SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0555-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANIEL J. WATERFIELD,

Defendant-Appellant.

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Argued January 10, 2023 – Decided March 7, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 19-05-0668.

Taylor L. Napolitano, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Tamar Y. Lerer, Assistant Deputy Public Defender, of counsel and on the brief).

Alexis R. Agre, Assistant Prosecutor, argued the cause for respondent (Scott A. Coffina, Burlington County Prosecutor, attorney; Alexis R. Agre, of counsel and on the brief).

PER CURIAM

Defendant Daniel J. Waterfield appeals from his jury trial conviction for desecration of human remains. The State presented evidence at trial that the decedent died of an overdose in defendant's vehicle after she used fentanyl-laced heroin. Defendant continued to make mattress deliveries with the decedent's corpse in the passenger seat. He then drove to a dark, rural road where the body was discarded.

Defendant contends several errors deprived him of a fair trial, including: (1) the trial judge violated the doctrine of completeness by not allowing defendant to elicit certain remarks made by defendant that the parties had agreed to redact from the recorded interrogation played to the jury; (2) the trial judge erred by failing to sua sponte exclude lay opinion testimony from the lead detective; (3) the prosecutor committed misconduct by making inappropriate comments to the jury and by eliciting testimony sympathetic to the decedent; and (4) the trial judge erred by failing to instruct the jury on the meaning of the term "unlawful." Defendant also contends the trial judge imposed an excessive sentence. After carefully reviewing the record in the light of the applicable legal principles and arguments of the parties, we affirm the conviction and sentence.

I.

Around 9:00 a.m. on October 31, 2018, the decedent called her grandmother to tell her that defendant had come to pick her up after she had gotten into an argument with the person she was staying with. Later that morning, the decedent again contacted her grandmother, this time asking for money. The grandmother sent forty dollars to a pharmacy via a money transfer service.

Defendant had several jobs to complete that day. The first took him and the decedent to Penns Grove, where defendant picked up mattresses. Around 1:00 p.m., defendant drove the decedent to the pharmacy to collect the money sent by her grandmother. Against the grandmother's wishes, the decedent used the money to purchase heroin. She and defendant then went to Camden for the first delivery.

The decedent's final communication to her grandmother was a text at 1:55 p.m. At some point she used the heroin she had purchased. She lost consciousness and died in the passenger seat of defendant's truck. Defendant did not summon emergency medical assistance. Instead, he continued to make his deliveries.

Defendant admitted to police that he communicated with the grandmother throughout the night without revealing that he knew where the decedent was. He untruthfully told the grandmother that she was not with him.

After another pickup and delivery, defendant went to the Walter Rand Transportation Center in Camden to eat. There, defendant picked up co-defendant Amanda Seth. While at the Center, a friend of the decedent, Troy, told defendant he wanted to talk to the decedent.

Around 5:00 p.m., defendant, accompanied by Seth and Troy and with the decedent's corpse still in the vehicle, drove to a diner in Southampton, approximately twenty miles from Camden. Defendant pulled over to let Troy "do his thing" in the woods, which defendant took to mean using drugs. Defendant tried to use the restroom at the diner but accidently set off an alarm. He then drove a short distance to an unlit street, Purgatory Road. On that road, defendant allowed Troy to take the decedent's body out of the car and then drove away. Sometime after 7:00 p.m., a motorist spotted the body on Purgatory Road.

The Burlington County Medical Examiner, Dr. Ian Hood, provided expert testimony about his autopsy findings. The toxicology results revealed that the decedent had large amounts of heroin and fentanyl in her blood. Dr. Hood attributed the cause of death to heroin and fentanyl toxicity. He also opined that

death occurred rapidly—in less than a minute—due to the high level of drugs in her system. Dr. Hood estimated the time of death was likely between 12:00 p.m. and 4:00 p.m.

Defendant testified in his own defense. He admitted that he lied to the grandmother about not knowing the decedent's whereabouts. He maintained the decedent was alive at the time he left her on the side of the road in Southampton Township.

In May 2019, defendant and co-defendant Seth were charged by indictment with second-degree desecrating human remains, N.J.S.A. 2C:22-1(a)(1), and fourth-degree tampering with physical evidence, N.J.S.A. 2C:28-(6)(1). The State later dismissed the tampering charge. Defendant was tried alone before a jury over the course of four days from late February to early March 2020. The jury found defendant guilty of desecration. In September 2020, defendant was sentenced by the trial judge to an eight-year term of imprisonment.

Defendant raises the following contentions for our consideration:

> POINT I
> THE TRIAL COURT'S RULING THAT THE DEFENSE COULD NOT INTRODUCE PARTS OF THE DEFENDANT'S RECORDED STATEMENT OTHER THAN THOSE CHERRY-PICKED AND EDITORIALIZED ON BY THE STATE WAS

ERRONEOUS, PREJUDICIAL, AND REQUIRES REVERSAL OF DEFENDANT'S CONVICTION.

A. THE DECISION TO PRECLUDE THE DEFENSE FROM INTRODUCING OTHER PORTIONS OF DEFENDANT'S STATEMENT VIOLATED THE DOCTRINE OF COMPLETENESS.

B. ASHLEY'S COMMENTARY ON DEFENDANT'S STATEMENT WAS INAPPROPRIATE LAY-OPINION TESTIMONY.

C. THE DECISION TO PRECLUDE THE DEFENSE FROM INTRODUCING OTHER PORTIONS OF DEFENDANT'S STATEMENT VIOLATED THE BEST-EVIDENCE RULE.

D. THE ADMISSION OF A HIGHLY EDITED AND EDITORIALIZED VERSON OF DEFENDANT'S STATEMENT, ALONG WITH PRECLUDING THE DEFENSE [FROM] ADMITTING OTHER PORTIONS OF THE STATEMENT, REQUIRES REVERSAL OF DEFENDANT'S CONVICTION.

POINT II

THE SYMPATHETIC PORTRAYAL OF THE DECEDENT, COMBINED WITH THE DEROGATORY PORTRAYAL OF THE DEFENDANT, WAS IRRELEVANT, PREJUDICIAL,

AND REQUIRES REVERSAL OF DEFENDANT'S CONVICTION.

POINT III
THE FAILURE [TO] DEFINE "UNLAWFULLY" WHEN THE DEFENDANT WAS CHARGED WITH "UNLAWFULLY" DISTURBING, MOVING, OR CONCEALING HUMAN REMAINS REQUIRES REVERSAL OF HIS CONVICTION.

POINT IV
THE SENTENCE OF EIGHT YEARS IS EXCESSIVE FOR DEFENDANT, WHO WAS [FIFTY-FIVE] YEARS OLD AT THE TIME OF SENTENCING AND WAS A FIRST-TIME OFFENDER.

II.

We first address defendant's contention that the trial court violated the "doctrine of completeness" by prohibiting defendant from introducing certain remarks defendant made during the video-recorded stationhouse interrogation. Defense counsel and the prosecutor reviewed the interrogation and agreed to redact certain remarks from the recording that would be played to the jury. State Police Detective Keith Ashley testified as to defendant's incriminating admissions made during the interrogation. Defendant did not object to the detective's direct examination.

On cross examination, defense counsel sought to ask the detective about self-serving remarks defendant made that counsel had previously agreed to

redact from the recording that was played to the jury. When counsel first attempted to question Detective Ashley about a redacted portion of defendant's statement, the prosecutor raised a hearsay objection. After a sidebar discussion, defense counsel acquiesced to the State's objection. When defense counsel made a second attempt to elicit a consensually redacted remark from the detective, the prosecution objected again, and defendant withdrew the question.

Under the doctrine of testimonial completeness, "[i]f a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part, or any other writing or recorded statement, that in fairness ought to be considered at the same time." N.J.R.E. 106.[1] A "second writing may be required to be read if it is necessary to (1) explain the admitted portion, (2) place the admitted portion in context, (3) avoid misleading the trier of fact, or (4) insure a fair and impartial understanding." State v. Lozada, 257 N.J. Super. 260, 272 (App. Div. 1992) (quoting United States v. Soures, 736 F.2d 87, 91 (3d Cir. 1984)).

[1] This is the current version of N.J.R.E. 106, which was amended on September 16, 2019 to be effective July 1, 2020. Defendant was tried prior to the amendment. The amendment did not change the substance of the rule.

As we explained in State v. Gomez,[2] the purpose of the rule is to permit the trier of fact to hear all that was said at that time about the same subject matter. 246 N.J. Super. 209, 217 (App. Div. 1991). Unrelated portions of the statement are not admissible under a theory of "completeness." Ibid.; see also State v. Colon, 246 N.J. Super 608, 614 (App. Div. 1991). We reasoned in Gomez that the defendant's exculpatory statement, which followed an inculpatory statement, was not admissible under the doctrine of completeness because the second statement was not necessary to explain the first. 246 N.J. Super. at 221.

In sum, a trial court is not required to admit an entire statement merely because the State introduces an inculpatory portion of it. Rather, "whether fairness requires the inclusion of the exculpatory portion of the statement and whether that portion carries with it a likelihood of trustworthiness rests in the sound discretion of the trial judge." Lozada, 257 N.J. Super. at 272.

Applying those principles to the matter before us, we see no error in precluding defendant from eliciting remarks that were redacted by consent of

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[2] In State v. White, our Supreme Court criticized portions of the analysis in Lozada and Gomez regarding the admissibility of a declarant's self-exculpatory statement. 158 N.J. 230, 239 (1999). However, White discussed the statement-against-interest exception to the hearsay rule and not the doctrine of completeness. Id. at 238.

the parties. For one thing, defendant does not argue that the redacted remarks pertain to the facts of the crime. Rather, the gravamen of defendant's argument is that the redacted remarks would soften the impact of derisive comments defendant made to police about the decedent.[3] Defendant contends that had the trial court allowed the jury to hear redacted comments about, for example, his experience with other opiate addicts and with homelessness, the context of defendant's derogatory remarks about the decedent would have "change[d] their tenor and meaning."

We fail to see how preventing defendant from eliciting the redacted remarks in any way misled the jury. The statements that defendant now argues were wrongfully excluded neither elaborate on any material fact nor alter the jurors' understanding of the events that transpired on the day the decedent's body was left on Purgatory Road. They provide only minimal context, if any, to the statements that were admitted and were not necessary "to insure a fair and impartial understanding" of the admitted comments. Lozada, 257 N.J. Super. at 272.

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[3] Specifically, defendant notes the jury heard defendant's comment that "[s]he's in a stupor. . . . It's to the point where this is no longer my fucking problem. She wants to hang with these jabronis, knock your socks off. Don't drag me into your bullshit life." The jury was also told defendant said the decedent was "useless as tits on a bull."

We reiterate and stress that defendant consented to the exclusion of the evidence he now says should have been admitted. When the State raised the hearsay objection, defense counsel offered no legal counterargument but instead withdrew the question, effectively depriving the judge the opportunity to rule on the State's objection. In sum, we conclude defendant's hearsay remarks were properly redacted, and defendant was not entitled to admit them during cross-examination of Detective Ashley under the guise of the doctrine of completeness or any other legal theory.

III.

We next address defendant's contention, raised for the first time on appeal, that Detective Ashley improperly provided lay opinion testimony regarding the contents of the video-recorded interrogation. Specifically, Detective Ashley commented that defendant's explanation of how he left the body did not make sense and that there were inconsistencies in defendant's version. Defendant argues the recording of the interrogation shown to the jury speaks for itself and did not require explanation or amplification by the detective. The State argues Detective Ashley—who conducted the interrogation—did not give lay opinion

testimony, but rather testified as a fact witness as to factual inconsistencies the detective became aware of while questioning defendant.[4]

N.J.R.E. 701[5] provides that if a witness is not testifying as an expert, testimony in the form of opinions or inferences may be admitted if it is "rationally based" on the perception of the witness and "will assist in understanding the witness' testimony or in determining a fact in issue." In order to admit lay opinion testimony, the "witness must have actual knowledge, acquired through his or her senses, of the matter to which he or she testifies." State v. Sanchez, 247 N.J. 450, 466 (2021) (quoting State v. LaBrutto, 114 N.J. 197 (1989)). "[L]ay opinion testimony is limited to what was directly perceived by the witness and may not rest on otherwise inadmissible hearsay." State v. McLean, 205 N.J. 438, 460 (2011).

Detective Ashley was permitted to explain the inconsistencies in defendant's answers the detective recognized as the interrogator during the course of the interrogation. Even if the detective's comments were construed to

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[4] For example, defendant described Troy as being two different heights, used different names to refer to Troy, and gave different locations for where Troy wanted to go.

[5] Similar to N.J.R.E. 106, this rule was amended after defendant's trial, but the amendment was stylistic and did not change the substance of the rule. See note 1.

be opinion testimony rather than fact testimony, defendant did not object at trial, thus depriving the trial court an opportunity to make findings under N.J.R.E. 701 as to whether his testimony would assist the jury in determining a fact in issue.

Evidentiary rulings are generally reviewed under the abuse of discretion standard. State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383–84 (2010)). However, when a party fails to object, appellate courts conduct a review under the plain error standard. State v. Santamaria, 236 N.J. 390, 404 (2019) (citing R. 2:10-2). Furthermore, a failure to object to testimony permits an inference that any error in admitting the testimony was not prejudicial. State v. Nelson, 173 N.J. 417, 471 (2002); see also State v. Frost, 158 N.J. 76, 84 (1999) ("The failure to object suggests that defense counsel did not believe the remarks were prejudicial at the time they were made."). We are satisfied that defendant has failed to establish that the detective's comments were of such nature as to have been clearly capable of producing an unjust result, see R. 2:10-2.

IV.

We turn next to defendant's contention, also raised for the first time on appeal, that the prosecutor committed misconduct by saying defendant did not

have "the human decency" to take the decedent to the hospital and by describing the remote location where the body was found as "right on the edge of where the Jersey Devil lives." Defendant also contends, again for the first time on appeal, the prosecutor improperly elicited testimony from the decedent's grandmother that bolstered the decedent's character and "served to juxtapose her goodness with [defendant]'s badness, encouraging the jury to punish someone for her death."

Prosecutors "are expected to make vigorous and forceful closing arguments to juries." Frost, 158 N.J. at 82 (citing State v. Harris, 141 N.J. 525, 559 (1995)). Furthermore, "[p]rosecutors are afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented." Ibid. (citing Harris, 141 N.J. at 559). "Even so, in the prosecutor's effort to see that justice is done, the prosecutor 'should not make inaccurate legal or factual assertions during a trial.'" State v. Bradshaw, 195 N.J. 493, 510 (2008) (quoting Frost, 158 N.J. at 85). We note that while the comments at issue here were made prior to the closing, the analysis in Frost has been applied to opening remarks. See State v. Atkins, 405 N.J. Super. 392, 401 (App. Div. 2009).

Defendant's allegation of prosecutorial misconduct requires us to assess whether he was deprived of the right to a fair trial. State v. Jackson, 211 N.J. 394, 407 (2012). To warrant reversal on appeal, the prosecutor's misconduct must be "clearly and unmistakably improper" and "so egregious" that it deprived defendant of the "right to have a jury fairly evaluate the merits of his defense." State v. Wakefield, 190 N.J. 397, 437–38 (2007) (quoting State v. Papasavvas, 163 N.J. 565, 625 (2000)).

In reviewing prosecutorial misconduct claims, we also consider: (1) whether defense counsel timely and properly objected to the remark; (2) whether the remark was withdrawn promptly; (3) whether the court gave curative instructions. State v. Allen, 337 N.J. Super. 259, 267 (App. Div. 2001) (quoting Frost, 158 N.J. at 83). Because defendant failed to object at trial, we review the challenged comments for plain error. See R. 2:10-2. Under that standard, we may reverse defendant's conviction only if the error was "clearly capable of producing an unjust result." Ibid.; see also State v. Cole, 229 N.J. 430, 458 (2017) (holding that a prosecutor's remark went "beyond the scope of fair comment on the evidence" but was still not reversible error under Rule 2:10-2).

As we have already noted, in Frost, our Supreme Court emphasized that "[g]enerally, if no objection was made to the improper remarks, the remarks will

not be deemed prejudicial. The failure to object suggests that defense counsel did not believe the remarks were prejudicial at the time they were made." 158 N.J. at 83–84 (citations omitted). "The failure to object also deprives the court of an opportunity to take curative action." Id. at 84.

Applying these legal principles in light of the evidence of the manner in which the decedent's remains were treated, we conclude the prosecutor's comment about defendant's lack of "human decency" was not "so egregious" as to deprive defendant of the "right to have a jury fairly evaluate the merits of his defense." Wakefield, 190 N.J. at 437–38. Claiming, in passing, that defendant did not have the "human decency" to take the decedent to the hospital is markedly different from the prosecutor "bas[ing] his whole presentation to the jury on derogatory remarks." Cf. State v. Gregg, 278 N.J. Super. 182, 191 (App. Div. 1994).

Defendant's contention the prosecutor essentially compared defendant to the devil also lacks merit, as it fundamentally misconstrues what happened at trial. To provide context for the fleeting reference to the Jersey Devil,[6] we reproduce verbatim the relevant portion of the prosecutor's opening statement to the jury:

> This is about someone dying, [defendant] knowing that she's dead, from a legal perspective, which the judge is

[6] The Jersey Devil is a mythical beast said to inhabit the Pine Barrens.

> going to get into and I'll touch upon in closing again, and then knowing all that, making the decision to move [the decedent] from Camden out to Southampton, and then to try to conceal her. He didn't leave her in Camden where there's a lot of people around. He took her out to someplace called Purgatory Road, [twenty] miles away, where there's no lights, there's -- there's very few houses, there's corn fields and trees; and if you keep traveling, you're right on the edge of where the Jersey Devil lives. It's out in the Pinelands out there. That movement shows a consciousness, an awareness, an intent, a knowledge that [defendant]'s design here was to conceal her body because he was worried about what would happen to him. He wasn't worried about anyone else that day except for [himself].

Viewed in context, it is clear the prosecutor's reference to the Jersey Devil was, in fact, a fair comment on the remoteness of the location where the body was left and its proximity to the Pine Barrens. The witness who found the body testified she found the body at the beginning of "the Pinelands." We therefore reject the defense's interpretation that the prosecutor's fleeting reference to the Jersey Devil was a derogatory characterization of defendant.

We also reject defendant's contention the prosecutor committed misconduct by eliciting testimony sympathetic to the decedent. Specifically, defendant identifies five statements elicited at trial from the decedent's grandmother that defendant now claims to be "excessive" and "irrelevant and prejudicial": (1) the grandmother "spoke of what 'a gifted child' [the decedent]

was and how smart and promising she was"; (2) she "spoke of [the decedent]'s 'loving nature, her goodness of heart'"; (3) she testified that the decedent "was 'brutally raped' and then her 'really good start' unfortunately evaporated"; (4) she told the jury "the tragic story of how [the decedent] developed an addiction [to] opiates after seeking treatment for seizures, scoliosis, and arthritis"; and (5) she "explained the complicated family dynamics, how [the decedent] 'couldn't live on her own,' and was vulnerable due to a lack of short-term memory."

"The admission of 'background' evidence relating to the decedent's character or personal life requires a balancing of the probative value of the proffered evidence against the risk that its admission may pose the danger of undue prejudice or confusion to the jury." State v. Williams, 113 N.J. 393, 451 (1988). Applying that principle, it is conceivable defendant could have successfully argued to the trial judge that any or all of the grandmother's statements about the decedent's life offered too little probative value to outweigh the danger of prejudice. The trial judge had no opportunity to make such a determination, however, because defendant did not object to the testimony.

We again infer that defense counsel did not object to this testimony because she did not believe the grandmother's remarks were prejudicial at the time they were made. See Frost, 158 N.J. at 84. Viewed in context with the

overwhelming evidence of defendant's guilt elicited from the other witnesses and defendant's own admissions, we are satisfied the portions of the grandmother's testimony defendant now challenges on appeal were not clearly capable of producing an unjust result and do not rise to the level of plain error warranting reversal. R. 2:10-2.

V.

Defendant next contends the trial court's instruction to the jury on the material elements of the desecration offense was inadequate because the court failed to define the term "unlawfully." At the charge conference convened pursuant to Rule 1:8-7(b), the parties agreed the trial judge use the language of the model jury instructions. The model charge includes an optional portion that is applicable "if unlawfulness is an issue," which expands on the definition of unlawfulness. Model Jury Charges (Criminal), "Disturbing/Desecrating Human Remains (N.J.S.A. 2C:22-1(a)(1))" (approved Oct. 15, 2012). However, defendant did not request that portion of the charge be included and did not object to the charge as it was read to the jury. The judge instructed the jury in pertinent part:

> [T]he indictment charges the defendant with the crime of disturbing or desecrating human remains. The statute on which this count of the indictment is based reads in pertinent part:

> A person commits an offense if he unlawfully disturbs, moves or conceals human remains.
>
> In order for you to find the defendant guilty of this offense, the State must prove each of the following elements beyond a reasonable doubt:
>
> Number one, that the defendant unlawfully disturbed, moved or concealed human remains.
>
> Two, that the defendant acted knowingly.
>
> The first element that the State must prove beyond a reasonable doubt is that the defendant unlawfully disturbed, moved or concealed human remains.
>
> "Unlawful" means not done in accordance with the law.
>
> [(Emphasis added).]

It is well-settled that when, as in this case, a defendant does not object to the jury charge, "there is a presumption that the charge was not error and was unlikely to prejudice the defendant's case." State v. Montalvo, 229 N.J. 300, 320 (2017) (quoting State v. Singleton, 211 NJ. 157, 182 (2012)). Furthermore, "a jury charge is presumed to be proper when it tracks the model jury charge because the process to adopt model jury charges is 'comprehensive and thorough.'" State v. Cotto, 471 N.J. Super. 489, 543 (App. Div. 2022) (quoting State v. R.B., 183 N.J. 308, 325 (2005)); cf. Mogull v. CB Com. Real Est. Grp.,

Inc., 162 N.J. 449, 466 (2000) ("It is difficult to find that a charge that follows the Model Charge so closely constitutes plain error.").

Applying these basic principles, we conclude the trial judge did not err, much less commit plain error, by reading verbatim the model charge that includes the succinct explanation of the term "unlawfully." Even now on appeal, defendant does not argue "there is a contention that the acts were done in accordance with law," which would implicate the expanded definition of unlawfulness. See Model Jury Charges (Criminal), "Disturbing/Desecrating Human Remains (N.J.S.A. 2C:22-1(a)(1))." We add that a jury does not need further explication to understand that abandoning a corpse on the side of a road is not done in accordance with the law.

VI.

Finally, we address defendant's contention that the trial court imposed an excessive sentence. The scope of our review is limited. Appellate courts review sentencing determinations deferentially. State v. Fuentes, 217 N.J. 57, 70 (2014). We must not substitute our judgment for that of the sentencing court. Ibid. Accordingly, we will affirm a sentence unless:

> (1) the sentencing guidelines were violated; (2) the aggravating and mitigating factors found by the sentencing court were not based upon competent and credible evidence in the record; or (3) "the application

> of the guidelines to the facts of [the] case makes the sentence clearly unreasonable so as to shock the judicial conscience."
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> [Ibid. (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364–65 (1984)).]

Based on our review of the record, we are satisfied the trial judge carefully and thoughtfully considered the applicable aggravating and mitigating circumstances. He found aggravating factor three, "[t]he risk that the defendant will commit another offense," N.J.S.A. 2C:44-1(a)(3), and gave it "some nominal minimal weight." He also found aggravating factor nine, "[t]he need for deterring the defendant and others from violating the law," N.J.S.A. 2C:44-1(a)(9). The judge accorded that factor "significant and very weighty consideration." The judge found mitigating factor eight, "[t]he defendant's conduct was the result of circumstances unlikely to recur," N.J.S.A. 2C:44-1(b)(8), and accorded it "the same sort of nominal minimal weight" as the court accorded to aggravating factor three.

After balancing the aggravating and mitigating factors, the judge imposed an eight-year prison term, which is just above the mid-point of the second-degree sentencing range of five to ten years, N.J.S.A. 2C:43-6(a)(2). The judge did not impose a period of parole ineligibility.

Defendant argues the judge relied too heavily on the need for general deterrence and that his reliance on aggravating factor nine was misplaced because the judge's other findings "do not actually support a need for deterrence in this case." We are not persuaded.

Defendant presents a closer question in his argument the trial court erred by refusing to find mitigating factor seven, "[t]he defendant has no history of prior delinquency or criminal activity or had led a law-abiding life for a substantial period of time before the commission of the present offense," N.J.S.A. 2C:44-1(b)(7). While defendant had not previously been convicted of an indictable crime, the sentencing judge did not find this factor because defendant had "a number of family court related [domestic violence] incidents resulting in restraining orders and . . . four municipal court contacts, one of which has resulted in a conviction for disorderly persons theft." Defendant argues that his previous arrests that did not lead to conviction should not have been considered and that his single municipal court conviction in fifty-five years "cannot invalidate that for the vast majority of his life, [defendant] was law-abiding."

While we might have reached a different conclusion as to whether mitigating factor seven applies were it our decision to make in the first instance,

we see no abuse of discretion in the sentencing court's reasoning. "Adult arrests that do not result in convictions may be 'relevant to the character of the sentence . . . imposed.'" State v. Rice, 425 N.J. Super. 375, 382 (App. Div. 2012) (omission in original) (quoting State v. Tanksley, 245 N.J. Super. 390, 397 (App. Div. 1991)). "A sentencing court, therefore, does not abuse its discretion by refusing to find mitigating factor seven based upon . . . charges that did not result in convictions." Ibid. (citing State v. Torres, 313 N.J. Super. 129, 162 (App. Div. 1998)). Furthermore, the judge did not abuse his discretion by considering defendant's 2014 municipal court conviction. In sum, we decline to substitute our judgment for that of the trial court and conclude the eight-year prison term does not shock the conscience. Fuentes, 217 N.J. at 70.

To the extent we have not specially addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.