State v. Ibarra

2007 | Cited 0 times | New Jersey Superior Court | July 5, 2007

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Submitted May 30, 2007

Before Judges Kestin and Weissbard.

After a jury trial, defendant Hector Ibarra was convicted on all three counts of an indictment charging second-degree aggravated assault, N.J.S.A. 2C:16-1b(1) (count one), third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4d (count two), and fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5d (count three). On November 18, 2004, defendant was sentenced on count one to seven and one-half years in prison, subject to the eighty-five percent parole ineligibility of the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. After merging count three into count two, the judge imposed a concurrent prison term of three years on count two.

On appeal, defendant presents the following issues:

POINT I:

"GORY" PHOTOGRAPHS OF JAIGUA'S WOUNDS SHOULD NOT HAVE BEEN ADMITTED BECAUSE THEY WERE UNDULY PREJUDICIAL AND INSUFFICIENTLY PROBATIVE.

POINT II:

EVIDENCE OF AND COMMENTS RELATING TO JAIGUA'S EMOTIONAL TRAUMA AND THE POLICE PERCEPTION OF THE SERIOUSNESS OF HIS INJURIES WERE IMPROPERLY PLACED BEFORE THE JURY.

POINT III:

THE TRIAL COURT IMPROPERLY FAILED TO INSTRUCT THE JURY ON WHAT CONSTITUTED "SERIOUS, PERMANENT DISFIGUREMENT."

POINT IV:

THE COURT ERRONEOUSLY PERMITTED EVIDENCE TO BE ADMITTED REGARDING

JAIGUA'S SCARRING AND FAILED TO ESTABLISH A RECORD OF THE SCARRING.

POINT V:

THE COURT IMPROPERLY ADMITTED EVIDENCE OF A DRAWING PREPARED BY THE TREATING PHYSICIAN.

POINT VI:

DEFENDANT'S SENTENCE IS MANIFESTLY EXCESSIVE.

POINT VII:

DEFENDANT'S SEVEN AND ONE-HALF YEAR SENTENCE, WHICH EXCEEDED THE THEN-EFFECTIVE PRESUMPTIVE TERM FOR DEFENDANT'S SECOND DEGREE CONVICTION BY ONE YEAR, WAS UNCONSTITUTIONAL.

With the exception of his sentencing argument in Point VII, we find defendant's contentions to be without sufficient merit to warrant extended discussion. R. 2:11-3(e)(2). We will comment on each briefly.

I.

We set forth the facts generally as stated in the State's brief. On July 16, 1999, at 4:00 p.m., Ruben Jaigua left his job with his co-worker Luis Romanillo. Before heading to their respective residences at the Windsor Castle Apartments, Jaigua and Romanillo stopped at a liquor store and purchased two six-packs of beer. Upon arriving at the apartments, the men agreed to meet around 6:00 p.m. and drink a few of the beers. The beer remained in Jaigua's vehicle.

At some point between 6:00 p.m. and 6:30 p.m., Romanillo met Jaigua at his apartment. They proceeded to Jaigua's car in the parking lot, removed the beer from the vehicle, and began talking and drinking. In a period of three to three and one-half hours, they consumed about four beers each.

Walter Sanchez arrived in his car with defendant. Sanchez and defendant decided to stay, have some beers, and talk to Jaigua and Romanillo. While they were socializing, defendant began to verbally demean Romanillo.

At about midnight, the police arrived while all four men were outside drinking and instructed them to dispose of their beer. The men complied and threw their beer into a dumpster in the apartment complex parking lot. Shortly after disposing of the beer, defendant began fighting with Romanillo. Jaigua intervened and separated the two men. As Jaigua was separating them, defendant asked Jaigua

if he wanted to fight, and punched him in the face. In turn, Jaigua repelled defendant with an open-hand shove to the face. While this was going on, someone yelled for the police to be called and Jaigua headed to his apartment. Romanillo went back to his apartment as well. Defendant took a bottle of beer and left the scene almost immediately after Romanillo departed. The only parties remaining outside were Sanchez and Hugo Cruz, Jaigua's cousin, who had arrived after the altercation between defendant and Romanillo.

Once Jaigua determined that the police were not coming, he came out of his apartment, saw that defendant was following Romanillo, and pursued him. Jaigua grabbed defendant and asked him why he was following Romanillo and why he wanted to fight again. At that point, Jaigua felt "something . . . wet in [his] chest." Defendant attacked again. Jaigua tried to grab defendant, but was losing strength. Jaigua attempted to retreat, but defendant continued his assault and began striking Jaigua's back. Jaigua noticed he was losing a lot of blood and asked Cruz, who was still outside, to call for help. Cruz then dialed 9-1-1.

Detective Joseph Gorski of the East Windsor Police Department, who was a patrolman when this incident occurred, arrived at the scene at approximately 1:15 a.m. and saw fellow Officer Eric Lion administering first-aid to Jaigua. According to Gorski, Jaigua had "multiple wounds about his body," was "visibly covered in blood," and appeared to be "wearing a red shirt."[1] Gorski followed a trail of blood to its apparent origin where he found a glass shard believed to have been part of a weapon used in the assault. Officer Wayne Hummel also responded to the scene and similarly observed that Jaigua's "torso was covered with blood [and] it appeared he was wearing a red shirt." Hummel also followed a trail of blood that ended at a broken piece of a beer bottle which was covered in blood. Another responding officer, Detective James Manahan, described Jaigua as "incapacitated" and "suffering from . . . what appeared to be stab wounds." Emergency medical technicians arrived, began to treat Jaigua, and transported him to Helene Fuld Medical Center (Helene Fuld) on life support. While in transit to the hospital, Jaigua lost consciousness.

On July 17, 1999, at 1:48 a.m., Dr. Kun Ho Cho, who was in charge of a trauma team on-call at Helene Fuld, received an alert that an individual with multiple stab wounds was en route to the hospital. Upon arrival, Jaigua was in a life-threatening state of shock and was bleeding profusely. He was immediately taken to the operating room where he was given general anesthesia, intubated, and a chest x-ray was taken. Jaigua's blood pressure was low and he had lost approximately two liters of blood. During surgery, Dr. Cho treated wounds to Jaigua's chest, back, abdominal region and left pinky finger. While in the operating room and in the intensive care unit, Jaigua was given four units of blood due to the blood loss he experienced as a result of his wounds. Over the course of the next three days, Jaigua's health gradually improved and he was discharged from the hospital on July 20, 1999.

II.

Just prior to jury selection, defense counsel voiced an objection to photographs of the victim taken at the scene, claiming that the pictures were "gruesome" and "inflammatory." The judge reviewed the photos and indicated her view that the photos were generally admissible but observed that several seemed duplicative and urged the prosecutor to review them with that thought in mind. As a result, the prosecutor reduced the number of photos he proposed to offer into evidence from nine to four. Defendant still objected, claiming that the probative value of the photos was outweighed by their prejudicial effect. N.J.R.E. 403. After reviewing the photos, the judge found they offered "some relevant information" and were not cumulative. When Detective Gorski subsequently testified, the photos were admitted.

There is no doubt that the photos, as described in the trial record,[2] were relevant to depict Jaigua's wounds and the severity of his injuries, which was an element of aggravated assault. The admissibility of photographs of a victim generally "rests in the discretion of the trial court, and the exercise of that discretion will not be reversed in the absence of a palpable abuse thereof." State v. Thompson, 59 N.J. 396, 420 (1971). "Palpable abuse exists only where the 'logical relevance will unquestionably be overwhelmed by the inherently prejudicial nature of the particular picture.'" State v. Bey, 112 N.J. 123, 182 (1988) (quoting State v. Smith, 32 N.J. 501, 525 (1960), certif. denied, 364 U.S. 936, 81 S.Ct. 383, 5 L.Ed. 2d 367 (1961)). Neither the presence of blood and gruesome details in photographs, nor the fact that photographs may be cumulative and somewhat inflammatory, provide automatic grounds for exclusion. See State v. DiFrisco, 137 N.J. 434, 500 (1994); State v. Belton, 60 N.J. 103, 109 (1972). Indeed, the trial judge's weighing of prejudice versus probative value of evidence is "entitled to deference unless it is a clear error of judgment or so wide of the mark that a manifest denial of justice results." State v. E.B., 348 N.J. Super. 336, 345 (App. Div.), certif. denied, 174 N.J. 192 (2002).

We discern no abuse of discretion here. The fact that the State presented witnesses to testify to the severity of the victim's wounds did not preclude admission of the photographs. State v. Morton, 155 N.J. 383, 455-58 (1998); State v. McDougald, 120 N.J. 523, 580-83 (1990). This was demonstrably not a case where the relevance of the photos was "overbalanced by more weighty considerations militating for exclusion." State v. Bucanis, 26 N.J. 45, 53, certif. denied, 357 U.S. 910, 78 S.Ct. 1157,2 L.Ed. 2d 1160 (1958).

III.

Defendant argues that it was error to admit Jaigua's testimony that he felt "very tired" after being stabbed and "thought that [he] was going to die," that he was "in a lot" of pain following surgery, and that it took him three months to return to work. Defendant also argues that it was improper for the judge to allow the victim to show the jury his wounds. In sum, defendant contends that he was prejudiced by the "highly inflammatory theme of Jaigua's five year physical and psychological ordeal" being placed before the jury. We disagree.

The victim's testimony about his injuries was unquestionably probative and not so inflammatory that it should have been precluded under N.J.R.E. 403. Defendant's argument would suggest that the more brutal the attack, and the more serious the resulting injuries, the more likely it is that the evidence should be precluded as unduly inflammatory. Clearly, such an argument makes no sense and defendant's position is without merit. Admission of the testimony was well within the judge's broad discretion. State v. Wise, 19 N.J. 59, 98 (1955); Dinter v. Sears, Roebuck & Co., 252 N.J. Super. 84, 92 (App. Div. 1991). And it was likewise within the judge's discretion to permit Jaigua to exhibit his scars to the jury, as we develop further below.

IV.

Defendant argues that the jury charge on the "serious permanent disfigurement" aspect of the "serious bodily injury," N.J.S.A. 2C:11-1b, was inadequate. In fact, defendant voiced no objection to the charge, although the judge had earlier invited the submission of an instruction that would have amplified the statutory terms. The defense position was that the victim's scarring did not, as a matter of law, constitute "serious permanent disfigurement." However, the judge determined that the issue was for the jury to decide.

Acknowledging the absence of any judicial description of serious permanent disfigurement in a criminal context, defendant urges us to adopt a definition found in civil law and conclude that the admission of such an explanation was prejudicial to him. We reject his invitation. In Soto v. Scaringelli, 189 N.J. 558 (2007), the Court recently addressed the issue of permanent disfigurement under the Automobile Cost Reduction Act of 1998 (AICRA), N.J.S.A. 39:6A-8a. While there is some merit to defendant's argument that amplification of the criminal charge in this regard may be warranted, we find no prejudice that would require reversal here.

The jury was charged on a number of lesser-included offenses which required instruction on not only serious bodily injury, but significant bodily injury and bodily injury.

N.J.S.A. 2C:11-1a, c. Given these options, it is unlikely the jury could have gone astray in deciding on the nature of Jaigua's injuries.

We also reject defendant's argument that his conviction for aggravated assault depended only on "serious permanent disfigurement." Rather, the evidence of "substantial risk of death" was clearly present in the record to support that conviction.

We conclude that the charge was adequate and provides no basis for reversal.

V.

We also reject defendant's related argument that the judge erred in permitting Jaigua to show his

scars to the jury because the scarring did not, as a matter of law, rise to the level of serious permanent disfigurement. While a photographic record of the scarring should have been made for the purposes of appellate review, see Soto, supra, 189 N.J. at 564, the description of the injuries in the record is sufficient in this case for us to conclude that the issue was for the jury. Finally, the drawing by Dr. Cho showing the number, location, and length of the victim's wounds was unquestionably relevant and not unduly prejudicial.

VI.

While we reject defendant's argument that the judge improperly found and weighed the aggravating and mitigating factors, we agree that his above presumptive sentence, albeit only slightly above, requires a remand pursuant to State v. Natale, 184 N.J. 458 (2005). As a result, defendant will have the opportunity to address the judge anew with his aggravating/mitigating arguments.

Conviction affirmed; remanded for a new sentencing pursuant to State v. Natale. We do not retain jurisdiction.

1. Jaigua was in fact not wearing a shirt when the assault occurred or after the police arrived.

2. We have not been provided with copies of the photographs.