

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-931-23

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of
v.	:	Conviction of the Superior Court of
	:	New Jersey, Law Division,
STEFAUN Z. CORLEY,	:	Gloucester County.
	:	Indictment No. 21-07-539
Defendant-Appellant.	:	Sat Below:
	:	
	:	Hon. Samuel J. Ragonese, Jr., J.S.C.,
	:	and a Jury.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

At Stefaun Corley's homicide trial, the State and the defense presented two competing versions of events. Although the parties agree that Stefaun went with brothers Terrell and Tyriq Bundy to attack Isaac Rose because of a dispute between Terrell and Isaac, they disagree about who fired the shots that killed Isaac's brother, Atiba Rose: the State argued that Stefaun shot Atiba, while the defense argued that it was not Stefaun but Terrell who likely shot Atiba. However, the court's numerous errors gutting Stefaun's defense and bolstering the State's case deprived the jury of the ability to fairly evaluate these competing theories. As a result, Stefaun's convictions must be reversed.

First, the court barred Stefaun from revealing Terrell's bias, preventing Stefaun from fully exploring Terrell's plea agreement and penal exposure, and from questioning Terrell about a related stabbing investigation in which he and his brother were primary suspects. Both errors precluded the defense from demonstrating to the jury Terrell's strong incentive to curry favor with the State. Had the jury learned about Terrell's biases, it would have been more likely to reject his testimony in support of the State's theory that Stefaun was the shooter.

Second, the court improperly denied Stefaun's repeated requests to instruct the jury on the lesser-related offense of conspiracy to commit aggravated assault. The jury had to decide whether Stefaun only accompanied

Terrell and Tyriq to fight Isaac, or whether he also fired the gun that killed Atiba. Even if the jury believed Stefaun was not the shooter, he could still be guilty of a conspiracy to assault Isaac. But the court deprived the jury of a legal framework for conviction if it believed this version of events, creating the impermissible risk that the jury compromised on a verdict of guilt for a greater offense rather than acquit Stefaun completely.

Finally, the prosecutor improperly bolstered his case in summation with unsupported claims about the shooter's position. The shooter's location was critical: if the jury believed the shooter was on the porch, then it would have believed Terrell committed the homicide; if it believed the shooter was off the porch and near the sidewalk, then it would have believed Stefaun committed the homicide. The State presented no shooting reconstruction or perforation analysis to prove the shooter's location—the only physical evidence was the location of two casings, which the State's own witness testified could not provide a precise coordinate. Nonetheless, the State asserted that damage to the house proved that the shooter was not standing at a "close range," and that the casings proved that the shooter was on the sidewalk. These statements went well beyond the record, compelling reversal. Because these errors individually and cumulatively deprived Stefaun of a fair trial, his convictions must be reversed.

PROCEDURAL HISTORY

On July 21, 2021, a Gloucester County grand jury issued Indictment No. 21-07-539 against defendant-appellant Stefaun Z. Corley, charging him with first-degree murder, contrary to N.J.S.A. 2C:11-3a(1), (2) (Count One), second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a(1) (Count Two), and second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b(1) (Count Three). (Da 1-3)¹ The remaining counts of the Indictment charged Tyriq L. Bundy and Antwonne D. Hutchins with first-degree conspiracy to commit murder (Counts Five and Six) and charged Tyriq² individually with third-degree aggravated assault (Count Four). A fourth co-

¹ Da: Defendant-appellant's appendix

Dca: Defendant-appellant's confidential appendix

1T: June 9, 2022 (conference)

2T: Aug. 8, 2022 (motion to suppress)

3T: Aug. 29, 2022 (motion to suppress)

4T: Nov. 28, 2022 (motion to sever)

5T: Mar. 14, 2023 (motion to admit Instagram messages)

6T: May 22, 2023 (motion to admit defensive 404b evidence)

7T: May 31, 2023 (motion to admit Instagram messages)

8T: June 1, 2023 (trial)

9T: June 2, 2023 (trial)

10T: June 6, 2023 (trial)

11T: June 7, 2023 (trial)

12T: June 9, 2023 (trial)

13T: Aug. 29, 2023 (sentencing)

PSR: Presentence Report

² Because several co-defendants and witness have the same last name, they will be referred to by their first names for clarity.

defendant, Terrell Bundy, was separately waived to adult court and charged with first-degree conspiracy to commit murder and third-degree aggravated assault. (Da 27)

On May 4, 2022, Terrell pleaded guilty to aggravated assault and a sentence of probation in exchange for testifying against his co-defendants. (Da 22-26) His plea also stated that he would be remanded to juvenile court following the resolution of the charges against his codefendants. (Da 24, 27)

On May 22, 2023, Antwonne Hutchins pleaded guilty to the disorderly persons charge of harassment and a fines-only sentence in exchange for his testimony. (Da 29-33) The plea further advised that sentencing would be postponed until after Stefaun's trial. (Da 31)

That same day, the court heard argument on Stefaun's motion to permit defensive use of prior bad act evidence. (6T 11-16) The Honorable Samuel J. Ragonese, Jr., J.S.C., presided over the testimonial hearing. The court denied Stefaun's motion on the record and issued a corresponding order and opinion. (6T 23-13; Da 4-21)

Stefaun's second trial³ began before Judge Ragonese, Jr., and a jury on June 1, 2023. (8T) During defense counsel's cross-examination of Terrell, the

³ Stefaun's first trial took place in March 2023 and ended in a mistrial after the jury hung on all counts.

court precluded counsel from inquiring into Terrell’s original sentencing exposure. (10T 155-7 to 24) However, after defense counsel’s closing argument, the court instructed the jury that it could consider “the question by defense counsel and response, if any, by Mr. Hutchins.”⁴ (11T 74-22) On June 9, 2023, after hearing testimony playback and reviewing the Ring camera and surveillance footage, the jury convicted Stefaun of all three counts. (12T 55-14 to 24; Da 34-35)

The court sentenced Stefaun on August 29, 2023, and imposed a 40-year sentence for first-degree murder, subject to the No Early Release Act (NERA) (Count One). (13T 45-24 to 46-5; Da 36) The court merged Counts Two and Three, but still imposed concurrent sentences of five years on each count and the corresponding fines and fees. (13T 46-20 to 47-1; Da 36-37) Stefaun filed a notice of appeal granted as within time. (Da 40-43)

⁴ As detailed in Point I.A, the court instructed the jury that defense counsel asked Antwonne this question, but counsel actually asked Terrell this question.

STATEMENT OF FACTS

On November 26, 2020, Antwonne Hutchins drove Tyriq Bundy, Terrell Bundy, and Stefaun Corley to 206 Hunter Street in Woodbury. (10T 132-24 to 134-14, 151-7 to 12) Terrell knew that Isaac Rose lived at 206 Hunter, and it was Terrell's idea to go there. (10T 161-5 to 16) Terrell "had it out" for Isaac because Isaac had him "jumped" and because Terrell was dating Isaac's ex-girlfriend. (10T 47-10 to 15, 151-13 to 15, 161-5 to 13) Surveillance footage from a nearby residence showed Antwonne's car park down the street from the Rose residence. (10T 79-15 to 19, 135-8 to 9) Terrell testified that he, Tyriq, and Stefaun exited the car and walked to 206 Hunter. (10T 78-6 to 10, 80-12 to 15, 151-21 to 23) Tyriq and Terrell walked onto the Rose's front porch and up to the front door. (10T 151-24 to 25) A Ring camera on the Rose's front door captured Terrell and Tyriq on video, which was played for the jury. (10T 42-10 to 23, 74-21 to 75-6, 77-11 to 15) No other person can be seen on the Ring video, and it did not capture the subsequent assault or shooting. (10T 104-19 to 23)

Isaac's older brother, Atiba Rose, answered the door. (10T 38-19 to 20, 40-9 to 12, 152-1 to 3) Terrell told Atiba to bring Isaac to the door. (10T 152-6 to 8) Isaac stepped onto the porch, and Terrell and Tyriq began to beat, hit, and kick him. (10T 40-17 to 20, 152-9 to 22) When Atiba came back to the porch to help Isaac, Isaac heard gunshots coming from the bottom of the steps. (10T 40-

21 to 25, 43-17 to 24) Atiba was shot in the abdomen, went back into the house, and died shortly after from a gunshot wound. (10T 178-10 to 21) Terrell stated that he and Tyriq ran back to the car after the shots were fired, and the surveillance footage shows three individuals reenter Antwonne's car before it drives away. (10T 153-20 to 25)

No witness saw Stefaun with a gun. Isaac told the jury that he was still being punched when the shots went off, that the people who were punching him did not shoot, and that he did not see who fired the gun. (10T 44-2 to 9, 45-5 to 7) But immediately following the shooting, Isaac told police that when he heard the shots, his hands were above his head and protecting his face, that he could not see anything because he was covering himself, and that he saw "all black," presumably because his eyes were closed. (10T 49-9 to 50-6, 52-17 to 53-13) Isaac also told police that he did not see any person beyond the porch and did not think anyone was down there until he saw the shots being fired from the bottom of the steps. (10T 51-6 to 13, 54-6 to 25)

Terrell also did not see anyone fire a weapon. (10T 164-16 to 21, 166-21 to 23) Terrell explained to the jury that he, Tyriq, and Stefaun got out of Antwonne's car, and Stefaun trailed behind him and Tyriq as they walked toward Isaac's house. (10T 150-21 to 25, 165-9 to 12) Only Terrell and Tyriq went up to the doorway to fight Isaac. During the fight, Terrell heard someone behind

him yell “move,” and he then heard gunshots.⁵ (10T 153-10 to 14) Terrell told police on the night of his arrest that, although Stefaun had gone with him to the Rose’s house, “he wasn’t up around the area at all.” (10T 162-22 to 164-1) He clarified during trial that he meant that Stefaun was near the house but was not “at the porch area.” (10T 165-16 to 25) Terrell also testified that he did not have a gun that night. (10T 165-6 to 8)

Unlike the other witnesses, Myla Dombkowski, Atiba’s sister, did see a firearm, but not being possessed by Stefaun. She had a view of the front door from inside the house and told police that she saw only two people on the porch. (11T 15-7 to 21) She reported that one of those two people pointed a gun at her. (11T 15-15 to 18, 17-2 to 5) Although Myla hit her head and blacked out in the chaotic aftermath, she told police that her injuries did not impair her ability to report what she had seen. (11T 18-3 to 24, 21-14 to 22-1)

The police arrived at 206 Hunter soon after the shooting. Several officers and emergency vehicles were in and around the house, and family members were gathered into one room inside. (9T 93-5 to 22; 10T 46-9 to 47-7) Detective Krystal Santiago led the investigation, and the responding officers conducted interviews and photographed the scene. Sergeant Gregory Malesich

⁵ A person can be heard yelling “move” before the sound of two gunshots on surveillance footage from a neighbor’s house. (10T 80-5 to 6)

photographed two brass shell casings in the area outside the house. (9T 68-14 to 17, 70-2 to 3) He also found a projectile near the front door, as well as damage to the siding of the house and an interior wall. (9T 71-3 to 72-5, 73-23 to 74-14, 75-18 to 76-15, 77-11 to 25) The State did not provide any trajectory analysis or shooting reconstruction, and Malesich confirmed that round casings, like those observed outside 206 Hunter, can travel up to ten feet when ejected. (9T 91-9 to 92-4, 97-6 to 11, 103-13 to 106-23; 11T 6-6 to 8)

Santiago identified Tyriq and Terrell from the Ring camera and arrested them at their house. (10T 85-2 to 9) Police then identified Antwonne through his car, which was captured on the Woodbury license plate reader system. (10T 86-3 to 12) Both Terrell and Antwonne gave statements to police, and Stefaun was arrested soon after. (10T 86-14 to 21) Police also interviewed Marley Redfield, Stefaun's girlfriend at the time, who said that she drove Stefaun to a gun shop in Philadelphia the day after the homicide, but she did not know the name of the gun shop, she never saw Stefaun actually enter any gun shop, and she did not see Stefaun carry anything out of the shop. (10T 13-8 to 12, 21-7 to 23, 22-6 to 14, 86-15 to 17)

Police searched and extracted data from each of the four co-defendants' cell phones. They found several searches on Stefaun's phone about a Woodbury shooting in the days following the homicide. (10T 87-7 to 10) The extraction

reports also included an Instagram message sent from Stefaun's Instagram account to Tyriq, Terrell, and Antwonne on November 25 that read, "You know I just bought a gun." (10T 91-16 to 23) While the testifying officers confirmed that the message came from an account associated with Stefaun, no officer or witness could verify that Stefaun sent this message.

Review of the extraction from Terrell's phone revealed a video that Terrell took of himself on November 11, just two weeks before the shooting. (10T 122-13 to 21) The video shows Terrell holding a gun and pointing it at the camera. (10T 124-17 to 23, 160-2 to 21) Even though this video was pulled from Terrell's phone in the police's Cellebrite examination, Santiago testified that she had never seen it, and no police followed up with or questioned Terrell about his access to firearms. (10T 125-11 to 126-21)

In closing, the defense argued that Terrell—not Stefaun—had a firearm and a motive. (11T 74-2 to 75-16) Counsel further argued that Terrell was a biased witness with a motive to lie so that he could protect himself and his brother and secure the best possible plea deal for himself. (11T 69-22 to 70-3) Defense counsel also noted that the State could not prove that the shooter was standing off the porch, as bullet casings can travel up to ten feet when ejected, people were moving in and out of the house in the chaotic aftermath, and the only witness who saw a gun—Myla Dombkowski—saw that gun on the porch.

(11T 71-15 to 72-16) Counsel argued that this evidence produced sufficient doubt in the State's case.

During the State's summation, the prosecutor spoke in detail about the location of the casings and the position of the shooter. He explained that Malesich's pictures showed that one casing was found "in the middle of the street," concluding that "[s]omeone was standing [t]here, and the casing dropped right where they were." (11T 83-5 to 12) When discussing the second casing, the prosecutor again emphasized that "[s]omeone was standing there and they released a shot." (11T 83-21) He later reiterated:

The State would argue the damage to that door was not caused by somebody standing right there on the porch. That's something hitting from quite a distance. The casings being on the street, both of them being on the street, that probably gets us to beyond a reasonable doubt that the shooter was on the street. Sidewalk, street, that area. Again, it's not a bullet from close range, right next to him, or right at the doorway. Then we know where the shooter was.

[(10T 98-24 to 99-8)]

After hearing playback of testimony and revisiting the surveillance footage and Ring camera videos, the jury convicted Stefaun of all counts. (12T 55-14 to 24; Da 34-35)

LEGAL ARGUMENT

POINT I

STEFAUN’S CONVICTIONS MUST BE REVERSED BECAUSE THE COURT BARRED HIM FROM QUESTIONING A COOPERATING CO-DEFENDANT ON HIS PENAL EXPOSURE AND A RELATED CRIMINAL INVESTIGATION. (6T 23-13 to 18; 10T 157-17 to 24; Da 4-21)

Stefaun’s defense at trial was that Terrell and Tyriq Bundy had the means and motive to shoot Isaac Rose—Terrell had a firearm just two weeks prior, he had it out for Isaac, and it was his idea to go to Isaac’s house. Terrell, however, presented a different story, telling the jury that he did not have a gun that night and that the shots came from behind him, bolstering the State’s theory that Stefaun was the shooter. To convince the jury to reject Terrell’s testimony, the defense attempted to undermine his credibility. But the trial court gutted defense counsel’s ability to do so in two ways: (1) the court prohibited counsel from conducting an “unfettered” inquiry into Terrell’s pre-plea sentencing exposure, see State v. Jackson, 243 N.J. 52, 59, 65 (2020); and (2) the court prohibited counsel from questioning Terrell about a related stabbing investigation, even though the officers investigating the homicide believed Terrell and Tyriq to be primary suspects. See State v. Parsons, 341 N.J. Super. 448, 458-59 (App. Div. 2001). The court’s rulings prevented the jury from learning about Terrell’s incentives to cooperate, curry favor, and, most critically, to deflect blame from

himself and his brother. These improper rulings violated Stefaun's rights to present a complete defense, confront witnesses, and to due process and a fair trial. Reversal is therefore required. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10.

A. The Trial Court Erroneously Prevented Exploration Of Terrell's Sentencing Exposure.

Our federal and state constitutions guarantee criminal defendants the right to present a complete defense and confront witnesses against them. Holmes v. South Carolina, 547 U.S. 319, 324 (2006); State v. Budis, 125 N.J. 519, 530-31 (1991) (citations omitted). A defendant must be able "to explore, through cross-examination, the potential bias of a prosecution's witness." Jackson, 243 N.J. at 65 (citing Delaware v. Van Arsdall, 475 U.S. 673, 678-79 (1986)); see State v. Bass, 224 N.J. 285, 301-02 (2016) (quoting State v. Sugar, 100 N.J. 214, 230 (1985)) ("[A] defendant must be afforded the opportunity through effective cross-examination to show bias on the part of adverse state witnesses."). New Jersey Evidence Rule 611(b) also allows defendants to cross-examine witnesses about matters affecting credibility.

