

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2329-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JASON W. VANDEREE,

Defendant-Appellant.

APPROVED FOR PUBLICATION

July 5, 2023

APPELLATE DIVISION

Argued April 25, 2023 – Decided July 5, 2023

Before Judges Gilson, Rose, and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Passaic County, Indictment No. 19-05-0357.

Taylor L. Napolitano, Assistant Deputy Public
Defender, argued the cause for appellant (Joseph E.
Krakora, Public Defender, attorney; Taylor L.
Napolitano, of counsel and on the brief).

Jennifer E. Kmieciak, Deputy Attorney General, argued
the cause for respondent (Matthew J. Platkin, Attorney
General, attorney; Jennifer E. Kmieciak, of counsel and
on the brief).

The opinion of the court was delivered by

GILSON, J.A.D.

This appeal arises out of a drug-induced tragedy. During the morning of February 19, 2019, defendant Jason Vanderee injected himself with fentanyl-laced heroin. Thereafter, he lost control of an SUV he had been driving, and his vehicle crashed into a gas station killing three people and injuring others.

Following the denial of his motion to suppress heroin and a glass pipe seized from his clothing, defendant pled guilty to three counts of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a). He was sentenced to an aggregate prison term of thirty years, with the requirement that he serve over twenty-five years before he is eligible for parole.

Defendant appeals from the denial of his motion to suppress and his sentence. He argues that the warrantless search of his clothes was unlawful, and that he is entitled to a resentencing. We reject defendant's arguments and affirm his convictions and sentence.

I.

The facts relevant to the suppression motion are not in dispute. The parties stipulated to the facts at the suppression hearing, and the trial court set forth those stipulated facts in its written decision. Thereafter, defendant admitted to other facts when he pled guilty.

Shortly before 9:00 a.m. on February 19, 2019, police received several calls reporting a multi-vehicle crash at a gas station on Route 23 in Wayne. Numerous police and emergency medical personnel responded to the scene.

At the gas station, the police found a station attendant motionless on the ground. Inside a Chevrolet Camaro parked at the gas pump, police saw two male occupants, one of whom had visible head injuries and neither of whom were moving. Those occupants were later identified as a father and his seventeen-year-old son. All three victims were pronounced dead at the scene.

Nearby, the police located a damaged Honda SUV with defendant inside the vehicle. Defendant was motionless and slumped over the steering wheel. A police officer checked defendant, found he had a pulse, and requested medical assistance. The officer also observed in plain view "an uncapped syringe (broken needle) on the driver's floor mat of the vehicle."

As medical personnel attended to defendant, the police determined that defendant should be arrested for driving while under the influence. Defendant was then placed in an ambulance, and Officer John Barrows was instructed to stay with him. Accordingly, Barrows followed the ambulance in his patrol car to the hospital.

While in the ambulance, paramedics observed that defendant was unconscious, his breathing was shallow, and he had a "track mark" on his left arm. Believing that defendant might have overdosed on opioids, defendant was given "IV Naloxone (Narcan)." Shortly thereafter, defendant regained consciousness, and a medical assistant asked defendant how much heroin he had used that day. Defendant responded: "I don't know."

When the ambulance arrived at the hospital, defendant was taken to a trauma room. Barrows, who had also arrived at the hospital, accompanied defendant. In the trauma room, medical personnel removed defendant's clothes to assess his injuries. Defendant's clothes were piled near the bed on which he was being treated.

At that time, which was between 9:30 a.m. and 10:15 a.m., Barrows searched defendant's clothing. In the pocket of defendant's sweatpants, Barrows found nine glassine bags of suspected heroin and seven used bags. The bags were all stamped "DEATH ROW." Barrows also found a glass pipe in defendant's jacket. Laboratory testing later confirmed that the powder in the bags consisted of heroin, fentanyl, "4 ANPP," and methamphetamine. The pipe was found to have a trace amount of cocaine.

After he was assessed in the trauma room, defendant was taken to an emergency room for further treatment. There, Detective Michael Polifrone arrived, and Barrows updated the detective on what he had found. The detective then decided to apply for search warrants to obtain blood and urine samples from defendant and to search the SUV defendant had driven.

Barrows observed that defendant was coming in and out of consciousness. At approximately 10:15 a.m., defendant had regained consciousness, and Barrows told him that he was under arrest and placed a handcuff on his left wrist. The handcuff was then secured to the bed on which defendant was lying.

Subsequently, law-enforcement applied for and obtained warrants to search the SUV defendant had driven and to take blood and urine samples from defendant. From the SUV, police seized the used syringe, a plastic Walgreens bag containing an opened package of insulin syringes, and a receipt from Walgreens. The package of syringes had nine unused syringes and one missing syringe. The Walgreens receipt showed that the box of syringes had been purchased at a Walgreens in Paterson at 8:26 a.m. on February 19, 2019.

An analysis of defendant's blood showed the presence of morphine, fentanyl, benzoylecgonine, which is a cocaine metabolite, and alprazolam, also known as Xanax. Analysis of defendant's urine showed the presence of

morphine, fentanyl, methamphetamine, cocaine, codeine, alprazolam, and 6-monoacetylmorphine. The laboratory reports on the blood and urine screenings further "indicate[d] the presence of other drugs not confirmed in [these] item[s]." The police also obtained defendant's medical records from the hospital, which "revealed a positive urine screen for benzodiazepines, cocaine, and opiates."

The investigation of the crash revealed that it had involved four vehicles: the Honda Pilot, operated by defendant; the Chevrolet Camaro, in which two of the dead victims had been found; a Ford Transit work van, occupied by two men who had been injured; and a Nissan Rogue, occupied by three women, one of whom had been injured. In addition, five vehicles parked in the front lot of the nearby Wayne Mazda dealership were damaged from flying debris.

Defendant was indicted for twelve crimes related to the deaths of the three victims and the injuries to two other victims. Specifically, defendant was charged with three counts of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a); three counts of second-degree death by auto, N.J.S.A. 2C:11-5(a); three counts of third-degree strict liability vehicular homicide, N.J.S.A. 2C:11-5.3(a); two counts of fourth-degree assault by auto, N.J.S.A. 2C:12-1(c)(2); and third-degree possession of heroin, N.J.S.A. 2C:35-10(a)(1).

Thereafter, defendant moved to suppress the evidence seized from the SUV and his clothing. He later withdrew the portion of his motion seeking to suppress evidence seized as authorized by the warrants. Accordingly, his motion was limited to suppressing the bags and pipe seized from his clothes.

On October 13, 2021, the trial court issued a written opinion and order denying defendant's motion to suppress. The court found that the search of defendant's clothing was a lawful search incident to his arrest. In that regard, the trial court found that Barrows would have searched defendant incident to his arrest at the crash scene but could not do so because defendant was undergoing assessment and treatment. The search of defendant's clothes had been conducted at the hospital approximately forty-five minutes to one-and-a-half hours after the police were called to the crash scene. Consequently, the trial court found that the search of defendant's clothing "was substantially contemporaneous with his arrest, was conducted as soon as it was practically possible, and was entirely justified." Moreover, the court found that "Barrows was already aware of an uncapped syringe/broken needle discovered in the driver's floor area of the vehicle and it was further totally reasonable to search his clothing for the protection of the police and the possibility that a further dangerous syringe could be contained therein."

As an alternative basis, the trial court found that the warrantless search of defendant's clothing was lawfully conducted as an inventory search. Accordingly, on those two alternative and related grounds, the trial court denied defendant's suppression motion.

In November 2021, defendant pled guilty to three counts of first-degree aggravated manslaughter. He also pled guilty to the motor vehicle offense of driving while under the influence, N.J.S.A. 39:4-50. In pleading guilty, defendant admitted that before the crash, he had purchased and ingested heroin, "which had fentanyl contained in it," and then drove the SUV. He also admitted that on three previous occasions he had lost consciousness after ingesting heroin, including while driving a vehicle. Accordingly, he acknowledged that he had disregarded the risk that he could lose consciousness from ingesting heroin and "could cause deaths by then getting in a motor vehicle and driving on th[e] highway."

In exchange for defendant's guilty plea, the State agreed to recommend an aggregate prison term of thirty years, with periods of parole ineligibility and supervision as prescribed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The State also agreed to recommend dismissal of all other criminal charges.

Defendant was sentenced on March 3, 2022. On each count of aggravated manslaughter, defendant was sentenced to ten years in prison subject to NERA. The court found that the three convictions involved three separate victims and that the sentences should be served consecutively. Consequently, consistent with the plea agreement, defendant was sentenced to an aggregate prison term of thirty years with the requirement that he serve twenty-five and a half years before he will be eligible for parole. Defendant will also be supervised on parole for fifteen years after his release from prison.¹

II.

On appeal, defendant challenges the denial of his motion to suppress and his sentence. He articulates his arguments as follows:

POINT I - THE WARRANTLESS SEARCH OF THE PILE OF [DEFENDANT'S] CLOTHING IN THE EMERGENCY ROOM WHILE HE WAS BARELY CONSCIOUS WAS NOT A SEARCH INCIDENT TO ARREST, NOR HAS THE STATE ESTABLISHED THAT THE EVIDENCE GARNERED WOULD HAVE BEEN INEVITABLY DISCOVERED DURING AN INVENTORY SEARCH.

¹ On the conviction for driving while under the influence, defendant was sentenced as a second-time offender to ninety days in jail. That sentence was ordered to run concurrently to his sentence for aggravated manslaughter. He was also sentenced to serve forty-eight hours in the Intoxicated Driver Resource Center, his driver's license was suspended for two years, and he will be required to install an interlock device for three years if he owns a vehicle after he is released from prison.

A. The Search Incident to Arrest Was Invalid.

B. The State Failed to Prove that the Inevitable Discovery Doctrine and Inventory Search Exception Apply.

POINT II – [DEFENDANT] IS ENTITLED TO RESENTENCING BECAUSE THE COURT (1) FAILED TO PROVIDE A STATEMENT OF REASONS FOR IMPOSING ENTIRELY CONSECUTIVE TERMS IN THE FACE OF SIGNIFICANT MITIGATING EVIDENCE OF HIS ADDICTION HISTORY AND THREE YEARS OF SOBRIETY PENDING SENTENCING; AND (2) ERRED IN FINDING AGGRAVATING FACTORS AND DENYING MITIGATING FACTORS BASED ON HIS ADDICTION.

We are not persuaded by either of defendant's arguments, and we affirm his convictions and his sentence. Initially, we note that it is not clear what defendant thinks he would gain by suppressing the evidence seized from his clothing. Other evidence seized pursuant to search warrants provides strong evidence that defendant was under the influence of heroin, fentanyl, and other illegal drugs at the time of the crash. That other evidence includes the syringe seized from the SUV, the observations made by medical personnel while treating and transporting defendant, and the analysis of defendant's blood and urine, which shows that he had heroin, fentanyl, and other substances in his system soon after the crash. Nevertheless, we analyze defendant's appeal of the denial

of his suppression motion because he has a right to have that issue reviewed. See State v. Knight, 183 N.J. 449, 471 (2005) (explaining Rule 3:5-7(d) "permit[s] a defendant to appeal the denial of a Fourth Amendment-based motion to suppress evidence after a conviction whether based on a guilty plea or a conviction").

A. The Search of and Seizure of Defendant's Clothing.

An appellate court reviewing a trial court's decision on a motion to suppress ordinarily "defer[s] to the [trial] court's factual and credibility findings provided they are supported by sufficient credible evidence in the record." State v. Washington, 475 N.J. Super. 292, 300 (App. Div. 2023) (citing State v. Dunbar, 229 N.J. 521, 538 (2017)). "But when the facts are undisputed, as they are here, and the judge interprets the law on a non-testimonial motion to suppress, [the] review is de novo." State v. Smart, 253 N.J. 156, 164 (2023).

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . and no warrant shall issue, but upon probable cause." U.S. Const. amend. IV. Article I, Paragraph 7 of the New Jersey Constitution contains nearly identical language guaranteeing the same right. N.J. Const. art. I, ¶ 7. "[U]nder both the Fourth Amendment to

the United States Constitution and Article I, Paragraph 7 of our State Constitution, searches and seizures conducted without warrants issued upon probable cause are presumptively unreasonable and therefore invalid." State v. Elders, 192 N.J. 224, 246 (2007). To justify a warrantless search or seizure, "the State bears the burden of proving by a preponderance of the evidence that [the] warrantless search or seizure falls within one of the few well-delineated exceptions to the warrant requirement." State v. Chisum, 236 N.J. 530, 546 (2019) (quoting State v. Mann, 203 N.J. 328, 337-38 (2010)). This appeal involves two exceptions to the warrant requirement: (1) a search incident to an arrest; and (2) an inventory search.

1. The Search Incident to Defendant's Arrest.

"It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment." United States v. Robinson, 414 U.S. 218, 224 (1973). Accordingly, "an officer [has] the right to search a [suspect's] person without a warrant if there is probable cause to arrest." State v. Roman-Rosado, 462 N.J. Super. 183, 201 (App. Div. 2020); see also Chimel v. California, 395 U.S. 752, 762-63 (1969). The officer may also search "the area 'within [the suspect's] immediate control.'" Chimel, 395 U.S. at 763.

The justification for a search incident to an arrest "is to protect arresting officers from potential dangers, as well as to prevent destruction or concealment of evidence." Roman-Rosado, 462 N.J. Super. at 201. Therefore, "ordinarily, '[a] search incident to an arrest must be contemporaneous with that arrest.'" State v. Lentz, 463 N.J. Super. 54, 70 (App. Div. 2020) (alteration in original) (quoting State v. Bradley, 291 N.J. Super. 501, 510 (App. Div. 1996)). "An arrest and search are deemed to be 'reasonably contemporaneous' if 'they occur as parts of a single transaction, as connected units of an integrated incident.'" Ibid. (quoting State v. Doyle, 42 N.J. 334, 343 (1964)).

A search incident to an arrest may, however, "be valid under some circumstances even though it is not conducted contemporaneously with the arrest." State v. Oyenusi, 387 N.J. Super. 146, 156 (App. Div. 2006). Recently, the New Jersey Supreme Court has clarified that delayed searches incident to an arrest "are constitutionally permissible so long as (1) the delay itself and (2) the scope of the search were 'objectively reasonable.'" State v. Torres, 253 N.J. 485, 507-08 (2023) (citing Lentz, 463 N.J. Super. at 76) (adopting the test this court set forth in Lentz). "[A]s with all searches, a search incident to arrest must be reasonable' and the reasonableness "'depends on [the totality] of the

circumstances surrounding the search . . . and the nature of the search." Id. at 507 (second alteration in original) (quoting Lentz, 463 N.J. Super. at 70).

The Court in Torres adopted the two-part Lentz test subject to the same caveat noted in Lentz. Id. at 508. In Lentz, we explained that in analyzing a delayed search incident to an arrest, the search must still be tethered to the justifications for a search incident to an arrest and the search cannot "give police free reign to conduct warrantless searches without probable cause at any point after a lawful arrest." Torres, 253 N.J. at 508 (quoting Lentz, 463 N.J. Super. at 79).

The Court in Torres also explained that the protections afforded under the New Jersey Constitution in analyzing searches incident to an arrest will "adhere" to the standards used by the United States Supreme Court in interpreting the Federal Constitution and New Jersey would not adopt a "more expansive" standard under the New Jersey Constitution. Id. at 504. Accordingly, the Torres Court relied on the United States Supreme Court's analysis in United States v. Edwards, 415 U.S. 800 (1974). Id. at 504-05. In that regard, the Torres Court quoted Edwards in summarizing the guiding principles concerning a delayed search of an arrestee:

[O]nce the accused is lawfully arrested and is in custody, the effects in his possession at the place of

detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed between the arrest and subsequent administrative processing, on the one hand, and the taking of the property for use as evidence, on the other.

[Id. at 505 (alteration in original) (quoting Edwards, 415 U.S. at 807).]

The Court in Torres also noted that Lentz's two-part standard struck the appropriate "constitutional balance" by, "on the one hand," protecting "individual privacy rights" while, "on the other hand," protecting "important governmental interests in public safety and the gathering of evidence for the prosecution of crimes." Id. at 508.

We do not read Torres or Lentz to be restricted to their facts or to the seizure of evidence that might dissipate. Torres involved the seizure of defendant's sweatshirt several hours after defendant's arrest when the police observed defendant wiping his hands on his sweatshirt and suspected he was trying to wipe away blood from an axe murder. Lentz involved the swabbing of defendant's hands for gunshot residue approximately three hours after his arrest. Nothing in Torres or Lentz suggests that the holdings are limited to seizure of evidence that may dissipate. Instead, both the Court and this court were clear in

stating that the two-part test should be used in analyzing delayed searches incident to an arrest.

Consequently, "the proper inquiry for determining the constitutionality of a search-and-seizure is whether the conduct of the law enforcement officer who undertook the search was objectively reasonable." State v. Watts, 223 N.J. 503, 514 (2015) (quoting State v. Bruzzese, 94 N.J. 210, 219 (1983)). "For purposes of our Federal and State Constitutions, it is enough that the police officers, in performing their duties, acted in an objectively reasonable fashion." Id. at 515.

Initially, we note defendant does not argue that there was no probable cause to arrest him. Indeed, the record established that there was ample probable cause to arrest defendant based on the observations made by police officers at the crash scene. See State v. Moore, 181 N.J. 40, 46 (2004) (explaining probable cause exists where the facts and circumstances within an officer's "knowledge . . . [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed" (alterations in original) (quoting Schneider v. Simonini, 163 N.J. 336, 361 (2000))).

The trial court in this matter denied defendant's suppression motion after finding that the search was substantially contemporaneous with defendant's arrest and was reasonable. Based on the stipulated facts and the governing law,

we agree with that finding because it is supported by substantial, credible evidence. When the police first arrived at the crash scene, defendant was not fully conscious and required medical assessment and treatment. The police determined to arrest defendant at the scene but could not reasonably search him until he was at the hospital. That search took place less than an hour and a half after police had responded to the crash scene, and there is no evidence suggesting that delay was not objectively reasonable.

The scope of the search incident to the arrest was also objectively reasonable. The police had reasonable objective suspicion that defendant was under the influence and that his clothing may contain syringes or drugs. It was, therefore, objectively reasonable to search defendant's clothes to see if they contained evidence and to preserve that evidence. That search was, therefore, tethered to one of the well-established justifications underlying the search-incident-to-arrest exception: "To search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." Torres, 253 N.J. at 503 (quoting Chimel, 395 U.S. at 763).

The search of defendant did not violate the caveat noted by the Court in Torres and this court in Lentz. Viewed objectively and in the context of the totality of the circumstances, holding this search constitutional does not give

police free reign to conduct warrantless searches without probable cause at any point after a lawful arrest. Instead, it strikes the appropriate balance of protecting privacy rights while also protecting the governmental interest in public safety and the gathering of evidence for the prosecution of crimes. In short, the search of defendant's clothes was legal and permissible as a search incident to his arrest.

2. The Inventory Search.

We also agree with the trial court that the search of defendant's clothes was lawfully conducted as an inventory search. Police can "search an arrestee without a warrant and inventory the property in the arrestee's possession before he or she is jailed." State v. Hummel, 232 N.J. 196, 208 (2018). Inventory searches "serve[] a three-fold purpose: protection of the inventoried property while in police custody, shielding the police and storage bailees from false property claims, and safeguarding the police from potential danger." Ibid. (alteration in original) (quoting State v. Mangold, 82 N.J. 575, 581-82 (1980)). An inventory search must be reasonable under the circumstances. Ibid.; see also Mangold, 82 N.J. at 583. Accordingly, "the propriety of an inventory search involves a two-step inquiry: (1) whether the impoundment of the property is justified; and (2) whether the inventory procedure was legal." Hummel, 232

N.J. at 208 (citing Mangold, 82 N.J. at 583). Factors relevant to determining the reasonableness of the search include "the scope of the search, the procedure used, and the availability of less intrusive alternatives." Mangold, 82 N.J. at 584. No one factor is dispositive, and each factor should be balanced against the others. Hummel, 232 N.J. at 208-09. Assessing "whether law enforcement conducted the search pursuant to routine police procedures is essential" and "[s]earches conducted at variance with or in the absence of standardized practices are unlikely to satisfy the inventory-search warrant exception." Id. at 210.

The trial court here found that the impoundment of defendant's clothes was lawful and there were safety concerns that another uncapped syringe could be in the clothes. Given the stipulated facts at the suppression hearing, we agree with that conclusion. Although the stipulated facts did not directly address the procedures the police routinely used for inventory searches, there was no dispute that inventory searches were routinely conducted by the Wayne police.

B. Defendant's Sentence.

Defendant challenges his sentence, arguing that the trial court erred in finding three aggravating factors and not finding any mitigating factors. In

addition, he contends that the court erred in imposing consecutive sentences. The record does not support those arguments; therefore, we affirm the sentence.

An appellate court's standard of review of a sentencing decision is well-established and deferential. See State v. Cuff, 239 N.J. 321, 347 (2019). We "must not 'substitute [our] judgment for that of the sentencing court.'" State v. Liepe, 239 N.J. 359, 370 (2019) (quoting State v. Fuentes, 217 N.J. 57, 70 (2014)). Instead, we will affirm a trial court's sentence unless: "(1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based upon competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).

1. The Aggravating and Mitigating Factors.

The court found aggravating factors one, three, and nine. See N.J.S.A. 2C:44-1(a)(1), (3), and (9). It did not find any mitigating factors, and in doing so it expressly rejected defendant's arguments for mitigating factors seven, eight, and nine. See N.J.S.A. 2C:44-1(b)(7), (8), and (9). Accordingly, the court found that the aggravating factors strongly outweighed any mitigating evidence.

In finding aggravating factor one, the court explained that it did not double count the fact that defendant had acted recklessly, which is an element of aggravated manslaughter; rather, under State v. Lawless, 214 N.J. 594 (2013), the court considered the injuries defendant had caused to other victims. The court also noted that defendant's actions resulted in three deaths. Nevertheless, the court did not rely solely on the victims' death in finding aggravating factor one because the court considered other facts, including the impact defendant's actions had on numerous families.

In finding aggravating factor three, the court considered defendant's prior adjudication for driving while intoxicated, his "long[-]time addiction, the failure of obtaining sobriety despite strong family support[] and ongoing treatment by his own doctors and his long[-]time therapist, and his involvement with numerous well regarded treatment programs." The court also considered the submissions by defense counsel, which noted defendant was at a low risk of committing violent offenses. Those submissions also explained, however, that defendant needed "therapy and counseling both . . . in prison and after his release," and the court determined there was a substantial risk of defendant returning to drugs and committing other reckless acts after being released,

especially because he would likely face substantial hardships with employment and relationships.

In finding aggravating factor nine, the court explained defendant's risk of reoffending was "closely intertwined with the need to deter him." The court also explained there was a "strong need to deter others who would make the same catastrophic decision to drive when they are under the influence of drugs [or] alcohol."

Although the court acknowledged defendant had no prior felony convictions, it declined to find mitigating factor seven because defendant had, "for many years, bought and possessed and used multiple different illegal drugs." Thus, "[b]y his own admission, [defendant] was immersed in the world of multiple illegal drugs for well over a decade prior to February 19[], 2019." Nevertheless, the court stated it would factor defendant's lack of prior felony convictions into the overall sentence.

In rejecting mitigating factor eight, the court found it could not conclude the circumstances underlying defendant's arrest were not likely to recur. The court explained defendant's addiction would likely continue and would be compounded by the hardships he would probably face once released from prison. Similarly, in rejecting mitigating factor nine, the court acknowledged

defendant's remorse but concluded defendant's "crimes flowed from a severe addiction, [which] will be lifelong." The court explained that it was unknown whether defendant could maintain sobriety when released and that was a very substantial risk.

Although the court did not find any mitigating factors, it considered the following mitigating evidence in determining the sentence: that defendant had attended many treatment programs and made efforts to address his substance abuse; that defendant had participated in counseling while in jail; that defendant had no disciplinary problems while in jail; and that defendant had accepted responsibility for his actions.

In short, the court's findings of the aggravating factors and its rejections of mitigating factors were based upon competent, credible evidence. We discern no abuse of discretion. See Bolvito, 217 N.J. at 228.

2. The Consecutive Sentences.

Defendant also argues the court erred in imposing consecutive sentences. In that regard, defendant contends the court failed to provide a statement of reasons explaining the overall fairness of its decision to impose consecutive

sentences and failed to evaluate the Yarbough² factors on the record. We reject these arguments.

"[T]rial judges have discretion to decide if sentences should run concurrently or consecutively." State v. Miller, 205 N.J. 109, 128 (2011); see also N.J.S.A. 2C:44-5(a). "[W]hen determining whether consecutive sentences are warranted," a court is required "to perform the well-known assessment of specific criteria" commonly referred to as the Yarbough factors. State v. Randolph, 210 N.J. 330, 353 (2012). Those factors include the following:

- (1) there can be no free crimes in a system for which the punishment shall fit the crime;
- (2) the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision;
- (3) some reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not:
 - (a) the crimes and their objectives were predominantly independent of each other;
 - (b) the crimes involved separate acts of violence or threats of violence;
 - (c) the crimes were committed at different times or separate places, rather than being committed

² State v. Yarbough, 100 N.J. 627 (1985).

so closely in time and place as to indicate a single period of aberrant behavior;

(d) any of the crimes involved multiple victims;

(e) the convictions for which the sentences are to be imposed are numerous;

(4) there should be no double counting of aggravating factors;

(5) successive terms for the same offense should not ordinarily be equal to the punishment for the first offense; and

(6) there should be an overall outer limit on the cumulation of consecutive sentences for multiple offenses not to exceed the sum of the longest terms (including an extended term, if eligible) that could be imposed for the two most serious offenses.

[State v. Torres (Edgar Torres), 246 N.J. 246, 264 (2021) (quoting Yarbough, 100 N.J. at 643-44).]

The sixth factor, regarding the imposition of an overall outer limit on consecutive sentences, has been superseded by statute. See State v. Eisenman, 153 N.J. 462, 478 (1998) (citing N.J.S.A. 2C:44-5(a)).

"A court must 'articulate [its] reasons' for imposing consecutive sentences 'with specific reference to the Yarbough factors.'" State v. Chavarria, 464 N.J. Super. 1, 19 (App. Div. 2020) (alteration in original) (quoting State v. Abdullah, 184 N.J. 497, 515 (2005)). Accordingly, "[a] statement of reasons is a necessary

prerequisite for adequate appellate review of sentencing decisions . . . [to] determine whether the trial court's imposition of consecutive sentences was a valid exercise of discretion." Ibid. (alterations in original) (quoting State v. Soto, 385 N.J. Super. 247, 256 (App. Div. 2006)). Moreover, "[a]n explicit statement, explaining the overall fairness of a sentence imposed on a defendant for multiple offenses in a single proceeding or in multiple sentencing proceedings, is essential to a proper Yarbough sentencing assessment." Edgar Torres, 246 N.J. at 268.

Ordinarily, when a judge "fails to give proper reasons for imposing consecutive sentences . . . a remand [is] required for resentencing." Randolph, 210 N.J. at 353 (alteration in original) (quoting State v. Carey, 168 N.J. 413, 424 (2001)); see also Cuff, 239 N.J. at 352. Sentences can, however, "be upheld where the sentencing transcript makes it possible to 'readily deduce' the judge's reasoning." Miller, 205 N.J. at 129-30 (quoting State v. Bieniek, 200 N.J. 601, 609 (2010)); see also State v. Molina, 168 N.J. 436, 442-43 (2001) (explaining the Court has, on occasion, disposed with the need to remand for a statement of reasons when it is convinced that the sentences clearly fall within the sentencing guidelines). "But those cases are the exception, not the rule." Miller, 205 N.J. at 130.

In imposing consecutive sentences, the trial court explained that it "fully recognize[d] the factors a judge should consider under the case law when considering both the length of the sentence and the structure of the sentence." The court recognized that "this was one incident, not multiple incidents committed at different times and on different dates." The court explained, however, that this was a "highly reckless incident." In addition, the court pointed out that defendant had crashed a vehicle in 2016 under similar circumstances and, therefore, he knew he "could lose consciousness and cognition and control, and . . . that driving a vehicle" in the manner that he did "could result in a catastrophic outcome."

The court then "conclude[d] that a proper sentence . . . [would] include two consecutive sentences following the first sentence." In that regard, the court explained such a punishment was "just" because "each victim should have a sentence which specifically addresse[d] the loss of that precious life." Moreover, consecutive sentences would permit defendant to be "on parole supervision as long as can be structured under the plea agreement," which the court believed would assist in protecting the public when defendant is released.

Although the court did not explicitly mention Yarbough in its sentencing decision, it explained it recognized the factors that a judge needs to consider

regarding the length of the sentence and whether to run sentences consecutively or concurrently. The court explicitly recognized that "this was one incident, not multiple incidents committed at different times and on different dates" but that it was "a highly, highly reckless incident following prior incidents where . . . [defendant] well knew that driving a vehicle could result in a catastrophic outcome." The court also noted that defendant's "actions on that morning clearly indicate that his primary focus was on getting heroin" and that the "safety of others never entered his mind." Moreover, the court reasoned that consecutive sentences would provide for an increased period of post-release supervision, which the court believed would assist in protecting the public after defendant's release.

Given the court's detailed and considered analysis, we are satisfied that the trial court considered the Yarbough factors despite not referring to those factors explicitly. The court also provided an explanation for why it believed the overall sentence was fair. The court's detailed reasonings reflect that the court did not apply a presumption in favor of consecutive sentences. Instead, the "sentencing transcript makes it possible to 'readily deduce' the judge's reasoning" and, therefore, we need not remand for resentencing. Miller, 205 N.J. at 129-30 (citation omitted); see also Liepe, 239 N.J. at 377-78. Indeed, the

court's imposition of consecutive sentences comports with our Supreme Court's recognition that "[c]rimes involving multiple deaths or victims who have sustained serious bodily injuries represent especially suitable circumstances for the imposition of consecutive sentences." Carey, 168 N.J. at 428; see also Molina, 168 N.J. at 442.

III.

In summary, having conducted a thorough review of the record and the governing law, we discern no reversible error in the denial of defendant's motion to suppress. We also see no abuse of discretion in the sentence imposed. Defendant's reckless actions cut short three lives and adversely affected many more lives of the victims' families and friends. His convictions and sentence were just.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION