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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4929-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ZENG L. CHEN, a/k/a

ZENG B. CHEN,

Defendant-Appellant.

Submitted October 4, 2017 – Decided April 12, 2018

Before Judges Koblitz, Manahan, and Suter.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment No.
10-10-1964.

Joseph E. Krakora, Public Defender, attorney
for appellant (Michael Confusione, Designated
Counsel, on the brief).

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Mary R.
Juliano, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Zeng L. Chen appeals from his May 5, 2015 judgment of conviction and sentence, asking for a new trial or for a remand for resentencing. We affirm.

I

The case arose from the 2010 murders of Yao Chen and his sister Yun Chen. Chen and his co-defendant Dong Biao Lin were indicted on multiple charges. Lin's case was severed from Chen's in 2012. In 2014, Lin pled guilty to two counts of first-degree murder and two counts of felony murder.

In 2015, Chen was convicted by a jury of second-degree conspiracy, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:18-2 (count one); one count of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and N.J.S.A. 2C:11-3(a)(2) (count two); two counts of first-degree felony murder, N.J.S.A. 2C:11-3(a)(3) (counts four and five); second-degree burglary, N.J.S.A. 2C:18-2 (count six); first-degree armed robbery, N.J.S.A. 2C:15-1 (count seven); and third-degree possession of a weapon (knife) for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count eight). He was sentenced to a life term of imprisonment with an eighty-five percent period of parole ineligibility under the No-Early Release Act (NERA) on count two. He also was sentenced to a thirty-year term on count five and a fifteen-year term on count seven, both of which were subject to

NERA, with both to run concurrently with count two. The remaining counts were merged.

Chen alleges the court erred in denying his motion to suppress the statement he gave to the police after he was arrested, his request to present expert testimony in support of that motion, and his motion for acquittal. He also alleges that certain jury instructions were incorrect and incomplete and that his sentence was improper and excessive.

We gather the following facts from the record developed at Chen's suppression motion. On June 16, 2010 at about 5:15 p.m., Lieutenant John Todd of the Freehold Township Police Department testified that he was on patrol. He heard a report about a stabbing and to be on the lookout for two men described as "two oriental males between 20 and 25 years old. One was wearing a green shirt. One was wearing a light colored shirt." Based on a tip from a citizen caller about their possible location, he proceeded to Williams Street where he saw two persons matching the description walking on the sidewalk. They appeared disheveled. He stopped his vehicle in front of them. He ordered them to get on the ground, which they did but not immediately, and held them at gunpoint. They did not seem to speak English. He observed that one had "blood splatter on his pants and . . . blood splatter on his hand." He took Chen to the police station.

In June 2010, Detective Sergeant Michael Magliozzo of the Monmouth County Prosecutor's Office was assigned to the Major Crimes Bureau. He was briefed on the scene by Detective Chris Otlowski about a male victim, Yao Chen, who had collapsed in the street with his hands bound and suffering from multiple wounds. When Magliozzo received word that two suspects had been captured, he proceeded to the police station. Both suspects, Chen and Lin, indicated they spoke Chinese. The Prosecutor's Office contacted Officer Robert Wei of the Piscataway Police Department to provide translation assistance because he spoke Mandarin Chinese. By this time, the police learned there was a female victim at the residence, Yun Chen, who was deceased and that the male victim, Yao Chen, had died at the hospital.

Magliozzo, Wei, and Otlowski interviewed Chen using Wei as the translator. According to Magliozzo, Chen appeared to understand. Wei "was [not] having any difficulty interpreting or speaking to" Chen. The interview was videotaped and there is a transcript.

Magliozzo read the Miranda¹ rights to Chen. As they were being read to him, Chen said, "[y]es. I have the right to remain silent." Chen responded affirmatively when advised that anything

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

he said may be used against him and that he had the right to consult with an attorney and to have him present during questioning. In response to being advised that if "he could not afford an attorney, one would be appointed for him," Chen responded "Attorney? I don't have family here." When advised again, he responded affirmatively that he understood an attorney could be appointed for him if he could not afford one. Chen asked what it meant not to have to speak or talk, and he was advised he did not have to talk if he did not want to. Chen then said he did not understand "the first one" and was advised again he had the right to remain silent and to refuse to answer any questions. Chen asked about "number two" and Magliozzo again explained to him that anything Chen said could be used against him in a court of law. Chen asked that if he lied whether that was going to come out in court and was told "yes".

Based on Chen's questions, Magliozzo reread the Miranda rights to Chen, and Wei interpreted them. Chen answered affirmatively that he understood these rights. When asked "Okay. Does he want to speak and answer questions", Chen replied "yes." Chen then gave a statement to the police about what had occurred.

Wei testified that he interpreted Mandarin Chinese "[c]ountless times" and administered Miranda warnings in Chinese about twenty or thirty times over the last ten years. He was born

in Taiwan and learned Mandarin Chinese as his first language. He learned English when he was nine years old because his family moved to the United States. He is not certified as an interpreter.

Wei translated the interview with Chen. He did not translate everything word for word. He testified "[m]ost of the things I did. There's certain things that I couldn't translate word for word, so I did the best that I could to convey the message." He had no trouble understanding Chen. Chen was responsive to his questions and appeared to understand him. After the transcript was produced, he went over it twice comparing it to the video tape and made corrections to it.

Dr. Weili Lu, an associate professor and licensed psychologist, was called by the defense as an expert witness in the field of psychology and to testify "about the specific province that Mr. Chen is from and his understanding of . . . the Miranda rights." On voir dire, she testified that she evaluates families facing deportation to determine whether someone would experience an extreme and exceptional hardship as it relates to immigration proceedings. She has testified as an expert in immigration court. Although she had published articles on post-traumatic stress disorder, she had not written any about law enforcement, Chinese law, Miranda or Chinese immigrants and their understanding of

Miranda. She had no familiarity with Miranda rights before she was retained for this case.

Lu testified that Chen is from Fugan Province in China. Because Lu has family from the same province and has lived there, her testimony was proffered regarding Chen's state of mind when he gave his statement to the police and whether he made a knowing and intelligent waiver of his rights.

The court barred her admission as an expert witness because she lacked expertise "about cross cultural effects or analysis of Miranda rights and the understanding of them with regard to individuals who are born out of this country." The court did not find that her testimony would be helpful to the court.

Chen testified that he came to the United States in 2006 when he was eighteen from the Fujian province in China. He speaks Fuzhou and Mandarin Chinese. In 2010, he could not speak or read English. After he was arrested, the police spoke to him through the interpreter.

Chen testified that he did not understand what the police explained to him. He did not understand what it meant to have the right to remain silent. He did not "quite comprehend" what the interpreter said about the law. He did not remember what an attorney was. When the interpreter told him that what he said could be used against him in court, he responded, "I didn't know

any law and I didn't know what it meant, it would work against me, so I just said everything." He did not understand he could first speak with an attorney or have the attorney present during questioning. He said he was "stunned" when the police told him that Lin said he had killed the victim, and "I was so confounded after he said these things and I didn't know anything else." Chen was asked,

PROSECUTOR: When you were provided these rights, you were asked if you understood them?

CHEN: Well, yes. This police officer who act as interpreter asked me do you understand this law.

PROSECUTOR: And there were points when you told him yes and there were times when you nodded your head?

CHEN: I nod my head.

PROSECUTOR: So why would you tell him that you understood something if you did not?

CHEN: Well, he told me I have commit a murder about those things, but I do not fully understand, but I say yes. Yes. Yes.

. . . .

PROSECUTOR: So you didn't understand that if you wanted to stop talking to the police that you had that option?

CHEN: Well, I don't know.

Chen claimed that he did not understand he could stop answering questions. He stated "[a]s long they ask me question I keep on answering." When he spoke with the police, he testified that he did not know he was giving up the rights that had been read to him.

The trial court found based on a totality of the circumstances that Chen gave "a knowing, voluntary, and intelligent waiver of his rights." The court found there was not any "overreaching." The interview atmosphere was calm; defendant was offered food and water. Magliozzo went through the Miranda rights twice, particularly the right to have an attorney appointed and to waive that right. The court found that Chen understood his rights; "there was clearly the shake of the head up and down indicating yes that he understood." The court observed that the officer "did take his time, made sure the defendant understood, and in certain circumstances gave examples." The court found the police advised defendant of his rights with the assistance of an interpreter. The court found there was no requirement that the police use a certified interpreter.

The court took into consideration that Chen was twenty-years old at the time of the offense, had been in the country over three years, had worked in different states, that the length of the questioning was about ninety minutes, and that Chen had no prior

encounters with the law here or in China. The court stated that "[t]here was an active understanding by the defendant, maybe not initially as to some questions when he didn't understand some of the questions, they were repeated until the point, . . . that in fact he wanted to waive his rights and to essentially . . . tell his story. He wanted to tell his story[.]" He wanted to "distance himself from the physical act" of committing murder.

Chen's case proceeded to trial. Part of the evidence included Chen's statement to the police. In that statement, Chen told the police he was "hanging out" in Chinatown in New York with Lin but did not know Lin had a knife. On June 16, 2010, they took a bus to Freehold, New Jersey because Lin used to work at a restaurant there. Lin was aware the restaurant owner kept money at his residence and they went there to burglarize it. They walked around the house and waited an hour before going in. They cut a screen window with the knife that Lin brought and they gained entry. Almost immediately, they discovered a man who had a bowl of food. Chen tied him up with telephone wire. Lin went upstairs while Chen guarded the man. Chen heard a woman upstairs who was screaming "and I was pretty sure she was being killed." He knew Lin took the knife upstairs but was not certain if the woman died. Then, the man he was watching started to scream. Chen held him

down. Chen said Lin then came downstairs and killed the man by stabbing him in his neck, arms and buttocks.

Chen stated that he did not know they were going to go there and kill anyone. He was "scared and shocked" by this. Chen admitted to holding a white knife that was used in the stabbings, but that he gave it back to Lin when Lin went upstairs. Chen had a pair of brass knuckles. The white knife broke as Lin was stabbing the man. Lin obtained "the other big knife" from the kitchen to stab the man. Lin did not want to kill him, but did because he kept screaming and yelling. The female victim upstairs recognized Lin because he used to work at the restaurant.

Chen denied using the knife to kill anyone. He said he threatened the man with the brass knuckles and also punched him a couple of times with them. Chen held the man down and put clothing over his mouth because he was screaming. Chen said he stood there as Lin stabbed the man, but that he was "shocked" and "never thought this would happened."

Lin also testified at Chen's trial about the events on June 16, 2010. He testified that Chen knew he had the white knife before they left Chinatown. He described, as had Chen, how they took a bus to Freehold, that they intended to burglarize the house of his former supervisor, and that they broke in and encountered the male victim. Chen helped to tie him up. Lin testified that

Chen suggested Lin go upstairs to search for more to steal. When Lin encountered the female victim and, although she told him to take what he wanted, he recognized her and "lost control" stabbing her to death. Lin went downstairs to assist Chen with the man who was struggling, and again lost control. He testified Chen held the man down when Lin began stabbing him and then Chen slowly walked behind him. Lin testified that Chen and he had discussed that if they found someone in the house, they could use the knife to threaten them.

Chen moved for acquittal under Rule 3:18-1 on Count Two, "the knowing and purposeful murder of [the male victim]." The trial court denied the motion because, viewing the states' evidence in its entirety, it found that a "reasonable jury could find guilt of the charges under accomplice or co-conspirator theories beyond a reasonable doubt." Chen was convicted of all charges and sentenced to a life term with a thirty-year period of parole ineligibility.

On appeal, Chen raises the following issues.

Point 1 The trial court erred in denying defendant's motion for acquittal (raised below), and the trial court's jury charges were incorrect and incomplete (plain error), warranting vacation of defendant's convictions for murder, armed burglary and robbery, felony murder, and possession of a weapon for an unlawful purpose.

Point 2 The trial court erred in denying defendant's motion to suppress statements made to police.

Point 3 The trial court erred in precluding defendant from offering expert testimony in support of his motion to suppress.

Point 4 Defendant's sentence is improper and excessive.

II

We defer to the trial court's factual findings on a motion to suppress unless they were "clearly mistaken" such that appellate intervention is necessary "in the interests of justice." State v. Elders, 192 N.J. 224, 244 (2007) (internal quotation marks and citation omitted). Our review of "purely legal conclusions" is plenary. State v. Goodman, 415 N.J. Super. 210, 225 (App. Div. 2010).

"[I]n determining whether incriminating statements are admissible, the State must 'prove beyond a reasonable doubt that the suspect's waiver [of rights] was knowing, intelligent, and voluntary[.]'" State v. A.M., __ N.J. Super. __, __ (App. Div. 2018) (slip op. at 13) (quoting State v. Yohnnson, 204 N.J. 43, 59 (2009)). To do so, a court must consider the "totality of the circumstances." Ibid. This includes consideration of factors such as defendant's "age, education and intelligence, advice as to constitutional rights, length of detention, whether the

questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved." Ibid.

Chen contends that the waiver of his Miranda rights was not "knowing and informed" because of the translation. In State v. Mejia, 141 N.J. 475, 503 (1995), the Court recognized "[t]he problem of communicating Miranda rights to non-English-speaking defendants is important, particularly in a state with so diverse a population." In State v. Marquez, 202 N.J. 485 (2009), the Court reversed a drunk driving conviction of a non-English speaking defendant where the standard statement about submitting to a breath test was read to him in English, because this "failed to inform [the] defendant of the consequences of the refusal." Id. at 514. However, in State v. Homdziuk, 369 N.J. Super. 279, 290 (App. Div. 2009), we affirmed the denial of a suppression motion where the defendant "was given his Miranda rights in his native language and admitted that he understood them."

Recently, in A.M., we reversed the denial of a suppression motion. In A.M., the defendant spoke Spanish as his primary language. He read and signed the Miranda waiver form that was written in Spanish and then gave a statement to the police. However, the court did not ask defendant about his level of education, determine if defendant was literate in Spanish, ask defendant to read the waiver provisions aloud or mention the word

waiver to defendant. We concluded that the court "improperly shift[ed] the burden of proof to defendant to alert the interrogating officers about any difficulty he may be having understanding the ramifications of a legal waiver[.]" A.M., __ N.J. Super. __ (slip op. at 17).

Here, Wei translated the Miranda rights that Maglizzo read to Chen. Wei acknowledged he did not interpret the rights word for word. We are satisfied based on the transcript and videotape that as in Mejia, the "police, confronted with the practical problem of advising a [Chinese]-speaking suspect, adequately administered the Miranda warnings." Mejia, 141 N.J. at 503. The rights were twice read to Chen. The transcript shows that initially there were discrepancies in the translation, including:

M.M.: Okay. We are going to read you your rights.

R.W.: [H]e is going to read the card to you. You listen. I will translate for you.

. . . .

M.M.: You have the right to consult with an attorney at any time and have him present before or during questions.

R.W.: You have the right to consult with an attorney.

. . . .

M.M.: If you cannot afford an attorney, one would be provided if you so desire prior to any questions.

R.W.: If you cannot afford an attorney, one would be provided for you.

. . . .

M.M.: A decision to waive these rights is not final; you may withdraw your waiver whenever you wish either before or during questioning.

R.W.: Whatever you said, you have the right to not talk at any time if you want to hire an attorney, [w]henever you wish.

However, Chen asked questions and the rights were repeated. The transcript shows that the discrepancies were corrected and Chen indicated he understood. The videotape shows that Chen is engaged with the officers and nodding his head in affirmance. Therefore, we are satisfied based on the record that Chen's waiver of his Miranda rights was knowing and intelligently given.

We also discern no error by the trial court in precluding Dr. Lu from testifying at the Miranda hearing. Our review of evidence issues "is limited to examining the decision for abuse of discretion." Hisenaj v. Kuehner, 194 N.J. 6, 12 (2008) (citing Brenman v. Demello, 191 N.J. 18, 31 (2007)). "Considerable latitude is afforded a trial court in determining whether to admit evidence, and that determination will be reversed only if it constitutes an abuse of discretion." State v. Feaster, 156 N.J.

1, 82 (1998). An appellate court should not substitute its own judgment for that of the trial court, unless "the trial court's ruling 'was so wide of the mark that a manifest denial of justice resulted.'" State v. Marrero, 148 N.J. 469, 484 (1997) (quoting State v. Kelly, 97 N.J. 178, 216 (1984)).

The admission of "expert testimony depends on a witness's 'specialized knowledge' to address matters outside a juror's understanding." State v. Hyman, 451 N.J. Super. 429, 443 (App. Div. 2017) (quoting Kelly, 97 N.J. at 208). "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." N.J.R.E. 702. There are three requirements:

(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony.

[Hyman, 451 N.J. Super. at 443.]

We discern no misapplication of discretion by the court in precluding Dr. Lu's testimony² when she had no familiarity with Miranda before she was retained by the defense, had not studied law enforcement, Chinese Law, Miranda or Chinese immigrants and their understanding of Miranda.

Chen contends that the trial court erred in instructing the jury on the law. Because there was no objection made to the charge at trial, we review this issue under a plain error standard, meaning that our inquiry is to determine whether this was an error that was "clearly capable of producing an unjust result." R. 2:10-2; see State v. Macon, 57 N.J. 325, 336 (1971). Where no objection is made to a jury instruction, this creates "a presumption that the charge was not error and was unlikely to prejudice the defendant's case." State v. Singleton, 211 N.J. 157, 182 (2012).

Under the plain error standard, reversal of a defendant's conviction is required if there was error "sufficient to raise a reasonable doubt as to whether [it] led the jury to a result it otherwise might not have reached." State v. Green, 447 N.J. Super. 317, 325 (App. Div. 2016) (quoting Macon, 57 N.J. at 336); see

² Dr. Lu testified at Chen's trial as an expert in clinical psychology. She offered the opinion that Chen has post-traumatic stress disorder from the events of June 16, 2010.

also State v. Green, 86 N.J. 281, 289 (1981) (applying plain error when no objection was made to the judge's jury charge on identification).

Chen contends that it was error to deny his motion for acquittal or to allow the jury to consider whether Chen "either by his own hand" committed the murder of the male victim because he contends there was not enough evidence to show that his physical actions were done with the conscious object to cause death or serious injury. He contends that it was error not to use language from State v. Bridges, 133 N.J. 447, 467 (1993) in charging the jury because the male victim's murder was not "objectively foreseeable or reasonably to be anticipated." He contends the court erred in allowing the jury to consider whether Chen committed count one (armed burglary) or count six (armed robbery) "either as a principal or accomplice" because mere possession of the knife was not enough. Chen contends that because the underlying robbery and burglary charges were flawed, that it affected the felony murder charges under counts three and four. He asserts that the court erred in instructing the jury that it could find defendant guilty of possession of the knife for an unlawful purpose as an accomplice.

In reviewing the adequacy of the judge's charge to the jury, we consider the charge as a whole in determining whether it was

prejudicial. See State v. Figueroa, 190 N.J. 219, 246 (2007) (citing State v. Wilbely, 63 N.J. 420, 422 (1973)). "[A]ppropriate and proper jury charges are essential to a fair trial." State v. Baum, 224 N.J. 147, 158-59 (2016) (quoting State v. Reddish, 181 N.J. 553, 613 (2004)); State v. Collier, 90 N.J. 117, 122 (1982) (quoting Green, 86 N.J. at 287).

Here, there was nothing clearly capable of producing an unjust result about the judge's charge to the jury. The charge tracked the model jury charges. Model jury charges are often helpful to trial courts performing this important function. See Moquill v. CB Commercial Real Estate Grp., Inc., 162 N.J. 449, 466 (2000) (holding that instructions given in accordance with model charges, or which closely track model charges, are generally not considered erroneous).

"[A] defendant must be shown to have engaged in conduct designed to aid another in the commission of a crime to be found guilty under a theory of accomplice liability." State v. Roldan, 314 N.J. Super. 173, 189 (App. Div. 1989). "[A] defendant may be found guilty under a theory of conspiratorial liability based solely on an agreement to commit a crime." Ibid. "If the facts will support liability as an accomplice or a co-conspirator, each theory supported by the facts should be charged to the jury, and the jury need not agree on the basis for liability to convict the

defendant of the substantive crime." Cannel, N.J. Criminal Code Annotated, cmt. 7 on N.J.S.A. 2C:2-6(c) (2017).

Lin's testimony supported both theories. Chen was aware before they travelled to New Jersey that Lin had a knife and brass knuckles. Chen was traveling with Lin to New Jersey to steal from the home of Lin's former supervisor. Chen knew they brought the knife with them and that Lin used it to enter the house. They discussed using the knife to threaten someone if they found them in the house. Although Lin testified that he stabbed both victims, Chen assisted in tying up the male victim's hands and feet. Chen suggested that Lin go upstairs to look for more things to steal. Chen beat the male victim with brass knuckles. He stuffed rags in his mouth to try to keep him quiet. Chen called Lin downstairs because he was having trouble keeping the male victim subdued once he heard his sister screaming from upstairs. Chen told the police in his statement that he thought that Lin was killing the female victim upstairs. Chen held down the male victim when Lin commenced stabbing him but then backed away.

We are satisfied on this record that there was no error producing an unjust result in the charge to the jury. The charge relied heavily on the model charges. It was not necessary for the charge to use the exact language from Bridges when it incorporated the concepts. The jury appropriately considered whether Chen was

an accomplice or co-conspirator and the charge explained these to the jury. The court did not err in charging the jury that defendant could be found guilty as a principal or accomplice based on the record.

Chen contends that the trial court erred in denying his motion for an acquittal. Chen moved for acquittal under Rule 3:18-1 on count two, "the knowing and purposeful murder of [the male victim]." Defense counsel argued that Chen did not act purposely in killing the male victim.

Under Rule 3:18-1, a trial court must enter a judgment of acquittal "if the evidence is insufficient to warrant a conviction" of one or more offenses charged in the indictment. The court "is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the State," State v. Muniz, 150 N.J. Super. 436, 440 (App. Div. 1977), and whether that would enable a jury to find guilt of the charge beyond a reasonable doubt. "If the evidence satisfies that standard, the motion must be denied." State v. Spivey, 179 N.J. 229, 236 (2004). We apply the same standard in determining this issue. See State v. Bunch, 180 N.J. 534, 549 (2004).

We agree with the trial court that based on the evidence, which included Lin's testimony about Chen's role in the armed burglary and his acts that enabled Lin to stab the male victim,

that serious bodily injury or death was a reasonably foreseeable consequence of their plan.

Chen contends that his sentence was excessive. He argues that the court should not have found aggravating factors one or two because he did not commit the murders with his own hand.

We review the judge's sentencing decision under an abuse of discretion standard. State v. Fuentes, 217 N.J. 57, 70 (2014).

We must determine whether:

(1) the sentencing guidelines were violated;
(2) the aggravating and mitigating factors found by the sentencing court were not based upon competent and credible evidence in the record; or (3) 'the application of the guidelines to the facts of [the] case makes the sentence clearly unreasonable so as to shock the judicial conscience.'

[Ibid. (alterations in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).]

Aggravating factor one concerns "the nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner." N.J.S.A. 2C:44-1(a)(1). Factor two concerns the "gravity and seriousness of harm inflicted on the victim including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable" N.J.S.A. 2C:44-1(a)(2).

We are satisfied the court did not abuse its discretion in finding these factors. The male victim was tied hand and foot and to the bed frame, making him more vulnerable to attack. The medical examiner testified that the male victim was stabbed seventy-four times, with disfiguring cuts to his face and abdominal cuts that revealed his intestines. Chen tied the victim, beat him and then held him at least in part while Lin stabbed him. The victim was alive long enough to escape, leave the house and stumble to the street before collapsing.

There was nothing about Chen's sentence that shocked one's conscience in light of his actions. The court was clear that because there were two victims, Chen could have been sentenced to consecutive terms. He was sentenced to concurrent terms because Lin was sentenced to this. Chen's sentence was not excessive given his involvement with these crimes.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION