SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0031-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN D. SEARLES,

Defendant-Appellant.

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Submitted November 29, 2022 – Decided April 3, 2023

Before Judges Messano and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 18-02-0598.

Arleo & Donohue, LLC, attorneys for appellant (Frank P. Arleo, of counsel and on the briefs).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent (Emily M. M. Pirro, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant John D. Searles appeals his convictions and sentence for attempted murder and weapons offenses following a jury trial. He focuses his appeal on the attempted-murder and aggravated-assault jury instructions, comments made by the assistant prosecutor in her summation, testimony by police officers about the "defaced" gun, and the finding that no mitigating factors applied in sentencing. Based on our review of the record and the applicable law, we affirm.

I.

A person in a black ski mask fired a gun multiple times at Lee Morant as he was walking to the front door of his house at night after parking in his garage. After engaging in a physical altercation with Morant, the shooter fled the scene and left in a car with two other people. The altercation was captured on video by Morant's home surveillance cameras. Although Morant was not shot, his jacket had a bullet hole and was stained with blood. One sample from the jacket tested as a positive match for defendant's DNA.

A grand jury returned an indictment charging defendant with first-degree attempted murder, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3(a)(1) and (2); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b); second-degree

possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a); and fourth-degree unlawful possession of a defaced firearm, N.J.S.A. 2C:39-3(d).

During the five-day trial, the State presented testimony from Morant, Morant's wife, police detectives and officers who had responded to the scene, the police communications officer who had received the 911 call from Morant's wife, a detective from the New Jersey State Police's ballistics unit who was a latent-fingerprint expert, a serology expert, a firearms-identification expert, and an expert in "forensic DNA STR analysis."[1]

Around 10:00 pm., Morant was returning home from his daughter's back-to-school night. After parking his car in the attached garage, Morant exited the garage and walked outside toward the front door of the house. As Morant approached the front door, he heard a noise coming from behind his wife's car, which was parked in the driveway. Morant saw a man in a ski mask coming from behind the car pointing a gun at him. The man fired the gun, but the bullet missed, passing Morant's head and ear, "blow[ing] [his] eardrum out . . . ." Morant "rushed" the shooter, and they "tussled in the driveway." Another

[1] "Many of the patterns found in DNA are shared among all people, so forensic analysis focuses on 'repeated DNA sequences scattered throughout the human genome,' known as 'short tandem repeats' (STRs)." State v. Washington, 453 N.J. Super. 164, 177 n.1 (App. Div. 2018) (quoting Maryland v. King, 569 U.S. 435, 443 (2013)).

gunshot missed Morant, making a hole in his jacket. Morant heard a third gunshot. According to Morant, their altercation went on for about five minutes. The shooter bit Morant's hand and said, "Lee please let me go." Morant asked him, "who sent you? Why are you here?" The shooter responded, "there's $20,000 on your head."

While Morant and the shooter were struggling, a black Nissan pulled up. A man exited the car and told Morant to get off of the shooter and that he would "deal with this." As Morant extricated himself from the shooter, he grabbed the shooter's gun and threw it into the backyard. The shooter and the other man ran to the end of the driveway and took off in the Nissan with a third individual.

After hearing three gunshots and Morant's cries for help, Morant's wife opened the front door, saw the altercation, and called 911. She reported someone had "just tried to rob Lee as he got home," she had heard three gunshots, and her husband was then engaged in an altercation with one of his assailants. Communication Officer Christopher Babinski, who worked in the police department's communication center as a 911 operator, taking calls and "dispatch[ing] the appropriate police, fire, medical units that are needed," testified he had received the 911 call from Morant's wife at 10:10 p.m. Portions of the call were played for the jury.

Detective Daniel Valle testified that when he arrived on the scene, he saw Morant outside of his home with lacerations on his hands and rips in his clothing. Morant described to him the encounter with the shooter and confirmed the suspects had fled the scene. The police were able to locate the gun, later identified as a nine-millimeter silver Ruger. Valle canvassed the neighborhood. Several people reported hearing gunshots; one resident said she had seen a man run to a black car. According to Valle, defendant was later identified as the suspect.

Detective Jose Alvarez responded to the scene and found the gun on the side of the house. Alvarez testified that when he recovered the gun, it did not have a magazine but had a spent shell casing lodged in the chamber of the gun. According to Alvarez, the gun had "no visible serial number that could be seen as it appeared that it had been defaced." Alvarez authenticated the gun and the exhibit box containing it. He read the description of the gun on the evidence box: "a Ruger nine-millimeter semi auto handgun that is silver and black with a defaced serial number." He identified the gun as "the defaced Ruger . . . ." When asked how he was able to recognize the gun, Alvarez testified he "could . . . still see where the . . . serial number would be. It's still defaced." When asked to point out where on the gun the "defaced area" was, Alvarez explained

"[t]he serial number should be here on the right side of the slide. But it looks like some type of tool was used to obliterate the serial number which should be on the slide." He authenticated photos of the gun. The prosecutor, pointing to a photo, asked Alvarez, "[a]nd what are we looking at here?" Alvarez responded: "It's . . . the same Ruger . . . with the defacing of the serial number." When asked to clarify what "defacing of the serial number" meant, Alvarez answered, "[t]he serial number which should be on the frame there, it looks like it's been obliterated or altered . . . in some which way where it's unidentifiable." Explaining further, Alvarez stated

> The serial number which would belong to this firearm would be printed or imprinted into the metal of the firearm. It appears that someone attempted to alter the firearm or obliterate . . . the serial number so it couldn't be traced back to its original owner. So, it looks like it's been defaced.

The prosecutor asked: "So, this firearm is defaced; is that correct?" Alvarez responded, "[c]orrect."

Lieutenant Thomas Barbella testified he had found in the driveway a live nine-millimeter round, along with two fragments of a fired bullet. Barbella also testified the police had taken possession of Morant's bloody shirt and the hard drive from the exterior surveillance cameras and had recovered a gun, which he described as having "a defaced serial number . . . ."

Officer Paul Parada testified he had secured the hard drive for the exterior surveillance cameras and authenticated the video footage, which was admitted into evidence and shown to the jury.

Detective Christopher Davis, the lead investigator on the case, testified he had responded to the call and had collected the evidence from the scene, including the gun, a spent casing, a live round, a fragmented round, and Morant's clothing. He referred to the gun as "the defaced firearm" and described it as having "had the serial numbers defaced on it." He identified photographs, describing them as depicting the "firearm that was defaced" and the "Ruger with the defaced serial number." Davis testified he had taken samples of "blood swabs" from Morant's clothing. The samples were sent to the New Jersey State Police laboratory for review. Davis received a report from the laboratory that the DNA from one of the samples recovered from Morant's jacket "was a positive match for the defendant . . . ." Based on that DNA match, Davis arrested defendant. Davis testified defendant did not have a permit to carry a firearm.

Detective Sergeant First Class Randy MacConnell, an assistant unit head in the ballistics unit of the New Jersey State Police, was qualified as a latent-fingerprint expert. In his testimony, MacConnell identified the gun as "a Ruger

P93DC [nine-]millimeter handgun." When asked how he had recognized the gun, MacConnell responded:

> I can see the manufacturer is right on the side of it. Unfortunately, the serial number on this is defaced, which means they actually – somebody took it and grinded it off so it doesn't have a serial number on it. So I can't identify it by serial number. But I recognize it as a weapon I processed in this case.

MacConnell testified he had not been able to lift fingerprints from the gun.

Kevin Cabnet, a forensic scientist in the serology unit of the New Jersey State Police Office of Forensic Scientists, was qualified as a serology expert "certified as a biological stain analyst." He testified he had sent Morant's shirt and jacket to the State Police DNA laboratory after tests he conducted indicated the presence of blood.

James Joyce, a New Jersey State Police firearms examiner, was qualified as a firearms-identification expert. Joyce testified the gun recovered from the scene was operable. Cross-examining Joyce, defense counsel asked, "[b]ecause this doesn't have a serial number on it, but it does have a make and model number, is there any database that a law enforcement could go to, to see if this particular model was reported stolen or missing in the United States?" Joyce responded that the National Crime Information Center has a database of stolen

firearms, but because "there was no serial number recovered on this . . . , you wouldn't be able to see if it was stolen or not."

Linnea Schiffner, a certified DNA analyst of the New Jersey State Police Office of Forensic Sciences, was qualified as an expert in forensic DNA STR analysis. Schiffner testified that although Morant was the source of most of the DNA samples taken from his clothing, the sample taken from the left sleeve of his jacket did not come from Morant. Using a buccal swab taken from defendant, Schiffner confirmed defendant was the source of the DNA found on Morant's left sleeve.

Defendant did not testify, call any witnesses, or present any evidence. Prior to closing arguments, the judge held "a relatively informal discussion" with counsel "in chambers about [the] request to charge." On the record, the judge stated she had "not received any specific request to charge from counsel" and asked if the State was requesting a charge on a lesser-included offense. The assistant prosecutor represented the State had "no objection to [a] lesser included of a second-degree aggravated assault, but that would be it." The judge told counsel she would send them a list of the charges about which she intended to instruct the jury and gave them an opportunity to submit objections.

The next day, the judge conducted a charge conference on the record. According to defense counsel, defendant was "not looking for lesser-included offenses[, but t]he State wanted that." The judge told counsel she would "consider charging a simple assault with a deadly weapon as a lesser-included" offense. The State "le[ft] it to [the judge's] discretion"; defense counsel represented defendant "would accept that." After further discussion, the judge decided that "over the objection of the defense," she would "charge aggravated assault, serious bodily injury" and would not charge "aggravated assault, bodily injury with a deadly weapon."

During the State's closing argument, the assistant prosecutor stated defendant "had an intent to kill, his motive was to kill, he was hired to kill the victim in this case, Mr. Lee Morant." Later, the assistant prosecutor remarked that defendant "was the individual at that location with the gun who fired at the victim, who was hired to kill the victim." Defense counsel did not object to those comments. After the assistant prosecutor completed her closing argument, the following colloquy took place at sidebar:

> THE COURT: And although the defense did not object, (indiscernible) said it more th[an] once and State murder for hire. (Indiscernible) to murder. What about (indiscernible) charge? There's been no evidence that this is (indiscernible).

[ASSISTANT PROSECUTOR]: Well, based on the statement of he had $20,000 [o]n your head. I did indicate that in my opening.

THE COURT: Perhaps, but that's different than (indiscernible). At least (indiscernible) more compelling . . . that's the Court's opinion. [Defense counsel]?

[DEFENSE COUNSEL]: Maybe we could advise the jury to disregard that.

. . . .

THE COURT: . . . the specific phrase, "murder for hire," the statement obviously that indicates –

. . . .

[ASSISTANT PROSECUTOR]: But he was hired to –

THE COURT: But murder for hire is a separate and distinct –

[ASSISTANT PROSECUTOR]: I don't believe I said murder for hire.

THE COURT: Yes, you did.

[ASSISTANT PROSECUTOR]: Okay.

. . . .

THE COURT: (Indiscernible). State (indiscernible) municipal, which allows you to suggest (indiscernible) murder, which you did, (indiscernible).

[ASSISTANT PROSECUTOR]: Okay.

Defense counsel told the judge he "tr[ies] not to object when someone is . . . opening and closing" and that he "did look at you a couple of times."

The next day, the trial judge charged the jury. When giving instructions for the attempted-murder charge, the trial judge initially used the "substantial step" language of the model charge for attempted murder:

> More specifically, the law provides that a person is guilty of an attempt to commit the crime of murder if the person purposely did or omitted to do anything which under the circumstances, as a reasonable person would permit them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in causing the death of the victim. Thus, in order to find the defendant guilty of the crime of attempted murder, the State must prove the following elements beyond a reasonable doubt.
>
> First, it was the defendant's purpose to cause the death of [Morant]. Secondly, the defendant purposely did or omitted to do anything which under the circumstances would cause a reasonable person, would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in causing – in his causing the death of the victim, [Morant].
>
> [(Emphases added).]

See also Model Jury Charges (Criminal), "Attempted Murder (N.J.S.A. 2C:5-1; N.J.S.A. 2C:11-3(a)(1))," at 1-2 (approved Dec. 7, 1992).

Moments later, when charging the jury on the State's burden of proof, the judge used the "when causing a particular result is an element of the crime" portion of the model charge:

> First, the State must prove that the defendant acted purposely.
>
> . . . .
>
> Secondly, the State must also prove beyond a reasonable doubt that the defendant did or omitted to do anything with the purpose of causing the death of the victim, without further conduct on his part. This means that the defendant did or failed to do anything designed to accomplish the death of the victim without having to take further action.
>
> Where the defendant has done all that he believes necessary to cause the death of the victim, you should consider that as evidence of guilt of attempt to purposely cause the victim's death.
>
> [(Emphasis added).]

See also id. at 4.

The jury found defendant guilty on all four charges. At sentencing, the trial judge found aggravating factor two, "[t]he gravity and seriousness of harm inflicted on the victim"; aggravating factor three, the risk of reoffending; and aggravating factor nine, the "need for deterring the defendant and others from violating the law." See N.J.S.A. 2C:44-1(a)(2), (3), and (9). The judge did not

find any mitigating factors. The judge imposed an aggregate prison term of twenty years. On the attempted-murder conviction, the judge sentenced defendant to a twenty-year term of imprisonment, with a parole-ineligibility period as prescribed by the No Early Release Act, N.J.S.A. 2C:43-7.2. On the conviction for second-degree unlawful possession of a handgun, the judge sentenced defendant to a ten-year term of imprisonment, subject to a five-year period of parole ineligibility. For purposes of sentencing, the judge merged the conviction for second-degree possession of a firearm for an unlawful purpose with the attempted-murder conviction and the conviction for fourth-degree unlawful possession of a defaced firearm with the conviction for second-degree unlawful possession of a handgun. The judge ordered defendant to serve the sentences concurrently.

On appeal, defendant makes the following arguments:

> Point I
>
> THE TRIAL COURT'S ERRONEOUS JURY CHARGE COMPELS REVERSAL OF [DEFENDANT'S] CONVICTION.
>
> Point II
>
> THE COURT'S FAILURE TO ISSUE A CURATIVE INSTRUCTION FOLLOWING IMPROPER COMMENTS BY THE ASSISTANT PROSECUTOR

DURING SUMMATION CONSTITUTES ERROR COMPELLING REVERSAL.

Point III

THE COURT ERRED IN CHARGING SECOND DEGREE AGGRAVATED ASSAULT AS A LESSER INCLUDED OFFENSE OF ATTEMPTED MURDER AS THE RECORD CONTAINS NO EVIDENCE SUPPORTING SUCH A CHARGE.

Point IV

THE TESTIMONY BY MULTIPLE OFFICERS THAT THE FIREARM WAS "DEFACED" CONSTITUTED IMPERMISSIBLE OPINION TESTIMONY THAT DEFENDANT WAS GUILTY OF COUNT FOUR OF THE INDICTMENT.

Point V

CUMULATIVE TRIAL ERRORS IN THE CONTEXT OF THE PROCEEDINGS BELOW DEPRIVED DEFENDANT OF A FAIR TRIAL AND WARRANT REVERSAL.

Point VI

THE SENTENCE IMPOSED BY THE COURT BELOW IS EXCESSIVE.

II.

Because defendant did not object or otherwise raise before the trial court many of the legal issues he now raises on appeal, we review his arguments under the plain-error standard of Rule 2:10-2, unless otherwise indicated. See State v.

Singh, 245 N.J. 1, 13 (2021) (finding "[w]hen a defendant does not object to an alleged error at trial, such error is reviewed under the plain error standard"). "[A]n unchallenged error constitutes plain error if it was 'clearly capable of producing an unjust result,'" id. (quoting R. 2:10-2), and "raise[s] 'a reasonable doubt . . . as to whether the error led the jury to a result it otherwise might not have reached,'" State v. Funderburg, 225 N.J. 66, 79 (2016) (quoting State v. Jenkins, 178 N.J. 347, 361 (2004)). "The mere possibility of an unjust result is not enough." Ibid. When applying the plain-error standard, we evaluate an error "in light of the overall strength of the State's case." State v. Sanchez-Medina, 231 N.J. 452, 468 (2018) (quoting State v. Galicia, 210 N.J. 364, 388 (2012)); see also State v. Clark, 251 N.J. 266, 287 (2022) (same).

A.

We first address defendant's arguments regarding the jury instructions. Defendant argues the trial judge erred in the attempted-murder charge by including language from both the "substantial step" and the "when causing a particular result" portions of the model jury charge. Defendant acknowledges he did not object to the attempted-murder charge and that, consequently, we apply the plain-error standard in considering his argument.

In the context of a jury charge, "plain error requires demonstration of 'legal impropriety in the charge prejudicially affecting the substantial rights of the defendant and sufficiently grievous to justify notice by the reviewing court and to convince the court that of itself the error possessed a clear capacity to bring about an unjust result.'" State v. Montalvo, 229 N.J. 300, 321 (2017) (quoting State v. Chapland, 187 N.J. 275, 289 (2006)). Although "erroneous instructions in a criminal case are 'poor candidates for rehabilitation under the plain error theory,'" State v. Adams. 194 N.J. 186, 207 (2008) (quoting State v. Jordan, 147 N.J. 409, 422 (1997)), "[t]he error must be considered in light of the entire charge and must be evaluated in light 'of the overall strength of the State's case,'" State v. Walker, 203 N.J. 73, 90 (2010) (quoting Chapland, 187 N.J. at 289). See also State v. Kille, 471 N.J. Super. 633, 641-42 (App. Div. 2022), certif. denied, 252 N.J. 228 (2022) (same).

"[N]ot every improper jury charge warrants reversal and a new trial." Prioleau v. Ky. Fried Chicken, Inc., 223 N.J. 245, 257 (2015). "As a general matter, [appellate courts] will not reverse if an erroneous jury instruction was 'incapable of producing an unjust result or prejudicing substantial rights.'" Mandal v. Port Auth. of N.Y. & N.J., 430 N.J. Super. 287, 296 (App. Div. 2013) (quoting Fisch v. Bellshot, 135 N.J. 374, 392 (1994)). The charge must be read

as a whole, and not just the challenged portion, to determine its overall effect. State v. Garrison, 228 N.J. 182, 201 (2017). "The test to be applied . . . is whether the charge as a whole is misleading, or sets forth accurately and fairly the controlling principles of law." State v. Baum, 224 N.J. 147, 159 (2016) (quoting State v. Jackmon, 305 N.J. Super. 274, 299 (App. Div. 1997)). "The key to finding harmless error in such cases is the isolated nature of the transgression and the fact that a correct definition of the law on the same charge is found elsewhere in the court's instructions." Id. at 160 (quoting Jackmon, 305 N.J. Super. at 299).

In response to defendant's argument, the State concedes the judge used both the "substantial step" language and the "causing a particular result" language from the model charge and that "best practices would have been to use just one." The State, however, contends that viewing the charge as a whole and considering the strengths of its case, the error was harmless because it did not have "a clear capacity to bring about an unjust result." Chapland, 187 N.J. at 289. We agree.

The evidence of guilt was overwhelming. The surveillance video captured the event and supported Morant's testimony. It showed the shooter coming from behind the car, the shooter raising his arm as if he were aiming at Morant, a flash

of what appeared to be gunfire, and the subsequent altercation. Defendant's DNA was identified in a blood stain on Morant's clothing. Morant testified that when he had asked the shooter why he was there, the shooter told him "there's $20,000 on your head."

As depicted in the video, it was a simple case. Under these straightforward circumstances, the jurors had to reach the same factual conclusions to convict under either "causing a particular result" attempted murder or "substantial step" attempted murder. Thus, there was no likelihood of a fragmented or erroneous verdict. Moreover, the parties did not present conflicting theories on the attempt issue; as presented in defense counsel's closing argument, defendant simply denied he had attempted to kill Morant. See State v. Kornberger, 419 N.J. Super. 295, 303-04 (App. Div. 2011) (in case in which trial court included in its jury instructions language from multiple portions of the attempted-murder model jury charge, appellate court concluded error in charge was harmless when the "case presented no complexity" and the parties did not have conflicting theories on attempted murder charge). Considering the instructions as a whole and the strengths of the State's case, we conclude the error was harmless because it did not have "a clear capacity to bring about an unjust result." Chapland, 187 N.J. at 289

Defendant also argues the trial judge erred in charging the jury on second-degree aggravated assault as a lesser-included offense of attempted murder. Because defendant was not convicted of that crime and we affirm defendant's actual convictions, we need not address that argument, as defendant has conceded in his brief.

B.

Defendant faults the trial judge for not issuing a curative instruction after the assistant prosecutor stated twice in her closing argument that defendant had been "hired to kill the victim." Because her statements were fair commentary based on the evidence before the jury, the judge did not need to give a curative instruction and did not err in not giving one.

We reverse a conviction for comments made during a prosecutor's closing argument "[o]nly when the prosecutor's conduct in summation so 'substantially prejudice[s] the defendant's fundamental right to have the jury fairly evaluate the merits of his defense.'" State v. Garcia, 245 N.J. 412, 436 (2021) (quoting State v. Bucanis, 26 N.J. 45, 56 (1958)). "'[P]rosecutors in criminal cases are expected to make vigorous and forceful closing arguments to juries' and are therefore 'afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented.'" State

v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Frost, 158 N.J. 76, 82 (1999)). "[A]s long as the prosecutor stays within the evidence and the legitimate inferences therefrom, [t]here is no error." Clark, 251 N.J. at 290 (alterations in the original) (quoting State v. Williams, 244 N.J. 592, 607 (2021)).

That is exactly what the assistant prosecutor was doing when she stated defendant had been "hired to kill the victim." Morant testified he had asked the shooter why he was there and who sent him and that the shooter responded, "there's $20,000 on your head." That defendant had been "hired to kill the victim" was a reasonable inference from that testimony. The assistant prosecutor's comments were also a fair response to defense counsel's argument that defendant did not intend to kill Morant but only to scare or rob him. Accordingly, her comments were not improper and did not deprive defendant of a fair trial, and the judge acted appropriately in not issuing a curative instruction.

C.

Defendant asks us to reverse the conviction for fourth-degree unlawful possession of a defaced firearm based on the police officers' references to the "defaced" gun. Defendant, who did not object to any of those references during

the trial, contends that by describing the gun as "defaced," the officers were improperly opining about defendant's guilt. We disagree.

N.J.S.A. 2C:39-3(d) provides "[a]ny person who knowingly has in his possession any firearm which has been defaced . . . is guilty of a crime of the fourth degree." Defendant did not challenge that the gun had been defaced. In fact, during the cross-examination of Joyce, defense counsel described the gun as not "hav[ing] a serial number on it" and elicited testimony about whether law enforcement had a database that could be used to search for the gun even though it did not "have a serial number on it." Instead, defendant argued he had not possessed the gun. And none of the officers opined that defendant had defaced the gun or had knowingly possessed it.

N.J.R.E. 701 provides opinion testimony by a non-expert witness may be admitted if the testimony "is rationally based on the witness' perception . . . ." Singh, 245 N.J. at 14. Thus, a non-expert witness may testify based on knowledge acquired "through the use of one's sense of touch, taste, sight, smell or hearing." Ibid. (quoting State v. McLean, 205 N.J. 438, 457 (2011)). A police "officer is permitted to set forth what he or she perceive through one or more of the senses." Id. at 15 (quoting McLean, 205 N.J. at 460). Testimony about what a police officer saw "does not convey information about what the officer

"believed," "thought" or "suspected," but instead is an ordinary fact-based recitation by a witness with first-hand knowledge." Ibid. (quoting McLean, 205 N.J. at 460).

Whether the gun was defaced and lacked a serial number was readily discernable by anyone – the officers, defense counsel, and the jurors – by simply looking at the gun. Accordingly, the officers' references to the gun as being "defaced" were not impermissible lay opinions about defendant's guilt; instead, they were permissible statements based on the officers' perceptions about an unchallenged characteristic of the gun.

D.

Defendant argues the trial judge erred in failing to find any mitigating factors when sentencing defendant and, consequently, in imposing an excessive sentence. We disagree.

We review an imposition of a sentence under the abuse-of-discretion standard. State v. Torres, 246 N.J. 246, 272 (2021). Under that standard, we defer to the sentencing judge's factual findings and should not "second-guess" them. State v. Case, 220 N.J. 49, 65 (2014). We give that deference, however, "only if the trial judge follows the [Criminal] Code and the basic precepts that channel sentencing discretion." State v. Trinidad, 241 N.J. 425, 453 (2020)

(quoting Case, 220 N.J. at 65). Whether a sentence violates sentencing guidelines is a question of law we review de novo. State v. Robinson, 217 N.J. 594, 603-04 (2014). In sum, we "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) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).

Defendant faults the trial judge for not finding mitigating factors eight ("defendant's conduct was the result of circumstances unlikely to recur"), eleven ("imprisonment . . . would entail excessive hardship to the defendant"), thirteen ("conduct of a youthful defendant was substantially influenced by another person more mature than the defendant"), and fourteen ("defendant was under 26 years of age at the time of the commission of the offense"). See N.J.S.A. 2C:44-1(b). At the sentencing hearing, defense counsel did not cite to those mitigating factors. Instead, "as to the mitigating circumstances," he argued "this is the only violen[t] offense ever for this young man and . . . Morant himself cast a doubt on whether or not this, in fact, was the individual."

In rendering the sentence, the judge considered that defendant was "only [twenty-three] years of age" and that "an unknown second individual" was involved. Morant's testimony that defendant had told him he was there because a bounty had been placed on Morant's life runs counter to consideration of mitigating factor eight. The record contained no evidence regarding the maturity or influence of the other people involved, and, thus, mitigating factor eleven was not supported any evidence. Mitigating factor fourteen does not apply because it was enacted after defendant was sentenced. See State v. Lane, 251 N.J. 84, 87-88 (2022) (holding N.J.S.A. 2C:44-1(b)(14) was prospective and did not apply to defendants sentenced prior to the provision's effective date). Accordingly, we perceive no abuse of discretion in the judge's determination that the mitigating factors were "non-existent" or in the sentence ultimately imposed.

E.

Given our above reasoning, defendant's argument that cumulative trial errors require reversal is without sufficient merit to warrant discussion. See R. 2:11-3(e)(2).

Affirmed.