SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0819-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUAN ABBOTT,
a/k/a JUAN ABBOT,

Defendant-Appellant.

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Submitted December 12, 2022 – Decided December 21, 2022

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 12-10-0792.

Joseph E. Krakora, Public Defender, attorney for appellant (Frank M. Gennaro, Designated Counsel, on the brief).

Camelia M. Valdes, Passaic County Prosecutor, attorney for respondent (Ali Y. Ozbek, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Juan Abbott appeals from his convictions for second-degree sexual assault, N.J.S.A. 2C:14-2(b), and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(1). He also challenges his sentence. We affirm.

Defendant's offenses occurred in 2012. The victim was a seven-year-old child who resided with a sister, brother, and mother in a two-story apartment, which they shared with defendant and his spouse. Despite the lack of a blood relation, the children referred to defendant as "Tío"[1] or "Uncle Juan." The children's mother worked long hours and often relied on a neighbor to pick the children up from school and watch them until she returned home.

On March 30, 2012, the victim confided in one of the neighbor's daughters that defendant asked her to give him a massage and she touched defendant's penis. The neighbor's daughter told her mother who then discussed it with her own mother. Both women waited for the victim's mother to return from work and informed her of the incident. The victim's mother reported it to the Passaic Police Department.

Child Interview Specialist, Gisselle Henriquez, from the Passaic County Prosecutor's Office, interviewed the victim who shared details about two other

[1] "Tío" is the Spanish word for "uncle." See Translation of Tío from Spanish to English, Google Translate, https://translate.google.com/?sl=es&tl=en&text=t%C3%ADo&op=translate.

incidents involving defendant. The victim stated she was plucking and combing defendant's facial hair, while sitting on his lap, and he placed his hand on her vagina and started rubbing it. He then placed his hands inside her pants and removed his hands when his wife entered the room. She could not remember whether defendant put his hands inside her underwear. On another occasion, defendant called the victim into his bedroom. When she entered, she found defendant with his pants on the floor. Defendant forced her to masturbate him, and she stated he released "something white" from his penis, which fell onto her foot and her hands. The child went to the bathroom to wash her hands, defendant followed her, forced her to kiss his penis, and she left the bathroom crying.

In May 2020, Passaic County Prosecutor's Office Detective Maria Ingraffia and another detective went to defendant's residence to ask if he would come to the Prosecutor's Office for questioning. Defendant complied. Once there, Detective Ingraffia asked defendant if he preferred conducting the interview in English or Spanish. Defendant stated if he did not understand a question, he would respond in Spanish, and in the meantime, would proceed in English. Detective Ingraffia read defendant his Miranda[2] rights and he verbally waived them.

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

Initially, defendant denied the allegations. Detective Ingraffia told defendant she believed he was a good man who probably made a mistake. When she learned defendant was Catholic like her, she told him to "do the right thing" and he could be "forgiven" if he confessed. Defendant then stated he may have touched the child's vagina unintentionally. He continued to disclose more details, but the detective was unpersuaded. Eventually, he stated the victim came to his bedroom while he was masturbating and that he orgasmed but denied forcing the child to masturbate him. Defendant began crying and was subsequently arrested.

Following a grand jury indictment, defendant filed pre-trial motions, including a motion to suppress his statement to Detective Ingraffia. He argued the statement was not voluntary because the detectives never told him why they wanted to question him or informed him of the charges against him prior to questioning. Judge Marybel Mercado-Ramirez conducted a two-day hearing, considered testimony from Detective Ingraffia, and reviewed the video recording of defendant's interview and police reports.

The judge made extensive findings. She noted the video recording was "approximately two hours and [fifty] minutes long." Defendant appeared "relaxed and at ease. He rests, naps, and is heard breathing deeply, apparently

falling into a deep sleep." Detectives offered defendant something to drink and granted his request to step out of the interview room to smoke. When defendant returned to the room, the judge noted he was resting and relaxed "closing his eyes, napping[,] and falling asleep." Detective Ingraffia entered the room and began the interview "approximately [forty] minutes into the recording . . . ." After defendant confirmed he would converse with the detective in English, she presented him with the Miranda forms in both English and Spanish and read each question aloud to defendant as he followed along on his copy. The judge detailed how defendant responded verbally, acknowledging each right as the detective read through the form. She concluded defendant waived his rights and agreed to speak with detectives.

The judge noted when defendant asked the detective why he was at the Prosecutor's Office, she did not tell him. Nonetheless, the interview continued, and the judge found "defendant respond[ed] coherently, cogently, and on topic in response to the questions posed."

The judge concluded the evidence showed defendant "was subject to a custodial interrogation. . . . [H]e was detained at the Prosecutor's Office for approximately three hours. He was in a room with a couple of chairs and two doors. . . . [H]e could not open the doors or walk out." When defendant asked

to leave to smoke a cigarette he was escorted outside. "As a result, it appears that he knew that he could not leave the room without police to smoke a cigarette."

The judge found the interview lasted two hours and Detective Ingraffia's "demeanor was professional, calm[,] and persistent throughout . . . . She did not raise her voice or speak in a harsh or unfriendly tone towards [defendant]." Further, defendant "was calm and cooperative throughout the interview and at times got upset and cried . . . , but . . . it was not due to Detective Ingraffia's behavior or manner of questioning."

Addressing other relevant factors, the judge noted defendant was fifty-eight years old, "[a]ble to communicate in two languages, . . . a long-time resident of the United States, . . . with no known previous encounters with law enforcement. He appeared of reasonable intelligence, . . . borne out by his extensive discussion with Detective Ingraffia . . . ."

The judge found defendant was not detained for a lengthy period because "[t]here is no lapse of time between the warnings and questioning[,]" the questioning was not prolonged and "did not involve physical or mental abuse, and in fact, [defendant] towered in both size and weight over Detective

Ingraffia." The judge concluded defendant "knowingly, intelligently[,] and voluntarily waived his rights, and . . . his waiver was the product of free will."

The judge found detectives were not required to advise defendant why they sought to question him or that he was a suspect in a criminal investigation. This had no effect on the voluntariness of his Miranda waiver. Moreover, Detective Ingraffia testified "that an arrest warrant or criminal complaint was not issued until after a review of defendant's statement with assistant prosecutors or her superiors." The judge found the detective's testimony was "credible and reasonable, in that law enforcement needed to hear what defendant had to say if he agreed to speak with them before making a charging decision."

In 2018, the judge presided over an eight-day jury trial. The State presented the video of defendant's interview and adduced testimony, including from the victim and Dr. Anthony D'Urso, an expert in clinical psychology, who testified regarding Child Sexual Abuse Accommodation Syndrome (CSAAS). Defendant called his wife and a character witness to testify on his behalf.

The CSAAS testimony became necessary because when the prosecutor asked the victim why she did not disclose the abuse allegations sooner, she responded she could not remember why. The State called Dr. D'Urso to explain to the jury why the victim would delay reporting the abuse. The judge noted our

Supreme Court had recently decided State v. J.L.G., which held CSAAS testimony is inadmissible, except if it was necessary pursuant to N.J.R.E. 702, and then only to explain a child victim's delayed disclosure of sexual abuse. 234 N.J. 265, 304, 308 (2018). The judge concluded an N.J.R.E. 104 hearing was necessary prior to determining whether expert testimony was required here.

At the hearing, Dr. D'Urso testified the scientific and academic community generally accepted that children delay disclosure of sexual abuse. He testified "there is not one credible study in the world that says kids typically tell after the first explicit act of sexual behavior." Further, children

> tell . . . a variety of people. . . . So, they may tell factual things or things about what happened to a detective. They may talk about their body to a pediatrician. They may talk about their emotions with a psychologist. They may talk about family to a caseworker. So, you're going to get different aspects of the abuse process. depending upon who the child sees. . . . [T]here [are] going to be things they remember, things they forget and things that they segregate to [whomever] they're speaking to.

Dr. D'Urso explained children often have piecemeal disclosure, meaning they

> will tell different aspects of the abuse at different times, so they're not going to be able to remember every aspect of the harm that's accrued to them, or the sexual assaults that have occurred. . . . So, piecemeal disclosure says that as they become more comfortable, they may tell

> different parts about the abuse, as they remember more, as they enter therapy they may remember things that they failed to tell the first time.

