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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1228-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JONATHAN CARAMBOT,

Defendant-Appellant.

Argued March 11, 2024 – Decided May 30, 2024

Before Judges Gilson and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Municipal Appeal No. 2022-001.

Richard B. Robins argued the cause for appellant (Brach Eichler LLC, attorneys; Richard B. Robins and Vanessa Lanell Coleman, of counsel and on the briefs).

Stephen Anton Pogany, Assistant Prosecutor, argued the cause for respondent (Theodore N. Stephens, II, Essex County Prosecutor, attorney; Stephen Anton Pogany, on the brief).

PER CURIAM

Defendant Jonathan Carambot appeals from his conviction for driving while intoxicated (DWI), N.J.S.A. 39:4-50, following a trial de novo in the Law Division. The Law Division found defendant guilty based on police officers' observations that defendant was impaired. In doing so, the court recognized that there was no evidence that defendant had consumed alcohol and instead found that defendant was under the influence of drugs based solely on the observations of the officers, none of whom were Drug Recognition Experts (DREs). The court also reviewed video footage from a body-worn camera (BWC).

Consistent with the New Jersey Supreme Court's recent pronouncements in State v. Olenowski (Olenowski II), 255 N.J. 529 (2023), we hold that impairment from drugs needs to be proven with some independent evidence beyond lay witness' observations to establish a DWI conviction. Accordingly, we reverse and vacate defendant's DWI conviction and related sentence.[1]

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[1] In the municipal court, defendant was also convicted of failure to observe a traffic control device, N.J.S.A. 39:4-81, making an unsafe lane change, N.J.S.A. 39:4-88(b), and careless driving, N.J.S.A. 39:4-97. Those convictions were merged with his DWI conviction at the time of sentencing in the municipal court. Our vacation of defendant's DWI conviction does not vacate his convictions for failure to observe a traffic control device, making an unsafe lane change, or careless driving. The matter is remanded as to those convictions for further proceedings and, if appropriate, sentencing on those convictions.

I.

We discern the facts from the trial record. In doing so, we note that the material facts are not in dispute. There is no dispute that defendant was impaired. Instead, the dispute is whether the State proved beyond a reasonable doubt that defendant was impaired because he was under the influence of drugs.

On July 10, 2021, Bloomfield Police Officer Roger Petroche and his partner were on patrol in a police vehicle. As the officers' vehicle traveled eastbound on Bloomfield Avenue, they observed a vehicle driven by defendant speeding in the opposite direction. The officers made a U-turn and followed defendant's vehicle. They then observed defendant's vehicle make an unsafe lane change without signaling. Thereafter, the officers observed defendant's vehicle proceed through a red light. The officers, therefore, stopped defendant's vehicle.

When Officer Petroche went up to defendant, he noticed that defendant was sweating profusely, his eyes were watery, his speech was slurred, and he appeared nervous. Based on those observations, Petroche asked defendant to step out of the vehicle to perform field sobriety tests. Petroche first administered a horizontal gaze nystagmus (HGN) test and a vertical gaze nystagmus (VGN) test. Defendant failed both of those tests. Defendant was then asked to perform

several field sobriety tests, including a walk-and-turn test and a one-legged-stand test. Defendant either failed to follow the instructions for those tests or failed those tests.

Thereafter, a police sergeant arrived at the scene and administered a second HGN test. Defendant was again unable to perform that test. Defendant was arrested and taken to the police station.

At the station, Officer Rana Khalid administered an Alcotest on defendant. The test results showed that defendant had .00 alcohol in his breath. Khalid then requested defendant to provide a urine sample, but defendant refused.

Defendant was charged with careless driving, making an unsafe lane change, failure to observe a traffic control device, and DWI. In municipal court, two witnesses testified: Officers Petroche and Khalid. The State also submitted into evidence footage from a BWC worn by Petroche.

The municipal court found defendant guilty of all charges. At the time of sentencing, the municipal court merged the convictions for failure to observe a traffic control device, making an unsafe lane change, and careless driving with the DWI conviction. The municipal court then imposed a sentence consisting of a one-year loss of license; a two-year installation of an interlock device in

defendant's vehicle; forty-eight hours to be served at the Intoxicated Driver Resource Center; and $890 in fines and fees.

Defendant appealed his DWI conviction to the Law Division. The Law Division conducted a trial de novo based on the record developed in the municipal court. The Law Division relied on the observations made by the two testifying police officers, as well as a review of the footage from the BWC. The Law Division recognized that there was insufficient evidence to establish that defendant had been under the influence of alcohol. The court also recognized that defendant's refusal to submit a urine sample could not be used against him. See N.J.S.A. 39:4-50.2; N.J.S.A. 39:4-50.4a.

Instead, the Law Division relied on the observations of the testifying police officers and a review of the BWC footage and found that the evidence was sufficient to support a DWI conviction. Although the Law Division did not expressly state it was finding that defendant was under the influence of drugs, that was the only possible basis for the conviction. The Law Division then imposed the same sentence that had been imposed by the municipal court.[2]

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[2] We note that the Law Division did not conduct an independent sentencing hearing, nor did it enter a judgment of conviction on the DWI. Instead, the Law Division entered an order which "DENIED" defendant's "motion to appeal the conviction and sentence imposed by the municipal court." Because the Law

II.

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

> POINT I – THE COURT BELOW ERRED IN FINDING BEYOND A REASONABLE DOUBT THAT DEFENDANT WAS GUILTY OF DWI WHERE ALCOHOL INTOXICATION WAS NOT FOUND OR PROVEN, AND THE FINDING OF ALLEGED DRUG INTOXICATION WAS NOT SUPPORTED BY SUFFICIENT INDEPENDENT PROOF
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> POINT II – THE COURT BELOW ERRED IN ACCEPTING THE CONCLUSIONS OF PLAINTIFF'S WITNESSES AS THEIR TESTIMONY WAS UNRELIABLE AND DID NOT ESTABLISH INTOXICATION
>
> POINT III – THE COURTS BELOW COMMITTED ERROR BY SHIFTING THE BURDEN OF PROOF ONTO DEFENDANT AND/OR DRAWING IMPROPER INFERENCES

It is illegal to operate a motor vehicle "while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug[s]." N.J.S.A. 39:4-50(a). Accordingly, in cases where the State seeks to prove that a defendant was under the influence of a substance other than alcohol, the State

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Division reviewed the conviction de novo, it was required to, and should have, imposed a new sentence. State v. Jang, ___ N.J. Super. ___, ___ (App. Div. 2024) (slip op. at 7-8).

must establish that "(1) the defendant was intoxicated[,] and (2) the cause of the intoxication was either narcotics, hallucinogens, or habit-producing drugs." Olenowski II, 255 N.J. at 550.

The New Jersey Supreme Court has held that lay persons, including police officers, can testify that someone was intoxicated, but lay persons cannot opine as to the cause of the intoxication when the cause of the intoxication is not alcohol consumption. State v. Bealor, 187 N.J. 574, 577, 585 (2006). In short, the State must present evidence to establish beyond a reasonable doubt that a defendant, while operating a motor vehicle, was under the influence of drugs. Id. at 589-90.

In State v. Olenowski (Olenowski I), 253 N.J. 133, 151-55 (2023), the Court adopted a "Daubert-type"[3] standard for determining the reliability of expert evidence in criminal and quasi-criminal cases. In Olenowski II, the Court held that DRE testimony could satisfy the modified Daubert criteria for admission, subject to certain limitations. 255 N.J. at 546. In that regard, the Court stated:

> If feasible, the State must make a reasonable attempt to obtain a toxicology report based on a blood or urine sample from the driver. If the State fails to make such

[3] Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993).

> a reasonable attempt without a persuasive justification, the DRE opinion testimony must be excluded.
>
> [Ibid.]

Relevant to this case, in Olenowski II, the Court reinforced Bealor's holding that testimony on intoxication due to drugs, whether expert or lay, requires corroborating evidence. 255 N.J. at 551. The independent evidence can include factual observations, a driver's admission, information about a driver's recent drug use, or drugs or paraphernalia found in the vehicle. Id. at 610.

We accept the Law Division's finding that defendant appeared to be impaired. That finding is supported by the testimony of the officers concerning their observations and the court's review of the BWC footage. The State failed, however, to present any evidence to establish that the cause of the impairment was either narcotics, hallucinogens, or habit-producing drugs. Neither officer who testified at trial was a DRE. Indeed, the State did not seek to have a DRE observe defendant. Moreover, the State did not seek to obtain a warrant to compel defendant to provide a urine or blood sample. So, there is no independent toxicology analysis showing drug use. Consequently, the State did not prove that defendant had violated the DWI statute.

In vacating defendant's DWI conviction, we clarify some issues. The officers had probable cause to arrest defendant and bring him to the police station. The officers' testimonies concerning defendant's impairment establish that he was in no condition to drive. After defendant took the Alcotest, which reflected that he did not have any alcohol in his blood system, the police could have sought a warrant to compel a urine sample or a blood sample. The police could have also brought in an officer certified as a DRE to make observations of defendant and corroborate their observations. The failure of proofs in this case is that the police did not obtain any independent evidence beyond the officers' observations of defendant. Unlike in Bealor, there was no smell of burnt marijuana and no pipe with marijuana residue found in the car that defendant had been driving. 187 N.J. at 581, 590.

Therefore, we vacate defendant's DWI conviction and sentence and remand for further proceedings on his convictions for failure to observe a traffic control device, making an unsafe lane change, and careless driving.

Reversed, vacated, and remanded. We do not retain jurisdiction.