When exploring bias during cross-examination, defendants must be permitted to question a witness about charges pending against them or resolved before trial. See Bass, 224 N.J. at 303-04; State v. Baker, 133 N.J. Super. 394, 396 (App. Div. 1975). In Jackson, 243 N.J. at 58-59, the trial court prohibited

defendant from eliciting testimony about a cooperating co-defendant's overall sentencing exposure, allowing cross-examination only on the length of sentence contemplated in the initial plea offer and the final agreement. Our Supreme Court held that this limitation violated the defendant's rights to confrontation and a fair trial because the defense must be permitted to probe the terms of the plea, including the original charges and penal exposure. Id. at 71-72; see State v. Rodriguez, 262 N.J. Super. 564, 570 (App. Div. 1993) (“[S]entencing possibilities . . . [are] highly relevant to the witness’s motive in testifying insofar as it bore upon his credibility.”). The Court emphasized that “[t]he jury should have had full access to [the witness’s] plea agreement history through the defense counsel’s unfettered examination of that history.” Jackson, 243 N.J. at 59 (emphasis added); see Bass, 224 N.J. at 304-07 (reversing a murder conviction when the court barred defendant from cross-examining a witness about his original charges and exposure).

Not only is a defendant entitled to elicit testimony about a witness’s original sentencing exposure, but he is also “entitled to question [the witness] about his subjective understanding of his plea bargain, including what sentence he faced and what was offered in the plea agreement.” Jackson, 243 N.J. at 69-70 (emphasis added). In Jackson, the witness in question originally faced an extended term, which the court observed may have been a “powerful incentive”

for his cooperation. Id. at 70. By limiting the defendant’s cross-examination, the trial court “prevented the jury from hearing the effect that sentencing exposure had on [the witness’s] mindset when negotiating his plea.” Ibid. A jury must know the witness’s understanding of his bargain to reach a fair verdict.

In this case, the trial court barred Stefaun from exploring Terrell’s understanding of his plea deal. Defense counsel asked Terrell if his original charges carried a sentence of over twenty-five years. (10T 157-7 to 16) The State objected to counsel’s question, and the court struck Terrell’s affirmative answer from the record. (10T 157-17 to 24) In compliance with the court’s ruling, defense counsel did not ask any follow-up questions about Terrell’s penal exposure. Like Jackson, the court’s ruling barred defense counsel from probing into Terrell’s original sentencing exposure, his “subjective understanding” of his plea deal, and consequently his “mindset” when negotiating that deal with the State. And not only did Terrell’s plea include the “powerful incentive” of dismissing a first-degree charge in exchange for a probation-only sentence, but the plea also promised to remand Terrell’s case to juvenile court for sentencing. (Da 24, 27) The court, however, prevented the defense from conducting an “unfettered examination” of Terrell’s plea, Jackson, 243 N.J. at 59, such that the jury never learned if these incentives biased Terrell’s testimony. Accordingly, the trial court did exactly what our Supreme Court condemned in Jackson.

The court's erroneous ruling in this case was especially harmful because Terrell was the center of Stefaun's third-party guilt defense and the most plausible perpetrator of this crime. Terrell had a motive to harm Isaac; he had access to a firearm; and it was his idea to attack Isaac. Further, Terrell admitted to being on the porch, and Myla testified that a person on the porch pointed a gun straight at her. (11T 15-15 to 18, 17-2 to 5) But Terrell told the jury that he did not have a gun that night and that he instead heard someone behind him yell "move" before the gunshots, supporting the State's theory that Stefaun was the shooter. (10T 153-10 to 14, 165-6 to 8) Had the jury learned about Terrell's understanding of his plea deal and the powerful incentive it provided to curry favor with the State, the jury could have more easily rejected his version of events where Stefaun is, by implication, the only person who could have fired the weapon. See Bass, 224 N.J. at 311 (finding harmful error and reversing a murder conviction because the "revelation" of the benefit of the witness's plea could have "affected [the witness's] credibility as the State's key witness, and altered the outcome of defendant's trial"). Because Terrell's understanding of his plea could have affected his credibility, this error was clearly harmful.

Moreover, the court's untimely, subsequent instruction did not render the error harmless. After defense counsel's summation, the court seemingly realized its previous error and instructed the jury that "Mr. Hutchins and Mr. Terrell

Bundy were charged with conspiracy to commit murder, which has a sentencing range of 10 to 20 years.”⁶ (11T 76-7 to 9) A similar circumstance arose in Jackson—there, even though the court did not permit counsel to inquire into a witness’s original exposure, the jury eventually learned about that exposure from a different witness. Id. at 73. But the Court still found the error harmful because both the witness’s “subjective perception” of his own exposure and the “factual description of the plea agreement” matter to the jury’s understanding of bias. Ibid. Just as in Jackson, the error here remains harmful because, even with the court’s instruction, the jury was deprived of Terrell’s “subjective perception” of his penal exposure. See United States v. Ambers, 85 F.3d 173, 176 (4th Cir. 1996) (stating that it is the witness’s “subjective understanding of his bargain with the government” that is “probative . . . on the issue of bias”).

⁶ The entirety of the court’s instruction stated: “Ladies and gentlemen, yesterday, defense counsel asked a question posed to Mr. Hutchins regarding his understanding of the charges he faced. I initially sustained an objection by the State. I have reconsidered my ruling and instruct you that you may consider the question by defense counsel and response, if any, by Mr. Hutchins. It is a proper question by cross-examination to ask a witness what their interest is in the outcome in the case and any consequences they might face and being charged with a crime. In this case, Mr. Hutchins and Mr. Terrell Bundy were charged with conspiracy to commit murder, which has a sentencing range of 10 to 20 years. In exchange for their plea, they agreed to testify in this trial. You are permitted to consider the witness’s plea bargain and his sentencing exposure in assessing his credibility, motive and testifying and bias, if any. Okay? Thank you.” (11T 75-22 to 76-14)

Additional aspects of the court's belated instruction were confusing and prejudicial. First, while the instruction stated that the court's prior ruling occurred during cross-examination of Antwonne Hutchins, it actually occurred during counsel's cross-examination of Terrell. This is significant because Terrell, who was at the scene of the homicide and not in the car a block away, was a much more powerful State's witness and the center of Stefaun's third-party guilt defense, making his credibility that much more important. To make matters worse, the court gave this instruction after defense counsel's closing but before the State's summation. So while defense counsel was not permitted to comment on the extent of Terrell's bias or the details of his plea deal in closing, the prosecutor was permitted to minimize that bias in his own closing. See Jackson, 243 N.J. at 72 (noting that the court exacerbated its error when the prosecutor commented on the witness's plea deal in summation while defense counsel was prevented from commenting on that same witness's maximum potential sentence). (11T 97-23 to 98-5) Because the court's instruction cannot cure its constitutional error, and because this error is clearly harmful, Stefaun's convictions must be reversed.

B. The Court Erroneously Precluded Questioning On A Related Investigation In Which Terrell And Tyriq Were Primary Suspects.

The court compounded its error when it prohibited defense counsel from cross-examining Terrell about a related aggravated assault investigation. Again,

the court's ruling precluded Stefaun from exploring Terrell's biases and the many reasons he may have had for currying favor with the State. Not only that, but the court mistakenly applied the Cofield test to exclude this evidence, instead of a simple relevance test. See State v. Weaver, 219 N.J. 131, 150 (2014). The court's analysis was an abuse of discretion and violated Stefaun's constitutional rights to present a complete defense and confront witnesses. Especially when considered in tandem with the court's decision to curtail Stefaun's questioning of Terrell's plea exposure, reversal is required.

As discussed above, "the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Bass, 224 N.J. at 301 (citing Van Arsdall, 475 U.S. at 678-79). "It is 'fundamental' that a defendant has a right to explore evidence tending to show that the State may have a 'hold' of some kind over a witness, the mere existence of which might prompt the individual to color his testimony in favor of the prosecution." Parsons, 341 N.J. Super. at 458 (quoting State v. Holmes, 290 N.J. Super. 302, 312 (App. Div. 1996)). Even where there is no plea agreement in place, the defense must be allowed to explore a witness's "motive to curry favor with the State." Ibid.

Additionally, a defendant may introduce evidence of a witness's "[o]ther crimes, wrongs, or acts" when it is relevant to a permissible purpose. N.J.R.E.

404(b); Weaver, 219 N.J. at 150. Unlike the State, which must meet a strict admissibility standard to use other-crimes evidence to prove a defendant's guilt, Weaver, 219 N.J. at 150 (citing State v. Cofield, 127 N.J. 328, 338 (1992)), the defense is not so limited.⁷ As clarified in Weaver, “[w]hen a person charged with a criminal offense seeks to use other-crimes evidence defensively, the Cofield standard does not govern because ‘an accused is entitled to advance in his defense any evidence which may rationally tend to refute his guilt or buttress his innocence of the charge made.’” Ibid. (quoting State v. Garfole, 76 N.J. 445, 453 (1978)) (emphasis added). Admissibility of other-crimes evidence of witnesses is “governed by N.J.R.E. 401, not N.J.R.E. 404(b).” Ibid.

Accordingly, defensive use of other-crimes evidence is admissible when it has “a tendency in reason to prove or disprove any fact of consequence to the determination of the action.” N.J.R.E. 401. The test for relevance is “broadly defined,” State v. Davis, 96 N.J. 611, 619 (1984), and “favors admissibility.” State v. Deatore, 70 N.J. 100, 116 (1976). Relevant evidence may be precluded only when it is “substantially outweighed by the risk” of undue prejudice. N.J.R.E. 403; see State v. Rose, 206 N.J. 141, 178 (2011) (noting that while

⁷ The State may only present other-crimes evidence if it is (1) relevant to a material issue; (2) similar in kind and reasonably close in time to the offense charged; (3) supported by clear and convincing evidence; and (4) its prejudice does not outweigh its probative value. Ibid. A strict standard of admissibility applies because of the highly prejudicial nature of the evidence.

“Rule 404(b) operates from the premise that evidence of other bad acts is inadmissible unless proffered for a proper purpose,” “the principle animating Rule 403 is that relevant evidence is admissible unless its probative value is substantially outweighed by a negative feature of the evidence”).

Here, Stefaun moved to introduce evidence that the Woodbury Police Department—the same department that was investigating the homicide of Atiba Rose—believed Terrell or his brother Tyriq perpetrated a stabbing just a few weeks prior. (Dca 1-11) The stabbing itself took place on November 1, 2020. Woodbury Police Officer Nicolas Cacciola quickly homed in on Terrell and Tyriq as suspects, particularly because of Terrell’s widely known “beef with Isaac Rose,” who is friends with the stabbing victim. (Dca 6) Cacciola had interviewed several witnesses, monitored Terrell’s Instagram account, and, as late as November 20, obtained a Communications Data Warrant for Terrell’s social media accounts. (Dca 7) After the homicide occurred on November 26, which once again centered around the escalating dispute between Terrell and Isaac, Cacciola concluded that “the homicide investigation had a direct nexus to the stabbing that occurred.” (Dca 8) Although Cacciola was forced to close the investigation about two months later, he vowed to reopen it if further evidence became available or if witnesses decided to cooperate. (Dca 10)

Defense counsel argued that evidence of this investigation was relevant to demonstrating Terrell's bias because it exposed a motive for "testifying on the State's behalf or in the hopes of garnering some sort of compensation." (6T 12-10 to 13, 13-1 to 17, 13-25 to 14-3) The trial court denied Stefaun's motion, and applied the four-step Cofield standard in both its oral and written opinions. (6T 22-3 to 7, 23-13 to 18; Da 4, 18-21) Case law makes clear, however, that Cofield does not apply to evidence of the prior wrongs of a testifying witness. Weaver, 219 N.J. at 150. The court's Cofield reasoning is therefore inapposite.

In its written opinion, the court also addressed the probative and prejudicial value of this evidence. (Da 14-18) The court found minimal relevance because there was not "a sufficient nexus of parties" between the homicide and the stabbing. (Da 14) Although the court acknowledged that the police believed there to be a link between these crimes and the "beef" between Isaac and Terrell, it concluded that introducing this evidence would require the jury "to speculate about the relationship between" the parties and noted that "Corley's role in the Bundy's group is not explained." (Da 14-15)

The court's reasoning utterly failed to address that the investigation into Terrell and Tyriq, and Terrell's knowledge of that investigation, was relevant to demonstrate Terrell's bias. See Parsons, 341 N.J. Super. at 458. While the court focused exclusively on whether the defense could show that Terrell actually

committed the stabbing, it failed to acknowledge that the fact of the investigation was still relevant to whether Terrell was motivated to curry favor with the State or color his testimony in its favor. See State v. Landano, 271 N.J. Super. 1, 40 (App. Div. 1994) (“In an unbroken line of decisions, our courts have held that the pendency of charges or an investigation relating to a prosecution witness is an appropriate topic for cross-examination.”); State v. Mazur, 158 N.J. Super. 89, 103-05 (App. Div. 1978) (finding that defense should have been able to cross-examine a key witness about a halted investigation into his alleged welfare fraud); see also State v. Baker, 133 N.J. Super. 394, 396-97 (App. Div. 1975) (finding pending charges relevant to show that a witness was “apprehensive of more stringent treatment thereon if he did not so testify,” even when he “denied receiving any such promises or holding any such expectations”). Whether or not Terrell stabbed anyone, the fact that the police believed he was involved provided an incentive for Terrell to keep the police content by cooperating or telling them what they wanted to hear about Atiba’s murder. The court’s failure to address the relevance of this evidence to Terrell’s bias constitutes an abuse of discretion.

Moreover, the relevance of this evidence is not substantially outweighed by its prejudice. N.J.R.E. 403. In its written opinion, the trial court reasoned that admission of this evidence would prejudice the State because no one was

charged for the assault; the evidence of Terrell's involvement was too speculative; and it could mislead the jury from focusing on its ultimate determination. (Da 15-18) But once again, even without charges or clear proof of Terrell's involvement, the fact that the Woodbury Police were investigating Terrell remains materially relevant to Terrell's bias and his incentive to curry favor with the police and the State. Introducing the fact of that investigation would not mislead or confuse the jury; rather, it would allow the jury to understand the extent of Terrell's bias and protect Stefaun's constitutional rights. Even if there is some minimal prejudice, it is not substantially outweighed by its relevance.

The court's erroneous exclusion of this evidence is not harmless. First, the evidence in this case was far from overwhelming—indeed, a jury just one month prior hung after hearing the State's case. Cf. State v. Tillery, 238 N.J. 293, 302 (2019) (finding an error harmless when the State presented overwhelming evidence of guilt). But, more importantly, Terrell was a key witness, as he was one of two people who placed Stefaun at 206 Hunter and the only witness to do so who was also present for the shooting. (10T 151-21 to 23, 165-9 to 20) Given the evidence presented, Terrell and his brother Tyriq were the only other plausible suspects besides Stefaun who could have shot Atiba. And because the jury had to make exactly that determination, Terrell's credibility was essential

to the State’s case. Had the jury learned about the pending investigation against Terrell—and, thus, his heightened motivation to curry favor with the State and deflect blame from himself and his brother—it would have been far less likely to believe his testimony, and more likely to question his role in the homicide. Because this evidence could have impacted the jury’s evaluation of Terrell’s credibility, its exclusion cannot be harmless. See State v. Frost, 158 N.J. 76, 87 (1999) (finding reversal proper and evidence not overwhelming “[w]hen a jury must choose which of two opposing versions to credit”); Holmes, 290 N.J. at 312 (observing in a case with “a pitched credibility battle” that “anything which could have tipped the credibility scale had the potential to affect the outcome”).

Together with the court’s decision to bar cross-examination about Terrell’s sentencing exposure, these decisions gutted Stefaun’s ability to expose Terrell’s extensive bias and sew additional doubt in the jury’s mind about who killed Atiba. Because these errors are individually and cumulatively harmful, Stefaun’s convictions must be reversed.

POINT II

THE COURT ERRONEOUSLY REFUSED TO INSTRUCT THE JURY ON THE REQUESTED RELATED OFFENSE OF CONSPIRACY TO COMMIT AGGRAVATED ASSAULT, DEPRIVING STEFAUN OF A FAIR TRIAL. (11T 40-7 to 57-23)⁸

As our courts have repeatedly held, “[a]ppropriate and proper jury instructions are essential to a fair trial.” State v. McKinney, 223 N.J. 475, 495 (2015). In certain cases, appropriate jury instructions include charging the jury on related offenses requested by the defense that are grounded in the record. State v. Alexander, 233 N.J. 132, 144-45 (2018); State v. Maloney, 216 N.J. 91, 107-08 (2013); State v. Thomas, 187 N.J. 119, 130-33 (2006). Here, the defense requested that the court instruct the jury on the related offense of conspiracy to commit aggravated assault, which was plainly supported by the record. The court’s denial of this request was harmful error that deprived Stefaun of his rights to due process and a fair trial. U.S. Const. amend. XIV; N.J. Const. art. I, ¶¶ 1, 9, 10. His convictions must be reversed.

Related offenses “share a common factual ground, but not a commonality in statutory elements, with the crimes charged in the indictment.” Alexander,

⁸ Although defense counsel characterized her request for a charge of conspiracy to commit aggravated assault as a request for a lesser included offense, she explicitly raised the charge to the trial court and explained the rational basis for requesting it. Accordingly, the matter should be reviewed for harmless error. See State v. Cooper, 256 N.J. 593, 609-10 (2024).

233 N.J. at 144 (quoting Thomas, 187 N.J. at 132). To determine if offenses are related, “the focus is whether the offense charged and the related offense share a common factual nucleus.” Thomas, 187 N.J. at 130. A court’s instruction to the jury on an uncharged, related offense raises “constitutional concerns because criminal defendants have rights to a grand jury presentment and fair notice of criminal charges against them.” Alexander, 233 N.J. at 144. Thus, to protect a defendant’s constitutional rights, a trial court may only instruct the jury on a related offense when (1) the defendant requests or consents to the related charge, and (2) there is a rational basis in the evidence to sustain the related offense. Id. at 144-45 (citing Thomas, 187 N.J. at 133); Maloney, 216 N.J. at 108.

Here, both requirements are met. First, the defense repeatedly implored the court to instruct the jury on the offense of conspiracy to commit aggravated assault. The court acknowledged this request, stating, “I understand . . . that [defense counsel] wishes to have a lesser included charge of conspiracy to commit assault.” (11T 40-8 to 10; see generally 11T 40-7 to 57-23) In addition, Stefaun confirmed on the record his request for the court to charge the jury with this offense. (11T 52-12 to 19)

There was also a rational basis to sustain this related offense. Terrell testified that it was his idea to go to Isaac’s house in retaliation for Isaac having him “jumped.” (10T 152-9 to 13, 161-5 to 13) There is no dispute that Stefaun

accompanied the Bundy brothers to attack Isaac. There is a dispute, however, about who fired the gun that killed Atiba. Stefaun's defense was that the State could not prove that Stefaun was the shooter, and that it was Terrell who had the incentive to harm Isaac, access to weapons, and was motivated to testify against Stefaun to protect himself and his brother. (11T 69-22 to 70-3, 74-18 to 75-6, 75-14 to 16) If the jury believed that Stefaun went with Terrell and Tyriq to attack Isaac but was not the person who shot Atiba, then his conduct could constitute conspiracy to commit aggravated assault. Because there is a rational basis for this offense in the record, both requirements for charging it were met. Thomas, 187 N.J. at 133.

The trial court, failing to apply this test, reasoned that the charge was improper because “[i]t ignores the death that resulted.” (11T 57-14 to 23) But as defense counsel explained, providing the conspiracy charge would not displace the homicide charge—it would instead give the jury a charge for conviction if they did not believe the State's murder case against Stefaun and instead “believe[d] that [Stefaun] went there with the Bundy brothers to participate in a conspiracy to assault someone.” (11T 54-24 to 55-4, 56-3 to 7) Without the instruction for conspiracy to commit aggravated assault, the jury was in a difficult position: if the jury believed the defense theory, it had to either acquit Stefaun of all the charges involving violence or convict him of homicide despite

the State’s shaky evidence. As our Supreme Court has recognized, “a jury reluctant to acquit [a] defendant might compromise on a verdict of guilt on the greater offense.” State v. Sloane, 111 N.J. 293, 299 (1988). Indeed, where the defendant is “plainly guilty of some offense, the jury is likely to resolve its doubts in favor of conviction.” Ibid. (quoting Keeble v. United States, 412 U.S. 205, 212-13 (1973)) (emphasis in original).

Consequently, this jury reasonably could have “resolve[d] its doubts in favor of” a conviction because it was not given any other way to address Stefaun’s conduct. Ibid. The court’s decision created the unacceptable risk that the jury “compromise[d] on a verdict of guilt on the greater offense” when it was not offered an alternative that aligned with the defense’s theory of the case—that Stefaun had agreed to go with the Bundys to assault Isaac, but that he had not shot or killed anyone. Ibid. This error deprived Stefaun of his rights to due process and is clearly harmful, necessitating reversal of his convictions.

POINT III

THE STATE IMPROPERLY BOLSTERED ITS CASE WITH UNSUPPORTED ARGUMENTS REGARDING THE LOCATION OF THE SHOOTER. (Not raised below)

In this case, the location of the shooter was critical to determining who shot Atiba. The testimony was inconclusive: Terrell stated that Stefaun was behind him and that someone behind him yelled “move” before the shots were fired, implying that Stefaun was the shooter, but he also stated in his initial interview that Stefaun “wasn’t up around the area at all,” (10T 162-22 to 163-23); Isaac testified that the shots came from the steps behind the porch, but told police on the night of the incident that he could not see anything because his hands were covering his eyes, (10T 40-23 to 25, 49-2 to 50-3); and Myla Dombkowski, who was inside the Rose’s house, saw someone on the porch point a gun. (11T 15-7 to 18, 17-2 to 5) The only physical evidence—the location of the bullet casings—was similarly inconclusive: Malesich stated that round casings can travel up to ten feet after discharge, (9T 103-20 to 23); multiple witnesses confirmed that officers and EMTs travelled in and out of the house in the aftermath, such that the casings could have been kicked or moved in the chaos, (10T 46-9 to 47-7, 171-20 to 172-10); and the State presented no perforation analysis or shooting trajectory. (9T 97-6 to 11)

Nonetheless, the prosecutor told the jury that the person who shot the gun was standing where casings were found, that the “damage to the door” of the Rose’s house “was not caused by somebody standing right there on the porch,” and that it was “not a bullet from close range . . . or right at the doorway.” (11T 98-24 to 99-8) The prosecutor’s assertions were unsupported by the record, unfairly bolstered the State’s case, and violated Stefaun’s rights to due process and a fair trial. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10; R. 2:10-2. As a result, Stefaun’s convictions must be reversed.

One of the most basic duties of the prosecutor is to avoid making unsupported or inaccurate statements to the jury. Accordingly, prosecutors must confine their summations “to evidence revealed during the trial and reasonable inferences to be drawn” therefrom. State v. Smith, 167 N.J. 158, 178 (2001) (citations omitted); see State v. Feaster, 156 N.J. 1, 58-59 (1998) (quoting State v. Johnson, 120 N.J. 263, 296 (1990)). A prosecutor may not “seek ‘to provide some of the missing pieces’” to the State’s case with unsupported assertions in summation. State v. McNeil-Thomas, 238 N.J. 256, 279-80 (2019) (quoting Feaster, 156 N.J. at 56).

Any effort to do so, moreover, will improperly influence the jury and violate the defendant’s rights. “Prosecutors are the representatives of the State,” and their statements “have a tendency to be given great weight by jurors.” State

v. Walden, 370 N.J. Super. 549, 558 (App. Div. 2004). Such comments may also suggest that the prosecutor is relying “upon something which he knows outside the evidence[,]” and thus may additionally sway and distract the jury. State v. Thornton, 38 N.J. 380, 398 (1962). Such a risk was clearly created here where the prosecutor made several unfounded comments about the shooter’s position.

The prosecutor told the jury that the damage to the doorway and the location of the casings definitively showed that the shooter was standing on the street or sidewalk, not on the porch. The prosecutor showed the jury the picture of the first casing and stated that the shooter “was standing here, and the casing dropped right where they were.” (11T 83-11 to 12) Then, showing the jury the second casing, he stated that “[s]omeone was standing there and they released a shot.” (11T 83-21) But no witness for the State testified that the location of a casing could provide the precise location of the shooter.

The prosecutor, however, went much further. Commenting on the damage to the house’s front door, the prosecutor opined:

[T]he damage to that door was not caused by somebody standing right there on the porch. That’s something hitting from quite a distance. The casings being on the street, both of them being on the street, that probably gets us to beyond a reasonable doubt that the shooter was on the street. Sidewalk, street, that area. Again, it’s not a bullet from close range, right next to him, or right at the doorway. Then we know where the shooter was.

[(11T 98-25 to 99-8) (emphasis added)]

Again, no witness testified regarding whether or how the damage to the door indicated anything about the location of the shooter. The State presented no shooting reconstruction or perforation analysis to this effect. To make matters worse, the State objected when defense counsel questioned Malesich about how far a casing might travel after it is ejected because it was “getting into expert testimony,” (9T 105-5 to 6); if the State believes that such testimony requires expertise, then certainly commentary about how a bullet’s damage to a door explains whether that bullet came “from close range” or “from quite a distance” requires expertise. (11T 99-2 to 7) Because the State presented no such testimony, expert, or analysis on this topic, its comments were not “based on evidence adduced at trial,” Feaster, 156 N.J. at 61, and they constitute reversible misconduct.

The prosecutor’s commentary was clearly capable of producing an unjust result. R. 2:10-2. The location of the shooter bore directly on the State’s case—Terrell and Tyriq were on the porch, while Stefaun was alleged to have been on the sidewalk or street. Cf. Feaster, 156 N.J. at 61 (permitting the prosecutor’s unsupported statements because they “had no specific bearing on defendant’s guilt or innocence”). But, as discussed above, the State’s proofs to show that the shooter was on the sidewalk rather than on the porch were riddled with problems: Isaac made inconsistent statements about whether he could see

anything at all when the shots went off; Terrell was inconsistent and biased, with a strong motivation to protect himself and his brother; and Malesich confirmed that casings can travel up to ten feet from the spot upon which they are ejected. Further, Myla testified that she saw someone on the porch with a gun. In this context, the State's inappropriate commentary amounts to nothing more than an attempt to sidestep these evidentiary issues and improperly insert a "missing piece[]" of evidence to bolster its case. McNeil-Thomas, 238 N.J. at 280. And, because this was a close case—evidenced in part by the fact that Stefaun's first trial, just one month prior, ended with a deadlocked jury—any piece of evidence shoring up the State's case was clearly capable of swaying the jury's deliberations. As a result, the prosecutor's misconduct in closing mandates a reversal of Stefaun's convictions.

POINT IV

THE CUMULATIVE EFFECT OF THE ERRORS DEPRIVED STEFAUN OF A FAIR TRIAL AND REQUIRE REVERSAL. (Not raised below)

If the Court does not find that any one error above warrants a new trial, it must find that their total effect casts doubt on the verdict, requiring reversal. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10; R. 2:10-2; see State v. Orecchio, 16 N.J. 125, 134 (1954) (citations omitted) (holding that “it is the duty of this court to reverse” where “all of [the errors] taken together justify the conclusion that defendant was not accorded a fair trial”).

In this case, the jury had to decide if Stefaun was the person who shot Atiba. The State contended that while Terrell and Tyriq were fighting Isaac on the Rose’s porch, Stefaun fired the weapon from the sidewalk below. Stefaun asserted, on the other hand, that he went with Terrell and Tyriq to assault Isaac, but that Terrell shot Atiba from the porch—a theory corroborated by Myla Dombkowski, who saw one of the two people on the porch point a gun.

Unfortunately, the court’s several errors prevented the jury from independently evaluating these competing theories. First, the court barred Stefaun from exploring Terrell’s bias toward the State by preventing questioning on Terrell’s plea agreement and sentencing exposure and on a related stabbing investigation into Terrell and his brother. The jury was thus not made aware of

Terrell's strong incentives to curry favor with the State, downplay his own culpability, and color his testimony accordingly. Second, the court refused to charge the jury with an offense that would comport with the defense's theory. By denying Stefaun's request to charge the lesser-related offense of conspiracy to commit aggravated assault, the court created the impermissible risk that if the jury believed Stefaun's version of events, it would be faced with either a complete acquittal or conviction for a greater offense, and that it settled on a conviction for a greater offense. Finally, the State improperly bolstered its theory with unsupported claims asserting that the physical evidence showed that the shots came from the sidewalk. The State's commentary inappropriately sought to provide the "missing piece" of evidence to further tip the scales toward finding that Stefaun, and not Terrell, fired the gun that killed Atiba.

Because each of the errors bore directly upon the jury's ability to determine the critical fact in dispute, the jury was deprived of the opportunity to render a fair and impartial verdict. Stefaun's convictions therefore must be reversed.

POINT V

A REMAND IS REQUIRED BECAUSE STEFAUN'S SENTENCE IS EXCESSIVE. (13T 45-24 to 46-5; Da 36-39).

At sentencing, the court found aggravating factor one, the offense was especially heinous, cruel, and depraved; factor three, the likelihood of re-offense; factor six, prior criminal record; and factor nine, the need for deterrence. N.J.S.A. 2C:44-1(a)(1), (3), (6), (9). (Da 38) The court also found several mitigating factors, including: factor three, strong provocation; factor seven, minimal criminal history; factor eight, the circumstances are unlikely to recur; factor nine, defendant's character and attitude indicates that he is unlikely to re-offend; factor eleven, excessive hardship; factor thirteen, defendant influenced by someone more mature; and factor fourteen, defendant was younger than twenty-six years old. N.J.S.A. 2C:44-1(b)(3), (7), (8), (9), (11), (13), (14). (Da 38) Applying minimal weight to all but one mitigating factor, the court found that the four aggravating factors predominated over the seven mitigating factors and imposed a 40-year NERA sentence for homicide. (13T 42-17, 43-16, 43-23, 44-6, 44-17, 45-14, 45-24 to 46-5) The court merged the two weapons convictions but imposed concurrent five-year sentences and corresponding fines for each conviction. (13T 46-20 to 47-5; Da 36-37)

This sentence is excessive and must be vacated for three reasons. First, the court did not properly consider Stefaun's youth when finding or weighing several aggravating and mitigating factors. Second, the court improperly applied aggravating factors one and nine. And third, the court incorrectly merged Stefaun's sentences and erroneously imposed corresponding fines and fees. The excessive nature of this sentence demands a remand.

A. The Court Failed to Consider Stefaun's Youth.

Well-accepted psychological and cognitive science confirms that children and young adults are different from older adults, in that they are far less likely to commit crimes as they age into adulthood and far more capable of rehabilitation. Consequently, a defendant's youth—like other individual characteristics, such as a criminal record, health conditions, or job history—must be considered when a sentencing court analyzes whether and to what extent the various aggravating and mitigating factors apply. Here, the court failed to consider Stefaun's youth when considering several relevant factors, including: the likelihood of reoffending (aggravating factor three and mitigating factor nine), potential for rehabilitation (mitigating factor eight), and the need to deter (aggravating factor nine). Likewise, the court failed to give proper consideration and sufficient weight to mitigating factor fourteen, the only factor which explicitly addresses youth. Had the court afforded appropriate weight to these

factors, it would not have imposed a sentence exceeding the mandatory minimum. Because the sentencing court failed to consider relevant information, Stefaun’s sentence cannot stand, and a remand is required. U.S. Const. amends. VIII, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10, 12.

Both the United States Supreme Court and the New Jersey Supreme Court have recognized that adolescents have “diminished culpability and greater prospects for reform” than adults, which make them “less deserving of the most severe punishments.” Miller v. Alabama, 567 U.S. 460, 471 (2012) (quoting Graham v. Florida, 560 U.S. 48, 68 (2010)); see State v. Comer, 249 N.J. 359, 384-87, 397-98 (2022). Developments in psychology and brain science verify that, while children exhibit recklessness, impulsivity, and heedless risk taking—often coined the “hallmark features” of youth—they age out of these behaviors as they mature. See State v. Zuber, 227 N.J. 422, 440, 444 (2017) (quoting Graham, 560 U.S. at 68); Miller, 567 U.S. at 471, 477 (quoting Roper v. Simmons, 543 U.S. 551, 569 (2005)). Accordingly, our courts have afforded additional constitutional protections to juveniles in sentencing.

The undisputed brain science now shows that children do not lose this lesser culpability or greater capacity for reform the moment they turn eighteen. See Roper, 543 U.S. at 574 (“The qualities that distinguish juveniles from adults do not disappear when an individual turns 18.”). Instead, brain maturation

continues well into an adult's twenties, leaving eighteen- and nineteen-year-olds with the same tendencies for recklessness and impulsiveness that are characteristic of juveniles. See Center for Law, Brain & Behavior at Massachusetts General Hospital, White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers 10-16 (2022). Indeed, "late adolescents (ages 18-21) respond more like younger adolescents (ages 13-17) than like young adults (ages 22-25) due to differences in brain maturation." Id. at 2; see B.J. Casey et al., Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders, 5 Ann. Rev. Criminology 321, 337 (2022).

Like juveniles, late adolescent offenders almost inevitably age out of crime as they mature. Criminologists refer to this trend as the "age-crime curve," which illustrates the age distribution of offenders. The contours of the curve are so well-accepted that it has been called "one of the brute facts of criminology." See Travis Hirschi & Michael Gottfredson, Age and the Explanation of Crime, 89 Am. J. Socio. 552, 552 (1983). The age-crime curve shows that offending peaks in the late teens and early twenties, and then drops significantly throughout the mid-twenties. Desistence studies, which follow a specific sample of offenders over time, reach the same conclusion: those who offend in their late teens are comparable to the general population in their unlikelihood of

committing future crimes. See e.g., R. Karl Hanson, Long-Term Recidivism Studies Show That Desistance Is the Norm, 45 *Crim. Just. & Behav.* 1340, 1341-42 (2018).

There is thus an overwhelming consensus among developmental scientists that individuals in their late teens disproportionately engage in risky behaviors and criminal activity, but generally age out of these misbehaviors within a few years. See Laurence Steinberg, Adolescent Brain Science and Juvenile Justice Policymaking, 23 *Psychol. Pub. Pol’y & L.* 410, 413 (2017). These changes are attributed to a young adult’s maturing brain. The prefrontal cortex, which is most associated with foresight and impulse control, continues developing through the mid-twenties, such that scientists largely believe that young adults lack the capacity to reliably control their misbehavior. See, e.g., Casey et al., supra, at 329-31. As a result, several states have extended the constitutional protections afforded to juveniles to eighteen- and nineteen-year-olds. See In re Monschke, 482 P.3d 276, 288 (Wash. 2021); People v. Parks, 987 N.W.2d 161, 171 (Mich. 2022); Commonwealth v. Mattis, 224 N.E.3d 410, 415, 428 (Mass. 2024).

As a result, Stefaun, like other nineteen-year-olds who commit crimes of impulsivity and recklessness, is highly unlikely to reoffend as he matures. The court, however, failed to consider his age and the science of youth when assessing relevant factors during sentencing. For example, the court applied

“substantial weight” to aggravating factor three, the risk of re-offense, because Stefaun had been previously adjudicated or convicted of assault, “wander[ing] or prowl[ing]” in a drug area,” criminal mischief, and for violating probation. (13T 38-18 to 25) The court stated that while this conduct represented “the wanderings of a young person,” there were “indications of danger in that conduct,” and that Stefaun’s “increasing offenses indicate a level of violence, which would pose a danger to the community.” (13T 38-23 to 39-4) But the court did not grapple with Stefaun’s age, even though the age-crime curve, desistence studies, and developmental science all show that individuals who commit crimes as teenagers almost invariably age out of this behavior and are unlikely to re-offend as they mature.⁹ Moreover, that reasoning must be applied not just to the instant crime, but also to the prior crimes Stefaun committed. As a juvenile, Stefaun was less culpable, less able to appreciate risk, and less able to control his impulses. The court therefore should have considered his age and its effect when applying this factor and given it little, if any, weight.

⁹ Further, contrary to the court’s conclusions, only one of these prior charges (assault) involved any form of violence—the others include “criminal mischief,” which was actually downgraded to a disorderly persons offense, and what the code defines as “loitering,” or being present in a public place with the purpose of obtaining drugs. N.J.S.A. 2C:33-2.1b. (PSR 5-6) These latter offenses are neither signs of “danger” nor do they represent “increasing” levels of violence.

On the other hand, the court should have given substantial weight to mitigating factor nine, whether Stefaun's character and attitudes indicate that he is unlikely to reoffend. In applying this factor, the court quickly reasoned, "I cannot find that there is a basis here to assume from [Stefaun's] character and attitude that he is unlikely to commit another offense. The court will give this minimal weight." (13T 44-3 to 6) But, once again, Stefaun's age provides more than a sufficient basis, as nineteen-year-olds are more prone to recklessness and impulsivity than adults because of their psychological and cognitive development. The criminal conduct of this age group is much less a product of a fixed personality trait and much more a function of a developmental stage. See Casey et al., supra, at 329-35. As the science confirms, Stefaun is highly unlikely to reoffend as he matures, militating in favor of applying substantial weight to mitigating factor nine.

The court similarly failed to consider Stefaun's age when analyzing mitigating factor eight, whether Stefaun's conduct is likely to recur—a factor relevant to his ability to rehabilitate and likelihood of recidivism. The court found that this factor deserved little weight because "if released now, the defendant would pose a danger to the community." (13T 43-17 to 23) But the question is not whether Stefaun would commit another crime if he was immediately released—indeed, Stefaun was facing a mandatory minimum

sentence of thirty years. The question, rather, was whether this factor should mitigate Stefaun's overall sentence. And because the overwhelming scientific consensus is that young people, like Stefaun, who commit crimes as teenagers will age out of this misbehavior by their mid-twenties, his conduct is highly unlikely to recur. Consequently, this factor should have weighed substantially toward mitigating Stefaun's sentence.

Additionally, the court failed to account for Stefaun's youth when applying aggravating factor nine, the need to deter. The court gave this factor "substantial" weight, because "murder is an inherently serious charge and the sentence for such a serious charge should likewise be a serious term." (13T 40-14 to 20) Although the crime here is serious, the court fails to contend with the consensus of criminology and desistance literature showing that youthful offenders desist from crime by their mid-twenties, and thus do not need increased incentives for deterrence. Our Supreme Court has acknowledged that the threat of a lengthy sentence is less of a deterrent for a young person, because the same qualities that make them less culpable also make them less susceptible to deterrence. See Comer, 249 N.J. at 398-400. And since the same science relied upon in Comer is now known to apply to nineteen-year-olds like Stefaun, this factor should not apply, much less be given substantial weight.

Finally, while the court did apply mitigating factor fourteen, it did not give it sufficient weight. First, application of this factor alone does not ensure a fair and individualized sentence. Indeed, application of mitigating factor fourteen does not render youth irrelevant to the other factors, as any mitigating factor “amply based in the record” must be found. State v. Dalziel, 182 N.J. 494, 504 (2005); State v. Case, 220 N.J. 49, 64 (2014). Moreover, although the court applied mitigating factor fourteen and afforded it “substantial weight,” it did so in name only. (13T 45-15 to 21) When this factor was passed into law, the primary sponsors underscored their clear intention of bringing sentencing practices into alignment with contemporary brain science: “Allowing the courts to consider age as a mitigating factor would align juvenile sentencing with best practices that stem from neurological evidence and prevent disproportionately harsh sentencing. Ultimately, our young people must have the opportunity to grow and redefine themselves beyond their wrongdoing.” Office of the Governor, Press Release: Statement Upon Signing A. 4373 (Oct. 19, 2020). But here, the court utterly failed to contend with the cognitive and developmental science undergirding this factor, and how it mitigates a young person’s conduct. Had the sentencing court applied mitigating factor fourteen consistent with the Legislature’s intent, it would have given it more significant weight and imposed

a sentence no longer than the mandatory minimum. The court's failure to give due consideration to Stefaun's youth necessitates a remand for resentencing.

B. The Court Improperly Found Aggravating Factors One and Nine.

A remand is also required when the sentencing court considers an improper aggravating factor or double counts, State v. Carey, 168 N.J. 413, 424 (2001), or if the court's reasoning was not "supported by substantial evidence in the record." State v. O'Donnell, 117 N.J. 210, 216 (1989). Because the court double counted when applying aggravating factor nine and erroneously applied aggravating factor one, a remand is necessary.

First, the court's application of aggravating factor nine constituted impermissible double counting. The court's only reasoning for finding this factor was that "murder is an inherently serious charge" that requires a "serious sentence." (13T 40-16 to 19) A court, however, may not use the fact of a defendant's conviction to aggravate his sentence. See State v. Lawless, 214 N.J. 594, 608 (2013) ("[E]lements of a crime, including those that establish its grade, may not be used as aggravating factors for sentencing of that particular crime."); Carey, 168 N.J. at 424 ("It is well-settled that where the death of an individual is an element of the offense, that fact cannot be used as an aggravating factor for sentencing purposes."). Moreover, the court provided no actual reasoning on deterrence itself, failing to explain why an increased sentence was necessary for

general or specific deterrence, both which it was required to address. See Fuentes, 217 N.J. at 81. Because the court provided no reasoning on deterrence whatsoever and relied only on the fact of Stefaun's conviction, the court's application of this factor was an abuse of discretion.

Additionally, the court should not have found aggravating factor one, that Stefaun's conduct was especially heinous, cruel, or depraved. See id. at 75-76.

The court reasoned:

[T]he act of shooting the victim in the presence of his family on Thanksgiving will forever sear in their minds the horrendous memory of the passing of their brother. This family will forever have the terrible memory of Thanksgiving. The Court will find that this unprovoked cold-blooded killing on a holiday in the presence of the victim's family was an especially heinous and cruel act.

[(13T 37-16 to 23)]

Although this homicide is tragic, conduct is "cruel" when a defendant exhibits a clear intent to inflict pain or suffering. See O'Donnell, 117 N.J. at 217-18 (finding defendant behaved cruelly when he "selected a method of beating that would increase the victim's pain" by "hoisting [him] in the air and striking him on the legs"); State v. Drury, 382 N.J. Super. 469, 487-88 (App. Div. 2006) (finding this factor when defendant "subject[ed] the victims to a night of terror"); State v. McGuire, 419 N.J. Super. 88, 158-59 (App. Div. 2011) (finding this factor where "the crimes were the result of a cold, calculated plan carried

out with shocking attention to detail and callous disregard for the life of a human being”). In all murder cases, a victim’s family will have to confront the loss of a loved one. But the fact that this crime occurred on a holiday does not aggravate it beyond a typical homicide, and there is certainly no evidence of any intent to inflict increased pain or suffering. The court’s erroneous application of aggravating factors one and nine compel a remand for resentencing.

C. The Court Should Have Merged Count Two With Count One.

During sentencing, the court merged Count Two, possession of a weapon for an unlawful purpose, with Count Three, unlawful possession of a weapon. (13T 46-20 to 24) The court went on to impose five-year sentences on Counts Two and Three, and to assess fines for “each of those offenses.” (13T 46-20 to 47-5; Da 36-37) Merging these two counts was error. Instead, the court should have merged Count Two, possession of a weapon for an unlawful purpose, with Count One, homicide. And, because these convictions should have merged, the court should not have imposed any sentence—including any fines or fees—for Count Two.

A conviction for possession of a weapon for an unlawful purpose and murder merge where the evidence fails to show that the defendant had a weapon for a purpose beyond the murder. See State v. Vasquez, 265 N.J. Super. 528, 563-64 (App. Div. 1993); State v. Nutter, 258 N.J. Super. 41, 59 (App. Div. 1992).

Here, there is no evidence whatsoever that Stefaun possessed a weapon for an unlawful purpose beyond the underlying homicide. Consequently, these convictions must merge.

When convictions merge, “a separate sentence should not be imposed on the count which must merge with another offense.” State v. Trotman, 366 N.J. Super. 226, 237 (App. Div. 2004). Likewise, fines and fees must not be assessed to convictions that have merged. State v. Huff, 292 N.J. Super. 185, 194 (App. Div. 1996) (remanding to “delete the VCCB and Safe Neighborhood Service Fund assessments improperly imposed” on a merged count). As a result, the matter must be remanded for resentencing.

CONCLUSION

For the reasons set forth in Points I through IV, Stefaun's convictions must be reversed. Alternatively, for the reasons set forth in Point V, this matter must be remanded for a resentencing.

Respectfully submitted,

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Dated: September 27, 2024

Superior Court of New Jersey

Appellate Division
DOCKET No.: A-0931-23
CRIMINAL ACTION

STATE OF NEW JERSEY	:	On Appeal from A Conviction The
Plaintiff-Respondent	:	Superior Court of New Jersey, Law
	:	Division, Gloucester County
v.	:	
STEFAN Z. CORLEY,	:	Indictment No. 21-07-0539-I
Defendant-Appellant	:	Sat Below:
	:	Hon. Samuel Ragonese, Jr., J.S.C.

AMENDED BRIEF ON BEHALF OF STATE – RESPONDENT

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DEFENDANT IS PRESENTLY CONFINED

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PROCEDURAL HISTORY

The State adopts and incorporates the Appellant's Procedural History.

STATEMENT OF FACTS

The State generally incorporates the Appellant's statement of facts, but provides the following supplemental, countervailing information.

Barring Testimony Concerning the Stabbing

On May 22, 2023, Defense Counsel moved to admit certain testimony concerning a stabbing incident, alleging witness Terrell Bundy had an interest in the stabbing investigation, arguing that the case was still open and that he was a suspect in the investigation. (6T13:1-13:10). The State argued that the stabbing incident was not relevant. (6T14:16-17). It noted that Terrell Bundy's plea did not contemplate the stabbing incident and suggested that it was his brother, not Terrell, who was a suspect in the case. (6T14:16-15:5).

Counsel then unintentionally conceded that the investigation was closed and Terrell was not the focus, highlighting to the court that, "Detective Cacciola states, 'as of 1/11/2021, this investigation is currently closed due to lack of cooperation from the victim, witnesses, and suspects. It is of this officer's belief that Tyriq Bundy is the primary suspect for this investigation. I will reestablish my investigation if any further evidence becomes available.'" (6T17-24).

The State emphasized that Terrell's personal interest was clearly in the case at hand and that was why he was testifying. (6T20:8-22). The State maintained that

attempting to introduce evidence about an irrelevant, closed investigation served only one purpose; to paint Terrell as a bad person. Ibid.

The court considered, and took issue with the vagueness of the allegations. (6T16:7-17:3). The court surmised that if Counsel's position was accepted, the jury would be forced to conduct a mini trial to discern the validity of the intended evidence. (6T22:14-22). The court found that doing so would have great potential to waste time, confuse the issues, and mislead the jury. (6T23:8-12). The application to admit the testimony was thus denied. (6T21:22-22:2).

Terrell Bundy Testimony

When asked where the defendant was at the time of the incident, Bundy acknowledged that he told police, "he was there, but he wasn't up around the area at all." (10T162:22-25). Later on redirect, he clarified that what he meant was that the Defendant was there, but he was not on the porch with him and his brother. (10T165:16-25). He noted that he had told officers that the day after the incident. Ibid.

Bundy Curative Instruction

During Witness Terrell Bundy's cross-examination, the Defense highlighted the fact that he was charged in this matter and entered a plea, whereby he would receive time served plus probation in exchange for his testimony. (10T155:6-15). Bundy confirmed that he was charged with being involved in a homicide. (10T1577-10). When asked what his exposure was, he stated, "I don't recall. I don't

remember.” (10T157:11-15). Counsel then stated, “it was upwards of over 25 years?” to which the State objected as the witness stated, “I believe so.” (10T157:16-25). The court sustained the objection, striking the question and answer from the record. Ibid.

The following day, after the Defense made their closing and prior to the State presenting theirs, the court called the parties to side bar. (11T75:17-21). Immediately after the conference, the court gave a curative instruction on the issue of witness Terrell Bundy’s possible exposure. (11T75:19-76-14).

Testimony of Gregory Malesich

On cross-examination Sgt. Malesich was asked how far bullet casings eject. (9T103:13-15). Sgt. Malesich responded, “I’m not very familiar with that to – like, I couldn’t say that – 6 feet or this gun, 7 feet for that gun. I could never say that.” (9T103:17-19). Counsel pressed on, stating “is that not unusual though, a casing can travel up to 10 feet?” (9T103:20-21). Again, Malesich refuted this, noting that in his experience at the range, a casing may travel five feet. (9T104:15-16). Counsel continued, asking about how a casing might roll on different surfaces, even after the State objected, as Malesich had not been qualified as an expert witness. (9T105:5-20). Eventually, Sgt. Malesich relented and testified as noted in the defense brief. (Db9).

Lesser-Included Offense

During the charging conference, the Defense requested a lesser-included offense of conspiracy to commit aggravated assault against Isaac Rose. (11T407-19). As the State pointed out, the Defendant was never indicted for the attack on Isaac Rose. (11T40:21-41:2). Rather, he was indicted for the murder of Isaac's brother, Atiba Rose. (11T41:1-3). The State maintained that aggravated assault cannot be a lesser-included offense of murder when it concerns an entirely different victim. (11T41:4-8). Counsel argued that there was a rational basis to include the charge, pointing to the state's theory of transferred intent. (11T41:10-42:13). The State countered that there can be no lesser-included aggravated assault for murder when the victim is dead. (11T42:14-43:9). It noted that the lesser-included would be manslaughter. (11T42:16-24). Later, the State suggested it would be agreeable to lesser-included offenses of aggravated manslaughter, reckless manslaughter, and passion provocation. (11T47:2-10).

The court noted that there was no debate about the degree of injury; all parties agreed that the victim for which the defendant was charged had died. (11T46:14-23). The court narrowed the option for a lesser-included down to aggravated manslaughter, and afforded counsel time to discuss the lesser included with her client. (11T49: 52:25). After that discussion, Defense Counsel colloqued Defendant, at which time he indicated he was only requesting lesser included offenses related to the assault of Isaac Rose. (11T52:8-25). The court denied that

request, noting that it ignored the fact that the victim for which defendant was charged, was dead. (11T57:14-25).

Summations

During the Defense summation, the Defense highlighted Terrell Bundy's motive to fabricate testimony, noting that,

[i]t may be very obvious why Terrell Bundy had a motive to lie to you. Terrell Bundy wanted to protect himself and his brother. You heard that he received a sweetheart deal because he, too, faced serious charges. Very serious charges. Except in exchange for those charges, he pled to a lesser offense and agreed to come testify for the State. [11T69:22-70:3.]

Counsel maintained that Terrell Bundy never told the police he heard anyone say the words "move, move" and that he expressly told police that the Defendant was not in the area at the time of the shooting. (11T70:17-21). Counsel also called into question where the shots were fired from, arguing that Malesich testified that bullet casings can travel up to 10 feet and that during the night of the incident, people were walking about the crime scene. (11T71:15-17; 11T73:17-19).

During the State's closing, it highlighted various piece of evidence in the record and asked the jury to draw reasonable inferences from the same. (11T85:11-86:5). The State provided further explanation, highlighting only that which was admitted and part of the record. Regarding the surveillance, the State highlighted the Ring Camera film, noting that it displayed the two assaulting individuals on the porch during the incident. (11T81:14-19). The State noted that the two individuals

had similar build and stature, as brothers would. (11T81:19-21). Those two individuals were brothers Terrell and Tyriq Bundy. (11T81:17-22). Terrell himself confirmed it was he and his brother. (11T82:1-3). The State pointed out that surveillance showed three individuals approaching the home where the shooting occurred however, which suggested that a third individual in the group was not on the porch when the assault occurred. (11T89:25-90:2).

The State also noted that S-33 depicted bullet entry damage in the siding next to the window by the front door. (11T82:5-12). It noted that witnesses testified that the Victim was in the doorway of the front door when he was shot. (11T82:16-23). The State pointed out that the locations where shell casings were discovered in the street provided vantage points which would allow someone to fire at the area of the front door and window. (11T83:5-84:23). The State also drew attention to S-172, which contained four video clips. (11T78:4-7). During the playing of the fourth clip, the State emphasized that you could hear the words, “move, move, move, move,” before the shots were fired. (11T80:22-24). The State then made the logical connection that this suggested the person shouting “move” was not on the porch, but was the third person in the group shouting before shooting towards the porch, because he did not want his friends to be hit by the gunfire. (11T99:10-16).

The State also reminded the jury that, Isaac Rose specifically advised police that the shots were fired from the street. (11T87:3-6). The State inferred that he was able to see this because after someone shouted “move”, the assault on the porch

stopped as the two assailants got out of the way, which afforded Isaac an opportunity to look up and see the shots fired. (11T87:11-21), see also (10T153:10-14). The State noted that Isaac had no reason to lie for Terrell about this; indeed the opposite was true. Terrell had physically assaulted Isaac. (11T87:14-17).

The State highlighted Instagram messages, witness testimony, and finger print evidence, which indicated Defendant was the third person in the group. (11T84:8-9; 11T89:9-24; 11T90:24-91:6; 11T91:11-19). The State noted that Defendant had advised his-co-defendants the day prior to the murder that he had just purchased a firearm. (11T:84-13-17). It also highlighted the fact that in the days immediately after the shooting, the Defendant conducted over one-hundred searches related to a Woodbury shooting. (11T:85-1-10).

The State asked the jury to draw logical inferences from this information, which collectively suggested that the shots were fired from the street and that Defendant was the shooter. (11T98:14-19).

LEGAL ANALYSIS

I. THE ISSUES RELATED TO BUNDY’S TESTIMONY DO NOT WARRANT REVERSAL BECAUSE HIS MOTIVE FOR BIAS WAS MADE CLEAR AND THE STABBING INCIDENT WAS OF A SPECULATIVE NATURE.

Article I, Paragraph 10 of the New Jersey Constitution affords defendants the right to confront witnesses against them. State v. Jackson, 243 N.J. 52, 65 (2020). Furthermore, N.J.R.E. 611(b) allows for inquiry into any matter affecting the witness’s credibility. Ibid. This necessarily includes the potential bias of any State witness and the reason for that bias. See State v. Bassm 224 N.J. 285, 301 (2016). However, there are instances where the right to confront a witness may be limited, including when the court has concerns related to “harassment, prejudice, confusion of the issues . . .” and more. See Van Arsdall, 475 U.S. 673, 679 (1986). Where the inquiry concerns a plea bargain and the sentencing range that a defendant faces, it has been held that such inquiry is appropriate on cross-examination. See Jackson at 71. While a decision to bar such testimony may constitute error, it may be considered harmless where it can be shown that the decision was not “clearly capable of producing an unjust result.” State v. Castagna, 187 N.J. 293, 312 (2006) (quoting R. 2:10-2).

A. THE JURY WAS SUFFICIENTLY INFORMED ABOUT BUNDY’S MOTIVE FOR BIASED TESTIMONY.

In Jackson, the State argued that, while the defense may have been improperly prohibited from cross-examining a co-defendant-turned-witness about his

sentencing exposure, the error was harmless because ultimately the defendant's sentencing range had come out during the examination of the assistant prosecutor who extended the witness's plea offer. Id. at 72. The Appellate Division was unpersuaded by this argument, noting that the critical issue was the potential bias of the witness, which could only be demonstrated by establishing his understanding of his exposure, not the assistant prosecutor's. Ibid.

Conversely, in this case the State first solicited testimony which established the fact that Bundy was charged in the matter, entered a plea for a year of time served plus probation, and that the sentence was conditioned upon his testimony. (10T155:6-15). The Defense then expounded upon this, soliciting testimony from Bundy that he was initially charged for involvement in the homicide. (10T157:7-10). Thus, his motive for biased testimony was made clear.

When the Defense inquired as to the range Bundy faced, he expressly stated, "I don't recall. I don't remember." (10T157:13-15). No objection nor ruling was made at that time. Thus, Bundy did provide uninterrupted testimony regarding *his* understanding of his sentencing exposure. It was only once the Defense testified for the witness, stating "it was upwards of over 25 years?" that the State objected and the court made a ruling barring such inquiry. (10T157:16-24).

While this may seem like a nuanced distinction, it is significant. In Jackson, the sentencing range that the defendant faced did eventually come out at trial, but the court's initial bar of such testimony was found to undermine the result because

the court never permitted inquiry into the *witness*'s understanding of their exposure. Here, that inquiry occurred and the response from the witness was that they did not know what the range they faced was. Furthermore, the following day, the court gave a curative instruction informing the jury that the range of Bundy's exposure was 10 to 20 years on the conspiracy to commit murder charge. (11T75:22-76:14). Thus, this case is distinguishable from Jackson. Here, the witness indicated his lack of understanding of exposure *and* the potential sentencing range did come out later via curative instruction.

Despite this, Appellant suggests that the curative instruction was administered in such a way that the Defense was prohibited from offering comment on it and was denied his right to a fair trial as a result. In response, the State would first note that the Defense did comment on the Defendant's alleged motive for bias, and specifically pointed out how obvious of a motive it was. (11T69:22-70:3.) It is a difficult position to now argue that "the court's rulings prevented the jury from learning about Terrell's incentives to cooperate, curry favor, and, most critically, to deflect blame. . ." when Defense Counsel below previously maintained that it was plain for all to see. (Db12-13; Ibid.)

It also cannot be ignored that the court called the parties up to side bar immediately after the Defense closed, had a conference, and only then issued the curative instruction. (11T75:17-76:14). While the transcript does not indicate precisely what was said, it does not take some clairvoyant ability to infer what the

topic of discussion was. Clearly, the issue of the sentencing range and a curative instruction were discussed at sidebar, as the curative instruction was then immediately issued. Thereafter, the Defense raised no further objection nor noted any further issue otherwise with the manner in which this was handled.

Accordingly, there was no error below. Should this court find there was, it was harmless error only because the motive for biased testimony was clear, the court did permit the witness to testify as to his understanding of his sentencing exposure, the defense did comment on the “obvious” motive for Bundy’s testimony, and the court later advised the jury what the specific range was (even though the witness did not know).

B. TESTIMONY RELATED TO THE STABBING INCIDENT WAS PROPERLY BARRED BECAUSE THE INVESTIGATION WAS INADMISSIBLE UNDER NJRE 403.

When a defendant seeks to use other crime evidence in aid of his defense, he need not satisfy the factors set out State v. Cofield 127 N.J. 328 (1992). See State v. Weaver, 219 N.J. 131, 150 (2014). Instead, a defendant is permitted to use other crime evidence in furtherance of his defense, provided it is relevant under NJRE 401 and not otherwise barred by NJRE 403. See State v. Cook, 179 N.J. 533, 566 (2004), see also State v. Williams, 240 N.J. 225, 237-38 (2019). Where a trial court fails to apply the proper legal standard in determining whether to admit such evidence, appellate courts apply a de novo standard of review. See Konop v. Rosen, 425 N.J. Super. 391, 401 (App. Div. 2012).

In State v. Garfole, the Court established the standard for determining the admissibility of other-crimes evidence when used defensively. 76 N.J. 445 (1978). There, the defendant was accused of offenses related to a molestation, and sought to admit evidence concerning other instances of molestation for which he had been accused, but had alibis for the majority of them. Id. at 448. He intended to argue that the instances were similar in kind and all committed by the same person (that is, someone other than him). Ibid. The trial judge deemed the evidence irrelevant and inadmissible. Ibid.

On review, the Court drew attention to the fact that many of the instances were similar. Id. at 449. The Court stated that “[i]t is well established that a defendant may use similar other-crimes evidence defensively if in reason it tends, alone or with other evidence, to negate his guilt of the crime charged against him.” Id. at 453 (citations omitted). In light of these considerations, the Court determined that the question was not one of relevance, but rather “the degree of relevance balanced against the counter considerations expressed in Evid. R. 4 of undue consumption of time, confusion of the issues and the misleading of the jury.” Id. at 451. Citing to the rule, the Court emphasized that,

The judge may in his discretion exclude evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (a) necessitate undue consumption of time or (b) create substantial danger of confusing the issues or of misleading the jury.

[Id. at 456 (citing Evid. R. 4)].

Applying this reasoning, the Court found that the proffered evidence had the potential to waste time and confuse the jury. Ibid. The defendant's offers of other-crimes would have created multiple mini-trials within the actual trial, necessitating witness testimony and more so that jury could determine the veracity of his claimed defense. Ibid. It found that "it is highly appropriate for a trial judge, confronted with the opposing evidential considerations in such a situation as here presented, to weigh in the balance of the concern of the law for orderly and efficient administration of the jury process." Ibid. It remanded the matter so that the trial court could make the "highly discretionary determination" as to the admissibility of the evidence by weighing its relevance "against the Rule 4 considerations which militate for rejecting it." Ibid.

In, State v. Cook the Court considered whether it was proper to deny the defendant's attempt to admit other-crimes evidence in a homicide. 179 N.J. 533 (2004). There, a juvenile had been bludgeoned to death after walking home from a roller rink. Id. at 540. The defendant sought to admit evidence that while he was incarcerated, there was a similar murder committed. Id. at 568.

The trial court found that the other-crime evidence was relevant to the case because of certain similarities, including age and body type of the victims. Id. at 567-68. However, there was "nothing distinctive to tie the two [crimes] together in any manner to indicate that they were the work of the same person" and the court

would have to hold a “mini-trial” to determine whether the two matters could be linked, which had “tremendous potential for confusing and misleading the jury.” Id. at 568.

On review, the Court reiterated that although the simple relevance standard of review for other-crimes evidence admitted by the defense is low, such evidence must still pass an NJRE 403 analysis. Id. at 566-67. Specifically, it must be considered whether the evidence’s “probative value is substantially outweighed by the risk that its admission will either (a) necessitate undue consumption of time or (b) create substantial danger of confusing the issues or of misleading the jury.” Id. at 567 (quoting State v. Garfole, 76 N.J. 445, 453 (1978) (quoting former Evidence R. 4)). The Court noted again that a trial court’s NJRE 403 assessment is “highly discretionary” due to the balancing of such factors. Id. at 567 (citing Garfole at 457.) Applying this standard, the Court found that the trial court’s analysis was properly conducted, and there was “no clear error of judgment or manifest denial of justice.” Id. at 569.

In State v. Weaver, the Court again considered the use of other crimes evidence in aid of a defense. 219 N.J. 131 (2014). In that case, there was conflicting witness testimony about which co-defendant fired the shots in a murder case. Id. at 141-42. Weaver filed a motion to sever and sought to admit other crimes evidence which tended show that his co-defendant had later used the same firearm in Winslow Township to shoot witnesses of the crime. Id. at 142. The trial court applied the four

factors set out in the Cofield test and concluded that the other-crimes evidence from the Winslow incident was inadmissible because it was not relevant and was unduly prejudicial against the co-defendant. Id. at 142-43. The trial court also denied the defendant's motion to sever. Id. at 143.

On review, the Court noted that when a defendant seeks to use other crime evidence in furtherance of their defense, the Cofield factors do not apply because “an accused is entitled to advance in his defense any evidence which may rationally tend to refute his guilt or buttress his innocence of the charge made.” Id. at 150 (citing State v. Garfole, 76 N.J. 445, 453 (1978)). Even under this relaxed standard, however, trial courts must still discern whether the proffered other-crimes evidence's probative value is not substantially outweighed by the factors set out in NJRE 403 Id. at 151. The Court noted again that such a determination is highly discretionary. Ibid.

Applying the NJRE 403 analysis to the case, the Court found that the relevance of the Winslow incident was clear. Weaver at 157-58. The sole issue in the case was who of the two co-defendants was the shooter, and the Winslow evidence tended to show that Weaver's co-defendant possessed and used the murder weapon against witnesses at a later date. Weaver at 157-58. The Court found that the presentation of such evidence was thus highly probative and “would not have consumed undue time or confused or misled the jury.” Id. at 158. This issue,

coupled with the denial of the motion to sever and a confrontation clause issue, warranted reversal. Id. at 160-63.

In State v. Williams, the Court considered a murder case where the defendant sought to admit a prior drug transaction involving the victim as evidence that he was aware of the dangers of the drug trade. 240 N.J. 225, 231-32 (2019). The defense intended to use such information in a claim of self-defense by insinuating that such knowledge would cause the victim to arm himself against such dangers during future transactions, including the one leading to his death. Id. at 236-37.

The trial court, relying on the factors set out in Cofield as well as NJRE 404(b), found the evidence to be inadmissible, concluding that the prior drug transaction and the transaction underlying the present matter were too dissimilar. Id. at 231. The Appellate Division reversed, holding that the trial court erred in applying Cofield and NJRE 404(b) to exclude the evidence. Id. at 232. Relying on Weaver, the Division found that the defendant should have been permitted to present the other-crime evidence defensively, provided it was relevant under NJRE 401 and not otherwise excluded under NJRE 403. Ibid.

On review, the Court agreed with the Division in that the trial court had applied the wrong legal standard for the admissibility of other crimes evidence in furtherance of a defense. Id. at 234. However, the Court found that the evidence was still inadmissible, as it was not relevant under NJRE 401. Ibid.

The Court found that without more, the failure to carry a gun in the first instance could not substantiate a claim that the victim carried one in the second as the evidence was “speculative, unproven, and ultimately irrelevant . . .” and thus inadmissible under NJRE 401. Ibid. The Court noted that even if the evidence had been found to be relevant, it still would have been inadmissible under NJRE 403, because it would have resulted in needless presentation of cumulative evidence. Id. 238. That is because there had already been a presentation of text messages between the defendant and the victim, which established the victim’s apprehension about the meeting. Ibid. The jury could have drawn the desired inference from those text messages alone, and thus the presentation of evidence related to the prior transaction was unnecessary. Ibid.

In the present matter, it is conceded that the trial court improperly cited to Cofield when determining whether or not to allow inquiry into the stabbing incident. (6T22:3-7). However, the court also conducted a NJRE 403 analysis, and properly barred the Defense from inquiring about a closed stabbing investigation in which witness Bundy was not even a noted suspect. (Dca10). As noted in Garfole, a jury should not be made to conduct mini trials to determine whether speculative other-crime evidence offered by the defense passes muster and is reliable. Here, the defense sought to cross-examine the state’s witness based on the fact that he was named in an investigation that had been closed due to lack of evidence. That means the officer conducting the investigation did not believe he had enough evidence to

make out probable cause to charge anyone in the case, let alone Terrell Bundy, who was not even the noted suspect. Yet, the Defense would have the jury consider such information in an attempt to infer bias on Terrell Bundy's part. Obviously, this has great potential to confuse the issues and waste the jury's time, as the court correctly indicated. (6T23:9-12). This is particularly so because, like in Williams, there were other means available which did show bias on the witness's behalf. As has already been established, it was made clear that Bundy was charged in this matter, and that that provided a substantial motive for testifying in the case. (6T20:8-22).

As the aforementioned case law makes clear, the admission of other-crimes evidence is a highly discretionary determination due to the accompanying NJRE 403 analysis. Here, the court below properly considered the issues that surrounded the other-crimes "evidence" offered. (6T16:7-17:3). Although Cofield may have been mentioned, the record also clearly establishes that the evidence should have been barred under NJRE 403, and further that the court did bar such evidence under that rule. (Dca1-11; 6T23:8-12; compare NJRE 403). Thus, as suggested in Williams, while it may have been a misstep to reference Cofield, the ruling was otherwise sound and should stand.

II. THE COURT WAS CORRECT IN NOT CHARGING REQUESTED LESSER-INCLUDE OFFENSES AS RELATED OFFENSES, BECAUSE THEY DID NOT SHARE A FACTUAL NUCLEUS WITH THE MURDER COMMITTED AGAINST AN ENTIRELY DIFFERENT INDIVIDUAL.

Included offenses which are different from those explicitly charged in an indictment are allowed only in limited circumstances, as set out in NJSA 2C:1-8d. See State v. Thomas, 187 N.J. 119, 130 (2006). As explained in NJSA 2C:1-8e “[t]he court shall not charge the jury with respect to an included offense unless there is a rational basis for a verdict convicting the defendant of the included offense.” NJSA 2C:1-8e. Thus, an included offense must both satisfy the statutory requirement of NJSA 2C:1-8d, and have a rational basis grounded in the evidence to support the charge. Thomas, at 131. When it is the defendant requesting an included offense, less focus is placed on the statutory requirement, as concerns related to due process and fair notice are not implicated. Ibid. However, that does not mean any tangential connection to a case will permit the reading of a lesser-included. See State v. Brent, 137 N.J. 107, 118 (1994) (noting that “sheer speculation does not constitute a rational basis.”)

The analysis is different for “an offense that is related to, but not included within, the offenses charged in the grand jury indictment, that is, offenses that share a common factual ground, but not commonality in statutory elements, with the crimes charged in the indictment.” Thomas, at 132. “[C]ourts [may] instruct the

jury on a related charge when two factors coalesce: the defendant requests or consents to the related offense charge, and there is a rational basis in the evidence to sustain the related offense.” Id. at 133.

In Thomas, the defendant was charged and tried for various offenses related to a purse snatching and flight from police, which resulted in his vehicle ramming a police car before he was detained. Id. at 124-25. During testimony, a responding officer relayed to the jury that the defendant had denied any participation in the actual robbery. Id. at 126. During the charging conference, the defendant never requested that the trial judge charge hindering as a lesser-included or related offense to robbery, nor did he object to the court’s charge for eluding. Id. at 126. On appeal, he maintained that the court should have sua sponte charged hindering as a lesser-included of robbery. Id. at 127.

On review, the Court noted that, in circumstances such as the one presented, “in order to trigger a sua sponte requirement for a jury charge, constitutional considerations require that the offense the defendant claims should have been charged must be (1) "included" in the offense actually charged and not simply related to the pattern of events that give rise to the offense charged, and (2) that "the facts adduced at trial clearly indicate that a jury could convict on the lesser while acquitting on the greater offense." Id. at 136.

On the other hand, whether offenses are related is not a function of a comparison of statutory elements. Instead, the focus is whether the offense charged and the related offense share a common factual

nucleus. See N.J.S.A. 2C:1-8a ("When *the same conduct* of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense.") (emphasis supplied).
[Id. at 190.]

The court noted that hindering and robbery do not share the same elements and so hindering fails the test for determining whether it is a lesser-included offense. Id. at 135.

Later, in State v. Maloney, the Court considered these issues in the context of another robbery. 216 N.J. 91 (2013). Post home invasion and robbery, the defendant and his crew fled with some stolen goods. Id. at 97-98. During their flight, one of the robbers was left behind and subsequently apprehended near the home. Id. at 97. He agreed to contact the defendant and try to coax him into returning to the area, which resulted in the defendant returning and being apprehended. Id. at 98.

During trial, the defendant denied participating in the robbery, and maintained that he returned to the area only because he thought "he would be paid some money after two stolen watches 'were swapped.'" Id. at 100. At the charge conference, defense counsel requested that the jury be charged on the offense of receiving stolen property as a lesser-included of robbery. Ibid. The request was denied and the defendant later appealed. Id. at 100-01. The Appellate Division found that receiving stolen property clearly did not constitute a lesser-included offense, noting the distinction in elements between receiving stolen property and robbery. Id. at 101. The Division also rejected the argument that the jury should have been charged on

receiving stolen property as a related offense, finding that “the two offenses do not share a common factual nucleus in that the same conduct does not establish the crimes of robbery and receipt of stolen property. . . the robbery was completed before the alleged 'attempted theft' and 'conspiracy to commit theft' that defendant had requested be charged to the jury.” Id. at 102.

In analyzing the case, the Court reiterated the tests established in Thomas. Id. at 106-07.

If the State requests an instruction on a lesser-included offense, it may be given only if the offense satisfies *N.J.S.A. 2C:1-8(d)*. *Id.* at 131, 900 A.2d 797. If the defendant makes such a request, the court must focus on whether there is a rational basis in the evidence to support such a charge. *Id.* at 131-32, 900 A.2d 797. If neither party requests a charge on a lesser-included offense, the court must sua sponte provide an instruction “when the facts adduced at trial clearly indicate that a jury could convict on the lesser while acquitting on the greater offense.” *Id.* at 132, 900 A.2d 797 (quoting State v. Jenkins, 178 N.J. 347, 361, 840 A.2d 242 (2004)).
[Id. at 107.]

The Court noted that on the other hand, a trial court may give an instruction on a related offense when it is requested by the defense and, similar to an included offense, “there is a rational basis in the evidence to support such a charge.” Id. at 108.

The Court found that there was a lack of shared statutory elements in the offenses and that “the record does not provide a rational basis for charging attempted theft by receipt of stolen property or conspiracy to receive stolen property as a lesser-

included offense of robbery”. Id. at 111. The Court reasoned that the defendant maintained he was not present for the robbery and that he only returned hours later to pick up watches that were stolen from the home. Ibid. Accordingly, there was no basis for a lesser-included offense. The Court noted that the issue of related offenses was summarily rejected by the Appellate Court. Ibid. In commenting on the same, it noted that the stolen watches were not sufficient to establish a factual nucleus. Ibid.¹

¹ This was despite Justice Albin’s dissenting opinion, where he noted that “our jurisprudence does not provide a neat definition of what constitutes a ‘common factual nucleus’ shared by a charged offense and an uncharged related offense . . . [but r]obbery is nothing more than an aggravated theft . . . [and t]he stolen property is the common nucleus between the two offenses.” Id. at 113. He went on to highlight that “prosecutors routinely charge defendants alternatively with theft and/or receiving stolen property” suggesting it was evidence of the close connection between the two offenses. Ibid. Justice Albin suggested that the defense’s movement for a lesser-included should have actually been for a related-offense, and that “formalism should not prevail over substance.” Notably, no other Justices joined Justice Albin in his dissent. Ibid. See also, State v. Carman, 2009 N.J. Super. Unpub. LEXIS 3025, *14 (where the Division found that there was not a sufficient factual nucleus to charge aggravated manslaughter and reckless manslaughter as related offenses in a homicide, where testimony by a jail house informant suggested the defendant intentionally hit the victim with a two-by-four and left her on train tracks to die.); State v. John, 2021 N.J. Super. Unpub. Lexis 2896, *17 (where the Appellate Division held that there was not a sufficient factual nucleus between the simple assault that occurred immediately prior to the defendant running down and killing the victim with his vehicle., Noting that “[n]o statute, rule, or case provides that a defendant may request an instruction on an offense unrelated to the indicted crimes. Under the Thomas guidelines, there was no basis for an instruction on simple assault.”)

In the case at hand, it is clear that it was not error to refuse to instruct on aggravated assault related offenses, as there was no nucleus connecting the sought lesser-included offense, which would have concerned an entirely different victim. First, Counsel moved to charge aggravated assault related offenses as lesser-included offenses, not related offenses. (11T52:8-18). Appellate Counsel acknowledges this. (Db26, n.8). The reasoning for the concession is obvious. The charges do not share the same elements, as the court correctly pointed out. (11T57:14-23). Namely, one requires a person's death. Additionally, the statute governing the imposition of lesser-included offenses notes that when one seeks a lesser included involving lesser injury it must be "to the same person." NJSA 2C:1-8d.²

Counsel argues that the sought assault charges are related offenses, however, and that this court should still consider their viability in that context because there was a movement for the charges, albeit an improper movement. (Db26, n.8 citing State v. Cooper, 256 N.J. 593, 609-10 (2024)). Yet, this ignores the fact that the New Jersey Supreme Court has expressly stated that "courts are never required to charge a jury sua sponte on related offenses." State v. Alexander 233 N.J. 132, 144

² Cf., State v. Lewis 223 N.J. Super. 145, 152-53 (App. Div. 1988) (considering and rejecting defendant's claim that he was guilty only of manslaughter because all other crimes for which he was convicted should merge. Relevant here, the division noted that convictions for assault and manslaughter could not merge because different victims were involved.)

(2018) (citing State v. Maloney, 216 N.J. 91, 107-08 (2013) (discussing Thomas, 187 N.J. at 129-33)). Here, neither the State nor the Defense below moved for a *related* offense. Thus, the court would have had to issue one sua sponte.

This is not mere legal gymnastics. The analysis for related offenses and included offenses entail entirely different considerations. The court below applied the analysis appropriate for lesser-included offenses, as requested. It was not required to consider a different legal rationale that was not even presented to it. Furthermore, this issue was raised by Justice Albin in his dissent in the Maloney case. He argued that this distinction was a mere formality. It is telling that no other justices joined in his opinion. It may be inferred that majority did not agree, believing instead that the difference matters and that judges are not required to account for related offenses when they are not expressly sought as such.

Even if this court does find that the trial court should have considered the sought offenses as related offenses, the result would be the same. The desired charges do not share a factual nucleus to the murder because they relate to an entirely different person. Thomas suggests that a factual nucleus exists “when the same conduct of a defendant may establish the commission of more than one offense . . .” There is case law which serves to guide this court in applying that reasoning. The robbery proceeds from the same location were not sufficient to make out a nucleus connecting a requested receiving charge in Maloney. An unobserved murder was found to lack a factual nucleus connecting aggravated or reckless manslaughter in

Carman. Mere seconds and the weapon used negated a nucleus connecting assault in John. Here, there was no showing of Defendant's direct involvement in the assault on Isaac Rose. Fists were used in the assault of Isaac Rose, while Defendant used a gun to shoot Atiba Rose. Isaac lived, and Atiba did not. The same conduct cannot establish both the murder of Atiba Rose and the factually distinct assault of Isaac Rose. There was no error in refusing to charge the requested assault related offenses.

III. THERE WAS NOTHING IMPROPER ABOUT THE PROSECUTOR'S COMMENTS REGARDING THE BULLET HOLES, BECAUSE THEY WERE BASED ON INFORMATION CONTAINED IN THE RECORD.

In State v. Feaster, the Court considered whether the prosecutor's comments during summation were improper in a case involving a shooting at a gas station. 156 N.J. 1, 26 (1998). During the state's closing argument, the prosecutor provided a narrative suggesting the route taken to the station, how the defendant prepared the weapon while en-route, and how he approached the victim while at the scene. Id. at 56-58, 62. None of that information was actually supported by the evidence. Ibid. The Court held that the state's commentary was inappropriate because there was no "basis in the record" for it. Id. at 62. Despite that, the Court held that the evidence in the record was sufficient to uphold the conviction, and thus the defendant was not deprived of a fair trial. Id. at 63-64.

In State v. Frost, the Court found a prosecutor's summation to constitute reversible error in a case involving narcotics. 158 N.J. 76 (1999). There, the defense

sought to discredit a testifying officer's trustworthiness, noting that the State did not produce any currency used in the alleged transaction. Id. at 80. During summations, the State incorrectly suggested that "buy money" was inadmissible at trial, and also improperly suggested that an officer would not fabricate their testimony because they would face serious charges if they did. Id. at 81, 85. Counsel objected to these comments, but the trial court did not strike them nor provide a curative instruction. Id. at 81.

The Court reversed the convictions, noting the lack of any curative instruction for the "inaccurate" and "misleading" statements. Id. at 85. The Court further noted that the officer's credibility was of paramount significance to the outcome of the case and that accordingly, the evidence presented did not overcome the defendant's "entitlement to a constitutionally guaranteed right to a fair trial." Id. at 87.

In State v. Smith, the Court considered whether the state's attempt to discredit defense expert testimony was reversible error. 167 N.J. 158 (2001). During summations, the prosecutor suggested that the defense experts had a financial incentive to testify favorably for the defense, while the countervailing State experts had no such incentive. Id. at 174. Defense counsel immediately objected, and a curative instruction was issued. Id. at 174. The prosecutor then continued his summation, noting that "you can consider the fees when you're considering whether the expert is telling the truth or not or whether the expert has shaded his testimony." Id. at 175. The defendant was convicted and at sentencing, counsel moved for a new

trial on the basis of the comments. Ibid. The court denied the application. Id. at 175-76.

On review, the Court noted that it has been clear that prosecutors “should not make inaccurate legal or factual assertions during a trial” and that their comments must be based on the evidence contained within the record, as well as reasonable inferences drawn therefrom. Id. at 178. Yet, even when comments by the State transgress this boundary, “[a] finding of prosecutorial misconduct does not end a reviewing court’s inquiry because, in order to justify reversal, the misconduct must have been ‘so egregious that it deprived the defendant of a fair trial.’” Id. at 181 (citing Frost at 83).

In making such a determination, the Court instructed reviewing courts to consider “(1) whether defense counsel made timely and proper objections to the improper remarks; (2) whether the remarks were withdrawn promptly; and (3) whether the court ordered the remarks stricken from the record and instructed the jury to disregard them.” Id. at 182 (citing State v. Marshall, 123 N.J. 1, 153 (1991)). Applying this standard to the facts of the case, the Court noted that the assertion about the expert was not supported by the record, a timely objection to commentary was raised, the State acted to negate the curative instruction issued, and the defendant’s guilt or innocence depended on which experts the jury believed. Id. at 183-84, 188. Thus, “the prosecutor’s comments clearly were capable of having an

unfair impact on the jury’s deliberations, thereby depriving defendant of a fair trial.”

Ibid.

In State v. Jackson, the Court held that the state’s summation was improper but did not merit a reversal of the defendant’s conviction in a robbery case. 211 N.J. 394 (2012). There, the defendant was arrested for robbing a cab driver and was searched incident to arrest with negative results. Id. at 399. Back at the station, the defendant was searched again, leading to the discovery of a gun on his person. Ibid. An altercation between defendant and officers then ensued. Ibid. An officer subsequently drafted a false report which left out the failure to discover the weapon during the initial search. Ibid.

During trial, the State presented testimony regarding the altercation with officers at the station, an assault charge filed by one of those officers, discipline imposed on the officer who filed the fictitious report, and a resulting civil suit brought by the defendant. Id. at 410-11. During closings, the State commented on these matters, noting that the officer “chose to lie in his report. And now [the defendant] wants to be a millionaire.” Id. at 411. Counsel moved for a mistrial or a curative instruction in the alternative, the latter of which the court gave. Id. at 411-12.

On review, the Court emphasized the fact that the testimony at issue was not objected to during trial and that the state’s comments were based on that testimony. See Id. at 412-13. Furthermore, when objection was raised to the commentary, a

timely curative instruction was given. Ibid. Thus, the commentary did not constitute reversible error. Ibid.

In State v. McNeil-Thomas, the Court considered whether it was proper for the State to suggest in summation that the defendant cased a restaurant to ensure his target was there, prior to returning and inadvertently shooting an off-duty officer. 238 N.J. 256 (2019). During trial, the State had presented witness testimony suggesting that the defendant had operated a “black sedan . . . ‘like’ a Cadillac CTS” on the day of the crime. Id. at 264. During summations, surveillance was played depicting a black sedan driving by the shooting location moments before it occurred, and the State drew the connection between that surveillance and the witness testimony. Id. at 270.

The Court found that the statements by the prosecutor were “fair comment on the evidence” and did not constitute reversible error. Id. at 280-81. It reasoned that all the State had done was provide the jury with the opportunity to make a reasonable inference drawn from the witness testimony and the surveillance video played, both of which were part of the record. Ibid.

In the present case, Counsel suggests that the prosecutor was commenting on information not in the record during summations. (Db32). For sake of completeness, the State notes the line preceding Counsel’s quote, where it was stated that “the State would *argue* the damage to that door was not caused by somebody standing right there on the porch.” (11T98:24-99:1 (emphasis added)). This is important because

it gets to the heart of the issue. This was an argument based on the evidence. The State's contention that the shooting occurred from a distance was simply an instance of the State allowing the jury to draw an inference from the information presented throughout the case.

As set out in the statement of facts above, the State highlighted several pieces of evidence and witness testimony which, collectively, allowed the jury to infer that the shooting occurred from the street. (Sb6-8). Addressing the comment on the photo specifically, this was no different than the logical inference drawn from surveillance in State v. McNeil-Thomas. It was not made up, as in Feaster. There was nothing outlandish, unsupported, or improper about it either, as was the case in Frost and Jackson.

Finally, the State notes that this statement highlighted at (Db32) was never objected to, which is the very first factor for consideration set out in the Smith test. Jackson suggests that the failure to object is significant. As no objection was made, and as the statement was a reasonable inference drawn from the evidence, the comment during summation does not warrant reversal.

IV. THERE IS NO CUMULATIVE ERROR WHICH DEPRIVED THE DEFENDANT OF A FAIR TRIAL.

Addressing this argument at length would be an unnecessary and duplicative retelling of the state's response in the points above. Accordingly, the State incorporates the arguments previously raised and submits that the errors alleged by

the defense are unfounded, or in the alternative that they are not sufficient to warrant a reversal.

V. THE SENTENCE IN THIS MATTER WAS NOT EXCESSIVE.

In order to impose an appropriate sentence, a trial court considers the aggravating and mitigating factors set forth in NJSA 2C:44-1(a) and (b). The factors are weighed against each other and the court must establish on the record how the sentence was determined. State v. O'Donnell 117 NJ 210, 215 (1989). When the factors considered are supported by the record, so long as they are properly balanced, an appellate court should affirm the sentence. State v. Carey, 168 NJ 413, 426-27 (2001). When a court follows the aforementioned guidelines, the sentence should only be modified if it “shock[s] the judicial conscience.” State v. Roth, 95 NJ 334, 365 (1984). Indeed, even when a factor is inappropriately applied, the sentence should stand provided if it is not otherwise capable of producing an unjust result. See R. 2:10-2; State v. O'Donnell, 117 N.J. 210, 215-16 (1989); State v. Ghertler, 114 N.J. 383, 393 (1989); State v. Roth, 95 N.J. 334, 363-65 (1984).

In State v. Roth, the New Jersey Supreme Court set forth certain guidelines for reviewing a sentence issued by a lower court. See Generally 95 N.J. 334 (1984). The Court held that an Appellate court may “review sentences to determine if the legislative policies, here the sentencing guidelines, were violated; (b) review the aggravating and mitigating factors found below to determine whether those factors were based upon competent credible evidence in the record; and (c) determine

whether, even though the court sentenced in accordance with the guidelines, nevertheless the application of the guidelines to the facts of this case make the sentence clearly unreasonable so as to shock the judicial conscience.” Id. at 364-65.

In State v. O’Donnell, the New Jersey Supreme Court reinstated a sentence previously vacated by the Appellate Division. 117 N.J. 210, 212 (1989). The Court found that there was ample evidence in the record to support the trial court’s findings and that the lower court had indeed considered mitigation. Id. at 215- 221. The Court noted “on occasion, a sentence within the statutory guidelines may strike a reviewing court as harsh, ‘but that is the consequence of the legislative scheme and not a clear error of judgment by the trial court.’” Ibid. (citing State v. Dunbar, 108 N.J. 80, 83 (1987)).

In State v. Ghertler, the Court reiterated the permissible basis for review set forth in Roth and stated that “the test, then, is not whether a reviewing court would have reached a different conclusion on what an appropriate sentence should be; it is rather whether, on the basis of the evidence, no reasonable sentencing court could have imposed the sentence under review.” Id. at 388 (citing Roth at 365). The Court, in reversing and re-instating the original sentence held that “there is no litmus test that will categorically demark the point at which . . . a sentence [is] to be so clearly wide of the mark as to shock the court’s conscience. All agree that the rubric does not embrace disagreement over sentencing results.” Id. at 393.

Finally, in the Court provided a succinct statement of how a trial court may logically arrive at a sentence imposed. State v. Fuentes, 217 N.J. 57 (2014).

[O]ne "reasonable" approach for sentencing judges is to use "the middle of the sentencing range as a logical starting point for the balancing process." [State v. Natale, 184 N.J. 458,488 (2005)]. So, for example, "if the aggravating and mitigating factors are in equipoise, the midpoint will be an appropriate sentence." Ibid. Moreover, "reason suggests that when the mitigating factors preponderate, sentences will tend toward the lower end of the range, and when the aggravating factors preponderate, sentences will tend toward the higher end of the range." Ibid. [Id. at 73].

A. BOTH THIS COURT AND THE SUPREME COURT HAVE DECLINED TO EXTEND THE COMER ANALYSIS TO ADULT OFFENDERS.

Comment on the age of Defendant is woven throughout the Appellant's sentencing factors analysis to suggest that the Defendant was not mentally mature and that accordingly, he should have received the mandatory minimum sentence for murder. (Db37-40). The argument is a familiar one. It is an attempt to entice the judiciary to legislate from the bench, relying on the Court's decision issued in State v. Comer, 249 N.J. 359 (2022).

In Comer, much of the science discussed in the Appellant's brief was considered. See Id. at 399-400. The Court found that lengthy sentences for juveniles were not necessarily an issue of constitutional concern in and of themselves, provided appropriate safeguards were in place. Id. at 401 (noting examples of such limitations in the cases of Graham v. Florida 560 U.S. 48 (2010) (prohibiting

juvenile sentences of life without parole for non-homicide offenses) and State v. Zuber, 227 N.J. 422, 429 (2017) (requiring judges to consider the Miller factors before sentencing a juvenile offender to the practical equivalent of life without parole)). Instead, the Court took issue with the fact that trial courts “lack[ed] discretion to assess a juvenile's individual circumstances and the details of the offense before imposing a decades-long sentence with no possibility of parole; and the court's inability to review the original sentence later, when relevant information that could not be foreseen might be presented.” Id. at 401. The Court addressed these issues by holding that juveniles convicted under the homicide statute are allowed to petition for a review of their sentence after serving twenty years in prison, noting that “children are constitutionally different from adults for purposes of sentencing.” Id. at 384 (quoting Miller v. Alabama, 567 U.S. 460, 471 (2012)).

Shortly thereafter, the Court declined to extend the Comer ruling to an adult when considering the appropriateness of a life without parole sentence pursuant to the Three Strikes Law. State v. Ryan, 249 N.J. 581 (2022). There, the defendant argued that the Miller factors should also be applied to his first strike, as he was a juvenile at the time of the offense. Id. at 590. The Court disagreed, noting that in Zuber it had not “extend[ed] Miller’s protections to defendants sentenced for crimes committed when those defendants were over the age of eighteen. . . [and that] Miller and Zuber are uniquely concerned with the sentencing of juvenile offenders to lifetime imprisonment or its functional equivalent without the possibility of parole.”

Id. at 596, 601. In a pertinent footnote, the Court noted that “[t]he Legislature has chosen eighteen as the threshold age for adulthood in criminal sentencing. Although this choice may seem arbitrary, ‘a line must be drawn,’ and ‘[t]he age of [eighteen] is the point where society draws the line for many purposes between childhood and adulthood.’” Id. at 600 n.10 (citations omitted).

Two years later, in State v. Jones, the Appellate Division was asked to extend the principles of Comer to adults and to allow offenders between the ages of 18 and 20 to petition for resentencing because “developmental science recognizes no meaningful cognitive difference between juveniles and young adults.” 478 N.J. Super. 532, 542 (App. Div. 2024). The Division also declined to do so, noting that the Comer “decision was limited to juvenile offenders tried and convicted of murder in adult court.” Id. at 549. See also 550-51 (citing the aforementioned footnote from State v. Ryan, 249 N.J. 581, 600 n.10 (2022)). The Division emphasized that its “role as an intermediate appellate court is a limited one” and that it was required to follow the precedent established by the High Courts. Id. at 551. It found no reason to break from those rulings, noting the expressed limitation of Comer, and reiterating that it did not apply to adults. Id. at 551.

Here, the lion’s share of the Appellant’s argument is yet another attempt to apply the principles established in Comer to adults. The arguments may be distilled down to one sentence in Appellant’s brief, where it is argued that “[t]he court, however, failed to consider his age and the science of youth when assessing relevant

factors during sentencing.” (Db41). A simple repackaging of the arguments refuted in Jones and Ryan does not now make them viable.

With regard to aggravating factor three, Counsel acknowledges that the Defendant had a criminal history, which included a violent offense and a violation of probation, but suggests essentially that it should be considered youthful indiscretion and not be given substantial weight. (13T 38-8 to 39:13), (Db 42). This argument is analogous to that made in Ryan. It suggests that a court should simply disregard a young offender’s criminal history, despite the trajectory it may suggest. If this argument is accepted as valid, it is difficult to imagine what a court could consider as indicative of the likelihood of reoffending when sentencing young adults. Virtually all forms of juvenile and young adult offenses could be discounted as a childhood gaffe.

Still, the Defendant mirrors the argument made in Jones that such offenders should not be held to fully account for criminal conduct because the science suggests that the difference between a 17 and 18 year old’s brain chemistry may be negligible. As the Court noted in Ryan, a line needs to be drawn somewhere. The legislature has drawn that line at 18. This Defendant was 19 and although he may have been a young adult at the time of offense, his criminal history did suggest that he was likely to reoffend, as the court found.

The same argument was made by Appellant to suggest that aggravating factor 9 should not have been applied and that mitigating factors 8 and 9 should have been

applied. (Db43-44). Counsel maintains that “since the same science relied upon in Comer is now known to apply to nineteen-year-olds like Stefaun . . .” it should serve as a basis to substantially reduce a young adult’s exposure via these aggravating and mitigating factors. Again, this argument is nothing more than an attempt to circumvent the previous rulings which declined to extend juvenile sentencing allowances beyond 18. It is without merit.

Interestingly, the Appellant acknowledges that the court did consider the Defendant’s age in the context of mitigating factor 14, which is the factor that the legislature specifically created to account for an individual’s youth. (Db45)., (13T 45-15 to 21). Appellant suggests that the court “did not give it sufficient weight” despite acknowledging the fact that the court gave it “substantial weight” in the same paragraph. (Db45). Appellant once more raises the arguments concerning brain development to suggest that, had the court really considered factor 14, there is no way it would have sentenced the Defendant to more than the mandatory minimum. (Db45-46).

The record reflects that the court appropriately applied factor 14 to account for the Legislature’s intent as related to young adult offenders, considered all relevant factors otherwise, provided an appropriate factual basis for them, and carefully weighed those aggravating and mitigating factors. (13T:36:1-46:3). It found that the aggravating factors “predominated” over the mitigating factors.

(13T:45:22-46:3). Accordingly, this court can only overturn the forty-year sentence here if it finds that it shocks the conscience, per Roth.

The sentencing range for first degree murder is 30 years to life. (NJSA 2C:11-3b(1)). Thus, as the court found the aggravating factors outweighed the mitigating factors, Fuentes suggests that 40 years was an entirely appropriate sentence and was well within what has been deemed reasonable. It cannot be said to shock the conscience.

B. THERE IS A NEED FOR GENERAL DETERRENCE OF MURDER.

Counsel argues in brief that the court committed double counting when it stated that there is a need for deterring Defendant and others from committing the crime of murder. (13T 40-16 to 19). However, both the Appellate Division and the New Jersey Supreme Court expressed the same belief in homicide cases.

In State v Carey, it was found that the Legislature's increase in penalties for a vehicular homicide indicates an increased need for the general deterrence of drinking and driving. 168 N.J. 413, 426 (2001). Similarly, in State v. Martin, this court noted that general deterrence in the context of vehicular homicides was "absolutely meaningful" because of the public interest in combating intoxicated driving. 235 N.J. Super. 47, 59-60 (App. Div.), *certify. den.* 235 N.J. (2018).

The same rationale applies here. Vehicular homicide and murder both result in the loss of life and both are offenses that society has an interest in combating. The

difference is that the form of killing contemplated here requires a mens rae that is purposeful or knowing. Vehicular homicide only requires a reckless showing. If this court and the New Jersey Supreme Court consider the less culpable conduct of reckless killing worthy of general deterrence, then surely the more culpable conduct of purposeful or knowing murder is equally, if not more worthy, of general deterrence. Accordingly, it was not appropriate for the court below to find a general need for deterrence of murder and it should not be viewed as double counting.

B.1. THIS WAS A CRUEL AND UNUSUAL KILLING, AS IT OCCURRED ON THE FRONT PORCH OF THE VERY HOUSE WHERE THE VICTIM AND HIS FAMILY WERE GATHERED TO CELEBRATE THANKSGIVING. [INCLUDED IN B IN APPELLANT BRIEF]

Counsel argues in brief that the “especially heinous, cruel, or depraved manner” provision of aggravating factor 1 applies only when a Defendant displays a clear intent to inflict pain or suffering. (Db47). Counsel further suggests there was no evidence presented to suggest the Defendant intended to inflict an increased level of pain or suffering. (Db48).

In State v. Lawless, the Court considered aggravating factor 1 and its applicability to those who were not the direct victim of an offense. 214 N.J. 594 (2013). The Court noted that the Legislature used comprehensive language when crafting the factor and that accordingly, courts should “undertake[] a thorough and broad inquiry under aggravating factor one.” Id. at 610. This includes “focus[ing]

on the gravity of the defendant's conduct, considering both its impact on its immediate victim and the overall circumstances of the criminal event." Id. at 610. The Court then provided a litany of instances where the factor has been applied due to the harm it caused individuals other than the direct victim. Id. at 609-10. Although some of those instances involved an intent to inflict pain or suffering, not all of them did. Ibid. One such case cited was State v Devlin, where this court held in a vehicular homicide case that the trial court properly evaluated the aggravating circumstances, "including defendant's extreme intoxication in a situation in which he knew he would have to drive home; [and] the far-reaching effects upon the victims' family that resulted from the death of the young wife and mother and the serious injuries to the infant daughter . . ." Ibid. (citing 234 N.J. Super. 545, 557 (App. Div. 1989)).

Here, the trial court was sentencing the Defendant for the murder of a son on the porch of his family's home, on the night of thanksgiving, with family and friends gathered inside. (11T10:20-25). The Defense attempts to argue that this is indistinguishable from any other murder, noting that "[i]n all murder cases, a victim's family will have to confront the loss of a loved one. But that this crime occurred on a holiday does not aggravate it beyond a typical homicide, and there is certainly no evidence of any intent to inflict increased pain or suffering." (Db48). The State could not disagree more with this assertion.

First, nothing in NJSA 2C:44-1(a)(1) suggests that a defendant must intend for the crime to be committed in “an especially heinous, cruel, or depraved manner . . .” The language is result oriented; it simply states that “it was committed” in such a way. (NJSA 2C:44-1(a)(1)). Even so, assuming that Counsel is correct; it cannot seriously be argued that this act does not qualify.

It is common knowledge that Thanksgiving is a day that family and friends gather together to have a meal, to spend time together, and to be thankful. Indeed, the Victim here was such a family member of the intended target. When the Defendant committed the act of shooting the Victim at his familial home, knowing that family was gathered inside and celebrating this day for giving thanks; he displayed an exceptional disregard for the consequences of his actions. Those consequences went well beyond the murder of the Victim and impacted his family in a significant way.

In murdering the Victim where and when he did, the Defendant displayed a wanton disregard for the fact that it would be the family who would witness their son’s death at the hands of a killer, that it would be the family who would forever associate Thanksgiving with their son’s murder, and that it would be the family who would forever associate their own home with their son’s murder. The Defendant took a life, ruined a home, shattered a family, and forever spoiled a family-oriented holiday day all in one cruel act. This was a killing which caused maximum pain to the family, just like the vehicular homicide in Devlin. This Defendant knew or

should have known that the family would be there on thanksgiving, just like the Defendant in Devlin knew he would have to drive home. Accordingly, this killing was an “especially heinous and cruel act”, just as the court found. (13T 37-16 to 23). There was no error here.

C. THE STATE AGREES THAT IT WAS ERROR TO MERGE UNLAWFUL POSSESSION OF A WEAPON WITH POSSESSION FOR AN UNLAWFUL PURPOSE.

Counsel is correct that the possession for an unlawful purpose conviction should have merged with the murder, but not the unlawful possession conviction. (Db48). As Counsel notes, State v. Vasquez holds that where the evidence suggests that a weapon was possessed for the unlawful purpose of murder and no other purpose, a conviction for possession for an unlawful purpose should merge with a conviction for murder. 265 N.J. Super. 528, 563-64 (App. Div. 1993). Accordingly, the failure to merge these two counts constitutes an illegal sentence, which must be corrected. See State v. Romero, 191 N.J. 59,80 (2007). However, this should be a mere formality, because the unlawful possession of a weapon does not merge with murder.

Unlawful possession of a handgun is an entirely separate offense from any offense committed with the firearm. See State v. Deluca, 325 N.J. Super. 376, 392-93 (App. Div. 1999), *aff’d* on other grds. 168 N.J. 626 (2001) (stating that “the gravamen of unlawful possession of a handgun is possessing it without a permit, it does not merge with a conviction for a substantive offense committed with the

weapon.”); State v. Bowser 297 N.J. Super. 588, 592 n.1 (App. Div. 1997) (noting it was error to merge “[a] conviction for unlawful possession of a handgun . . . with armed robbery while armed with the same gun.”)

Accordingly, it was error for the court to merge the unlawful possession count with the possession for an unlawful purpose, and with murder by extension. That does not nullify the conviction for unlawful possession of a handgun though. That is because when two counts merge, they both survive, even though a defendant is only sentenced on one of them. See e.g. State v. Trotman, 366 N.J. Super. 226, 237 (App. Div. 2004). When one of those merged convictions is overturned on appeal, a defendant may still properly be sentenced on the remaining count(s). See State v. Pennington, 273 N.J. Super. 289 (App. Div.) certify. den. 137 N.J. 313 (1994). The principle is equally applicable here. While the possession for an unlawful purpose will necessarily merge with murder, the unlawful possession cannot. It will survive and remain separate for sentencing purposes.

Here, the court imposed a five-year term on the merged weapons related counts, which is the lowest sentence possible in the 5 to 10 year range for these second-degree offenses. (NJSA 2C:39-5(b), NJSA 2C:39-4(a)). Thus, there is no room for Defendant to reduce his exposure here. The result of a remand will be one of two things: 1.) Defendant will receive the exact same minimum sentence of five years for the unlawful possession of a handgun charge, or 2.) he can pursue resentencing on the separate unlawful possession conviction and risk an increased

sentencing within the 2nd degree range. Given this, the State submits that it is in the best interests of both the Defendant and judicial economy to direct that the sentence be modified such that the five year term be imposed under the unlawful possession conviction instead of the possession for an unlawful purpose conviction, and that the latter be merged with the Murder conviction. No hearing is otherwise necessary, unless Defendant wishes to risk greater exposure.

CONCLUSION

For the aforementioned reasons, the State submits that, with the exception of the Point V(C), the Appellant's application should be **DENIED**.

Respectfully submitted,

s/ *Michael C. Mellon*

Michael C. Mellon, SDAG/
Acting Assistant Prosecutor

Dated: December 20, 2024



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REPLY LETTER BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-931-23
INDICTMENT NO. 21-07-539

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of
v.	:	Conviction of the Superior Court of
	:	New Jersey, Law Division,
STEFAN Z. CORLEY,	:	Gloucester County.
	:	Sat Below:
Defendant-Appellant.	:	Hon. Samuel J. Ragonese, Jr., J.S.C.,
	:	and a Jury.

DEFENDANT IS CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Stefaun Z. Corley respectfully relies on the Procedural History and Statement of Facts from his initial brief. (Db 3-11)¹

LEGAL ARGUMENT

Stefaun relies on the arguments in his initial brief, adding the following:

POINT I

STEFAUN’S CONVICTIONS MUST BE REVERSED BECAUSE THE COURT BARRED HIM FROM EXPOSING THE EXTENT OF A COOPERATING CO-DEFENDANT’S BIAS.

The State’s case against Stefaun hinged on Terrell Bundy’s testimony. Although Terrell planned to attack Isaac for revenge and had access to a firearm, he testified that he did not bring a gun to the Roses’ house and that the shots came from behind him, directly implicating Stefaun. To prevail, the defense needed to convince the jury to reject Terrell’s testimony. The trial court, however, erroneously curtailed Stefaun’s ability to expose Terrell’s bias in two ways: first, the court prohibited the defense from pursuing an “unfettered examination” of Terrell’s original sentencing exposure and plea deal; and second, the court barred defense counsel from questioning Terrell about a stabbing that occurred just weeks earlier, even though police believed Terrell

¹ Db: Defendant-appellant’s appellate brief
Pb: Plaintiff-respondent’s appellate brief

and his brother, Tyriq, were the most likely perpetrators. These rulings precluded the defense from exposing the degree of Terrell's bias, his incentive to curry favor for both him and his brother, and his general lack of credibility. Because the State does not present any compelling argument or legal authority to the contrary, Stefaun's convictions must be reversed.

A. The Trial Court Erroneously Barred The Defense From An “Unfettered Examination” of Terrell’s Sentencing Exposure.

Citing no new case law, the State relies on State v. Jackson, 243 N.J. 52 (2020) to argue that Terrell's motive for bias was exposed from the charges alone, that the defense had a sufficient opportunity to question Terrell about his sentencing exposure, and that the court's curative instruction remedied any potential error. (Pb 8-11) Each argument is flawed.

First, our Supreme Court has made clear that permitting the defense to question a witness about his original charges but not his penal exposure violates a defendant's constitutional right to confrontation. See id. at 65, 71-72 (emphasizing that defendants are entitled “to explore, through cross-examination, the potential bias of a prosecution's witness”). Indeed, Jackson holds that a defendant is entitled to “question [the witness] about his subjective understanding of the benefit of his plea bargain, including what sentence he faced and what was offered in the plea agreement.” Id. at 69-70 (emphasis added). (Db 13-15) The defense must be allowed to expose “the effect the

sentencing exposure had on [the witness's] mindset when negotiating his plea with the State.” Id. at 70. Here, the court precluded the defense from pursuing this line of questioning. The State’s assertion—that the jury’s knowledge of the original charge suffices—directly contradicts this precedent. (Pb 9)

Not only that, but even a limited inquiry into a witness’s understanding of his exposure defies the mandate in Jackson, where our Supreme Court made clear that a jury must have “full access to [the witness’s] plea agreement history through the defense counsel’s unfettered examination of that history.” Id. at 59 (emphasis added). The State claims that, unlike Jackson, the jury here learned of Terrell’s understanding of his plea because Terrell stated that he could not recall his original exposure when initially asked. (Pb 9) But that was not the end of the cross-examination, which went as follows:

DEFENSE: And let’s [go] over your plea agreement. You were initially charged with being involved in a homicide, right?

TERRELL: Yes.

DEFENSE: Okay. And do you remember what you were facing when you were initially charged?

TERRELL: How much time I received?

DEFENSE: Yes.

TERRELL: I don’t recall. I don’t remember.

DEFENSE: It was upwards of over 25 years?

STATE: Objection.

THE COURT: Sustained.

TERRELL: I believe so.

STATE: Your Honor.

THE COURT: That answer will be struck from the jury. You did not hear that, it should not have been answered, it was struck by the Court. You should ignore that comment, Ladies and Gentlemen.

[(10T 157-17 to 24) (emphasis added)]

Clearly, Terrell did remember his exposure when prompted, but his response was struck from the record. Moreover, had the defense been allowed to conduct the “unfettered” inquiry promised by Jackson, counsel could have refreshed his recollection, see N.J.R.E. 612, or asked any number of follow-up questions to elicit Terrell’s understanding of his exposure and how it impacted his mindset when negotiating his plea deal. Accordingly, this severely limited inquiry into Terrell’s understanding of his penal exposure contravened the requirements of Jackson and deprived Stefaun of a fair trial.

The court’s curative instruction did not remedy this error. (Pb 10-11) First, the instruction was flawed in several ways: it focused on the wrong witness,² it came a whole day after Terrell’s testimony, and it did not consider Terrell’s

² The court told the jury that defense counsel asked “Mr. Hutchins” about his “understanding of the charges he faced,” and that the jury was now permitted to “consider the question by defense counsel and the response, if any, by Mr. Hutchins.” (11T 76-1 to 3) Of course, the error occurred during the questioning of Terrell and not Mr. Hutchins, creating further confusion.

exposure to consecutive sentences. But even if the court’s instruction was not so flawed, it still would not have addressed the underlying error. A similar circumstance arose in Jackson; in that case, even though the court precluded counsel from inquiring into a witness’s sentencing exposure, the jury still learned of the three-to-five years of exposure from a different witness. 243 N.J. at 63. Nonetheless, our Supreme Court reversed the defendant’s conviction, reasoning that it is the witness’s “subjective perception” of his own exposure that matters and not just the factual assertion of the potential term. Id. at 73. Likewise, here, the court’s instruction on Terrell’s penal exposure did not remedy its prior error curbing Stefaun’s right to confront Terrell with facts directly related to his bias toward the State.³

Lastly, while the State is correct that the defense commented on Terrell’s bias in closing, (Pb 10) defense counsel did not and could not comment on Terrell’s penal exposure and the extent of bias toward the State that inevitably results. Terrell’s bias was a central part of Stefaun’s defense. Had the jury learned about Terrell’s understanding of his plea deal and the powerful incentive it provided to curry favor with the State—and had defense counsel been

³ The State emphasizes that the parties were called to sidebar immediately prior to the court’s curative instruction. (Pb 10-11) The transcripts do not reflect what was said at this sidebar, and any speculation regarding whether the parties discussed the content of the instruction should be disregarded.

permitted to make related arguments—the jury could have more easily rejected Terrell’s version of events where Stefaun is, by implication, the only person who could have fired the weapon. See State v. Bass, 224 N.J. 285, 311 (2016) (reversing a murder conviction the court did not allow questioning on a witness’s plea and sentencing exposure, which could have affected the credibility of a key State witness). The court’s error was clearly harmful, deprived Stefaun of a fair trial, and requires reversal of his convictions.

B. The Court Erroneously Excluded Evidence Relevant To Terrell’s Bias And Credibility.

At trial, the defense sought to introduce evidence of a related aggravated assault investigation focused on Terrell and his brother, Tyriq, aiming to expose Terrell’s motive for “testifying on the State’s behalf or in the hopes of garnering some sort of compensation.” (6T 12-10 to 13, 13-1 to 14-3) Applying the standards in State v. Cofield and N.J.R.E. 403, the trial court found this evidence inadmissible, and once again curtailed the defense’s ability to unveil the extent of Terrell’s bias to the jury. In response, the State concedes that the trial court improperly applied Cofield but maintains that the evidence was inadmissible under N.J.R.E. 403. (Pb 17) The State’s arguments are meritless.

First, the State fails to cite a single relevant case—none consider the admission of a witness’s prior bad act for the purpose of showing bias. See e.g., State v. Garfole, 76 N.J. 445, 456 (1978) (denying defendant’s motion to admit

evidence of four prior instances of molestation for which he was accused but had alibis because it would have created multiple mini trials requiring each victim to testify); State v. Cook, 179 N.J. 533, 568 (2004) (barring defendant from admitting evidence of a similar murder committed while he was incarcerated because it was not probative and necessitated a “mini-trial of sorts on serial killers and homicidal pathology to link the two crimes”). (Pb 11-17)

Nonetheless, the State relies on these cases to suggest that introduction of this evidence would necessitate a set of “mini trials to determine whether speculative other-crime evidence . . . is reliable.” (Pb 17) But as Stefaun argued in his opening brief, the only facts the defense needed to introduce were (1) that there was an investigation into Terrell and Tyriq for aggravated assault and (2) Terrell knew about that investigation. (Db 22-23) Those facts alone, which would require no mini trial or confusing testimony regarding how the stabbing occurred, would demonstrate Terrell’s incentive to deflect blame from himself and his brother and to keep the police and State content by cooperating in the subsequent homicide investigation.

Further, the State’s argument that this evidence would have been cumulative, relying on State v. Williams, 240 N.J. 225 (2019), is unfounded. Williams involved a homicide during a drug deal, and the defense at trial was self-defense. The defendant sought to admit evidence of the victim’s prior

unrelated drug deal—where the victim did not bring a gun—to establish that the victim was aware of the dangers associated with buying drugs and thus did bring a gun to the meeting with the defendant. Id. at 230-31, 236-37. Our Supreme Court found that the evidence was not relevant and that, even if it was, it would have been cumulative of the other evidence showing that the victim had safety concerns about meeting the defendant. Id. at 237-38.

This case is factually distinct. Here, the defense did not seek to introduce this evidence to prove what factually happened. Cf. id. at 236-37 (“Defendant sought to prove that the victim brought a handgun to the . . . transaction.”). Rather, the defense sought to introduce this evidence to further undermine Terrell’s credibility and unveil the extent of his bias to the jury. Terrell was the State’s key witness—he told the jury that he did not have a gun when he approached Isaac’s house and that he instead heard someone behind him yell “move” before the sound of gunshots, supporting the State’s theory that Stefaun, and not Terrell, was the shooter. (10T 153-10 to 14, 165-6 to 8) But Terrell was the much more plausible perpetrator; he had the motive to harm Isaac, he had access to a firearm, and it was his idea to attack Isaac at his house. Terrell’s credibility was at the heart of Stefaun’s defense, making any evidence of his bias critical. Evidence of Terrell’s bias toward the State is thus not cumulative, but corroborative. See State v. Scott, 229 N.J. 469, 485 (2017). And

“corroborative testimony is the hallmark of presenting a credible defense.” Ibid. Accordingly, the court’s erroneous decision excluding this evidence requires reversal of Stefaun’s convictions.

POINT II

THE COURT’S FAILURE TO CHARGE A REQUESTED RELATED OFFENSE REQUIRES REVERSAL.

In his opening brief, Stefaun argued that the trial court’s refusal to charge the jury on the related offense of conspiracy to commit aggravated assault violated his rights to due process and a fair trial. (Db 26) Stefaun maintained that both requirements for charging a related offense were met: (1) the charge has a rational basis in the record and (2) the defense requested it. The State’s responsive arguments are unpersuasive.⁴

First, there is a rational basis in this record to support the charge of conspiracy to commit aggravated assault. To argue the contrary, the State relies on State v. Maloney, 216 N.J. 91 (2013). In that case, the State alleged that defendant and one of three other co-conspirators executed an armed robbery at the victim’s home. Id. at 95. The defendant testified that he was not part of the conspiracy but admitted to calling a co-conspirator the next day to obtain stolen

⁴ At times, the State suggests the defense requested an aggravated assault charge. (Pb 24) The issue on appeal is whether the court should have charged conspiracy to commit aggravated assault. (11T 40-7 to 19; Db 26)

property. Id. at 98. On appeal, the defense argued that the court should have charged the jury on receipt of stolen property, which the defense requested at trial, and on accomplice liability, which the defense did not request. Id. at 100. Our Supreme Court found no reversible error. As to accomplice liability, the Court first noted that the trial court was not required to charge accomplice liability sua sponte. Id. at 108. But, even if the defense had asked for the instruction, it would still be improper because no evidence presented at trial supported a theory of accomplice liability—indeed, the State proffered that defendant was a principal and the defense proffered that defendant was not present at all. Id. at 108-09. As to receipt of stolen property, the Court reasoned that this was not a lesser-included offense because it did not share a “common factual nucleus” with the robbery charge, as the robbery took place “hours before” defendant sought to receive any stolen property and defendant adamantly denied being present for the robbery. Id. at 110-11. Notably, the Court declined to analyze this charge as a related offense because it “was not raised by defendant in the Appellate Division.” Id. at 111.

Unlike Maloney, the proofs in this case provide a rational basis for the requested charge. There is no dispute that Stefaun accompanied Terrell and Tyriq to Isaac’s house so that Terrell could seek revenge upon Isaac. (10T 151-3 to 152-13, 161-5 to 13, 165-9 to 12) That alone provides a rational basis, or a

“common factual nucleus,” for the offense of conspiracy to commit aggravated assault. In this case, the only dispute was about who fired the gun that killed Atiba Rose. If the jury believed that Stefaun went with Terrell and Tyriq to attack Isaac but was not the shooter, then his conduct would constitute conspiracy to commit aggravated assault. Consequently, unlike Maloney, the facts supporting the requested charge emanate directly from the State’s proofs, demonstrating the rational basis in the record.⁵

Second, the defense requested the charge for conspiracy to commit aggravated assault repeatedly. (11T 40-8 to 10; see generally 11T 40-7 to 57-23) The State contends that because defense counsel characterized her request as a lesser-included offense instead of a related one, she effectively did not request any related offenses at all and that “the court would have had to issue one sua sponte.” (Pb 23-24) This argument is unpersuasive. Unlike a court’s decision to charge a lesser-included offense, a decision to charge a related offense requires the defendant’s request or consent because it implicates his constitutional rights—namely, the “guarantee of prosecution only by grand jury indictment.” State v. Thomas, 187 N.J. 119, 131-33 (2006). The rule operates to protect the defendant’s rights, as related offenses expand a defendant’s liability.

⁵ The only other legal authority the State cites in support of its position are two unpublished opinions, which are factually distinct, not binding, and should be afforded little to no weight. See R. 1:36-3. (Pb 23 n.1, 25-26)

Moreover, courts acknowledge that, “[i]n the absence of a defendant’s request for or consent to a jury instruction on a related offense, ‘a trial court should not scour the statutes to determine if there are some uncharged offenses of which the defendant may be guilty.’” Id. at 134 (citing State v. Brent, 137 N.J. 107, 118 (1994)) (cleaned up and emphasis added).

Here, counsel’s mischaracterization implicates neither of the concerns animating this rule. First, the defense plainly requested a charge for conspiracy to commit aggravated assault—there is thus no worry or expectation that the trial court “scour the statutes” in search of a related offense to charge sua sponte. Ibid. And second, there is no risk of offending Stefaun’s rights to a grand jury and indictment because, once again, he requested the instruction. The State’s contention that the defense failed to move for a related offense and that the “court would have had to issue one sua sponte” rings hollow where the record is replete with defense counsel’s requests.⁶ Because counsel requested the

⁶ The State also emphasizes that no other justice joined Justice Albin’s dissent in Maloney, 216 N.J. at 114, where he argued that defense counsel’s motion for a lesser-included offense should have been for a related offense, and that formalism should not prevail over substance. But, as discussed above, the majority did not address whether receipt of stolen property could have been charged as a related offense because “[t]he issue of related offenses was not raised by the defendant in the Appellate Division. Thus, we merely note that . . . [there was] not enough to establish a common factual nucleus between the robbery charge and attempted theft by receiving stolen property.” Id. at 111. The State’s suggestion that this Court infer any further meaning is purely speculative. (Pb 25)

charge, and because it is grounded in a rational basis in the record, the court erred by declining to charge the jury with this related offense, violating Stefaun's rights to due process and a fair trial. Reversal is therefore required.

POINT III

A REMAND IS REQUIRED TO ADDRESS STEFAUN'S EXCESSIVE SENTENCE.

Stefaun's sentence is excessive and must be vacated, in part because the sentencing court failed to meaningfully consider Stefaun's youth. First, despite the State's claims, Stefaun neither seeks to extend the rule in State v. Comer, 249 N.J. 359 (2022) to nineteen-year-olds nor to "circumvent . . . previous rulings which declined to extend juvenile sentencing beyond 18." (Pb 34, 36, 38) Indeed, Stefaun's opening brief argued that the court should have imposed the mandatory minimum sentence of thirty years. (Db 38-39) Instead, Stefaun argued in his initial brief that the sentencing court failed to acknowledge the well-accepted cognitive, psychological, and social science regarding the lesser culpability of young adults and their likelihood to rehabilitate. (Db 38-46) Had the court considered that information, it would not have imposed a sentence exceeding the mandatory minimum.

Citing cases from this Court declining to extend Comer to young adults, the State suggests that Stefaun's argument "attempt[s] to entice the judiciary to legislate from the bench." (Pb 34) But the legislature has already made clear

that, even when the substantive rights in a case like Comer do not apply, the neurological evidence supporting that decision remains relevant in sentencing. For example, in codifying mitigating factor fourteen, our legislature aimed to “align juvenile sentencing with best practices that stem from neurological evidence and prevent disproportionately harsh sentencing.” Office of the Governor, Press Release: Statement Upon Signing A. 4373 (Oct. 19, 2020). Primary sponsors of the bill confirmed that “[t]he social, emotional and mental maturity of a youthful defendant is complex and nuanced. That very fact makes it critical for the age of a defendant to be factored by the court in criminal culpability.” Ibid. Another senator confirmed:

All too often people make mistakes in their youth which follow them for the rest of their lives . . . By allowing judges to consider the age of defendants, up to age 26, we can help to ensure the sentencing of children and young adults takes into account their level of maturity when they committed the crime, so can be given a second chance to turn their lives around.

[Ibid.]

But the presence of mitigating factor fourteen does not absolve the court from considering relevant evidence in the record when analyzing the other mitigating and aggravating factors. See State v. Dalziel, 182 N.J. 494, 504 (2005) (stating that mitigating factors “amply based in the record . . . must be found”); State v. Case, 220 N.J. 49, 64 (2014) (same); State v. Randolph, 210 N.J. 330, 349 (2012) (finding that aggravating factors three and nine “invite

consideration by the sentencing court of the individual defendant's unique character and qualities"); State v. Thomas, 188 N.J. 137, 153 (2006) (same). For example, even though aggravating factor six directs courts to consider a defendant's prior record, courts are still empowered to and regularly consider a defendant's criminal record when analyzing the likelihood of reoffense under aggravating factor three. Similarly, here, the fact that mitigating factor fourteen applies does not make youth irrelevant to other factors in which it may play a role. Consequently, as Stefaun argued in his initial brief, the court's failure to consider Stefaun's youth when analyzing aggravating factors three and nine, and mitigating factors eight and nine, require a remand for resentencing. (Db 38-46)

CONCLUSION

For the reasons set forth in Points I and II, Stefaun's convictions must be reversed. Alternatively, for the reasons stated in Point III, this matter must be remanded for resentencing.

Respectfully submitted,
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