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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2661-18**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

NATHANIEL YOUNG, JR.,  
a/k/a NATHANIEL YOUNG,  
and NATE E. YOUNG,

Defendant-Appellant.

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Submitted November 7, 2022 – Decided December 7, 2022

Before Judges Mayer and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law  
Division, Union County, Indictment No. 15-12-0812.

Hegge & Confusione, LLC, attorneys for appellant  
(Michael Confusione, of counsel and on the briefs).

William A. Daniel, Union County Prosecutor, attorney  
for respondent (Milton S. Leibowitz, Assistant  
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Nathaniel Young, Jr. appeals from a December 11, 2018 judgment of conviction for murder, robbery, possession of a weapon for an unlawful purpose, and aggravated assault. He also challenges the sentence imposed. We affirm the convictions and sentence.

A Union County grand jury charged defendant with first-degree murder, N.J.S.A. 2C:11-3(a)(1) and/or (2) (count one); first-degree felony murder, N.J.S.A. 2C:11-3(a)(3) (count two); first-degree robbery, N.J.S.A. 2C:15-1 (count three); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count four); and second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (count five).

Prior to trial, defendant filed a motion to compel discovery, asserting a Brady<sup>1</sup> violation. On November 17, 2017, the judge denied defendant's discovery motion. Defendant also filed a motion to suppress evidence obtained by way of a communications data warrant (CDW) and requested a Franks<sup>2</sup> hearing. On September 18, 2018, the judge denied defendant's suppression motion and declined to conduct a Franks hearing.

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<sup>1</sup> Brady v. Maryland, 373 U.S. 83 (1963).

<sup>2</sup> Franks v. Delaware, 438 U.S. 154 (1978).

The matter proceeded to trial before a jury on September 10, 2018, and concluded on October 29, 2018. The jury found defendant guilty on all charges.

I.

We recite the facts leading to defendant's conviction based on the testimony from the motion hearings and trial. At 10:45 p.m. on August 25, 2015, a local taxi service dispatcher received a call from a man requesting a ride from Bedford Street to Washington Street in Rahway. The dispatcher sent a taxicab driven by Imad Alasmar to transport the caller.

Around that same time, Stacy Lopez and her boyfriend sat in a parked car outside Lopez's house on Bedford Street. According to her trial testimony, Lopez noticed "an African-American male with shoulder length dreadlocks wearing a white shirt and like cargo shorts-ish pants-ish" walking on Bedford Street. Lopez did not recognize the man as someone from the neighborhood.

Shortly thereafter, Lopez saw a taxicab turn onto Bedford Street and head toward her house. The taxicab caught her attention "because it was really the only like sign of life . . . on our street at that time." According to Lopez, the taxicab "wasn't driving straight exactly" and was "wobbling a little bit, almost as if someone was . . . trying to turn the wheel almost." She heard a "high pitched" "pop pop" sound and thought the taxicab "back fir[ed]." After hearing

the sound, Lopez saw "the taxi just accelerated at full speed" directly toward her boyfriend's car. The taxicab then hit her boyfriend's parked car "almost exactly straight head on." Lopez was thrown from the car and lost consciousness. When Lopez regained consciousness, she felt pain "over all of [her] body, specifically in [her] leg and like around [her] hip, pelvis region."

A neighbor, who lived on Bedford Street for twenty-six years, testified that she was watching late night television on August 25, when she heard "a bang, a loud noise" that sounded like a car backfiring. She heard a second bang, followed by a crash. The neighbor ran outside and saw "a taxicab had hit a parked car." She also "saw an individual running towards [her] house." The neighbor ran toward the taxicab and called 9-1-1.

After she called 9-1-1, the neighbor noticed an individual "running down the middle of the street." She described the person as a thin black male, approximately six feet tall. According to the neighbor, the man had shoulder-length dreadlocks and wore a white t-shirt and dark pants. Because the street was dimly lit, the neighbor testified she did not get a "clear look" at the man's face.

Although the neighbor saw the man run past her, she did not see where he went because she heard someone screaming for help. The neighbor again called

9-1-1 and reported a woman "trapped under [a] car." The neighbor saw Lopez "face down pinned between the taxicab and the curb" and heard Lopez "crying" and "screaming."

Within minutes after the neighbor's second 9-1-1 call, Corporal Frank Weitry of the Rahway Police Department and his partner arrived at the scene. Weitry saw a car up against a tree and heard a woman screaming. He saw Lopez "wedged underneath" the car and "trapped" between a tree and the street curb. Weitry described Lopez as "banged up pretty bad." Because Weitry saw that Lopez "was in pretty bad shape," Weitry told his fellow officer to stay with Lopez while he checked the taxicab.

Weitry looked inside the taxicab and "observed the driver, male, slumped over into the back seat - from the front between the seats into the back of the car." According to Weitry, "[i]t was obvious that [the taxicab driver] suffered a traumatic injury . . . . There was a lot of blood." Weitry subsequently learned the identity of the taxicab driver and that the driver, Alasmar, died from his injuries.

The Union County Medical Examiner, Dr. Junaid Shaikh, conducted Alasmar's autopsy. The doctor opined Alasmar died from two gunshot wounds sustained to the right side of his face and neck.

After the car crash, Lopez went in an ambulance to a local hospital. She sustained significant injuries, including broken bones throughout her body, a lacerated liver and spleen. Lopez underwent fifteen surgeries and spent a month in the hospital. After being discharged from the hospital, Lopez received two months of rehabilitation treatment. Eventually, Lopez lost a portion of her right leg below the knee.

Union County Sheriff's Officer Anastasio Anastasatos testified he was assigned to the Crime Scene Unit on the date of the incident. He and another officer investigated and photographed the scene on August 25. The officers recovered a loaded Ruger P90 handgun inside the taxicab. The officers also found a discharged cartridge case under the front passenger seat of the taxicab. Additionally, the officers recovered blood-stained money from the floor of the taxicab on the driver's side.

The taxicab was towed to the Union County Crime Scene garage where, on August 26, 2015, Sheriff Officer Edward Suter photographed the vehicle, dusted for fingerprints, and swabbed for DNA evidence. Officer Suter found a second discharged cartridge casing and a projectile inside the driver's side door panel. Suter testified that only three of the fingerprints he lifted from the taxicab were suitable for analysis.

During the investigation, detectives from the Union County Prosecutor's Office interviewed defendant's girlfriend. On August 28, 2015, defendant's girlfriend gave a statement to the detectives and identified defendant's cellphone number as xxx-xxx-5617. The girlfriend also told the detectives that defendant had dreadlocks when she saw him on Tuesday but cut them off when she saw him on Wednesday, the day after the murder. However, the girlfriend provided inconsistent statements to the detectives regarding defendant's haircut, indicating she saw defendant on Tuesday and defendant did not have dreadlocks on that day.

At trial, defendant's girlfriend reviewed her prior statement to the detectives. She admitted telling the detectives that defendant had dreadlocks when she saw him on Tuesday, August 25, 2015, and his hair was cut when she saw defendant the next day. Additionally, defendant's girlfriend testified that defendant had injuries on his face and hands when she saw him the day after the murder.

The police also interviewed defendant's friend, Mark Hernandez. In 2015, Hernandez believed he was targeted as a suspect in Alasmar's murder. In all, nine suspects were investigated for the murder. In a statement to police on August 28, 2015, Hernandez reported defendant's cellphone number as xxx-xxx-

5617, the same number provided by defendant's girlfriend. According to Hernandez, defendant stood about five-foot-nine or ten inches, had brown skin, and wore shoulder-length dreadlocks.

At trial, Joseph Sierra, a T-Mobile records custodian, testified for the State. He confirmed the cellular telephone number, xxx-xxx-5617, belonged to defendant. According to defendant's cellphone records, Sierra stated defendant's phone placed the call to the local taxicab company at 10:44 p.m. on August 25, 2015. He explained that the call used a cell tower located near the murder scene.

Sergeant Krzystof Audinis, with the Union County Police Department, testified for the State as an expert in firearm identification, projectile identification, and casing identification. Audinis testified that both casings recovered from the crime scene were fired from the handgun recovered inside the taxicab. He further testified that the projectile recovered from the cab door was fired from the same handgun.

Detective Adrian Gardner, with the Union County Sheriff's Crime Scene Unit, testified for the State as an expert in fingerprint comparison. Gardner testified that defendant's right index finger was the source of the fingerprint on the trigger of the handgun found in the taxicab.



Gardner also compared three other fingerprints taken from inside the taxicab and a palm print taken from outside the taxicab. Gardner opined defendant was excluded as the source of the other three fingerprints and the palm print.

Donna Hansen, with the Forensic Science Laboratory section of the Union County Prosecutor's Office, testified for the State as an expert in DNA testing, DNA comparisons, and population statistics. Hansen ran a DNA profile from DNA found on the magazine floor plate of the handgun. Based on statistical probabilities, Hansen testified defendant could not be excluded as a possible major contributor. In her analysis of the profile from DNA found on the grip area of the recovered handgun, Hansen further testified that defendant could not be excluded as a minor contributor based on statistical probabilities.

Robin Cotton, Ph.D., an associate professor at Boston University School of Medicine and an expert in forensic DNA analysis, testified for defendant. Although she testified as to possible deficiencies in the State's DNA profile analysis, on cross-examination, Cotton agreed defendant could not be excluded as a possible contributor to the DNA profile found on the handgun's grip and magazine. She also concurred with the State's expert that defendant could not be excluded as a possible contributor to the DNA profile found on the trigger.

After his conviction, at the sentencing hearing on December 7, 2018, the judge merged count two, felony murder, into count one, murder, and sentenced defendant to a fifty-year term of imprisonment with an eighty-five percent period of parole ineligibility under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The judge also merged count four, the weapons charge, into count three, robbery, and sentenced defendant to a concurrent fifteen-year term with an eighty-five percent period of parole ineligibility under NERA. On count five, aggravated assault, the judge sentenced defendant to a consecutive eight-year term with an eighty-five percent period of parole ineligibility under NERA.

On appeal, defendant raises the following arguments:

POINT 1

The Trial Court Erred in Denying Defendant's Motion to Suppress Cell Phone Evidence Seized by Police.

POINT 2

The Trial Court Erred in Denying Defendant's Motion to Compel Production of [Brady] Materials and Related Discovery.

POINT 3

The Trial Court Erred in Denying Defendant's Motion for Acquittal.

POINT 4

The Trial Court Erred in Charging Flight Over Defendant's Objection.

POINT 5

Defendant's Right to a Fair Jury Trial was Violated When the Trial Court Denied Defendant's Motion to Strike Jurors.

POINT 6

Defendant's Sentence is Improper and Excessive.

POINT 7

The Cumulative Errors Warrant Reversal (plain error; not raised below).

II.

We first address defendant's argument that the judge erred in denying his motion to suppress the cellphone evidence, including the subscriber information, call detail records, and historical cell-site records obtained through a CDW issued by a Superior Court judge. Defendant argues the information contained in the affidavit supporting the CDW was insufficient to establish probable cause. He asserts the affidavit failed to indicate any eyewitnesses who identified defendant as the perpetrator and the description of suspect provided by the witnesses differed from defendant's physical traits, including height and weight.

Defendant further claims the State withheld relevant information in the CDW affidavit, specifically that some fingerprints found on the recovered handgun were unsuitable for analysis, rendering the results for those prints "inconclusive." Additionally, defendant contends the judge should have conducted a Franks hearing regarding the validity of the CDW. We disagree with defendant's contentions regarding the admission of the cellphone evidence.

A.

Our review of a judge's decision on a motion to suppress is limited, and we defer to the "motion judge's factual findings so long as sufficient credible evidence in the record supports those findings." State v. Gonzales, 227 N.J. 77, 101 (2016) (citing State v. Elders, 192 N.J. 224, 243-44 (2007)). We will defer to a trial judge's determination unless it is "'clearly mistaken' or 'so wide of the mark' that the interests of justice require[] appellate intervention." Elders, 192 N.J. at 245.

A valid search warrant "must be based on sufficient specific information to enable a prudent, neutral judicial officer to make an independent determination that there is probable cause to believe that a search would yield evidence of past or present criminal activity." State v. Keyes, 184 N.J. 541, 553 (2005) (citing State v. Novembrino, 105 N.J. 95, 120, 124 (1987)). Probable

cause is a "'common-sense, practical standard' dealing with 'probabilities' and the 'practical considerations of everyday life,'" and is generally understood to mean "less than legal evidence necessary to convict though more than mere naked suspicion." State v. Evers, 175 N.J. 355, 381 (2003) (quoting State v. Sullivan, 169 N.J. 204, 211(2001); State v. Mark, 46 N.J. 262, 271 (1966)). In evaluating the sufficiency of the probable cause supporting a search warrant, the court should review the four corners of the supporting affidavit and the totality of the circumstances presented therein. Id. at 380. "[H]earsay alone can provide a sufficient basis for [a] warrant." Novembrino, 105 N.J. at 110.

"Once issued, '[a] search warrant is presumed to be valid, and defendant bears the burden of demonstrating that the warrant was issued without probable cause or that the search was otherwise unreasonable.'" State v. Chippero, 201 N.J. 14, 26 (2009) (alterations in original) (quoting Evers, 175 N.J. at 381). In considering the validity of a search warrant, the reviewing court should "accord substantial deference to the discretionary determination resulting in the issuance of the [search] warrant." State v. Sullivan, 169 N.J. 204, 211-12 (2001) (alterations in original) (quoting State v. Marshall, 123 N.J. 1, 72 (1991)).

If the court has any "[d]oubt as to the validity of the warrant[,]" such doubt "should ordinarily be resolved by sustaining the search." Keyes, 184 N.J. at 554

(quoting State v. Jones, 179 N.J. 377, 389 (2004)). Moreover, pursuant to Rule 3:5-7(g), "[i]n the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceedings to obtain it, or in its execution."

In denying defendant's motion to suppress, viewing the totality of the circumstances, the judge found there was "ample information contained in the affidavit [for the CDW] to support the finding of probable cause and the issuance of the warrant." The judge noted defendant's girlfriend saw defendant wearing dreadlocks before the murder and told detectives that defendant cut his hair after the murder. The judge also explained the girlfriend lacked information about defendant's whereabouts the night of the murder, noticed injuries on defendant's hands and face, and observed defendant walking with a limp following the murder. The judge further cited the testimony of defendant's friend, Hernandez, who told "police that the defendant's appearance had changed between Monday, August 24, 2015 and Wednesday, August 26, 2015."

In finding sufficient probable cause for the CDW, the judge also found "[s]urveillance footage obtained from the crime scene showed an individual matching the descriptions given by the [neighbor] . . . who observed an

individual fleeing the scene of the accident." Moreover, the judge concluded the finding of defendant's fingerprint on the handgun and identification of a call placed from defendant's cellphone number to the taxicab company just before the murder "also supported the judge's findings that sufficient probable cause existed to issue the CDW."

Under the circumstances, we are satisfied there was sufficient credible evidence in the record to support the judge's finding of probable cause for the issuance of the CDW and, therefore, the judge did not abuse her discretion in denying the motion to suppress the cellphone evidence.

B.

We next address defendant's claim that the judge should have conducted an evidentiary hearing regarding his claim the State withheld information that would establish the existence of a factual misrepresentation in the affidavit supporting the requested CDW. We disagree.

We review a trial judge's decision regarding the need for a Franks hearing for an abuse of discretion. State v. Broom-Smith, 406 N.J. Super. 228, 239 (App. Div. 2009). Trial judges abuse their discretion when the "decision [is] made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis." United States v. Scurry, 193 N.J.

492, 504 (2008) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

"When reviewing the issuance of a search warrant by another judge, the [motion judge] is required to pay substantial deference to the [issuing] judge's determination." State v. Dispoto, 383 N.J. Super. 205, 216 (App. Div. 2006), aff'd as modified on other grounds, 189 N.J. 108 (2007). "Notwithstanding its favored status, under certain circumstances, a search warrant's validity may be questioned, in which case an evidential hearing may be afforded." Ibid. (citing Franks, 438 U.S. at 155-56). In circumstances

where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request.

[Franks, 438 U.S. at 155-56.]

Misstatements in an affidavit for a search warrant are considered material if, when excised from the affidavit, "that document no longer contains facts sufficient to establish probable cause." State v. Howery, 80 N.J. 563, 568 (1979). "If at such inquiry the defendant proves such falsity by a preponderance



of the evidence, the warrant is invalid and the evidence seized thereby must be suppressed." Id. at 566.

The requirements for challenging a search warrant based on false statements in the affidavit also "apply where the allegations are that the affidavit, though facially accurate, omits material facts." State v. Stelzner, 257 N.J. Super. 219, 235 (App. Div. 1992). Like false statements, an omission is considered material if the issuing judge likely would not have approved the search warrant had the judge been aware of the omitted information. State v. Smith, 212 N.J. 365, 399 (2012) ("The core issue presented in the context of a challenge to an affidavit, where the challenger alleges the affidavit is fatally inaccurate by reason of omission, is whether the information omitted from the affidavit is material."). However, "[t]he test for materiality is whether inclusion of the omitted information would defeat a finding of probable cause; it is not . . . whether a reviewing magistrate would want to know the information." Ibid.

In denying defendant's request for a Franks hearing, the judge rejected defendant's argument that the failure to inform the court about the fingerprint photographs which were unsuitable for review by the Automated Fingerprint Identification System was a material misrepresentation. First, the State's fingerprint examiner elected not to use the fingerprint photographs and, instead,

manually reviewed and compared the fingerprint on the recovered handgun to defendant's actual fingerprint so there was no material misrepresentation in that regard. Further, the judge held the finding of fingerprints and handprints belonging to other individuals on and in the taxicab failed to "rise[] to the level of a falsehood or an omission that [would] require a Franks hearing." Because people frequently touch the interior and exterior of a vehicle when entering and exiting, there were likely numerous prints from other passengers in the taxicab and the failure to convey that information did not constitute a material misrepresentation.

Regarding the omission in the CDW affidavit that defendant's girlfriend gave inconsistent statements regarding defendant's hair at the time of the murder, the judge explained an evidentiary hearing was unnecessary because defense "counsel agreed the [girlfriend's] last statement to police was accurately reflected in the affidavit."<sup>3</sup> The judge concluded that defendant raised the purported falsehoods in the CDW affidavit "in an effort to gain a hearing and cross-examine the State's witness" but defendant failed to provide sufficient evidence to support a finding of material falsehoods or omissions. The judge

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<sup>3</sup> The girlfriend's last statement to the detectives corrected her prior misstatements by explaining defendant "had the [dreadlocks] . . . on Tuesday and he didn't have the [dreadlocks] on Wednesday."

concluded there was ample evidence to issue the CDW and a Franks hearing was not required.

Having reviewed the record, we are satisfied the judge did not abuse her discretion in denying a Franks hearing. Defendant failed to satisfy his burden of showing a false statement in the CDW affidavit or that the affidavit contained a material omission or misrepresentation.

### III.

We next consider defendant's contention that the judge erred in denying his motion to "compel production of Brady material and related discovery" and his request for a Brady hearing. We disagree.

"In every criminal case the prosecution must disclose to the defendant all evidence that is material either to guilt or to punishment." State v. Nelson, 155 N.J. 487, 497 (1998) (citing Brady, 373 U.S. at 87). A failure to turn over such evidence is a violation of defendant's due process rights. State v. Russo, 333 N.J. Super. 119, 133-34 (App. Div. 2000). To establish a Brady violation warranting an evidentiary hearing, the "defendant must show that: (1) the prosecution suppressed evidence; (2) the evidence is favorable to the defense; and (3) the evidence is material." Ibid.

The first element, suppression by the prosecution, may be established regardless of whether the suppression was purposeful or inadvertent. See State v. Brown, 236 N.J. 497, 518 (2019). Determining "[w]hether the prosecution should be understood to have suppressed evidence. . . . depends on whether the prosecution actually or constructively possessed that evidence." Nelson, 155 N.J. at 498. "The Brady disclosure rule applies only to information of which the prosecution is actually or constructively aware." Ibid.

In considering whether the evidence was favorable under the second element, our Supreme Court has held that undisclosed information that "is merely cumulative or repetitious as to the purpose for which it could have been used" fails to satisfy this element. State v. Carter, 85 N.J. 300, 313 (1981).

The third element necessary to prove a Brady violation – that the evidence is material – "is satisfied if [the] defendant demonstrates that there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different." Russo, 333 N.J. Super. at 134. Under this prong, "[t]he significance of the nondisclosure 'depends primarily on the importance of the [evidence] and the strength of the State's case against [a] defendant as a whole.'" Brown, 236 N.J. at 520 (second and third alterations in original) (quoting Marshall, 123 N.J. at 200).

The judge found defendant received the requested discovery information but in a different document provided by the State. Because the format in which the fingerprint photographs were originally produced was not suitable for comparison, as stated in the first report provided to defendant, the fingerprint photographs were then produced in four separate CDs. The second report addressing the fingerprint photographs reproduced in the four CDs reached the same conclusion as the first report that the fingerprint photographs were not suitable for comparison. The judge concluded the CDs produced to defendant contained the same photographs, defendant had photographs in his possession almost a year before trial, and none of the fingerprint photographs reproduced on any of the CDs were suitable for comparison. Thus, the judge held the issuance of two reports from the same set of fingerprint photographs was not "done in a manner to somehow hide information, to somehow do something nefarious, . . . and [did] not feel that a hearing [was] necessary to come to that determination."

A judge's determination as to whether evidence is subject to disclosure under Brady presents a mixed question of law and fact. State v. Marshall, 148 N.J. 89, 185 (1997). Where there are mixed questions of law and fact, we defer to the trial judge's factual findings but review de novo the judge's application of

the law to those factual findings. State v. Pierre, 223 N.J. 560, 577 (2015) (citing State v. Harris, 181 N.J. 391, 416 (2004)).

Here, the judge correctly concluded there was no Brady violation because the State disclosed evidence to defendant that the fingerprint photographs were not suitable for comparison. Because defendant knew the fingerprint photographs in the State's possession were not suitable for comparison based on the first report he received, the State did not fail to turn over relevant and material information in the second report, containing that same information, to constitute a Brady violation. Moreover, defendant's expert did not rely on the fingerprint photographs. Instead, the defense expert relied on a manual comparison of the recovered fingerprint and defendant's actual fingerprint rather than the fingerprint photographs, the same as the State's expert. Thus, there is no reasonable probability the result would have been different in this case.

Based on our review of the facts on this record and the applicable case law, the judge did not err in finding there was no Brady violation and therefore did not err in denying defendant's request for a Brady hearing.

#### IV.

We next consider defendant's claim that the judge erred in denying his motion for acquittal on the robbery and felony murder charges. He contends

there was no evidence of any robbery and therefore "the felony murder count hinging on the robbery also failed as a matter of law."

A judge shall enter an order for a judgment of acquittal only if "the evidence is insufficient to warrant a conviction." R. 3:18-1. Our Supreme Court articulated the following standard in deciding a motion for judgment of acquittal:

[T]he question the trial judge must determine is whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt.

[State v. Reyes, 50 N.J. 454, 458-59 (1967) (citing State v. Fiorello, 36 N.J. 80, 90-91 (1961)).]

Under Rule 3:18-1, a judge "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. Papasavvas, 170 N.J. 462, 521 (2002) (quoting State v. Klubber, 130 N.J. Super. 336, 342 (App. Div. 1974)). "If the evidence satisfies that standard, the motion must be denied." State v. Spivey, 179 N.J. 229, 236 (2004).

We review a judge's denial of a motion for judgment of acquittal de novo. State v. Dekowski, 218 N.J. 596, 608 (2014). We conduct an independent

assessment of the evidence, applying the same standard as the trial judge. See State v. Williams, 218 N.J. 576, 593-94 (2014).

To convict a defendant of robbery, the State must prove that in the course of committing a theft, defendant:

- (1) Inflicts bodily injury or uses force upon another; or
- (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
- (3) Commits or threatens immediately to commit any crime of the first or second degree.

[N.J.S.A. 2C:15-1.]

In opposing defendant's motion, the State argued the money splattered with blood found at Alasmar's feet on the floor of the taxicab supported the robbery charge. The State asserted entitlement to all reasonable inferences based on the evidence, including that Alasmar was shot "during the time that money was out which would clearly indicate attempted robbery."

Under N.J.S.A. 2C:11-3(a)(3), felony murder occurs when:

the actor, acting either alone or with one or more persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery . . . and in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants . . . .



"Felony murder is an absolute-liability crime because the actor need not have contemplated or consciously risked the victim's death." State v. McClain, 263 N.J. Super. 488, 491-92 (App. Div. 1993) (citing State v. Martin, 119 N.J. 2, 20 (1990)).

In denying defendant's acquittal motion, the judge explained:

So considering the robbery count, as I indicated[,] there is no direct evidence. The evidence would be circumstantial. Based on the evidence that was put forward . . . in the State's case and giving the State all the favorable inferences, the benefit of all favorable testimony, this [c]ourt is going to deny the defendant's request to dismiss the robbery count at this point in time.

The evidence in this case has indicated that a taxi was called to Bedford Street, that once the person entered the taxi -- and there's no question that the taxicab driver, Mr. Alasmar, was shot twice. The court does find quite compelling . . . the photograph of the money at the feet of the deceased. I note the fact that there are many bills, that there are -- I could see twenties, tens, ones. It's not as if there was a wad of money that upon impact just went up in the air and landed. It looks certainly like in the photograph almost like it's dropped there and the blood on top of it quite telling which would appear that it is splattered blood as if it was a result of the victim getting shot in the head and this is giving the State all favorable inference[s] here and that's what I'm compelled to do at this point in time. Based on all the circumstances presented I think there is certainly enough evidence for this jury to decide whether or not a robbery took place or whether or not they find beyond a reasonable doubt that this

defendant was attempting to take money from this driver and use force and a deadly weapon in an effort to do so.

So understanding all the evidence that is put forward, giving the State all the favorable inferences, this [c]ourt finds that there is enough for the robbery count to go to the jury. And it follows that the defense's argument going to the count of [felony] murder was based solely on the fact that the predicate offense the robbery is contained therein. The defense is not arguing anything further regarding the felony murder. So since this [c]ourt is keeping in the robbery, I'm also keeping in the felony murder.

Applying well-settled law governing motions for acquittal, we are satisfied the judge did not err in denying defendant's motion for acquittal of the robbery and felony murder charges based on sufficient evidence, both direct and circumstantial, presented during the trial. Here, several witnesses testified they saw a thin, black male with shoulder length dreadlocks at the crime scene. Their description matched defendant's general appearance. Additionally, defendant's cellphone records demonstrated a call to the local cab company came from his cellphone just before Alasmar was dispatched to Bedford Street. Thus, there was sufficient evidence presented for a jury to infer defendant was at the scene of the crime and hailed a taxicab to the murder location on Bedford Street.

The jury also heard forensic evidence linking defendant to the crime scene. A loaded handgun found in the taxicab had defendant's fingerprint on the

trigger. Additionally, defendant could not be eliminated as a contributor to the DNA recovered on the handgun. Thus, the jury could infer that defendant shot Alasmar.

Further, there were bills of different dollar denominations scattered on the floor of the taxicab and splattered with blood, suggesting Alasmar's murder occurred during a robbery gone awry. There was sufficient evidence from which the jury could infer Alasmar was shot after he pulled out the money to hand over to defendant.

Moreover, there was sufficient evidence to deny the motion for acquittal on the felony murder charge. As we noted in reviewing the evidence associated with the robbery charge, the jury could infer from the evidence that defendant killed Alasmar during the commission of a botched robbery. Giving the State the benefit of reasonable inferences drawn from the evidence, a jury could reasonably have determined that Alasmar was shot and killed during the commission of a robbery and, therefore, that defendant was guilty of felony murder. Based on the evidence, we are satisfied the judge correctly denied defendant's motion for acquittal of the robbery and felony murder charges.

## V.

We next consider defendant's claim that the judge erred in issuing a flight charge over his objection. He asserts the evidence was insufficient to support a consciousness of flight for such a charge. We disagree.

When a defendant alleges error in the jury charge, the charge must be reviewed as a whole. State v. Loftin, 146 N.J. 295, 379 (1996). We acknowledge that "[a]ppropriate and proper charges to a jury are essential for a fair trial." State v. Jordan, 147 N.J. 409, 421-22 (1997) (quoting State v. Green, 86 N.J. 281, 287 (1981)). Because an individual's liberty is at stake, "[e]rroneous instructions on matters or issues that are material to the jury's deliberation are presumed to be reversible error in criminal prosecutions." Ibid. (citing State v. Warren, 104 N.J. 571, 579 (1986)).

A flight charge "is appropriate when there are 'circumstances present and unexplained which . . . reasonably justify an inference that it was done with a consciousness of guilt and pursuant to an effort to avoid an accusation based on that guilt.'" State v. Latney, 415 N.J. Super. 169, 175-76 (App. Div. 2010) (alteration in original) (quoting State v. Mann, 132 N.J. 410, 418-19 (1993)). The circumstances need not constitute unequivocal proof of a consciousness of

guilt, but it "must be intrinsically indicative of" such consciousness. State v. Randolph, 228 N.J. 566, 595 (2017) (internal quotation marks omitted).

The admission of evidence supporting a flight charge

depends upon the degree of confidence with which four inferences can be drawn: (1) from the defendant's behavior to flight; (2) from flight to consciousness of guilt; (3) from consciousness of guilt to consciousness of guilt concerning the crime charged; and (4) from consciousness of guilt concerning the crime charged to actual guilt of the crime charged.

[Latney, 415 N.J. Super. at 176 (emphasis omitted) (quoting Mann, 132 N.J. at 420).]

We review a trial court's decision whether to give a flight charge for abuse of discretion. See State v. Long, 119 N.J. 439, 499 (1990). We will only reverse upon finding the decision "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)).

In overruling defense counsel's objection to the flight charge, the judge explained:

I'll begin by saying that it was the [c]ourt that put the flight charge in the draft and that was because based on the information that I heard in this case . . . I thought and I still think there is a basis for charging this jury on flight. . . .

Now, I disagree with the defense's contention that flight is not applicable in this particular case . . . . I

think in this particular case the evidence is that whoever it was that committed this crime or these crimes got out of there, left the scene, and I think that there is a basis for which to give this charge which is a permissible charge which allows the jury to draw a reasonable inference that if you have left the scene of a crime that they may make this inference that the flight could go to the [s]tate of mind of the individual and their consciousness of guilt.

Having reviewed the record, there was sufficient testimony to support the flight charge. The judge noted the testimony of the witnesses who saw a thin, black male with shoulder length dreadlocks at the crime scene. Other witnesses saw a person fleeing the scene shortly after hearing shots and then a crash. Based on this evidence, a jury could reasonably infer an individual fled the scene to avoid accusation or prosecution that would imply a consciousness of guilt sufficient for issuing a flight charge. The judge's flight charge mirrored the model jury charge and was appropriately tailored to the facts based on the evidence. Further, the judge instructed the jury how to apply the law governing flight to the facts and issues in this case. Thus, we are satisfied the judge's flight charge was warranted.

## VI.

We next consider defendant's assertion that he was denied his right to a fair trial when the judge rejected his motion to strike jurors and declare a mistrial based on events witnessed by jurors. We are not persuaded.

Defendant contends that during a trial recess one or more jurors heard a reporter interviewing members of the victim's family as well as a separate instance where several jurors witnessed a member of the victim's family throw a tissue at defense counsel. Based on these allegations, defendant moved to strike the impacted juror, specifically juror number one, and also moved for a mistrial.

The decision to grant a defendant's motion for a mistrial rests within the sound discretion of the trial court. Harris, 181 N.J. at 518. A judge must determine

whether or not the error is such that manifest injustice would result from continuance of the trial and submission of the case to the jury. The consideration of the mistrial motion, however, has one additional element, namely the court's determination of whether or not the prejudice resulting from the error is of a nature which can be effectively cured by a cautionary instruction or other curative steps.

[Pressler & Verniero, Current N.J. Court Rules, cmt. 5.1 on R. 3:20-1 (2023).]

The grant of a mistrial is an extraordinary remedy that should be granted sparingly due to the "enormous costs" it imposes on the judicial system. State v. Jenkins, 182 N.J. 112, 124 (2004). Thus, we defer to the decision of the trial court and will not disturb the denial of a mistrial "unless there [was] a clear showing of mistaken use of discretion by the trial court," Greenberg v. Stanley, 30 N.J. 485, 503 (1959), or unless "manifest injustice would . . . result." State v. LaBrutto, 114 N.J. 187, 207 (1989); see also State v. Smith, 224 N.J. 36, 47 (2016) (whether an event at trial justifies a mistrial is a decision "entrusted to the sound discretion of the trial court" (quoting State v. Harvey, 151 N.J. 117, 205 (1997))). A mistrial should be granted only when necessary "to prevent an obvious failure of justice." Harvey, 151 N.J. at 205.

The test for determining if a new trial is warranted as a result of juror misconduct

is whether such matters could have a tendency to influence the jury in arriving at its verdict in a manner inconsistent with the legal proofs and the court's charge. If the irregular matter has that tendency on the face of it, a new trial should be granted without further inquiry as to its actual effect. The test is not whether the irregular matter actually influenced the result, but whether it had the capacity of doing so.

[Panko v. Flintkote Co., 7 N.J. 55, 61 (1951).]



A criminal defendant has a constitutional right afforded by both the Sixth Amendment of the United States Constitution and Article I, paragraph 10, of the New Jersey Constitution "to be fairly tried by an impartial jury." State v. Williams, 93 N.J. 39, 61 (1983). A juror who has prematurely "formed an unalterable opinion of the defendant's guilt or innocence must be excused from service on the panel." State v. Loftin, 191 N.J. 172, 187 (2007). Moreover, "all doubts about a juror's integrity or ability to be fair should be resolved in favor of removing the juror from the panel." Ibid. Predeterminations of guilt are inconsistent with a juror's duty of impartiality. Id. at 189.

"A new trial, however, is not necessary in every instance where it appears an individual juror has been exposed to outside influence." State v. R.D., 169 N.J. 551, 559 (2001). "Ultimately, the trial court is in the best position to determine whether the jury has been tainted." Ibid.

That determination requires the trial court to consider the gravity of the extraneous information in relation to the case, the demeanor and credibility of the juror or jurors who were exposed to the extraneous information, and the overall impact of the matter on the fairness of the proceedings. The inquiry about whether extraneous information had the capacity to influence the result of the jury requires an examination of whether there was at least an opportunity for the extraneous information to reach the remaining jurors when that extraneous information is knowledge unique to one juror . . . .

[Ibid. (emphasis omitted).]

To determine whether juror misconduct or outside influences were prejudicial, the judge must first examine the information to determine if it has the capacity to prejudice the defendant, and if it does, "the judge must conduct voir dire, preferably individually in camera, to determine whether any jurors were exposed to the information." State v. Scherzer, 301 N.J. Super. 363, 487 (App. Div. 1997) (citing State v. Bey, 112 N.J. 45, 84-86 (1988)). "If they were, the judge then questions each juror individually to determine what information was learned and whether the juror is capable of deciding the case impartially, based solely on the evidence presented at trial." Ibid. (citing Bey, 112 N.J. at 87). "[T]he trial judge must make a probing inquiry into the possible prejudice caused by any jury irregularity, relying on his or her own objective evaluation of the potential for prejudice rather than on the jurors' subjective evaluation of their own impartiality." Id. at 487-88.

Here, defendant claimed there were two incidents witnessed by, or discussed among, several jurors that prejudiced those jurors such that they were unable to deliberate fairly and impartially based solely on the evidence. In determining whether either incident improperly influenced any jurors, the judge

conducted a thorough voir dire of the jurors who may have witnessed or discussed the incidents.

The judge questioned those jurors who, during a trial recess, overheard a reporter interviewing the victim's family. The judge also questioned all jurors who may have discussed the interview with the jurors who overheard the interview.

None of the jurors heard anything specific regarding the interview related to the trial testimony or evidence. In response to the judge's questions, each juror assured the judge that any information they may have heard outside the courtroom was not evidence, the outside information would not affect their ability to be fair and impartial in deciding the case, and they would be able to set aside that information if they were selected as a deliberating juror.

After the judge's voir dire of the jurors, defense counsel moved only to strike a single juror, juror number one, expressing "great concern" about "victim impact information outside the scope of the evidence going before this jury."

In denying the motion to strike juror number one, the judge explained:

[Juror number one] indicated the information that she heard. She indicated that she -- I talked to her about it not being evidence. She said that she would not consider it as evidence. She would not discuss it again. It would not go into the jury room, and I have to accept that representation. I think a failure to accept that

representation combined with the kind of information she heard, she would have heard different information and I'm sure there's information she could have heard that would cause this [c]ourt to strike her, but it's not the information that she let this [c]ourt know. And I will add to that there were other jurors who actually came out and spoke to us as well. [Juror number four] said she didn't hear anything and she was sitting right next to [juror number one]. I'm accepting that representation. No one is moving to strike her [juror number four]. I addressed the juror I think in the proper fashion. I am satisfied that striking [juror number one] is not the proper remedy and that she can be a fair and impartial juror . . . .

The judge's findings, after conducting an in-depth voir dire of the jurors, are supported by the record and her denial of the motion to strike juror number one was not an abuse of discretion. The judge found the jurors' responses during voir dire were truthful, the jurors were not tainted by the incident with the reporter, and they could proceed as fair and impartial jurors.

Similarly, we are satisfied the judge properly denied defendant's motion for a mistrial related to those jurors who witnessed a member of the victim's family throw a tissue at defense counsel.

According to a detective who was observing the trial, only juror number ten may have witnessed the tissue incident. Thus, the judge conducted an extensive voir dire of that juror. Juror number ten told the judge that while outside the courtroom she witnessed a member of the victim's family throw a

tissue toward defense counsel. However, she did not see if the tissue hit counsel. Juror number ten reported seeing defense counsel request assistance from a police officer, who then handcuffed the tissue thrower.

Juror number ten assured the judge that she was aware the incident was not evidence in the case, the incident would not affect her ability to be fair and impartial in the case, she could set the incident aside, and she would not consider it during deliberations. Juror number ten also told the judge that she discussed the incident with other jurors.

Therefore, the judge questioned all of the jurors regarding the tissue incident. With the exception of juror number three, the other jurors did not see, hear, or know about the incident. Juror number three told the judge she heard that somebody threw a tissue at the defense attorney, and the person got arrested. All of the jurors told the judge they understood anything they heard about the incident was not evidence, it would not affect their ability to be a fair and impartial juror, and they could set it aside and not consider it during deliberations.

Based on the jurors' responses during voir dire, the judge denied defendant's request for a mistrial. The judge explained:

Based on the information that I heard, under the circumstances and what was observed, all of these

jurors have indicated that they can set it aside. Certainly considering the facts of this case we talked about this before, this is an emotionally difficult matter no matter who the person is -- and that's not up to me. I told you that a million times. It's up to this jury. No matter who the person is who committed this murder, it's an emotionally charged issue. So certainly what they saw outside is not evidence. If anything, [defense counsel], you were the victim. They were apprised of the fact that an individual who did this was arrested and, if anything, I think it would garner sympathy for you, [defense counsel]. To be honest with you. However, I don't want to go too far down that road because while I understand that the defense is indicating that this information is something that you feel the jurors cannot set aside, that you feel that they cannot be fair and impartial. . . . So understanding the defense's application I do not feel that based on these facts that a mistrial is warranted and that the defendant is being somehow prejudiced by these jurors. They have indicated to us they can be fair and impartial. They will not discuss it any further in the jury room, that they will not let it enter into their deliberations in any way, shape or form.

We are satisfied the judge conducted a proper voir dire of the jurors and her findings that the jurors would be able to assess the case fairly and impartially, without considering events outside the courtroom, are supported by the record. Therefore, the judge's denial of defendant's motion to strike juror number one and for a mistrial was not an abuse of discretion.

## VII.

We turn to defendant's argument that the sentence imposed is manifestly excessive. He contends the judge erred in applying the aggravating and mitigating factors in imposing the sentence. Defendant also asserts the judge erred in imposing a consecutive sentence for the assault charge. We reject defendant's arguments.

We review a judge's sentencing decision for an abuse of discretion. State v. Blackmon, 202 N.J. 283, 297 (2010). We will not disturb a judge's sentence unless it "shocks the judicial conscience." State v. O'Donnell, 117 N.J. 210, 215-16 (1989). We will consider "whether the trial [judge] . . . made findings of fact that are grounded in competent, reasonably credible evidence and whether 'the factfinder [has] appl[ied] correct legal principles in exercising its discretion.'" Blackmon, 202 N.J. at 297 (third and fourth alterations in original) (quoting State v. Roth, 95 N.J. 334, 363 (1984)).

In reviewing a sentence, "[a]n appellate court is not to substitute its assessment of aggravating and mitigating factors for that of the trial court." State v. Bieniek, 200 N.J. 601, 608 (2010). We will not set aside a sentence 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 Roth, 95 N.J. at 364-65).

A.

When imposing a sentence, the trial judge "must identify any relevant aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1(a) and (b) that apply to the case." State v. Case, 220 N.J. 49, 64 (2014). The trial judge must then "determine which factors are supported by a preponderance of evidence, balance the relevant factors, and explain how he arrives at the appropriate sentence." O'Donnell, 117 N.J. at 215. The findings supporting these factors "must be supported by competent, credible evidence in the record." Case, 220 N.J. at 64 (citing Roth, 115 N.J. at 363).

In sentencing defendant, the judge found the following aggravating factors: three, N.J.S.A. 2C:44-1(a)(3) ("The risk that the defendant will commit another offense"); six, N.J.S.A. 2C:44-1(a)(6) ("The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted"); and nine, N.J.S.A. 2C:44-1(a)(9) ("The need for deterring the defendant and others from violating the law"). The judge also acknowledged defendant was twenty-three-years old at the time of sentencing, and twenty years



old at the time of the offense. Because she found no mitigating factors, the judge concluded the aggravating factors substantially outweighed the nonexistent mitigating factors.

Regarding aggravating factor three, the judge found that there was a significant risk that defendant would commit another offense based on his lack of success in prior diversionary programs. The judge also noted defendant's history of drug use, which increased the likelihood that he would commit another offense.

In support of her finding regarding aggravating factor six, the judge stated defendant had a prior conviction for possession with the intent to distribute and a violation of probation.

Regarding aggravating factor nine, the judge explained:

This is a strong aggravating factor. This court considers in this case there is a need to deter this defendant personally from continuing to commit crime, and there is also a general need to deter actions such as this, and this senseless type of murder in an effort to rob a taxicab driver, as everyone has said, of his hard-earned money, and subsequently, whatever happened in that taxi[,] [defendant] pulled that trigger and shot this man and killed him.

Further, the record supported the judge's determination that none of the mitigating factors applied. Contrary to defendant's argument, the judge

considered defendant's youth at the time of the offense even though the amendment to N.J.S.A. 2C:44-1(b)(14) was not enacted at the time defendant was sentenced. As the judge stated:

I completely recognize the youth of [defendant]. He is a young man. He was 20 years old on this date, he is still a young man. He is -- I believe he's 23 years old . . . . And this day is difficult for his family, as [defendant] is someone's son, he's someone's father, and . . . he is a human being who did something very terrible. However, . . . I do recognize his extreme youth. It was something that was argued vigorously by his attorney, and I read the brief, and I fully understand, as a mother myself, the development of the frontal lobe of young people, and I -- you know, everyone can think back to themselves and what they were thinking as a young person. However, in this case there's a lot of other things that have to go into this determination. . . .

Here, the judge acknowledged and considered defendant's youth in determining an appropriate sentence.

Moreover, contrary to defendant's assertion, the judge thoroughly and thoughtfully explained her reasons for rejecting defendant's proffered mitigating factors. While the judge recognized "defendant [had] a young toddler child," the judge explained, "[defendant] should have thought about . . . whether or not he wanted to see his young child again before he stepped into that taxicab with a loaded handgun on the date in question." The judge also rejected as unsupported by the evidence that defendant was unlikely to commit another

offense. The judge found defendant's argument contradictory since defendant committed another offense, eluding, subsequent to his arrest on the offenses at issue in this case.

After reviewing the record, we are satisfied the judge properly considered and weighed the aggravating and mitigating factors and, therefore, the judge did not abuse her discretion in sentencing defendant.

B.

Defendant argues the judge imposed a consecutive sentence without conducting a Yarbough<sup>4</sup> analysis. In determining whether sentences should be concurrent or consecutive, the sentencing court must be guided by the following:

(1) there can be no free crimes in a system for which the punishment shall fit the crime;

(2) the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision;

(3) some reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not:

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

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<sup>4</sup> State v. Yarbough, 100 N.J. 627 (1985).

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

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

(d) any of the crimes involved multiple victims;

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

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

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

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

[State v. Yarbough, 100 N.J. at 643-44].

"[W]hen imposing either consecutive or concurrent sentences, '[t]he focus should be on the fairness of the overall sentence . . . .'" State v. Abdullah, 184 N.J. 497, 515 (2005) (quoting State v. Miller, 108 N.J. 112, 122 (1987)).

"Consecutive sentences are not an abuse of discretion when the crimes involve

multiple victims and separate acts of violence." State v. Roach, 167 N.J. 565, 568 (2001); see also Yarbough, 100 N.J. at 644 ("[S]ome reasons to be considered by the sentencing court should include facts relating to the crimes, including whether or not . . . any of the crimes involved multiple victims. . . .").

When the sentencing court properly evaluates the Yarbough factors, its decision should not be disturbed on appeal. See State v. Cassady, 198 N.J. 165, 182 (2009) ("Because the sentencing court faithfully paired the Yarbough factors with the facts as found by the jury, there is no basis upon which to upend its reasoning supporting the imposition of consecutive sentences."). However, if the sentencing court does not explain why consecutive sentences were imposed, a remand is warranted for the court to place its reasons on the record. Abdullah, 184 N.J. at 514-15.

Here, the judge properly analyzed the Yarbough factors in imposing consecutive sentences for the murder of Alasmar and the aggravated assault of Lopez. As the judge explained:

There is no question in this court's mind after looking at [Yarbough], and considering those factors, that the aggravated assault as to Ms. Lopez should run consecutively to the murder count in this case. This is a separate victim, and the multiple-victim factor is entitled to great weight. That's State v. Carey, 168 N.J. 41[3] (2001). The State's theory on the aggravated assault which went to the jury was a recklessness

theory, I -- I understand that. However, I think that it is fully appropriate in this case to sentence this defendant consecutively on the aggravated assault. That is this court's decision regarding whether or not the sentence will run concurrently or consecutive.

We are satisfied consecutive sentences were warranted under these circumstances. Here, there were two separate victims and both were subject to defendant's egregious criminal conduct. Defendant murdered Alasmar and caused Lopez to suffer horrific, life-altering injuries. While the two crimes occurred close in time and the second crime resulted from the first crime, the fact remains that the crimes were separate and distinct and involved two victims. As a result, the judge did not abuse her discretion by imposing consecutive sentences.

## VIII.

Lastly, defendant contends that cumulative errors during pretrial hearings, the trial, and sentencing warrant reversal of his convictions or remand for trial or resentencing. We disagree.

When a defendant alleges multiple errors, "the predicate for relief for cumulative error must be that the probable effect of the cumulative error was to render the underlying trial unfair." State v. Wakefield, 190 N.J. 397, 538 (2007). Even where a defendant alleges multiple errors, "the theory of cumulative error

will still not apply where no error was prejudicial and the trial was fair." State v. Weaver, 219 N.J. 131, 155 (2014). Because we are satisfied that defendant failed to demonstrate there were prejudicial pretrial and trial errors, there was no cumulative effect that denied defendant a fair trial.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION