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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4358-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CARLOS ROJAS, a/k/a CARLOS
BENITEZ, a/k/a CARLOS
ROJAS-BENITEZ,

Defendant-Appellant.

Submitted September 20, 2017 — Decided November 20, 2017

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Morris County, Indictment No.
12-09-1046.

Walter Murawinski, attorney for appellant.

Fredric M. Knapp, Morris County Prosecutor,
attorney for respondent (Erin Smith Wisloff,
Supervising Assistant Prosecutor, on the
brief).

PER CURIAM

A jury convicted defendant Carlos Rojas of committing first-
degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), and other

crimes arising from his role in the killing of a friend and the disposal of the victim's remains. On appeal, defendant challenges his conviction and sentence. He argues that the trial court failed to properly respond to questions asked by the jury during deliberations. He also contends his conviction was the result of ineffective assistance of trial counsel and the prosecutor's improper comments to the jury during summations. In addition, defendant challenges his sentence by arguing that the aggregate thirty-year prison term imposed by the trial court was excessive in light of his minimal criminal history. We reject these contentions and affirm.

The facts leading to defendant's arrest and conviction as developed at trial are summarized as follows. On August 4, 2011, the Lincoln Park Police Department discovered an abandoned vehicle at the bottom of an embankment. Upon inspection, police found that the car was unlocked, in park, and the interior of the vehicle had been doused in motor oil. They also discovered a business card for a car wash. Later, detectives also noted that the car stereo was missing.

When the police opened the vehicle's trunk, they discovered the body of Esteban Hernandez. The county medical examiner later determined Hernandez died of blunt force trauma to the head,

consistent with wounds that would result from being beaten by a hammer and that the manner of death was homicide.

Using a receipt from a supermarket, also found in the car near a bag of peaches, detectives were able to obtain security footage from the supermarket showing the victim and an unidentified male purchasing the peaches and beer on the afternoon of August 3, 2011. Police detectives were able to determine Hernandez's cell phone number and discovered it was registered under defendant's name. They obtained a photograph of defendant that appeared to match the unidentified male in the supermarket surveillance video.

Detectives went to defendant's residence and questioned him about Hernandez. Ultimately, they transported defendant to the police station for further questioning. At the station, defendant told conflicting stories to detectives, which led to them charging defendant with hindering his own apprehension. Defendant was placed under arrest and transported to the county jail.

The police continued their investigation and conducted a search of defendant's residence and automobile. In defendant's bedroom, detectives discovered bloodstained clothing that matched the clothes worn by defendant in the surveillance video. A detective, who was qualified as an expert in blood stain pattern analysis, examined the bloody shirt and concluded that the

"[s]tains . . . were consistent with impact spatter," "cast-off spatter," "expired blood," and "transfer pattern blood." The search of defendant's car yielded, among other items, a GPS device, which police used to determine that the car was in Lincoln Park, near the location where Hernandez's body was found, at 8:50 p.m. on August 3, 2011.

In addition to the evidence obtained through their investigation, detectives received information about defendant's role in Hernandez's murder from a third party, Joseph Masino, an inmate at the county jail, who shared a cell with defendant. He met with detectives after claiming he had information regarding defendant's involvement in Hernandez's death. Masino stated defendant told him that he beat the victim to death with a hammer after an argument over \$4000 "got out of hand," and afterward he and another individual transported the body to Lincoln Park.

The information provided by Masino led the detectives to a garage located in Fairview owned by Oscar Aleman, a mechanic who was teaching defendant how to repair cars. Oscar wore a green t-shirt with an emblem that matched the one on the business card found in the victim's vehicle. The police spoke to Oscar¹ and Oscar's then eleven-year-old son, John Aleman.

¹ First names are used to avoid confusion.

John stated that on August 3, 2011, he and his father were returning home when they observed two men, including defendant, who he knew as his father's friend, stealing Oscar's stereo system from the garage and placing it in a vehicle. When they entered the garage, John saw defendant standing over Hernandez and holding a hammer. He did not see defendant strike the victim, nor did he recall whether he saw blood. Defendant told John and his father that if they "ever said anything, he would . . . come after [them]." John recalled seeing the hammer before; however, he did not know what happened to it after that day. Oscar told John not to tell anyone what he saw.

According to defendant,² it was Oscar who killed Hernandez. He stated he was with Hernandez when the two of them went to Oscar's garage. While there, Hernandez started to steal items from the garage before Oscar arrived. When Oscar appeared, he and Hernandez began to fight, during which Oscar struck Hernandez in the head with a hammer numerous times. Fearful for his own life, defendant helped Oscar move the body to where it was discovered in Lincoln Park. According to defendant, he could not have been

² Defendant testified at trial. On cross-examination, he conceded that he had given three different versions of the facts relating to the murder. In fact, defendant acknowledged that his August 5, 2011 statement to police contained up to twenty-five lies.

the killer as he is left handed and according to expert testimony, the person who killed Hernandez had to be right handed, and Oscar was right-handed.

A Morris County Grand Jury returned an indictment charging defendant with first-degree murder, N.J.S.A. 2C:11-3(a)(1)-(2) ("count one"); first-degree felony-murder, N.J.S.A. 2C:11-3(a)(3) ("count two"); first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1)-(2) ("count three"); second-degree desecrating human remains, N.J.S.A. 2C:22-1(a)(1) ("count four"); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) ("count five"); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-4(d) ("count six"); third-degree theft from a person, N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:20-2(b)(2)(d) ("count seven"); fourth-degree theft by unlawful taking, N.J.S.A. 2C:20-3(a) and N.J.S.A. 2C:20-2(b)(3) ("count eight"); and third-degree hindering one's own apprehension, N.J.S.A. 2C:29-3(b)(4) ("count nine").

At the conclusion of defendant's trial, the jury acquitted defendant of the first two counts, but convicted him of the lesser-included offense of first-degree aggravated manslaughter and the remaining counts as charged. The trial court sentenced defendant to an aggregate term of thirty years. This appeal followed.

Defendant presents the following arguments for our consideration:

POINT I

THE TRIAL COURT ERRED IN FAILING TO QUESTION JUROR #2 INDIVIDUALLY AND IN FAILING TO RECHARGE THE JURY ON REASONABLE DOUBT. (Raised Below).

POINT II

APPELLANT WAS DEPRIVED OF A FAIR TRIAL DUE TO THE INEFFECTIVE ASSISTANCE OF COUNSEL. (Not Raised Below).

POINT III

THE IMPROPER SUMMATION OF THE PROSECUTOR DEPRIVED APPELLANT OF A FAIR TRIAL. (Not Raised Below).

POINT IV

GIVEN APPELLANT'S COMPLETE LACK OF A CRIMINAL RECORD, THE THIRTY-YEAR SENTENCE IMPOSED WAS EXCESSIVE.^[3] (Raised Below).

We begin our review by addressing defendant's contentions concerning the trial court's response to issues raised by the jury. During deliberations on Thursday, October 30, 2014, the

³ Defendant raised an additional argument in his reply brief claiming that "the trial court erred by permitting the State to elicit net opinions that" should not have been admitted. Because this argument was not raised in his merits brief, we do not consider it in support of his appeal. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (citations omitted) (providing that claims not addressed in the appellant's merits brief were deemed abandoned, and could not properly be raised in a reply brief).

jury sent out two notes.⁴ The first note asked the court to adjourn at 4:30 p.m. that day and to resume the trial on the following Monday. The second note, written by juror number two, stated, "I [cannot] continue to serve on this [j]ury. We are making no headway on this case. We have a [j]uror who almost needs certainty before he can make a guilty verdict. I am being asked to be excused from this [j]ury."

In response to the first note, the parties told the court they preferred that the jurors continue their deliberations, even if it meant holding the jury beyond 4:30 p.m. that day and continuing the next day, rather than adjourning until Monday. The court decided to give the jurors the option of staying late that day or continuing the following day.

As to the second note, the prosecutor suggested that the jury should be "recharg[ed] on reasonable doubt^[5] and the burden of proof." Defense counsel stated he was concerned juror two was being pressured. He asked the court to question the juror

⁴ Defendant's brief makes reference to a third note that is not the subject of his appeal. He states that the note advised the court that the jury had agreed on seven charges but could not reach a decision as to the balance and requested "advice" from the court. A copy of the note was not included in the appendix.

⁵ During the court's original charge to the jury, it instructed the jurors on the concept of reasonable doubt, consistent with the Model Jury Charge (Criminal), "Reasonable Doubt" (1997).

individually. The court refused to interview juror two because it believed "there[were] inherent problems with bringing out one juror . . . and isolating him with the other jurors waiting." Accordingly, the court brought out all of the jurors, and addressed both notes by stating the following:

I am not going to excuse any juror from this jury at this time. You all took an oath to continue to deliberat[e] -- through deliberations under the instructions I've given you and . . . there's no doubt in my mind that you've listened very carefully. And that you've also indicated that you're at a point where you're in agreement on certain issues and you're still in deliberation on other issues. . . . I am going to require that you continue those . . . deliberations with all [twelve] deliberating jurors.

When you reach the point where you feel in good conscious you have considered that further and that you cannot come to agreement, then you can hand out a note and either tell me that consistent with the charges that I've given you that you've reached a complete jury verdict or . . . you're still in agreement on certain issues but [are] not able to agree on others, and then I would bring you out and give you some further instructions.

Now, because of these developments and because . . . I've reflected on the time, and this is my decision, I recognize that some of you have been making commitments for Fridays, but I am concerned that if I release you until Monday this would only create greater problems. So I am going to direct that you continue your deliberations, and I'm going to give you the choice, you can continue them this evening or if you feel it more appropriate you'd have to come back tomorrow.

But I'm not going to release you until Monday at this time.

. . . .

[I]t is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous but do not surrender your honest conviction as to weight or the effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of . . . returning a verdict. You are not partisans. You are judges, judges of the facts.

. . . .

And I don't want any jurors singling out any other juror in any way.

After returning to the jury room, the jury sent out a note stating it would continue deliberating into the evening. The jury rendered its verdict approximately one-half hour later.

Defendant argues on appeal that the court interfered with his right to a fair trial by not re-instructing the jury as to reasonable doubt, and failing to question juror two as to the nature of the conflict with the other jurors. In addition, he contends that the court's failure to agree to the jury's preferred schedule "coercive[ly]" gave them the option to either deliberate

further Thursday evening or reconvene for deliberations on Friday. We disagree.

"We traditionally . . . accord[] trial courts deference in exercising control over matters pertaining to the jury." State v. R.D., 169 N.J. 551, 559-60 (2001). Whether the court failed to properly exercise its discretion in handling issues with the jury, such as removing and substituting a deliberating juror, State v. Musa, 222 N.J. 554, 564-65 (2015), depends upon whether the court's actions impaired the defendant's right "to be tried before an impartial jury[, which] is one of the most basic guarantees of a fair trial." See State v. Brown, 442 N.J. Super. 154, 179 (App. Div. 2015) (quoting State v. Loftin, 191 N.J. 172, 187 (2007)).

Applying this deferential standard, we find no abuse of the court's discretion in deciding to disagree with the jury's requested schedule for deliberations or its decision to not interview juror two. As to the schedule, defendant urged the court to continue deliberations despite the jurors' request. We find nothing coercive about allowing the jury to continue deliberations, especially when the court gave the jury the option of adjourning for the day and continuing the next day. But cf. State v. Figueroa, 190 N.J. 219, 242 (2007) (finding the trial court's instructions to the jury were "inappropriately coercive");

In re Stern, 11 N.J. 584, 590 (1953) (finding "[u]ndue stress was laid upon the economic element and the importance of a verdict; agreement to avoid the expense of a retrial of the cause was the dominant consideration, and the result betokens its coercive tendency and effect."). We conclude there was no impairment of defendant's right to a fair trial on these grounds.

We reach the same conclusion as to the court's rejection of defendant's request for the court to interview juror two about his desire to not participate in further deliberations. The court's decision was consistent with the Supreme Court's limitations on a court's ability to interfere with deliberations. Those limitations recognize that jury deliberations often become heated, and jurors may place all sorts of pressures on each other in the course of deliberations. See State v. Young, 181 N.J. Super. 463, 468 (App. Div. 1981), certif. denied, 91 N.J. 222 (1982). It is not the court's role to inquire into deliberations, absent evidence of impropriety, such as "[a] physical altercation between two or more deliberating jurors[, which] constitutes an irreparable breakdown in the civility and decorum expected to dominate the deliberative process." State v. Dorsainvil, 435 N.J. Super. 449, 482 (App. Div. 2014).

Removal of a juror during deliberations is allowed only as a last resort "[b]ecause juror substitution poses a clear potential

for prejudicing the integrity of the jury's deliberative process." State v. Hightower, 146 N.J. 239, 254 (1996); State v. Valenzuela, 136 N.J. 458, 468-69 (1994). For that reason, Rule 1:8-2(d)(1) permits the removal and substitution of jurors in criminal trials after deliberations have begun "only in specifically defined circumstances." State v. Jenkins, 182 N.J. 112, 123-24 (2004). Generally, a deliberating juror can be excused only for reasons personal to the individual juror, those that "do[] not pose a threat to the integrity or independence of the deliberative process." Id. at 124; See also State v. Ross, 218 N.J. 130, 147 (2014).

Here, juror two's note did not set forth a valid basis for the court to question or remove the juror. The note did not claim there was "an inherently coercive and chaotic environment[, rising to the level of] an affront to any notion of civilized justice," Dorsainvil, supra, 435 N.J. at 482, rather the juror only noted there was a disagreement regarding the deliberative process. The request for removal was also not supported by a reason wholly personal to juror two, as such there was no basis to remove him.

Turning to defendant's argument that the court should have recharged on reasonable doubt, juror two's statement that "[w]e have a juror who almost needs certainty," demonstrated that the other juror understood the difference between proof beyond a

reasonable doubt as compared to proof by a preponderance of the evidence, which was consistent with the court's original charge. Moreover, the jury did not indicate any issue regarding its understanding of any charge. The single juror's complaint about a dispute in deliberations was not a substitute for a jury's request for more information about a charge.

In any event, after the court's instructions and the jurors' decision to continue their deliberations into the evening, they reached a verdict with no evidence of further conflict. Defendant has not demonstrated the continuation of deliberations, any alleged conflict between the two jurors or the failure to charge reasonable doubt caused any prejudice. Defendant was acquitted of the most serious charge against him and convicted of the lesser-included offense, which demonstrated the jury's ability to understand the law as charged.

We turn next to defendant's contention that comments made by the prosecutor during summations were improper. Again, we disagree.

Before the prosecutor presented his summation, defense counsel attacked Masino's credibility during summations by calling him a "sociopath." Over the State's objection, the trial court permitted defense counsel to continue with the proviso that "he make it clear [to the jury] that the[y] are [defense counsel's]

terms," or his "contention." Defense counsel resumed his summation regarding Masino, stating: "As I was saying, he is a sociopath. Do you know what a sociopath is? It is my opinion on the evidence, that's an antisocial personality. He's pathological. He's a pathological liar."

During the prosecutor's summation, he stated:

And that brings us to [defendant]. Again, although [defendant's] closing was two hours long, we didn't hear much about what [defendant] said from this witness stand. We heard him referred to as a boy. We heard all of that information.

If there is one pathological liar in this whole case, it's [defendant].

The prosecutor continued by arguing how the evidence supported this characterization of defendant, referring to the fact defendant admitted that he told police officers twenty-five lies during their questioning of him. The prosecutor also stated that Oscar was not familiar with the victim.

Citing State v. Frost, 158 N.J. 76, 88-89 (1999), defendant asserts that the prosecutor's reference to defendant as a pathological liar was improper. He similarly contends that a reference to Oscar not knowing Hernandez was "prohibited" and unsupported by the record. Defendant argues these comments prejudiced him by unfairly attacking his credibility and "warrant[] a new trial." We find no merit to his arguments.

At the outset, we observe that defendant did not object to the prosecutor's summation. When a defendant fails to make a contemporaneous objection to an argument presented during summation, it is "fair to infer from the failure to object below that in the context of the trial the error was actually of no moment." State v. Ingram, 196 N.J. 23, 42 (2008) (quoting Nelson, supra, 173 N.J. at 471); see also Frost, supra, 158 N.J. at 83 (holding generally, "if no objection was made [at trial,] the remarks will not be deemed prejudicial)."

When there is no objection made at trial, we review the record for plain error. Plain error is "[a]ny error or omission [that] is of such a nature as to have been clearly capable of producing an unjust result." R. 2:10-2.

Applying that standard, we conclude that there was no error made by the trial court in permitting the prosecutor to comment on defendant's credibility. When considering an argument about a prosecutor's comments during summation, we must acknowledge that "[p]rosecutors are expected to make a vigorous and forceful closing argument to the jury, and are afforded considerable leeway in that endeavor." Ingram, supra, 196 N.J. at 43 (quoting State v. Jenewicz, 193 N.J. 440, 471 (2008)). "[S]o long as their comments are reasonably related to the scope of the evidence presented" at trial, courts afford prosecutors "considerable leeway" in the

vigor and force of the language used in closing arguments. State v. Timmendequas, 161 N.J. 515, 587 (1999) (citing State v. Harris, 141 N.J. 525, 559 (1995)). "To justify reversal, the prosecutor's conduct must have been 'clearly and unmistakably improper,' and must have substantially prejudiced the defendant's fundamental right to have a jury fairly evaluate the merits of his [or her] defense." Id. at 575 (citations omitted). That said, "there is a fine line that separates forceful from impermissible closing argument. . . . [A] prosecutor must refrain from improper methods that result in wrongful conviction, and is obligated to use legitimate means to bring about a just conviction." Ingram, supra, 196 N.J. at 43 (quoting Jenewicz, supra, 193 N.J. at 471).

A prosecutor may not "offer a personal opinion of defendant's veracity"; however, the prosecutor may make comments "based on reasonable inferences drawn from the evidence presented during the trial." State v. Morton, 155 N.J. 383, 457-58 (1998) (finding no error when a prosecutor called defendant's testimony a "self-serving pack of lies" because the prosecutor's statements were "based on reasonable inferences drawn from the evidence presented during the trial" (emphasis added)); see also State v. Bauman, 298 N.J. Super. 176, 208 (App. Div.), certif. denied, 150 N.J. 25 (1997) (finding "alleged improper remark[was] clearly [a]

remark[] on the credibility of defendant's testimony and [was] therefore unobjectionable").

Here, the prosecutor's statements were made in response to defense counsel's characterization of the State's witness as a sociopath and pathological liar. More importantly, they were based upon defendant's admission during cross examination that he gave the police three different versions of events regarding the murder and that his statement to police contained up to twenty-five lies. Accordingly, the prosecutor's characterization was well-grounded in the evidence and was not improper.⁶ The prosecutor's statement that Oscar did not know the victim was also not contrary to the evidence, and did not prejudice the defendant.

Defendant's remaining challenge to his conviction rests upon his claim that he received ineffective assistance from trial counsel. He asserts numerous issues with counsel's performance that he claims led to his wrongful conviction. According to defendant, the record of the trial is sufficient for us to rely

⁶ Defendant's reliance on Frost is misplaced. In Frost, the prosecutor did not attack defendant's credibility based on evidence in the trial record; rather, he attempted to bolster the credibility of the police officers by suggesting they would not lie due to the severe consequences that would follow if they were caught. See Frost, supra, 158 N.J. at 85.

upon in determining whether trial counsel's alleged errors prejudiced defendant.

We disagree with defendant's assessment of the sufficiency of the record before us. We adhere to our "general policy against entertaining ineffective-assistance of counsel claims on direct appeal because such claims involve allegations and evidence that lie outside the trial record." State v. Castagna, 187 N.J. 293, 313 (2006) (quoting State v. Preciose, 129 N.J. 451, 460 (1992)). Typically, a "defendant must develop a record at a hearing at which counsel can explain the reasons for his conduct and inaction and at which the trial judge can rule upon the claims including the issue of prejudice." State v. Sparano, 249 N.J. Super. 411, 419 (App. Div. 1991) (citations omitted); see also State v. McDonald, 211 N.J. 4, 30 (2012). Defendant can pursue his claims in accordance with the Court's rules governing post-conviction relief petitions. See R. 3:22-1 to -13.

Finally, we consider defendant's challenge to his sentence. At sentencing, the court found that aggravating factors three, N.J.S.A. 2C:44-1(a)(3) ("risk that defendant will commit another" crime), and nine, N.J.S.A. 2C:44-1(a)(9) (the need to deter), applied to defendant, as did mitigating factor seven, N.J.S.A. 2C:44-1(b)(7) (no prior criminal history). It concluded that "the aggravating factors of three and nine substantially preponderate

over . . . mitigating factor seven . . . [, giving] a fair amount of weight on aggravating factor three, a substantial amount of weight on aggravating factor nine, and . . . limited weight to mitigating factor seven."

In imposing consecutive sentences, the court applied the Yarbough factors. State v. Yarbough, 100 N.J. 627 (1985), cert. denied, 475 U.S. 1014, 106 S. Ct. 1193, 89 L. Ed. 2d 308 (1986). The court observed defendant agreed with the State that the sentence for hindering his own apprehension should be consecutive to the sentences for the other charges. Defendant argued, however, that the sentences for aggravated manslaughter and desecrating human remains should be concurrent. The court disagreed, stating:

The charge of aggravated manslaughter and desecrating and disturbing human remains, and hindering [his] own apprehension, look at and consider the factor of those crimes and their objects were predominantly independent of each other, although clearly you can argue that this was a particular episode. The aggravated manslaughter was distinct from desecrating human remains. No matter how you look at this, this crime took place in a garage in Fairview, New Jersey, but the body was then stuffed into a trunk and taken out and left in Lincoln Park, and left in a condition where it was pretty clear from the evidence that there was an intention to try to burn this car up. Motor oil had been spread all over. There was a discharged lighter found. Those are sufficiently independent, and although they occurred somewhat close in time, they are still independent.

The court concluded by merging appropriate counts and imposing a twenty-year term on the aggravated manslaughter charge, subject to the mandatory period of parole ineligibility under the No Early Release Act, N.J.S.A. 2C:43-7.2; a concurrent fifteen-year term on the kidnapping charge; a consecutive seven-year term on the charge of disturbing human remains; a three-year term on the theft from person charge, concurrent to the aggravated manslaughter sentence; and a three-year term on the hindering apprehension charge, connected to both the kidnapping and disturbing human remains charges.

Defendant argues on appeal that the court erred in determining the kidnapping, disturbing human remains and hindering apprehension charges were "separate criminal episodes," and therefore the court was not justified in imposing consecutive sentences as to those counts. He specifically relies upon the fact that "[o]nly minutes elapsed between the blows to the victim's head that led to his death and the decision to stuff the corpse into a trunk of a car and take it out to Lincoln Park for disposal."

Our review of sentencing determinations is limited and governed by the "clear abuse of discretion" standard. State v. Roth, 95 N.J. 334, 363 (1984). We are bound to uphold the trial court's sentence, even if we would have reached a different result, "unless (1) the sentencing guidelines were violated; (2) the

aggravating and mitigating factors found . . . were not based upon competent and credible evidence in the record; or (3) 'the application of the guidelines to the facts . . . makes the sentence clearly unreasonable so as to shock the judicial conscience.'" State v. Fuentes, 217 N.J. 57, 70 (2014) (quoting Roth, supra, 95 N.J. at 364-65); see also State v. O'Donnell, 117 N.J. 210, 215-16 (1989). Although sentences are reviewed for abuse of discretion, the first prong of the analysis presents a question of law that is reviewed de novo. State v. Robinson, 217 N.J. 594, 603-04 (2014).

We conclude the court properly exercised its discretion in sentencing defendant. The court considered and weighed the sentencing factors, imposed consecutive sentences and explained the reasons for its decision, including its qualitative consideration of the Yarbough factors.⁷ See N.J.S.A. 2C:44-5(a);

⁷ The factors that must be considered are as follows:

- (1) there can be no free crimes in a system for which the punishment shall fit the crime;
- (2) the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision;
- (3) some reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not:

Yarbough, supra, 100 N.J. at 643-44; see also State v. Carey, 168 N.J. 413, 427-28 (2001). Contrary to defendant's argument, concurrent sentences are not mandated even where the crimes were connected by a 'unity of specific purpose', . . . were somewhat

(a) the crimes and their objectives "were predominantly independent of each other;

(b) the crimes involved separate acts of violence or threats of violence;

(c) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior;

(d) any of the crimes involved multiple victims;

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

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

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

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


[Yarbough, supra, 100 N.J. at 643-44 (footnotes omitted).]

interdependent of one another, and were committed within a short period of time of one another." State v. Swint, 328 N.J. Super. 236, 264 (App. Div.) (emphasis added), certif. denied, 165 N.J. 492 (2000).

Under these circumstances, we discern no reason to disturb the sentences imposed. They were appropriately explained and do not "shock the judicial conscience." State v. Case, 220 N.J. 49, 65 (2014) (quoting Roth, supra, 95 N.J. at 365).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION