SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0739-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANTE A. ROBINSON,

Defendant-Appellant.

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Argued March 28, 2023 – Decided May 24, 2023

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment Nos. 17-08-2164 and 19-09-2238.

David A. Gies, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; David A. Gies, on the briefs).

William P. Cooper-Daub, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; William P. Cooper-Daub, of counsel and on the brief).

PER CURIAM

Defendant Dante A. Robinson appeals from his jury trial convictions arising from a home invasion committed by a group of five individuals. During the course of the attempted robbery, defendant was shot by one of the victims and was transported to the hospital, where he gave three separate statements to police. The first statement was made in the emergency room during a conversation defendant initiated with a uniformed patrol officer. That initial statement was not electronically recorded; nor was it prefaced with Miranda[1] warnings.

The two subsequent statements were given during audio-recorded interviews with detectives. Both recorded interrogations were preceded by Miranda waivers. Defendant contends all three statements should have been suppressed. Relatedly, defendant argues the prosecutor committed a Brady[2] violation by not alerting counsel before trial to the statement defendant made to the patrol officer. Defendant also contends the trial court erred by admitting the testimony of the State's DNA expert.

After carefully reviewing the record in light of the governing legal principles, we affirm defendant's convictions. We conclude—contrary to the

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

[2] Brady v. Maryland, 373 U.S. 83 (1963).

ruling of the trial court—defendant was in custody for Miranda purposes when he conversed with an officer in the emergency room. We nonetheless are satisfied that the admission of this statement was harmless constitutional error. Defendant's brief statement was consistent with the defense theory that he was present at the scene of the crime—as shown by the undisputed fact he was shot there—but that he was not a knowing and willing participant in the robbery attempt. Indeed, defendant acknowledges this statement was exculpatory. We conclude the two other statements were voluntarily given after the administration of Miranda warnings and were properly admitted at trial.

We likewise reject defendant's remaining trial error contentions regarding the Brady violation and the DNA expert's qualifications. However, we remand for resentencing because the sentencing court did not account for the new youth mitigating factor, N.J.S.A. 2C:44-1(a)(14), which was in effect at the time of sentencing. A remand is also necessary for the sentencing court to explain the overall fairness of imposing consecutive sentences as required by State v. Torres, 246 N.J. 246 (2021).

I.

In August 2017, defendant and codefendant Lamont H. Conley[3] were charged by indictment with various crimes arising from a May 21, 2017 home invasion in Gloucester Township. The indictment charged defendant with thirteen counts: (1) three counts of first-degree armed robbery, N.J.S.A. 2C:15-1(a)(1); (2) second-degree burglary involving injury or attempted injury, N.J.S.A. 2C:18-2(a)(1); (3) second-degree armed burglary, N.J.S.A. 2C:18-2(a)(1) and (2); (4) second-degree aggravated assault involving serious bodily injury or attempted serious bodily injury, N.J.S.A. 2C:12-1(b)(1); (5) fourth-degree aggravated assault by pointing a firearm, N.J.S.A. 2C:12-1(b)(4); (6) third-degree endangering the welfare of a child, N.J.S.A. 2C:24- 4(a)(2); (7) first-degree conspiracy to commit armed robbery, N.J.S.A. 2C:5-2 and 2C:15-1(a)(1); (8) third-degree unlawful possession of a rifle, N.J.S.A. 2C:39-5(c)(1); (9) second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); (10) third-degree theft by unlawful taking of movable property, N.J.S.A. 2C:20-3(a); and (11) third-degree terroristic threats, N.J.S.A. 2C:12-3(a). On September 10, 2019, defendant was charged in a separate indictment

[3] Conley successfully moved to sever his trial from defendant. He is not a party to this appeal.

with third-degree aggravated assault of a corrections officer, N.J.S.A. 2C:12-1(b)(5)(h).

Defendant was tried over the course of six days in September and October 2019. At the end of the trial, the State moved to dismiss the terroristic threats charge. The jury acquitted defendant of both robbery and assault involving bodily injury upon David Zeisweiss. It also acquitted defendant of second-degree burglary involving bodily injury but found him guilty of the lesser-included charge of third-degree burglary. The jury convicted defendant on each of the remaining nine counts.

In February 2020, defendant pled guilty to third-degree aggravated assault of a corrections officer—that conviction is not contested in this appeal. The trial judge held a joint sentencing hearing on October 22, 2020. The judge sentenced defendant to an aggregate prison term of thirty-five years and six months with twenty-seven years of parole ineligibility for the charges at issue here. That sentence was comprised of the following consecutive sentences: eighteen months with no period of parole eligibility for fourth-degree aggravated assault; four years with no period of parole ineligibility for third-degree endangering; fifteen years with an eight-five-percent period of parole ineligibility for one count of first-degree robbery; and fifteen years with an eighty-five-percent

period of parole ineligibility for the other count of first-degree robbery. A seven-year sentence for second-degree armed burglary and a four-year sentence for unlawful possession of a weapon ran concurrently with the consecutive sentences. The four remaining counts merged into other charges. For the assault on a corrections officer, the judge sentenced defendant to a three-year term with no period of parole ineligibility to run concurrently with the sentences on the other charges.

II.

We discern the following facts from the trial record. On the evening of May 21, 2017, defendant was driving his red 2004 Chevrolet Aveo with Michael Hill, Kahlin Wright, and Andre Magobet as passengers. One of them received a call from Conley, who told them to come to Sicklerville—a community within Gloucester Township—to rob a house where Conley believed marijuana was sold.

The men drove to Sicklerville and met Conley. They discussed the roles each would perform during the robbery. Magobet brought along a black paintball gun that resembled an assault rifle, which they planned to use in the robbery.

Around 11:30 p.m., defendant drove the group to Sandra Farkas's home on Kay Lane in Sicklerville. Defendant parked the car down the street from the house so they would not be seen. The men approached the house wearing t-shirts and bandanas as make-shift masks to hide their faces.

The group got out of defendant's car and looked in the windows of the split-level house to see who was inside. They saw two women upstairs—Farkas and Traci Judge. They also saw a young boy—Farkas's ten-year-old grandson—downstairs.

The five men then entered the house. Hill and Magobet went upstairs to rob Farkas and Judge. Defendant, Conley, and Wright went downstairs, where they encountered Zeisweiss and Farkas's grandson. The men ordered the child to get on the ground. One of the men beat Zeisweiss in the head and then broke open a gun cabinet, removing four or five long guns that were inside.

Defendant, Conley, and Wright carried the long guns back to the entrance level of the house. Zeisweiss retrieved a handgun. He went toward the stairwell and, when one of the men raised a gun toward him, fired the handgun. The bullet struck defendant near the armpit and exited his back. When Zeisweiss saw the men were going upstairs toward the women, he fired another shot that apparently missed.

At that point, the group of invaders fled. Defendant and one of the other men ran upstairs and into Farkas's bedroom, where they jumped out a window. The child, Farkas, and Judge ran across the street to a neighbor's house and called 911. Zeisweiss, who was now standing in the doorway, believed he saw some of the men approaching Judge with a raised long gun, prompting him to fire a third shot at the group. Defendant got in his car and drove away. The other invaders fled on foot.

After traveling about three-quarters of a mile, defendant stopped his car by a house on Jarvis Road. He began banging on the door asking for help. The residents called 911. Police responding to the 911 call found defendant and his car there. He was taken to Cooper University Hospital by ambulance. Defendant was handcuffed to a stretcher while he was transported to the hospital. The handcuffs were removed upon arrival. The record does not indicate who placed defendant in handcuffs. Nor does it establish who removed the handcuffs after defendant arrived at the hospital.

III.

Defendant raises the following contentions for our consideration:

> POINT I
>
> THE MOTION JUDGE DID NOT EVALUATE THE CUSTODIAL INTERROGATION UNDER THE

"KNOWING AND INTELLIGENT" PRONG WHEN DECIDING DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENTS.

POINT II

THE OBJECTIVE CIRCUMSTANCES SURROUNDING THE QUESTIONING OF DEFENDANT BY THE PATROLMAN DEMONSTRATE THAT THE HOSPITAL EMERGENCY ROOM WAS A CUSTODIAL SETTING REQUIRING MIRANDA WARNINGS TO BE ADMINISTERED.

POINT III

THE ASSISTANT PROSECUTOR'S FAILURE TO DISCLOSE TO DEFENSE COUNSEL DEFENDANT'S PRETRIAL STATEMENT TO THE PATROLMAN VIOLATED THE COMMANDS OF BRADY, UNDULY PREJUCING DEFENDANT'S RIGHT TO A FAIR TRIAL.

A. Defendant's statement to the patrolman was favorable to his trial strategy since it was consistent with the forensic evidence and it suggested he did not have the same culpability as the others.

B. Admitting the late disclosure of defendant's unrecorded statement to the patrolman unduly prejudiced defendant's right to a fair trial where its untimely production did not lessen the impact of defendant's custodial statement to the investigating detective.

POINT IV

THE TRIAL JUDGE'S DECISION TO ALLOW THE STATE'S DNA EXPERT WHO WAS NOT CERTIFIED AT THE TIME OF HER TRIAL TESTIMONY TO OFFER AN OPINION AS TO THE "MAJOR" AND "MINOR" CONTRIBUTORS TO A SPECIMEN WAS AN ABUSE OF DISCRETION.

POINT V

THE TRIAL JUDGE ERRED WHERE HE DID NOT EMBRACE PROPORTIONALITY CONCERNS WHEN SENTENCING DEFENDANT TO FOUR CONSECUTIVE TERMS.

POINT VI

THE FAILURE TO CONSIDER DEFENDANT'S YOUTH AS A MITIGATING FACTOR REQUIRES A REMAND.

IV.

We first address defendant's contention that his Miranda rights were violated and the statements he made to police on three separate occasions while he was hospitalized should have been suppressed. The United States Supreme Court in its landmark Miranda decision established strict procedural safeguards to protect a person's Fifth Amendment right to remain silent and to consult an attorney. Before police can question a person in their custody, they must administer the now-familiar warnings and obtain a waiver of those rights. See

State in Int. of A.A., 240 N.J. 341, 352 (2020). Miranda warnings must be given to persons who are simultaneously (1) in custody, and (2) being interrogated by officers. Miranda, 384 U.S. at 444; State v. Knight, 183 N.J. 449, 461 (2005). Whether a suspect is in custody and being interrogated is a fact-sensitive question that must take into consideration the totality of the circumstances. State v. Pearson, 318 N.J. Super. 123, 133 (App. Div. 1999). The relevant circumstances include "the time and place of the interrogation, the length of the interrogation, the nature of the questions, the conduct of the police, the status of the interrogator, the status of the suspect, and other such factors." Ibid.

The standard for custody is whether "a reasonable person in the defendant's position would have believed they were free to leave." State v. Ahmad, 246 N.J. 592, 614 (2021). An "interrogation" occurs for purposes of Miranda when the person who is in custody is subjected to either "express questioning" or its "functional equivalent." A.A., 240 N.J. at 352 (quoting Rhode Island v. Innis, 446 U.S. 291, 300–01 (1980)). However, the Miranda rule does not apply if the suspect makes unsolicited or spontaneous statements not in response to any interrogative questioning. State v. Beckler, 366 N.J. Super. 16, 25 (App. Div. 2004); see also State v. Ward, 240 N.J. Super. 412, 419 (App. Div. 1990) (noting "any statement that is voluntarily blurted out by an

accused in custody where the police have not subjected him [or her] to an interrogative technique . . . [is] volunteered and [is] admissible without Miranda warnings").

As a general matter, "[w]e defer to a trial court's evidentiary ruling absent an abuse of discretion," and "will not substitute our judgment unless the evidentiary ruling is 'so wide of the mark' that it constitutes 'a clear error in judgment.'" State v. Garcia, 245 N.J. 412, 430 (2021) (first citing State v. Nantambu, 221 N.J. 390, 402 (2015); and then quoting State v. Medina, 242 N.J. 397, 412 (2020)). "However, we accord no deference to the trial court's legal conclusions." Nantambu, 221 N.J. at 402. Furthermore, we stress that on a suppression motion, the State bears the burden of establishing compliance with Miranda and admissibility of the challenged statement. State v. Tillery, 238 N.J. 293, 317 (2019).

A.

The Unrecorded Statement in the Emergency Room

Defendant contends that shortly after he arrived at the hospital, he was subjected to a custodial interrogation not prefaced by Miranda warnings, thus requiring suppression of the statement he made to the officer that the State

sought to introduce at trial. We begin our analysis by recounting the pertinent facts.

Patrol Officer Paul Beyers[4] responded to the 911 call placed from the residence on Jarvis Road. When he arrived, the officer came upon defendant screaming for help. Emergency medical services arrived and transported defendant to the hospital. The record indicates that defendant was placed in handcuffs before he was put in the ambulance. Officer Beyers, who was in uniform, followed the ambulance to the hospital and stayed with defendant while waiting for detectives to arrive.

Officer Beyers testified at trial he was there "to give updates on [defendant's] condition and stand by until detectives got there." He further testified he "didn't attempt to take a statement from [defendant] or anything like that" but said defendant talked to him. When the State attempted to elicit what defendant said to Officer Beyers, defense counsel objected, prompting a mid-trial N.J.R.E. 104 hearing.

[4] By the time of trial, Officer Beyers had been promoted to detective. We refer to him as Officer Byers to avoid confusion with respect to his status and role at the time of his interaction with defendant in the hospital. We mean no disrespect in not referring to him by his present rank and duty assignment.

During that hearing outside the jury's presence, Officer Beyers testified that defendant was not under arrest and that defendant had initiated the conversation. Officer Beyers acknowledged, however, he "may have asked follow-up questions." He claimed he did not know what defendant's role was in the incident and had no reason to suspect defendant was involved in criminal activity. The record does not indicate whether Officer Beyers placed defendant in handcuffs or otherwise knew that defendant had been handcuffed. Officer Beyers did not record his conversation with defendant, nor did he include any mention of it in his report. He explained that his "involvement was very minimal at that point" and that he "figured [the detectives] would elicit the same information that [he] had just gotten."

The trial judge ruled the bedside conversation was not a custodial interrogation.[5] The judge reasoned that Officer Beyers did not know defendant was a suspect. He also determined defendant's freedom of movement was not restricted by police action, but rather by his medical condition. The judge noted

[5] We note the judge who heard the pretrial motion concerning the admissibility of the subsequent audio-recorded interviews conducted by detectives reached a different conclusion, relying in part on the fact that defendant had been brought to the hospital in handcuffs and that Officer Beyers was standing near defendant until the detectives arrived to conduct the investigation. See infra Section IV-B. It is not clear whether the trial judge was aware of the reasons for the motion judge's prior ruling.

Officer Beyers testified he did not believe defendant was handcuffed during the conversation. The trial judge also emphasized that defendant initiated the conversation. For those reasons, the judge found there was no Miranda violation.

The judge also found the statement was not made involuntarily, relying principally on Officer Beyers's testimony that defendant had been stabilized by medical staff and was aware of his surroundings. The judge noted there was no evidence of overbearing questions or other indicia of coercion.

Following that ruling, Officer Beyers testified defendant had said,

> basically he was outside in the street at his car, some friends were in a house, he was waiting for them, he didn't know what they were doing at the house, and he heard some type of commotion. He ran over there to see what was going on and then he was shot.

Although we acknowledge the deference we owe to a trial court's factual findings, Tillery, 238 N.J. at 319, we conclude defendant was in police custody while he was conversing with Officer Beyers. Defendant's freedom of movement was not restricted solely by his medical condition. He had been brought to the hospital in handcuffs. When they were removed—ostensibly so hospital staff could provide treatment—he was faced with a uniformed officer standing alongside him, close enough to allow for conversation.

As we have noted, the determination of whether a person is in custody for Miranda purposes focuses on whether a reasonable person in the suspect's position would feel free to leave. Ahmad, 246 N.J. at 614. The critical issue is not whether the officer believed defendant was a suspect or intended to restrict his movements. An objectively reasonable person in this situation would believe the restraining nature of the handcuffs had been replaced by a uniformed offer who appeared to be standing guard.

We also conclude that defendant was subjected to interrogation. We accept the trial court's finding that the conversation was initiated by defendant and that his initial statement thus was spontaneous and unsolicited. See Beckler, 366 N.J. Super. at 25 (quoting Ward, 240 N.J. Super. at 418). However, Officer Beyers candidly admitted he was "sure" he asked defendant "follow-up questions," although he could not remember what those questions were. We deem it significant that the record does not establish when the officer's follow-up questions were posed in relation to the statement the State sought to introduce at trial.

We emphasize the State bears the burden of demonstrating compliance with Miranda. On this record, the State has failed to establish that defendant made the relevant statement before the officer posed a follow-up question

constituting interrogation for Miranda purposes. In sum, there is insufficient competent evidence in the record to support the trial court's conclusion that the statement was not the product of custodial interrogation. Because it is not disputed that Miranda warnings were not given, defendant's statement should have been suppressed in accordance with Miranda's strict mandate.

Our determination that the Miranda rule was violated during the conversation between defendant and Officer Beyers does not end our inquiry. As our Supreme Court recognized in Tillery, the improper admission of a statement taken in violation of Miranda may constitute harmless error. 238 N.J. at 302 ("We conclude, however, that any error in the trial court's admission of the statement was harmless beyond a reasonable doubt."); see also State v. Macon, 57 N.J. 325, 338 (1971) ("Equally clear must be the proposition that not every 'constitutional' error can sensibly call for a new trial. . . . [A]n error may indeed be harmless despite its constitutional hue."). More recently, our Supreme Court explained that "[i]f a defendant's un-Mirandized statement is admitted in error, an appellate court will not reverse the conviction unless the error was 'of such a nature as to have been clearly capable of producing an unjust result.'" Ahmad, 246 N.J. at 612 (quoting R. 2:10-2).

In this instance, the brief statement Officer Beyers relayed to the jury was consistent with the version of events defendant told detectives in his recorded, properly Mirandized statements. See infra Section IV-B. Furthermore, the only inculpatory portion of the statement he made to Officer Beyers was his admission that he was at the residence on Kay Lane the night of the robbery attempt. But defendant never denied that he was present.

The gravamen of his defense at trial was that he was not aware that a robbery had been planned. Indeed, defendant argues in his appeal brief the statement he gave to Officer Beyers was exculpatory. See infra Section V (discussing defendant's Brady violation contention). We add that DNA evidence from defendant's blood was found at the Kay Lane crime scene, forensically confirming his presence there. We are thus satisfied the admission of his brief remark to Officer Beyers was harmless beyond a reasonable doubt. See Tillery, 238 N.J. at 302.

B.

The Recorded Interrogations

We turn next to defendant's contentions regarding the other two statements he gave to police while he was hospitalized. Both statements were taken by Detective Martin Farrell of the Camden County Prosecutor's Office and

Detective Brian Farrell of the Gloucester Township Police Department. The first interrogation was conducted at around 3:30 a.m. on May 22, 2017. The second was conducted around 11:15 a.m. the same day. Both were audio-recorded.

Prior to trial, defendant moved to suppress these statements. The motion judge[6] conducted a N.J.R.E. 104 hearing, after which she determined the recorded statements would be admissible at trial. We briefly summarize the testimony presented at the hearing.

Detective Martin[7] testified that he spoke with medical staff about defendant's medical condition before both interviews and they did not raise concerns. Detective Martin noted that although defendant had medical apparatus attached to him, he was conscious and was not actively undergoing treatment. Defendant had received two doses of fentanyl at the hospital that night—one at 12:40 p.m. and one at 1:15 a.m. Detective Martin stated that Officer Beyers—who had been waiting with defendant and "left shortly after"

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[6] The suppression motion was heard by a different judge than the one who presided over the trial and conducted the N.J.R.E. 104 hearing regarding the initial, unrecorded statement given to Officer Beyers.

[7] Because the detectives, who are not related, share the same surname, we refer to them by their first names to avoid confusion. We mean no disrespect in doing so.

the interviewing detectives arrived—was wearing a uniform. Detectives Martin and Brian were wearing plain clothes but had their weapons visible.

The audio recordings of the interrogations confirm that, on both occasions, the detectives advised defendant of his Miranda rights and defendant signed the Miranda waiver forms.

During the Miranda waiver colloquies of both recorded interrogations, defendant asked if he was under arrest. When defendant first asked if he was under arrest, Detective Martin responded, "[n]o, you're not under arrest right now. It's just an investigation. All right? It's just an investigation, it's not an arrest. But for your protection, I'm gonna read you your rights." Detective Brian added, "[y]ou don't have any charges on you right now." Later in the first recorded interrogation, defendant asked if he was in trouble, and the detectives responded, "[r]ight now it's an investigation, that's all. . . . We're just trying to get to the bottom of the story."

When defendant asked if he was under arrest early in the second recorded interrogation, Detective Martin said, "[a]ll right, yeah, it's still an investigation. You're not under arrest, still an investigation." Detective Brian added, "[y]ou don't have any charges against you," and Detective Martin clarified, "[a]s of right now, okay?"

During both recorded interrogations, defendant stated he went with the group to the house on Kay Lane intending to purchase marijuana. He maintained that he was unaware of the others' plan to rob the house's occupants and he thought the paintball gun was just part of a prank. Defendant claimed he went into the house after hearing a commotion and was shot shortly after entering.

The motion judge found that both interviews were custodial interrogations requiring Miranda warnings. She based that decision on the fact that defendant had been handcuffed when he was brought to the hospital, a uniformed officer had been standing near defendant until the detectives arrived, and the detectives were carrying unconcealed firearms.

The motion judge then addressed whether the recorded statements were voluntarily given. She first noted the relevant factors set forth in State v. Cook, 179 N.J. 533, 563 (2004). Then, she distinguished the facts of this case from those in Mincey v. Arizona, 437 U.S. 385 (1978), a case in which the defendant was in "unbearable pain," had lost consciousness, and was "almost . . . in a coma." The motion judge concluded that there was "no question in [her] mind that the statements were given freely and voluntarily," based on defendant's apparent awareness of what was happening, his ability to actively engage in the conversation, and the "very full answers" he was able to give to each question.

She noted defendant had been given pain medication but found it was not "enough pain medication for him to not understand exactly what was going on." Therefore, she ruled both recorded statements would be admissible at trial.

In determining whether the State has satisfied its burden of proving beyond a reasonable doubt that a defendant's statement was voluntary, "a court [is required] to assess 'the totality of circumstances, including both the characteristics of the defendant and the nature of the interrogation.'" State v. Hreha, 217 N.J. 368, 383 (2014) (quoting State v. Galloway, 133 N.J. 631, 654 (1993)). Reviewing courts must determine "whether, under the totality of the circumstances, the confession is 'the product of an essentially free and unconstrained choice by its maker' or whether 'his [or her] will has been overborne and his [or her] capacity for self-determination critically impaired.'" State v. Pillar, 359 N.J. Super. 249, 271 (App. Div. 2003) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225–26 (1973)).

The "factors relevant to that analysis include 'the suspect's age, education and intelligence, advice concerning constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment and mental exhaustion were involved.'" Hreha, 217 N.J. at

383 (quoting Galloway, 133 N.J. at 654). The court should also consider defendant's prior encounters with law enforcement. Ibid.

Defendant contends that the detectives "concealed . . . his 'true status' in order to obtain his statement without appreciating the consequences of waiving his Miranda rights." Defendant cites State v. A.G.D., 178 N.J. 56 (2003), State v. Vincenty, 237 N.J. 122 (2019), and State v. Sims, 250 N.J. 189 (2022) for the proposition that officers must inform suspects of their "true status" before accepting a Miranda waiver. He claims the detective's assertions that defendant was not under arrest and it was "still an investigation" misled defendant as to the consequences of his waiver of his Miranda rights.

In Sims, our Supreme Court explained,

> The rule announced in A.G.D. is clear and circumscribed. If a complaint-warrant has been filed or an arrest warrant has been issued against a suspect whom law enforcement officers seek to interrogate, the officers must disclose that fact to the interrogee and inform him in a simple declaratory statement of the charges filed against him before any interrogation.
>
> [250 N.J. at 213.]

The Court further explained, "[t]he officers need not speculate about additional charges that may later be brought or the potential amendment of pending charges." Id. at 214.

It is undisputed that no charges had been filed when Detectives Martin and Brian conducted the interrogations. Accordingly, as Sims reaffirms, the detectives were not required to tell defendant what specific charges they were investigating.

The record makes clear, moreover, that the detectives did not mislead defendant into believing he was not a suspect. Defendant knew he was at the hospital for a gunshot wound he received while inside a house he did not have permission to be in. In response to the detectives telling him it was just an investigation, defendant said, "[l]ast time somebody told me that shit I got locked up," indicating he understood that investigations can lead to criminal charges. See Hreha, 217 N.J. at 383 (noting that "whether the defendant has had previous encounters with law enforcement" is a relevant factor for determining the voluntariness of a statement). Furthermore, while they told him there were no charges against him—which was true—they qualified it each time with "right now" or similar language, clearly implying that charges might be filed against him later. As the Supreme Court explained in Sims, police interrogators are not required to speculate as to future charges. 250 N.J. at 214.

Defendant also contends he "did not expressly say he waived" his Miranda rights. He argues he "cryptically replied" to the detectives' question "[y]ou want

to answer our questions?" after defendant stated he understood his rights. The purportedly "cryptic" response during the first recorded interrogation was "[y]ea man whatever yea yea." There is nothing ambiguous about that waiver. Cf. Tillery, 238 N.J. at 316 ("Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." (quoting Berghuis v. Thompkins, 560 U.S. 370, 384 (2010))).

Regarding the waiver in the second recorded interrogation, defendant argues his answer of "[y]es sir" to the waiver question is unclear because the detectives asked a compound question. That question was, "[n]ow having been advised of your rights, and understanding them do you desire to waive those rights, and answer questions or give a statement?" That standard question does not create ambiguity as to the meaning of defendant's affirmative response. Furthermore, defendant signed Miranda forms at the start of both recorded interrogations.

Lastly, with respect to the admissibility of the recorded statements, defendant contends the motion judge relied solely on the audio recording of the interrogation to make her decision. The record belies that claim. At the hearing, Detective Martin testified about the circumstances surrounding the

interrogations. Defense counsel, moreover, highlighted the relevant medical documentation and the fact that defendant had been given pain medication prior to the interviews. The motion judge considered that evidence in making her ruling. She stated, for example, "I've reviewed the medical reports that were submitted for this motion," and "the detective checked with medical personnel first to see if it was okay if they spoke to [defendant], and medical personnel said yes." For all of those reasons, the motion judge did not err in finding the recorded statements admissible.

V.

Defendant next contends, for the first time on appeal, the prosecutor wrongfully withheld Officer Beyers's conversation with defendant, constituting a Brady violation. That contention lacks sufficient merit to warrant extensive discussion. For there to be a Brady violation, "(1) the evidence at issue must be favorable to the accused, either as exculpatory or impeachment evidence; (2) the State must have suppressed the evidence, either purposely or inadvertently; and (3) the evidence must be material to the defendant's case." State v. Brown, 236 N.J. 497, 518 (2019). "Determining whether the first two Brady elements have been satisfied is a straightforward analysis." Ibid.

The record conclusively shows that the prosecutor did not suppress evidence from the defense. On the day before the trial started, the prosecutor sent an email to defendant's trial counsel, which read in pertinent part:

> [Officer] Beyers, GTPD testified at the [codefendant's] trial. During his testimony on cross-examination he stated that he sat at the hospital with [defendant]. While he was sitting by, [defendant] made some statements about what occurred that night. At trial, he did not go into the details of what [defendant] said as he was not asked by me or Duclair about that topic. I just spoke with [Officer] Beyers for purposes of conducting trial prep and I asked him what if anything did [defendant] say to him. He advised that he recalled [defendant] telling him that he was just standing by the car and then heard a commotion and went inside the house and got shot. He said that [defendant] basically was saying that he was in the wrong place at the wrong time. I wanted to pass this information along to you as it may come up during trial testimony.

Although this information should have been disclosed earlier pursuant to Rule 3:13-3, the prosecutor did not suppress exculpatory[8] information. We discern no plain error.

[8] As we have noted, defendant's newly minted Brady argument characterizes his un-Mirandized statement to Officer Beyers as exculpatory. However, he also argues the admission of the statement was harmful error warranting the reversal of his convictions.

VI.

Defendant contends the State's DNA expert, Dr. Lynn Crutchley, should not have been permitted to testify as an expert because her certification to perform DNA testing was out-of-date. We conclude that given the circumstances pertaining to her certification, the trial judge did not abuse his discretion in allowing her to testify.

To qualify as an expert, "the witness must have sufficient expertise to offer the intended testimony." State v. Jenewicz, 193 N.J. 440, 454 (2008). "[O]ur trial courts take a liberal approach when assessing a person's qualifications." Ibid. Appellate courts "allow substantial deference to the trial court when it determines whether to qualify a proposed expert." Id. at 455.

It is not disputed that Dr. Crutchley was certified to conduct DNA testing when she performed her work in this case. However, her certification had lapsed about a month before trial. It did not expire because she failed a test; rather, it expired because she was promoted to a supervisory position in a different unit and no longer needed to maintain that certification. Prior to taking the promotion, Dr. Crutchley had spent sixteen years in the New Jersey State Police's DNA unit, analyzed thousands of DNA samples, and never failed a

proficiency test. She had been qualified as a DNA expert approximately seventy times before testifying in this case.

The trial judge overruled defendant's objection to Dr. Crutchley offering expert testimony based upon his finding that Dr. Crutchley was properly certified when she performed the relevant analysis and was otherwise qualified to perform the tests and testify as to the results. We conclude that ruling was not an abuse of discretion, much less a "manifest error and injustice" warranting reversal. See Jenewicz, 193 N.J. at 455 (quoting State v. Torres, 183 N.J. 554, 572, 579 (2005)).

VII.

Lastly, defendant contends he is entitled to a resentencing hearing. We agree. First, defendant argues that when imposing consecutive sentences, the judge did not sufficiently address the Yarbough[9] factors or provide an "explicit statement, explaining the overall fairness of a sentence imposed on a defendant for multiple offenses" as required by Torres, 246 N.J. at 268. He also contends the judge was required to find mitigating factor fourteen—that defendant was under the age of twenty-six when he committed the offense—which went into

[9] State v. Yarbough, 100 N.J. 627 (1985).

effect three days before defendant's sentencing hearing. L. 2020, c. 110. Both of those arguments are meritorious. As acknowledged in the State's brief:

> The State agrees with defendant that a remand for resentencing is appropriate because the judge did not consider defendant's youth as a mitigating factor[] under N.J.S.A. 2C:44-1(b)(14). The State also notes that, on remand, the judge should put on the record an explicit statement explaining the overall fairness of defendant's consecutive sentences.

While we affirm defendant's convictions, we remand for resentencing.

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

Affirmed in part and vacated and remanded in part. We do not retain jurisdiction.