Citing several studies of child sexual abuse victims over decades, Dr. D'Urso noted the studies found "the greater the [degree of] relationship [to the perpetrator], the more likely [the revelation of abuse] would be delayed." Also, "the severity of abuse was another factor . . . ." Dr. D'Urso explained his testimony would provide the jury "a backdrop of educative information about the dynamics of child sexual abuse and how those dynamics may differ or be counter intuitive to the sexual assault that an adult experiences."

Following the hearing, Judge Mercado-Ramirez made detailed oral findings regarding the necessity for expert testimony to explain the victim's delayed disclosure. She found Dr. D'Urso "extremely knowledgeable about the area and counsel has also conceded that he has the expertise and knowledge . . . ." The judge concluded it was beyond the ken of an average juror to understand the victim's testimony that she did not remember why she delayed in disclosing the abuse. Crediting Dr. D'Urso's testimony, the judge found he provided a generally accepted scientific reason why children delay disclosing abuse and stating the scientific community "all agree that delayed disclosure is reliable, it is accepted, scientifically studied[,] and found to be reliable." The

judge noted J.L.G. referenced scientific studies, which "undergirded" the Court's decision. She concluded the doctor's testimony did not touch upon the CSAAS factors invalidated by J.L.G., and the science relied upon by the doctor was reliable and the testimony would be permitted.

Following defendant's conviction, the judge sentenced him on the second-degree sexual assault conviction to seven years in prison subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, and a concurrent three-year flat term on the third-degree endangering the welfare of a child conviction. The judge reviewed the pre-sentence report, the Avenel evaluation, counsel's arguments, defendant's statements, and his wife's statements at sentencing and her trial testimony.

The judge found aggravating factor three, N.J.S.A. 2C:44-1(a)(3), noting defendant was at risk of re-offense because he had multiple out-of-state arrests between 1994 and 2008 and was charged with burglary, aggravated battery, assault, contempt of court, and theft by unlawful taking. Although defendant maintained his innocence when interviewed for the pre-sentence report and for the Avenel evaluation, the judge noted the jury did not believe he "was masturbating in his room, and the child walked in and wanted to partake in it . . . ." She concluded defendant's lack of insight showed "there's certainly a risk of re-offense here."

Aggravating factor four, N.J.S.A. 2C:44-1(a)(4), applied because defendant used his position of trust or confidence to commit his crimes. She noted the victim and her family had immigrated "a very short time prior to the onset of abuse." The victim's mother had to work long hours and entrusted the children to defendant and his wife, and instead of finding safety, defendant took advantage of his position to abuse the victim. The victim and her family were "particularly vulnerable" because of a language barrier and reliance on defendant's family, "who has been here much longer than them and understood how it worked in the United States . . . ."

The judge found aggravating factor nine, N.J.S.A. 2C:44-1(a)(9). She concluded the need to deter defendant and others from committing such crimes was "an understatement . . . in light of the circumstances of sexual assault of a child . . . ."

The judge found mitigating factor seven, N.J.S.A. 2C:44-1(b)(7), because although defendant had arrests, he had no convictions and led a law-abiding life prior to this offense. Mitigating factor eleven, N.J.S.A. 2C:44-1(b)(11), applied because defendant's incarceration caused a hardship on his wife who was "now left in a very precarious situation."

Defendant raises the following points on appeal:

POINT ONE DEFENDANT'S STATEMENT WAS NOT MADE VOLUNTARILY, AS THE INTERROGATOR EMPLOYED PSYCHOLOGICAL COERCION TO OVERCOME DEFENDANT'S WILL, AND THEREFORE SHOULD HAVE BEEN SUPPRESSED BY THE TRIAL COURT.

POINT TWO THE ADMISSION OF EXPERT TESTIMONY AS TO THE DELAYED DISCLOSURE COMPONENT OF [CSAAS] WAS REVERSIBLE ERROR.

POINT THREE THE PROSECUTOR'S COMMENTS DURING SUMMATION[,] WHICH IMPROPERLY VOUCHED FOR THE CREDIBILITY OF THE VICTIM AND IMPROPERLY COMMENTED ON THE FAILURE OF DEFENDANT TO TESTIFY CONSTITUTED MISCONDUCT[,] WHICH DENIED DEFENDANT A FAIR TRAIL (Not Raised Below).

POINT FOUR DEFENDANT'S SEVEN[-]YEAR SENTENCE IS EXCESSIVE.

I.

In Point One, defendant argues the judge should have granted the motion to suppress his statements to Detective Ingraffia. He asserts his statement was not voluntary because the detective psychologically coerced him by appealing to religion to extract a confession. Also, the detective minimized the gravity of the circumstances to gain his confession by suggesting defendant was a "good

and honest person who simply made a 'mistake,' and that mistakes were understandable."

We defer to the factual findings of the trial court on a suppression motion when they are supported by sufficient credible evidence in the record. State v. Sims, 250 N.J. 189, 210 (2022); State v. Nyhammer, 197 N.J. 383, 409 (2009) (citing State v. Elders, 192 N.J. 224, 243-44 (2007)). This is "because the findings of the trial judge . . . are substantially influenced by [their] opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy." State v. Reece, 222 N.J. 154, 166 (2015) (internal quotations omitted) (first alteration in original) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). We review the legal conclusions drawn from the facts de novo. State v. Radel, 249 N.J. 469, 493 (2022); State v. Hubbard, 222 N.J. 249, 263 (2015).

The right against self-incrimination is guaranteed by the Fifth Amendment of the United States Constitution and New Jersey law. See U.S. Const. amend. V; N.J.S.A. 2A:84A-19; N.J.R.E. 503. "The administration of Miranda warnings ensures that a defendant's right against self-incrimination is protected in the inherently coercive atmosphere of custodial interrogation." State v. A.M., 237 N.J. 384, 397 (2019).

To admit a statement obtained during a custodial interrogation, "the State must 'prove beyond a reasonable doubt that the suspect's waiver was knowing, intelligent, and voluntary in light of all the circumstances.'" State v. Tillery, 238 N.J. 293, 316 (2019) (quoting State v. Presha, 163 N.J. 304, 313 (2000)); see also Nyhammer, 197 N.J. at 405, n.11. In order to determine whether a defendant's statements were voluntary, the court considers "the totality of circumstances . . . ." A.M., 237 N.J. at 398. These include a 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." Nyhammer, 197 N.J. at 402 (quoting Presha, 163 N.J. at 313).

"A court may consider on a case-by-case basis attendant circumstances such as the length of the interrogation, the place and time of the interrogation, the nature of the questions, the conduct of the police and all other relevant circumstances." State v. Choinacki, 324 N.J. Super. 19, 44 (App. Div. 1999) (citations omitted). An investigator's statements must not be "manipulative or coercive[,]" because it could deprive a defendant of their "ability to make an unconstrained, autonomous decision to confess." State v. Di Frisco, 118 N.J. 253, 257 (1990) (quoting Miller v. Fenton, 796 F.2d 598, 605 (3d Cir.), cert.

denied, 479 U.S. 989 (1986)). "Efforts by a law enforcement officer to persuade a suspect to talk 'are proper as long as the will of the suspect is not overborne.'" State v. Maltese, 222 N.J. 525, 544 (2015) (quoting State v. Miller, 76 N.J. 392, 403 (1978)). A false promise of leniency is not an inherently coercive lie. State v. L.H., 239 N.J. 22, 44 (2019) (noting a false promise of lenience may be coercive if the lie, "under the totality of the circumstances, ha[s] the capacity to overbear a [defendant]'s will").

Pursuant to these principles, we affirm substantially for the reasons expressed in the judge's oral opinion denying the motion to suppress. As she found, defendant's Miranda waiver was knowing, voluntary, and intelligent. The totality of the circumstances did not demonstrate defendant's will was overborne. Our Supreme Court has held police are permitted to appeal to a defendant's "sense of decency" and urge them "to tell the truth for [their] own sake." L.H., 239 N.J. at 44 (citing Miller, 76 N.J. at 405).

Therefore, Detective Ingraffia's statement defendant was "a good person who had made a mistake" was appropriate. The detective's use of defendant's religion is a different inquiry.

Both parties cite Brewer v. Williams, a case involving a defendant who left a mental health facility, abducted, and murdered a ten-year old child in Des

Moines, Iowa. 430 U.S. 387, 390 (1977). A warrant was issued for defendant's arrest, and he turned himself into police 160 miles away, in Davenport, Iowa. Ibid. Davenport authorities Mirandized the defendant. Ibid. Des Moines police informed defense counsel they would pick the defendant up from Davenport and assured counsel they would not interrogate the defendant. Id. at 390-91. When the officers arrived to transport the defendant, he at no point expressed a willingness to be interrogated in the absence of an attorney. Id. at 392.

One of the officers knew the defendant suffered from mental health issues and was deeply religious. Ibid. So, on their drive back to Des Moines, the officer told the defendant not to discuss anything with him but to consider the state of the victim's body and whether she should be given a proper "Christian burial." Id. at 392-93. The defendant directed police to the child's body. Id. at 393.

The United States Supreme Court found a Miranda violation because the defendant was in custody when the officer discussed the whereabouts of the victim's body with him. Id. at 397. The Court held the defendant's statements were not voluntarily. Ibid.

The parties also cite State v. Elysee, 159 N.J. Super. 380 (App. Div. 1978). There, the defendant spoke Creole and advised police he wanted to conduct all

communications with them in Creole. Id. at 388. Police used a Creole interpreter whom they had advise the defendant of his Miranda rights and the defendant signed a form waiving his rights. Id. at 388-89. During the interrogation, the interpreter learned the defendant had killed a family member. Id. at 389. She informed the defendant "she was a Jehovah's Witness and asked him, 'Don't you feel guilty—you did that . . . ? Do you have the right to do that?'" Ibid.

The trial court suppressed defendant's subsequent confession to the murder, and we reversed, holding the trial judge relied heavily "upon the incidental reference to God or religion . . . during the police questioning." Id. at 392. We held "[t]here [was] no evidence of unfair or improper tactics by police involving the invocation of religion or other facets of persuasion from which a court could conclude that the giving of the statement was coerced so as to be inadmissible." Ibid. The interpreter's reference to the defendant's guilt was made "without complicity by the police . . . ." Ibid.

In Berghuis v. Thompkins, the United States Supreme Court found no reversible error when a police officer appealed to a defendant's religious beliefs to obtain a confession. 560 U.S. 370, 386-89. The defendant was Mirandized, however, he remained silent throughout a two hour and forty-five-minute

interrogation, with limited yes and no responses. Id. at 385. Police asked the defendant whether he believed and "pray[ed] to God." Id. at 376. The defendant ultimately confessed and moved to suppress his statements. Ibid. The Court held the defendant waived his right to remain silent because he did not affirmatively invoke his right to remain silent, however, it also found police did not coerce the defendant into making a confession by referencing religious beliefs. Id. at 386-87.

Brewer is inapposite because there the defendant invoked his Miranda rights, whereas here, defendant expressly waived them. The totality of the circumstances do not convince us Detective Ingraffia's invocation of defendant's faith was inherently coercive such that his will was overborne. Further, the detective's comments were unlike the interpreter's accusatory questions in Elysee, and more like Berghuis. Indeed, Detective Ingraffia referenced a faith she and defendant shared to persuade and relate to him,[3] much like an officer would do using other means such as a shared upbringing or shared fondness for

[3] Although our decision is not predicated on this theory, some have noted that another court has held "[r]eligious influence and religious exhortation preceding a confession have been thought not only unobjectionable but indicative of the trustworthiness of the confession." Richard E. Durfee, Jr., The Constitutional Admissibility of Confessions Induced by Appeals to Religious Belief, 4 BYU J. Pub. L. 219, 229 (1990) (citing Davis v. North Carolina, 339 F.2d 770, 776 (4th Cir. 1964), rev'd on other grounds, 384 U.S. 737 (1966)).

a place, sport, hobby, or other thing. We are satisfied the totality of the circumstances show the judge's denial of the motion to suppress was not abuse of discretion.

II.

In Point Two, defendant argues for a new trial because the admission of Dr. D'Urso's testimony prejudiced the outcome of his case. He asserts the reasons for the victim's delayed disclosure did not warrant explanation by an expert and deprived him of a fair trial.

We owe deference to a trial court's credibility and factual findings regarding expert witnesses if the findings are supported by the substantial credible evidence in the record. J.L.G., 234 N.J. at 301. No deference is owed to a court's legal conclusions regarding the admission of expert testimony. Ibid.

In J.L.G. our Supreme Court "reassess[ed] the scientific underpinning of CSAAS evidence[,]" and narrowed the scope of CSAAS expert testimony in criminal trials. Id. at 288. The Court ultimately "rejected the use of CSAAS evidence—with the exception of certain testimony concerning delayed disclosure—as lacking 'a sufficiently reliable basis in science to be the subject of expert testimony.'" State v. G.E.P., 243 N.J. 362, 369 (2020) (quoting J.L.G., 234 N.J. at 272). The Court held "testimony should not stray from explaining

that delayed disclosure commonly occurs among victims of child abuse, and offering a basis for that conclusion." J.L.G., 234 N.J. at 303. Consistent with N.J.R.E. 702, trial courts must determine whether delayed disclosure was "beyond the ken of the average juror." Id. at 304-05.

Having thoroughly reviewed the record pursuant to these principles, we are satisfied the judge's decision to admit Dr. D'Urso's testimony was neither an abuse of discretion nor a mistaken application of the law. The judge's findings in this regard are unassailable and defendant's arguments to the contrary lack merit. R. 2:11-3(e)(2).

III.

In Point Three, defendant alleges prosecutor misconduct occurred during summation because the prosecutor commented on defendant's failure to testify and improperly vouched for the victim's credibility. Defendant contends we should order a new trial based on the following passage:

> But do you know what we do have? We have the defendant's own word in his interrogation, and we have [the victim's] own testimony here, live, in front of you, and also in the forensic interview, and you can assess because they both have—the defendant has a different version and you can ask yourself, well, who is worthy of belief here. Who has an interest in the outcome of the case? The defendant who's facing trial or this child that really gains nothing coming here from Pennsylvania to testify about things, horrible things

> that happened to her when she was seven years old? Who testified with the intent to deceive you? Not [the victim]. She's worthy of belief.

Generally, "[p]rosecutors are afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented." State v. Patterson, 435 N.J. Super. 498, 508 (App. Div. 2014) (quoting State v. R.B., 183 N.J. 308, 332 (2005)). Prosecutorial misconduct justifies reversal where the misconduct was so egregious as to deprive the defendant of a fair trial. State v. Smith, 167 N.J. 158, 181 (2001).

"In deciding whether prosecutorial conduct deprived a defendant of a fair trial, 'an appellate court must take into account the tenor of the trial and the degree of responsiveness of both counsel and the court to improprieties when they occurred.'" State v. Williams, 244 N.J. 592, 608 (2021) (quoting State v. Frost, 158 N.J. 76, 83 (1999)). "Factors to be considered in making that decision include, '(1) whether defense counsel made timely and proper objections to the improper remarks; (2) whether the remarks were withdrawn promptly; and (3) whether the court ordered the remarks stricken from the record and instructed the jury to disregard them.'" Ibid. (quoting Frost, 158 N.J. at 83). Reversal is appropriate only where the prosecutor's actions are "clearly and unmistakably improper" to "deprive defendant of a fair trial." Patterson, 435 N.J. Super. at

508 (quoting State v. Wakefield, 190 N.J. 397, 437-38 (2007), cert. denied, 552 U.S. 1146 (2008)). "In reviewing closing arguments, we look, not to isolated remarks, but to the summation as a whole." State v. Atwater, 400 N.J. Super. 319, 335 (App. Div. 2008).

At the outset, we note although the defense objected elsewhere in the State's summation, the allegedly improper comment highlighted to us on appeal did not draw an objection. More importantly, the prosecutor made no comment about defendant not testifying and did not ask the jury to draw a negative inference therefrom. Taken in context, it is clear to us the prosecutor was addressing credibility. In this regard, the prosecutor neither substituted her own opinion nor bolstered the victim's testimony, and her comments did not constitute misconduct or reversible error.

IV.

Finally, in Point Four defendant argues the sentence was excessive. He claims the judge erred in applying aggravating factor three, N.J.S.A. 2C:44-1(a)(3), because there was no evidence to support the finding he was at risk of re-offending. He points out his lack of prior convictions.

Our review of a sentencing decision is limited. State v. Miller, 205 N.J. 109, 127 (2011). We do "not substitute [our] judgment for that of the trial court."

State v. Burton, 309 N.J. Super. 280, 290 (App. Div. 1998). We "must affirm the sentence of a trial court unless: (1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based upon competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v. Bolvito, 217 N.J. 221, 228 (2014) (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).

Pursuant to these principles and our thorough review of the sentencing record, we affirm for the reasons expressed by the judge. Defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.