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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2241-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RASHAD EXUM,

Defendant-Appellant.

Submitted November 15, 2022 – Decided March 1, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 18-11-1008.

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

Esther Suarez, Hudson County Prosecutor, attorney for respondent (Colleen Kristan Signorelli, Assistant Prosecutor, on the brief).

PER CURIAM

A jury found defendant Rashad Exum guilty of first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2a(1) and N.J.S.A. 2C:11-3a(1), for the shooting death of Amir Pleasant by co-defendant Marquise Brown. Defendant was found not guilty of purposeful/knowing murder of Pleasant, N.J.S.A. 2C:11-3a(1) to (2); possession of a firearm for an unlawful purpose N.J.S.A. 2C:39-4a(1); and unlawful possession of a handgun, N.J.S.A. 2C:39-5b(1). He was tried with co-defendants Brown and Jahi Beatty, who were convicted of various offenses arising from Pleasant's murder.¹ Defendant was sentenced to a twenty-year prison term, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

Defendant appeals his conviction. He contends the trial court erred in not granting his motion for judgment of acquittal. He maintains there was insufficient evidence of his guilt because the State's case was built entirely on the dishonest testimony of William Davis. Defendant also challenges his sentence. He contends it is excessive because the court misapplied aggravating factor six, "extent of the defendant's prior criminal record and the seriousness of [this] offense," N.J.S.A. 2C:44-1(a)(6), causing an improper double-counting of

¹ Brown was found guilty of murder, possession of a firearm for an unlawful purpose, and unlawful possession of a handgun. State v. Brown, No. A-2408-19 (App. Div. March 15, 2022) (slip op. at 2), certif. denied, ___ N.J. ___ (2023). Beatty was found guilty of hindering apprehension or prosecution of another and hindering his own apprehension or prosecution. Ibid.

aggravating factors. In addition, he contends he is entitled to four days of jail credit.

We affirm defendant's conviction and sentence. However, we remand because, as the State concedes, defendant's judgment of conviction (JOC) should be amended to reflect four days of jail credit which were awarded to him at his sentencing.

The focus of defendant's motion for acquittal was an attack on the credibility of the State's prime witness, Davis. Prior to defendant's trial, Davis pled guilty to second-degree aggravated assault and conspiracy in connection with "a cooperation agreement[,] in which he agreed to "testify and tell the truth" about Pleasant's killing. Davis honored that agreement by testifying about his role in the shooting as well as that of defendant, Brown, and Beatty.

Days after the shooting, Davis voluntarily went to the Hudson County Prosecutor's Office where he told investigators that Brown shot and killed Pleasant.² After giving his statement, Davis was arrested and charged with murder, conspiracy, and unlawful possession of a weapon.

² Defendant went to the Prosecutor's Office upon learning the police had "grabbed" his girlfriend and were looking for him.

Davis testified that before speaking with investigators, he deleted texts from his phone related to the shooting. He also acknowledged his initial statement contained lies. He claimed he began telling the truth after he was arrested for murder and was not promised anything in exchange for his truthful statement.

Davis testified he was driving his girlfriend's car with Beatty and defendant as passengers when they saw Pleasant, an "op[p]"—meaning "[e]nemy [o]pposition"—of theirs, at a gas station. By happenstance they saw Brown on the street and stopped to talk to him. According to Davis, defendant asked Brown if he had a gun because they had just "seen our op[p]s." Brown responded that he would "go get it," then got in the back seat of the car and directed Davis to drive to a nearby building. When they arrived at their destination, Brown got out of the car, entered the building, and came back within five minutes. Brown returned to the back seat of the car, behind the front passenger's seat. Davis stated he did not see a gun.

Davis then drove back to where they had seen Pleasant. Once they were in the vicinity, Davis heard a gun being "cocked . . . back." Defendant told Brown "[t]hat's him right there." After Davis stopped the car, Brown exited and, within moments, Davis heard approximately four gunshots. Defendant climbed

into the back seat. After Brown returned to the car and sat in the front passenger seat, Davis drove away. Davis testified that Brown then stated "[h]e shot [Pleasant] two times in the head. And he shot two more times." Davis identified himself, defendant, Brown, and Beatty in surveillance video still photos taken from a convenience store they went to right after Pleasant's murder. He stated his trial testimony was truthful because he was "locked up."³

At the close of the State's case, Beatty moved for acquittal. Defendant's trial counsel joined the motion to dismiss the conspiracy and unlawful possession of a firearm charges. Defendant contended Davis's testimony was unreliable and, since it was the only evidence the State provided, no rational jury could find defendant guilty of conspiracy. After hearing the parties' respective arguments, the court denied the motion. Without specifying the evidence, the court stated:

In viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, I find that a jury could find . . . defendants, guilty of the charge beyond a reasonable doubt.

³ Under Davis's plea deal, he was sentenced to a ten-year prison term subject to NERA.

Before us, defendant asserts his motion for acquittal should have been granted because Davis's testimony was "unfit for consumption by any rational juror" considering Davis's admission that he lied; deleted texts from his phone before speaking to the police; and was motivated by a plea agreement "to save his own skin." Defendant also points out that, although the State's evidence placed him in the car near the crime scene, it did not establish he shot Pleasant or was tied to the murder weapon. Defendant, citing State v. Samuels, 189 N.J. 236, 249 (2007), argues his "presence at or near the scene of the crime" or "acquaintance with participants in a crime" was not sufficient evidence to prove beyond a reasonable doubt that he conspired to commit Pleasant's murder. We are unpersuaded.

Rule 3:18-1 provides that a defendant may, at the close of evidence, move for the entry of a judgment of acquittal on the grounds that "the evidence is insufficient to warrant a conviction." When considering a Rule 3:18-1 motion,

the trial judge must determine . . . whether, viewing the State's evidence in its entirety, . . . and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt.

[State v. Reyes, 50 N.J. 454, 458-59 (1967).]

Such inferences of guilt may be based on circumstantial evidence. State v. Franklin, 52 N.J. 386, 406 (1968) (citing State v. Fiorello, 36 N.J. 80, 86 (1961)).

We apply the same test as the trial court in reviewing the sufficiency of evidence. State v. Kittrell, 145 N.J. 112, 130 (1996). "In deciding whether the trial court was correct in denying [a Reyes] motion, we . . . take into account only the evidence on the State's case, unaided by what defendant later developed at trial." State v. Lemken, 136 N.J. Super. 310, 314 (App. Div. 1974).

Giving the State the benefit of all reasonable inferences from its evidence, a reasonable jury could have found that defendant conspired with his co-defendants. N.J.S.A. 2C:5-2(a) defines conspiracy:

A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he:

(1) Agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) Agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

There was no need for the State to prove that defendant verbally agreed to kill Pleasant. "[T]he conduct and words of co-conspirators is generally shrouded in 'silence, furtiveness and secrecy,' the conspiracy may be proven

circumstantially." Samuels, 189 N.J. at 246 (quoting State v. Phelps, 96 N.J. 500, 509 (1984) (citations omitted)).

The State, through Davis's testimony, did not try to prove defendant's guilt by his mere presence in the car with his co-defendants. See id. at 249 (holding a defendant's presence at the scene of a crime or association with those who committed the crime is insufficient to establish conspiracy). Rather, Davis described defendant's promotion, facilitation, planning, and aiding of Pleasant's murder. Davis testified defendant was in the car with him and Beatty when they saw their enemy, Pleasant; asked Brown to get a gun to shoot Pleasant; drove around with his co-defendants to searching for Pleasant; and was in the car and remained there when Brown got out of the car to shoot Pleasant and subsequently returned to the car. It is the jury's responsibility, not the trial court or this court, to determine whether Davis was telling the truth concerning defendant's role in the murder. See State v. Long, 216 N.J. Super. 269, 279-80 (App. Div. 1987) (concluding witness credibility is decided by the jury and denial of a motion for judgment of acquittal is appropriate when "the outcome depended on the issue of credibility"). Because there was sufficient circumstantial evidence to find defendant guilty of conspiracy to commit murder, the trial court—despite not detailing the State's evidence in support of

defendant's guilt—correctly denied defendant's motion for acquittal and allowed the jury to determine defendant's guilt.

Turning to defendant's twenty-year NERA sentence, he contends it is excessive because the trial court misapplied aggravating factor six. Defendant asserts his sentence was based on an improper double-counting of aggravating factor six when in "finding . . . aggravating factor number [six], the trial [court] placed reliance on 'the extent of . . . defendant's prior criminal record and the seriousness of this offense. Th[is] is first degree, the most serious offense degree.'"⁴ He adds "the trial court's reliance on the fact that conspiracy was a first[-]degree crime was a misapplication of aggravating factor [six], which may have affected the court's decision to impose the maximum possible term." In addition, defendant, citing State v. Marinez, 370 N.J. Super. 49, 58-59 (App. Div. 2004), complains "that by imposing the maximum [twenty-]year sentence subject to the 85% parole disqualifier of [NERA], the trial court did not adequately consider the real time consequences of the sentence being imposed."

⁴ The court also applied aggravating factor three, "the risk that [] defendant will commit another offense," N.J.S.A. 2C:44-1(a)(3), and aggravating factor nine, "the need for deterring [] defendant and others from violating the law," N.J.S.A. 2C:44-1(a)(9). The court did not apply mitigating factors and found the aggravating factors outweighed the mitigating factors.

Defendant's contentions lack sufficient merit to deserve much discussion in a written opinion. R. 2:11-3(e)(2). The trial court's application of aggravating factor six was supported by defendant's prior criminal history of a first-degree robbery conviction along with his eight juvenile adjudications. The record fails to show the trial court abused its discretion in sentencing defendant, see State v. Torres, 246 N.J. 246, 272 (2021), let alone double counted the sentencing factors. Defendant's sentence is consistent with our sentencing guidelines and does not shock our judicial conscience. State v. Tillery, 238 N.J. 293, 323 (2019) (citing State v. Fuentes, 217 N.J. 57, 70 (2014)).

We affirm defendant's conviction and sentence but remand for the trial court to amend the JOC to provide for four days of jail credit.

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



CLERK OF THE APPELLATE DIVISION