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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0459-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WELDER D. MORENTE-DUBON,

Defendant-Appellant.

APPROVED FOR PUBLICATION
December 19, 2022
APPELLATE DIVISION

Submitted December 6, 2022 – Decided December 19, 2022

Before Judges Geiger, Berdote Byrne and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 17-06-0450.

Joseph E. Krakora, Public Defender, attorney for appellant (Marcia Blum, Assistant Deputy Public Defender, of counsel and on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Lauren Bonfiglio, Deputy Attorney General, of counsel and on the brief).

The opinion of the court was delivered by

GEIGER, J.A.D.

In this opinion we address the judicial factfinding undertaken by the trial court as part of its sentencing analysis that found facts contrary to the jury's

verdict. We also address the improper application of aggravating factor four, N.J.S.A. 2C:44-1(a)(4), and the need for the court to explain in greater detail how it reconciles its application of aggravating factor three, N.J.S.A. 2C:44-1(a)(3), and mitigating factor seven, N.J.S.A. 2C:44-1(b)(7), the weight assigned to those factors, and how those factors are balanced with respect to a defendant who had no prior juvenile or criminal history and no subsequent criminal history in the decade that elapsed before his arrest.

Tried to a jury, defendant Welder D. Morente-Dubon was convicted of the lesser-included offense of second-degree passion-provocation manslaughter, third-degree possession of a weapon for an unlawful purpose, and fourth-degree unlawful possession of a weapon. Following merger, he was sentenced to a nine-and-one-half-year prison term, subject to the periods of parole ineligibility and parole supervision imposed by the No Early Release Act, N.J.S.A. 2C:43-7.2. Defendant appeals his sentence, arguing the trial court misapplied the statutory aggravating and mitigating factors. We vacate defendant's sentence and remand for resentencing.

The crimes were committed when defendant was twenty-one years old and working as an employee at a used-tire shop. Defendant was the only person scheduled to work that day because the owner of the shop was on vacation. As a result, defendant called his aunt and received permission for his

sixteen-year-old cousin, Walter Alvarez, to help him at the shop. Alvarez had occasionally helped at the shop in the past.

A regular customer, Joseph Tremarco, entered the shop to make a purchase. Defendant alleged an argument ensued after Tremarco accused him of "shorting" the order. The argument escalated to the point of violence. Defendant alleged Tremarco punched him, pushed him to the ground, and kicked him in the abdomen. Defendant claimed that despite telling Tremarco to stop, he did not. He further alleged "he looked around the room" for an "object that he thought he could use to defend himself," saw a baseball bat within his reach, grabbed the bat, "got up as fast as he could," and "swung it in Tremarco's direction." Defendant does not dispute he killed Tremarco by striking him in the head four times with the bat.

Defendant then enlisted Alvarez to assist him in covering up the death. They dragged Tremarco's body across the shop and defendant placed it in Tremarco's truck. Defendant drove the truck to a residential neighborhood, and directed Alvarez, who did not have a license, to follow him in the shop's minivan. Defendant abandoned Tremarco's truck and drove Alvarez back to the shop in the minivan. They then cleaned up Tremarco's blood with rags, wrapped the rags in carpets, and put the carpets in the shop's minivan. Defendant then took Alvarez home and continued his workday.

Defendant then fled to Guatemala where he lived for almost ten years until he was extradited back to New Jersey to face charges of first-degree murder, N.J.S.A. 2C:11-3(a)(1)-(2), fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d), third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d), and second-degree hindering apprehension through witness intimidation, N.J.S.A. 2C:29-3(b)(3). Ultimately, the case proceeded to trial.

The State disputed defendant's characterization of the incident. Relying on Alvarez as a witness, the State asserted that "[t]here was no argument" between Tremarco and defendant, and instead, defendant committed a "knowing and purposeful killing from behind," which Tremarco "never saw [] coming." Relying again on Alvarez's testimony, the State further asserted defendant threatened to kill Alvarez if he did not help cover up the incident. Defendant denied these assertions, arguing that Alvarez's statements to the police were inconsistent and therefore his testimony was unreliable.

Defendant claimed self-defense and passion/provocation. The jury found defendant guilty of the lesser-included offense of passion-provocation manslaughter and the two weapons counts, and not guilty of hindering.

Defendant was sentenced on September 17, 2020. The trial court initially noted the sentencing range for passion/provocation manslaughter was

five to ten years. The State sought the maximum term of ten years, arguing that aggravating factors one, three, and nine applied, N.J.S.A. 2C:44-1(a)(1), (3), and (9), and no mitigating factors applied. The State did not request the court to apply aggravating factor four, N.J.S.A. 2C:44-1(a)(4).

Defendant sought the minimum term of five years, arguing that mitigating factors seven and nine applied, N.J.S.A. 2C:44-1(b)(7) and (9), and aggravating factor one did not apply. Defendant pointed out he had not committed any new offenses in the thirteen years since the homicide occurred, had matured, and was now "a very different man." Defendant also requested defendant's age be considered as a mitigating factor, noting that pending legislation would add a new mitigating factor fourteen for defendants who were under the age of twenty-six at the time the offense was committed.

The court found aggravating factors one ("nature and circumstances of the offense," defendant's role in committing the offense, and whether "it was committed in an especially heinous, cruel, or depraved manner"), three (risk defendant will commit another offense), four ("defendant took advantage of a position of trust or confidence to commit the offense"), and nine ("need for deterring the defendant and others from violating the law").

As to aggravating factor one, the court stated:

> The defendant's conduct here, his role, the particularly heinous, cruel and depraved actions of the

defendant clearly warrant application of this aggravating factor. I very rarely impose aggravating factor [one]. If ever there was a case in my judgment which warrants application of this factor, it is the facts and circumstances of this one.

. . . .

The evidence adduced at trial was clear and unambiguous. The defendant in this case was not reasonably provoked to passion and had sufficient intervening time for reason to intercede before he brutally killed Mr. Tremarco. The provocation here, according to the defendant's own testimony, was verbal mocking[] which . . . warped into a physical altercation whereby Mr. Tremarco, according to the defendant . . . pushed, punched[,] and kicked the defendant. The defendant [then] rendered [Tremarco] defenseless with [a] blow to the back of [the] head with a baseball bat. At no time did the defendant attempt to render aid to Mr. Tremarco, [] cease the onslaught[,] or call for medical assistance. Instead, he continued to strike the victim with a baseball bat . . . [and then w]ith an apparent cool, methodical and deliberative head, he instructed his young relative to help move and conceal the deceased, came back and cleaned up evidence of the crime, and then continued his day's deliveries as if it were an ordinary, uneventful work day. Hours later, he left the state and the country.

. . . .

The serial nature of the blows . . . only to the back of the head with a lethal weapon bespeaks especially heinous, cruel, and depraved conduct. The testimony of the medical examiner, which was uncontested, confirmed significant blunt force trauma, four separate blows and only to the back of Mr. Tremarco's head literally breaking his skull. Violence

> and rage well beyond what was necessary to ward off any assault by Mr. Tremarco. . . . Here it is clear that the force of the first blows to Mr. Tremarco's head had so restrained him so as to render him incapable of any meaningful physical resistance such that the last blows were gratuitous and can only be characterized as an extraordinary exercise of rage.
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> . . . .
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> Also[] supporting aggravating factor [one] was [the defendant's] own testimony . . . . The defendant testified that after he struck Mr. Tremarco with the bat to his head the first time, Mr. Tremarco's arm moved toward him as if Mr. Tremarco were coming at him . . . . This is evidence that Mr. Tremarco was alive and, thus, experienced an added incomprehensible pain when the defendant then landed repeated additional blows to Mr. Tremarco's already battered head.

The court also noted that aggravating factor one could be applied to passion-provocation cases. The court explained that "[a] jury's reasonable doubt that the State has [disproved] the mitigating elements of passion provocation manslaughter is not the equivalent for sentencing purposes of an affirmative finding of fact that the defendant was reasonably provoked to passion and killed before [reason had] sufficient time to regain its sway." Finally, the trial court noted that because defendant engaged in "extraordinary brutality," application of aggravating factor one did not constitute double counting. The court gave aggravating factor one "moderate weight."

As to aggravating factor three, the court stated:

> The defendant's deliberate and extensive efforts of concealment and his utter lack of remorse bespeak [the] continued risk that he will commit another offense. In addition, the defendant here was quite easily provoked to brutal rage followed immediately by cool, methodical, self-interest. This cocktail clearly supports the [] finding that the defendant poses a risk of reoffending.

The court gave aggravating factor three "significant weight."

As to aggravating factor four, the court stated:

> Consistent with the evidence there is no doubt the defendant took advantage of a position of trust or confidence to commit the offense. Mr. Alvarez was a [sixteen-year-old] child at the time of the offense . . . . Clearly, the defendant was in a position of authority, trust[,] and confidence in terms of his youthful and far less mature cousin.
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> . . . .
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> The defendant admitted that he called the child's mother, his aunt, for permission for the child to help him at the tire shop on the date in question. The defendant knew he needed the approval of the child's parent, his guardian, which she gave in trusting the high school freshman to the watchful, presumably protective eyes of the adult, older relative . . . .
>
> After the defendant brutally bludgeoned Mr. Tremarco, the defendant directed the [sixteen-year-old] to help drag the body across the cement, and according to the defendant, helped him haul and dump the victim lifeless in his own truck. Thereafter, the defendant admitted he directed the child . . . to drive miles away to provide a getaway for the defendant after he abandoned Mr. Tremarco in the truck. Directing an unlicensed child to drive a vehicle on

> congested city streets after recruiting that child to assist in moving a dead body poses a serious risk of harm to the child and the public at large. The defendant exploited his age, his maturity, and his family relationship and took advantage of a high school freshman in order to conceal the crime after the fact.

The court gave aggravating factor four "modest weight."

As to aggravating factor nine, the court stated:

> [T]he facts and circumstances of this case require both general and specific deterrence. From a general standpoint the public needs to know that society will not permit actions of unbridled rage, of insufficient provocation as the facts [of] this case so readily demonstrate, of using others . . . to conceal the commission of serious crimes, of the desecration of [a] human body . . . .
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> Most particularly, however, the [c]ourt finds the need to specifically deter the defendant.
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> So, I give modest consideration for the need of general deterrence, but I give heightened, great consideration to specific deterrence . . . . Here, the defendant committed crimes which were completely avoidable and preventable. Whatever the provocation [it] was grossly insufficient to warrant the defendant . . . battering the young victim's skull repeatedly with rage over and over and over again.

The court found mitigating factor seven ("defendant has no history of prior delinquency or criminal activity") and gave it "moderate weight" but rejected mitigating factor nine (defendant's "character and attitude . . . indicate that the defendant is unlikely to commit another offense"). The court stated:

> In light of the cool, calculated manner in which he committed this [of]fense, that he recruited another individual, that he methodically cleaned up, discarded the body and immediately fled, and the nonchalance of the phone calls to his would-be paramour in the days after, to me, do not indicate the character and attitude of an individual that I can say is entitled to statutory mitigating factor [nine].

Although defendant's age was not yet a statutory mitigating factor at the time of sentencing, the court stated it took defendant's youthfulness into consideration. More specifically, the trial court stated "if it weren't for the relative youthfulness of [defendant, it] would have given aggravating factor [four] greater weight." The court found the aggravating factors "substantially outweigh[ed] the sole mitigating factor." The court then added:

> And I want to be clear for the record, even if the court were not to find aggravating factor [four,] because I gave it modest weight[,] it will not and would not alter the [c]ourt's sentence in any regard. I just believe under the facts I am compelled under the plain reading of that aggravating factor as I find it, but I am giving it modest application.

During his allocution, defendant stated he wanted to apologize to the victim's family but added "whatever I did and whatever happened, it was not my decision."

The court found defendant's "motive was rage, unbridled rage." It also found there was "no evidence" that defendant "woke up that morning bent to brutally murder Mr. Tremarco or anyone. Nothing in his past suggests that."

The court noted defendant's "acts of brutality" were "immediately followed by a rather extensive and well-executed cover-up and flight."

The court merged the weapons counts into the manslaughter and sentenced defendant to a nine-and-a-half-year NERA term.

This appeal followed. Initially, defendant challenged both his conviction and sentence but later withdrew the challenge to his conviction.

On appeal, defendant argues:

> THE MATTER MUST BE REMANDED FOR A NEW SENTENCING HEARING BECAUSE THE CURRENT SENTENCE OF NINE AND ONE-HALF YEARS, JUST SIX MONTHS SHORT OF THE MAXIMUM TERM, RELIES ON LEGALLY INAPPLICABLE AND FACTUALLY UNSUPPORTED AGGRAVATING FACTORS, IGNORES A RELEVANT MITIGATING FACTOR, AND IS EXCESSIVE.
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> A. There is No Support for Any of The Aggravating Factors.
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> 1. Aggravating factor (1).
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> 2. Aggravating factor (3).
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> 3. Aggravating factor (4).
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> 4. Aggravating factor (9).
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> B. The Court Failed to Find a Relevant Mitigating Factor.

We review a sentence under an abuse of discretion standard. See State v. Trinidad, 241 N.J. 425, 453 (2020). When sentencing a defendant, a court must identify and balance the aggravating and mitigating factors pursuant to N.J.S.A. 2C:44-1(a) and (b) and explain the factual basis underpinning its findings. State v. Fuentes, 217 N.J. 57, 72-73 (2014). "After balancing the factors, the trial court may impose a term within the permissible range for the offense." State v. Bieniek, 200 N.J. 601, 608 (2010).

"When the aggravating and mitigating factors are identified, supported by competent, credible evidence in the record, and properly balanced, we must affirm the sentence," provided it does not violate the sentencing guidelines or "shock the judicial conscience." State v. Case, 220 N.J. 49, 65 (2014) (quoting State v. Roth, 95 N.J. 334, 365 (1984)); accord Fuentes, 217 N.J. at 70. We do not substitute our judgment for that of the sentencing court. Fuentes, 217 N.J. at 70.

If a trial court "fails to provide a qualitative analysis of the relevant sentencing factors on the record, [we] may remand for resentencing." Ibid. "[We] may also remand for resentencing if the trial court considers an aggravating factor that is inappropriate to a particular defendant or to the offense at issue." Ibid.

However, when an "appeal challenges not the application of permissible considerations, but rather the permissibility of the considerations the sentencing court applied," such as "the consideration of acquitted conduct," "a question of law" is presented, and "our review is therefore de novo." State v. Melvin, 248 N.J. 321, 341 (2021) (citing State v. Tillery, 238 N.J. 293, 314 (2019)). In Melvin, and its companion case, State v. Paden-Battle, 248 N.J. 321 (2021), the trial judge made factual findings that contradicted those made by the juries in acquitting the defendants. Melvin, 248 N.J. at 349-51. The Court noted "'special weight' conferred by a jury's acquittal." Id. at 342 (quoting United States v. DiFrancesco, 449 U.S. 117, 129 (1980)). "Even if the verdict is 'based upon an egregiously erroneous foundation,' Fong Foo v. United States, 369 U.S. 141, 143 (1962), its finality is unassailable," Yeager v. United States, 557 U.S. 110, 122-23 (2009); accord, Melvin, 248 N.J. at 342.

The Court held the due process principles inherent in Article I, Paragraph 1 of the New Jersey Constitution and the doctrine of fundamental fairness protected the defendant in each case from the sentencing court's improper use of facts related to acquitted conduct to enhance a sentence. Id. at 347-52. The Court reasoned:

> Our Constitution's guarantee of the right to a criminal trial by jury is "inviolate." N.J. Const. art. I, ¶ 9. In order to protect that right, we cannot allow the finality of a jury's not-guilty verdict to be put into

> question. To permit the re-litigation of facts in a criminal case under the lower preponderance of the evidence standard would render the jury's role in the criminal justice process null and would be fundamentally unfair. In order to protect the integrity of our Constitution's right to a criminal trial by jury, we simply cannot allow a jury's verdict to be ignored through judicial fact-finding at sentencing. Such a practice defies the principles of due process and fundamental fairness.
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> [Id. at 349.]

Thus, a defendant "retain[s] the presumption of innocence for any offenses of which he was acquitted." Id. at 350.

Defendant argues that applying aggravating factor one is prohibited double counting. We disagree. Aggravating factor one applies if the offense "was committed in an especially heinous, cruel, or depraved manner." N.J.S.A. 2C:44-1(a)(1). In analyzing aggravating factor one, "a sentencing court must scrupulously avoid 'double-counting' facts that establish the elements of the relevant offense." Fuentes, 217 N.J. at 74-75. However, "a sentencing court may justify the application of aggravating factor one, without double-counting, by reference to the extraordinary brutality involved in an offense." Id. at 75.

"Passion/provocation manslaughter has four essential elements: '[1] the provocation must be adequate; [2] the defendant must not have had time to cool off between the provocation and the slaying; [3] the provocation must

have actually impassioned the defendant; and [4] the defendant must not have actually cooled off before the slaying.'" State v. Carrero, 229 N.J. 118, 129 (2017) (alterations in original) (quoting State v. Mauricio, 117 N.J. 402, 411 (1990)). The State bears the burden of disproving passion/provocation manslaughter. State v. Supreme Life, 473 N.J. Super. 165, 175 (App. Div. 2022); accord State v. Vasquez, 265 N.J. Super. 528, 541 (App. Div. 1993).

The jury was instructed:

> If you determine that the State has proven beyond a reasonable doubt that there was not adequate provocation or that the provocation did not actually impassion the defendant or that the defendant had a reasonable time to cool off or that the defendant actually cooled off, and in addition to proving beyond a reasonable doubt that at least one of these factors was not present, you determine that the State has proven beyond a reasonable doubt that defendant purposely or knowingly caused death or serious bodily injury resulting in death, you must find defendant guilty of murder.
>
> If, on the other hand, you determine that the State has not disproved at least one of the factors of passion/provocation manslaughter beyond a reasonable doubt, but that the State has proven beyond a reasonable doubt that defendant purposely or knowingly caused death or serious bodily injury resulting in death, then you must find him guilty of passion/provocation manslaughter.

When analyzing whether extraordinary brutality is present in a manslaughter case, sentencing courts should consider whether a defendant

intended "to inflict pain, harm and suffering—in addition to intending death." Fuentes, 217 N.J. at 75 (quoting State v. O'Donnell, 117 N.J. 210, 217-18 (1989)). The trial court considered these exact criteria, and its conclusions were based on competent evidence in the record. Defendant's claim of double counting is misguided.

Defendant next argues that contrary to the jury's verdict, the court found that defendant "was not reasonably provoked to passion and had sufficient intervening time for reason to intercede before he brutally killed Mr. Tremarco." The court relied on our analysis in State v. Teat, where we stated:

> [It is not required] that a judge sentencing a defendant for passion/provocation manslaughter [to] treat the jury's guilty verdict as a finding of fact that the defendant was reasonably provoked to passion and committed the homicide before reason had sufficient time to regain its sway, which would preclude the application of inconsistent aggravating factors. . . . A jury's reasonable doubt that the State disproved the mitigating elements of passion/provocation manslaughter is not the equivalent, for sentencing purposes, of an affirmative finding of fact that the defendant was reasonably provoked to passion and killed before reason had sufficient time to regain its sway.
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> It is therefore proper—and consistent with the verdict—for a judge sentencing a defendant for passion/provocation manslaughter to find as an aggravating factor in an appropriate case, that the provocation to kill was slight or that reason had sufficient time to regain its sway before the defendant killed.

[233 N.J. Super. 368, 373 (App. Div. 1989).]

While our analysis in Teat supports the trial court's position, it is inconsistent with Melvin, which held that "acquitted conduct" could not be "considered in sentencing defendants." 248 N.J. at 349, 352. In Melvin, the Court held:

> that the findings of juries cannot be nullified through lower-standard fact findings at sentencing. The trial court, after presiding over a trial and hearing all the evidence, may well have a different view of the case than the jury. But once the jury has spoken through its verdict of acquittal, that verdict is final and unassailable. The public's confidence in the criminal justice system and the rule of law is premised on that understanding. Fundamental fairness simply cannot let stand the perverse result of allowing in through the back door at sentencing conduct that the jury rejected at trial.
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> [Id. at 352.]

Melvin silently overruled Teat.

Here, because the State failed to disprove passion/provocation manslaughter, defendant was convicted of that lesser-included offense. Nevertheless, at sentencing, the trial court found that "defendant [] was not reasonably provoked to passion and had sufficient intervening time for reason to intercede before he brutally killed Mr. Tremarco." This constituted

impermissible judicial fact-finding at sentencing that Melvin declared violated fundamental fairness. Ibid.

To be clear, if the jury had found inadequate provocation or sufficient time to cool off, defendant would have been convicted of murder. The jury did not make that finding. It was therefore improper for the trial court to engage in judicial factfinding to reach a different conclusion and to consider those facts in sentencing defendant.

We recognize that "[t]he benefit a defendant receives when passion/provocation is established . . . is not an outright acquittal . . . rather, a homicide that otherwise would be first-degree murder is mitigated to manslaughter." State v. Canfield, 470 N.J. Super. 234, 277 (App. Div. 2022). But see Carrero, 229 N.J. at 121 ("We find that the trial testimony present[ed] a rational basis on which the jury could acquit defendant of murder but convict him of passion/provocation manslaughter."). The jury's verdict precluded the court from finding defendant "was not reasonably provoked to passion" and had sufficient time to cool-off as part of its sentencing analysis.

Melvin recognized the Court had never previously considered whether acquitted conduct could be considered at sentencing and announced a new rule of law. 248 N.J. at 352. We conclude the new rule adopted in Melvin should have at least pipeline retroactivity, "rendering it applicable in all future cases,

the case in which the rule [was] announced, and any cases still on direct appeal." State v. Cummings, 184 N.J. 84, 98 (2005) (quoting State v. Knight, 145 N.J. 233, 249 (1996)).

The trial court erred when it made findings inconsistent with the jury's verdict. These findings were used when analyzing whether aggravating factor one applied and the weight it was afforded. We therefore conclude that resentencing is necessary and direct the trial court to reconsider this factor based on appropriate criteria. See State v. Dalziel, 182 N.J. 494, 501-02 (2005) (stating that if the "proper legal principles have not been applied or the facts found by [a] judge are not supported by the record, it is not for us to agree or disagree with the sentence; it is for the judge to resentence, applying the correct sentencing guidelines to the facts of record"). On remand, the court shall not consider the degree of provocation or whether defendant had sufficient time to cool off.

Defendant also argues that the court erred by finding aggravating factor four. In the context of this case, aggravating factor four applies if "the defendant took advantage of a position of trust or confidence to commit the offense." N.J.S.A. 2C:44-1(a)(4) (emphasis added). Notably, at sentencing the State did not argue aggravating factor four applied. The court nevertheless found it applied, reasoning that defendant was "in a position of authority, trust

and confidence in terms of his youthful and far less mature cousin," and he took advantage of that position when concealing the crime. The court concluded that a "plain reading of the language in aggravating factor four" required its application. We disagree.

Alvarez did not help commit the manslaughter or weapons offenses. As the sentencing court recognized, he only helped "conceal the crime after the fact." Importantly, defendant was acquitted of hindering apprehension.

More fundamentally, the "position of trust or confidence" must relate to the victim, not to a minor assisting defendant operate the shop, who participates in an attempted coverup of the crime.

The court erred in applying aggravating factor four. For this additional reason, resentencing is necessary. On remand, the court shall not consider aggravating factor four.

Regarding aggravating factor three, "sentencing courts frequently look to the defendant's criminal history" when determining "whether a defendant is likely to offend in the future." State v. Rivera, 249 N.J. 285, 300 (2021). Nevertheless, "the absence of a criminal record will not preclude application of aggravating factor three so long as it is supported by other credible evidence in the record." Ibid. "For example, a sentencing judge may reasonably find

aggravating factor three when presented with evidence of a defendant's lack of remorse or pride in the crime." Ibid.

Here, the court explained that "defendant's deliberate and extensive efforts of concealment," his "lack of remorse," and the fact that he "was quite easily provoked to brutal rage followed immediately by cool, methodical, self-interest," showed that "defendant pose[d] a risk of reoffending." The court gave aggravating factor three "significant weight" despite finding mitigating factor seven and giving it "moderate weight."

"In exceptional circumstances, courts may find it necessary to apply seemingly contradictory aggravating and mitigating factors, such as aggravating factor three and mitigating factor seven." Rivera, 249 N.J. at 300-01 (citing Fuentes, 217 N.J. at 80). "When doing so, the sentencing court must 'explain how it reconciles those two findings,'" id. at 301 (quoting Fuentes, 217 N.J. at 81), by providing a "detailed, reasoned explanation . . . ," ibid. (citing Case, 220 N.J. at 67).

Defendant had no prior juvenile or criminal history and no criminal history in the decade following the homicide. He expressed some remorse during his allocution. The jury convicted defendant of passion/provocation manslaughter, not murder. On remand, the court shall reconsider whether aggravating factor three applies, and if so, the weight to be given to it. It shall

"explain how it reconciles" its findings of aggravating factor three and mitigating factor seven "by providing greater detail as to the weight assigned to each aggravating and mitigating factor and how those factors are balanced with respect to the defendant." Ibid. (quoting Fuentes, 217 N.J. at 81).

We find no abuse of discretion or legal error in the application or weighing of aggravating factor nine, or the rejection of mitigating factor nine.

Finally, defendant was twenty-one years old when he committed the offense. Mitigating factor fourteen applies if the defendant was under twenty-six years old at the time the offense was committed. N.J.S.A. 2C:44-1(b)(14). Because defendant will be resentenced, mitigating factor fourteen shall be applied and given appropriate weight on remand. See State v. Lane, 251 N.J. 84, 97 n.3 (2022) (stating that mitigating factor fourteen applies "not only to defendants sentenced for the first time on or after October 19, 2020, but also to defendants resentenced on or after that date for reasons unrelated to mitigating factor fourteen").

Vacated and remanded for resentencing. We do not retain jurisdiction.