

# RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1573-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSE M. MOREL,

Defendant-Appellant.

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Argued December 19, 2022 – Decided June 14, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 18-01-0010.

Stefan Van Jura, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Stefan Van Jura, of counsel and on the brief).

Patrick R. McAvaddy, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Patrick R. McAvaddy, on the brief).

Appellant filed a pro se supplemental brief.

## PER CURIAM

Defendant, Jose M. Morel, appeals from the November 12, 2019 order denying his motion for a new trial and imposing a fifty-year custodial sentence. Based on our review of the record and applicable legal principles, we affirm in part, vacate in part, and remand for further proceedings.

### I.

Milagros Rodriguez De Morel (Milagros),<sup>1</sup> Milagros's son, Michael<sup>2</sup> (age fifteen), and defendant, lived together in a Jersey City apartment. Defendant was Michael's stepfather. On October 17, 2017, Michael got home from school at about 4:00 p.m. Defendant was also home. Defendant advised Michael that Milagros, who was not home at the time, was cheating on him, and he had seen her with another man. Milagros came home around 11:00 p.m. or 12:00 a.m. that evening and went to her bedroom.

Not long after Milagros arrived, she and defendant had an interaction in their bedroom, and Michael heard his mother yell, "Jose, you[ are] crazy."

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<sup>1</sup> We refer to Milagros by her first name because she shares a common surname with defendant. By doing so, we intend no disrespect.

<sup>2</sup> We employ a pseudonym for the child, who was a minor at the time of Milagros's death.

Michael proceeded to the bedroom to see what was transpiring. He observed defendant stab Milagros in the back with a knife. Michael testified that he tried to help his mother, but defendant warded him off with the knife. Eventually, however, he was able to grab Milagros's arm and drag her into the common hallway of the apartment building. While he was pulling his mother into the hallway, defendant was stabbing her feet.

According to Michael, defendant "looked crazy," but did not speak during the attack. Defendant continued to stab Milagros in the hallway. This portion of the attack was recorded by a security camera in the hallway. After repeatedly stabbing Milagros, defendant eventually dropped the knife. Defendant, who was covered in blood, then walked back into the apartment and sat on a couch. Michael asked defendant for his phone so he could call the police, and defendant obliged. Defendant waited in the apartment for police to arrive. Milagros died from the attack.

Police arrived and found Milagros in the hallway, covered in blood. Michael identified defendant as the assailant, and the police arrested him. After being transported to the Hudson County Prosecutor's Office, defendant waived his Miranda<sup>3</sup> rights and gave a recorded statement that was played at trial.

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<sup>3</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

Defendant admitted he killed Milagros and he would "have to pay for it." Concerning his motive, defendant said he "lost it" because Milagros was cheating on him. He claimed he blacked out, and by the time he realized what he had done, it was too late. Defendant told police he had seen Milagros with another man earlier that day. When he later confronted her, she just laughed at him. Defendant then blacked out. He stated he did not know what happened after that, but he knew he killed her because he had blood all over himself.

Defendant was subsequently indicted and charged with first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count one); second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1) (count two); third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(2) (count three); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count four); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (count five); and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a) (count six).

A bench trial commenced in May 2019. It was undisputed defendant killed Milagros by stabbing her approximately seventy times. The key issue at trial was whether defendant was legally insane at the time he killed her. Defendant called Dr. Gerald Cooke, an expert in forensic psychology, in support of his insanity, diminished capacity, and passion/provocation defense. Dr.

Cooke related that, shortly before defendant killed Milagros, Milagros advised defendant that two weeks earlier, she had performed oral sex on another man about an hour before she returned home and performed oral sex on defendant. At that time, defendant asserts he blacked out, and the next thing he recalled was having a knife in his hand and being covered in blood. He claimed he thought he had only stabbed Milagros once.

Dr. Cooke diagnosed defendant with a rare condition known as a "dissociative trance." He explained that defendant learning his wife was cheating on him caused the dissociative episode, which Dr. Cooke defined as "a disruption in the normal integration of various cognitive abilities, including cognition, consciousness, memory, emotion, perception, motor control[,] and behavior." In short, he opined defendant was not functioning in a rational way and was flooded with emotions, leading to his dissociation and loss of control.

Dr. Cooke further opined defendant met the legal definition of the passion/provocation defense insofar as Milagros's words and continuing course of infidelity were adequate provocation that actually impassioned defendant and from which he did not have time to cool down. Moreover, Dr. Cooke opined defendant was legally insane at the time of the attack because the dissociative trance prevented him from knowing what he was doing.

On cross-examination, Dr. Cooke conceded defendant did not have an emotional outburst or lose control when he saw his wife hugging and kissing a man on the street earlier on the day of the killing. Rather, defendant was "capable of going home, and rationally calling out of work" because he wanted to discuss the issue with his wife. Although Dr. Cooke indicated Milagros's statement she had oral sex with another man was "what triggered the temporary dissociation," he acknowledged it is unknown whether defendant would have had the emotional outburst but for that comment. Dr. Cooke agreed if Milagros had not made that comment, defendant was capable of continuing to repress his anger.

Dr. Cooke acknowledged dissociative disorders are very uncommon and occur in only one percent of the general population. He also conceded he watched defendant's police interview, and he did not mention the alleged statement Milagros made regarding her performing oral sex on her boyfriend. Lastly, Dr. Cooke stated he was not provided with a copy of the video surveillance from the hallway, which depicted part of the attack on Milagros.

On June 6, 2019, the trial court found defendant guilty of first-degree murder, third-degree possession of a weapon for an unlawful purpose, fourth-degree unlawful possession of a weapon, and second-degree endangering the

welfare of a child, but not guilty of second-degree aggravated assault and third-degree aggravated assault. The court also found defendant failed to establish by a preponderance of the evidence he was "suffering from a mental disease as to not know the nature and quality of the act he was committing." Defendant subsequently filed a motion for a new trial, or more specifically to re-open the case and to take additional testimony from Dr. Cooke regarding the video surveillance. As discussed more fully below, the court denied the application.

At sentencing, the court merged counts five with four and four with one. The court then sentenced defendant on count one to a forty-year sentence with an eighty-five percent period of parole ineligibility pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, and a consecutive ten-year term on count six. Thereafter, defendant appealed.

## II.

Defendant raises the following points on appeal:

### POINT I

THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO REOPEN THE BENCH TRIAL WHERE DEFENDANT'S SANITY WAS THE SOLE CONTESTED ISSUE IN THE CASE, WHERE THERE WAS ONLY ONE PSYCHOLOGICAL EXPERT AT TRIAL, WHERE IT WAS DISCOVERED DURING THE TRIAL THAT THE EXPERT HAD NOT SEEN THE VIDEO OF THE

HOMICIDE, AND WHERE THAT OVERSIGHT WAS THE CENTRAL REASON THAT THE COURT REJECTED THE EXPERT'S CONCLUSIONS.

POINT II

THE MATTER MUST BE REMANDED FOR RESENTENCING BECAUSE THE COURT CONDUCTED A FAULTY YARBOUGH<sup>[4]</sup> ANALYSIS AND OTHERWISE FAILED TO CONSIDER THE OVERALL FAIRNESS OF THE SENTENCE WHEN IMPOSING A TEN-YEAR SENTENCE CONSECUTIVE TO THE SENTENCE IMPOSED ON THE MURDER CONVICTION.

Defendant raises the following points in his pro se supplemental brief:

POINT I

DEFENDANT['S] DUE PROCESS RIGHTS WERE VIOLATED WHEN THE ARRESTING OFFICER FAILED TO READ HIS MIRANDA RIGHTS, WHILE INSIDE THE APARTMENT AND WHEN [HE] WAS GETTING ARREST[ED].

(A) Trial court erred when [it] denied the defendant's motion to suppress his statement to be played during the trial.

POINT II

THE TRIAL COURT ERRED IN ALLOWING A PREJUDICIAL STATEMENT FROM STATE WITNESS [MICHAEL], ESPECIALLY, WHEN HE RESPONDED WITH AN ANSWER NOT RELATED TO THE QUESTION ASKED. THIS IN TURN GAVE

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



THE APPEARANCE OF IMPROPRIETY BY [THE JUDGE].

A.

In addressing a motion for a new criminal trial, courts are guided by Rule 3:20-1, which, in pertinent part, provides:

The trial judge on defendant's motion may grant the defendant a new trial if required in the interest of justice. If trial was by the judge without a jury, the judge may, on defendant's motion for a new trial, vacate the judgment if entered, take additional testimony[,] and direct the entry of a new judgment.

Here, defendant sought to vacate the judgment and re-open the case to allow Dr. Cooke to testify regarding the video surveillance he did not review prior to his trial testimony.

In State v. Russo, we noted, "a motion for a new trial is addressed to the sound discretion of the trial judge, and the exercise of that discretion will not be interfered with on appeal unless a clear abuse has been shown." 333 N.J. Super. 119, 137 (App. Div. 2000) (citing State v. Artis, 36 N.J. 538, 541 (1962)). We further noted the same standard applies to a motion for a new trial following a bench trial. Ibid. We apply the same "clear abuse of discretion" in the context of defendant's application to vacate the judgment to allow supplemental testimony.

We will find an abuse of discretion only where "a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). Even if we disagree with the trial judge's conclusions, we will not substitute our own judgment for that of the trial judge unless the judge's ruling was "so wide of the mark that a manifest denial of justice resulted." State v. Lora, 465 N.J. Super 477, 492 (App. Div. 2020) (quoting State v. Perry, 225 N.J. 222, 233 (2016)).

At the hearing on the motion for a new trial, defense counsel represented to the court that Dr. Cooke had reviewed the video after the trial and indicated it did not alter his overall opinion in this matter, but counsel stated it would "complete the record." The thrust of defendant's argument on appeal is the court rejected Dr. Cooke's opinion at trial primarily because he failed to address defendant's actions as depicted in the video. Accordingly, defendant sought to have Dr. Cooke testify about his review of the video and for the court to assess whether his opinion should "be credited if he provided an explanation of the significance of defendant's actions, as captured on the video."

In rendering its trial decision, the court stated, "[t]he evidence presented reveals that Dr. Cooke was not provided with or was even made aware of the

video marked in evidence . . . capturing the stabbing. It would have been instructive for this [c]ourt to know what effect, if any, defendant's interaction with [Michael] had on the opined mental defect." The court further commented it was left to speculate regarding how Dr. Cooke would explain defendant's conduct in the video which "appear[ed] to be, at times, rational. Specifically, the struggle between defendant and [Milagros] . . . the initial stabbing in the bedroom to the continued stabbing in the hallway; the multiple times the knife was dropped; as well as the . . . interaction defendant had with [Michael] in the hallway." Although the court found Dr. Cooke was a credible witness, it ultimately determined his opinions were "based on, at the very least, contradictory facts[,] but, more importantly, incomplete facts."

The trial court was unpersuaded by defendant's argument that its rejection of Dr. Cooke's testimony—based on his failure to review the video—was central to the ultimate decision. Defendant's argument "oversimplifie[d]" the previous discussion of the testimony, but the court also conceded "it could be that this [c]ourt inartfully . . . articulat[ed] its opinion" when previously commenting on the expert not having reviewed the video. To clarify, the court recounted it had found Dr. Cooke credible, but that his opinions were no stronger than the facts on which they were premised. Specifically, the court observed it was

unpersuaded by Dr. Cooke's opinion concerning defendant's dissociative trance based on the differing versions of what purportedly triggered defendant's alleged condition. The court observed defendant advised police Milagros's laughing prompted his blackout, whereas he told Dr. Cooke it was Milagros telling him she performed oral sex on another man. The court commented it was unable to rely on Dr. Cooke as to the cause of the episode and "that[ is] something that calling him back to the stand cannot fix . . . ."

Moreover, the court stated the other reason for rejecting Dr. Cooke's testimony was its own observations of the video surveillance regarding defendant's conduct. Specifically, the court described defendant acting rationally and deliberately in pushing Michael away when he tried to intervene, which it found was a clear indication defendant did not want to injure Michael. The court determined the interest of justice standard under Rule 3:20-1 did not warrant vacating the judgment to allow supplemental testimony from Dr. Cooke. The court concluded re-opening the case for his testimony would not impact the court's ultimate decision given the previous findings regarding the video and other evidence.

"In general, expert testimony is needed where the factfinder would not be expected to have sufficient knowledge or experience and would have to

speculate without the aid of expert testimony." Torres v. Schripps, Inc., 342 N.J. Super. 419, 430 (App. Div. 2001) (citing Kelly v. Berlin, 300 N.J. Super. 256, 268 (App. Div. 1997)). "Nevertheless, expert testimony need not be given greater weight than other evidence nor more weight than it would otherwise deserve in light of common sense and experience." Ibid. (citing In re Yaccarino, 117 N.J. 175, 196 (1989)). Furthermore, "[t]he factfinder may accept some of the expert's testimony and reject the rest." Ibid. (citing Todd v. Sheridan, 268 N.J. Super. 387, 401 (App. Div. 1993)). "That is, a factfinder is not bound to accept the testimony of an expert witness, even if it is unrebutted by any other evidence." Id. at 431 (citing Johnson v. Am. Homestead Mortg. Corp., 306 N.J. Super. 429, 438 (App. Div. 1997)).

The trial court previously rejected the testimony of Dr. Cooke and recognized it was not bound by his testimony. Although the court noted in its trial decision it would have been instructive to hear Dr. Cooke's comment about the video surveillance, upon further reflection and given the court's independent review of the video surveillance, it determined the supplemental testimony from Dr. Cooke would not be material to its decision and not needed in the interests of justice. We find no clear abuse of discretion by the trial court in denying

defendant's application to re-open the case to allow Dr. Cooke to supplement his testimony regarding his review of the video surveillance.

B.

We next consider defendant's challenge to his sentencing. Following our review of the record, we are constrained to vacate the sentence and remand for further proceedings.

To evaluate defendant's appeal, we are guided by well-settled principles. "[Our] review of sentencing decisions is relatively narrow and is governed by an abuse of discretion standard." State v. Blackmon, 202 N.J. 283, 297 (2010). We consider whether the trial court has made findings of fact grounded in "reasonably credible evidence[.]" whether the factfinder applied "correct legal principles in exercising . . . discretion[.]" and whether "application of the facts to the law [has resulted in] such a clear error of judgment that it shocks the judicial conscience." State v. Roth, 95 N.J. 334, 363-64 (1984) (citations omitted). "To facilitate meaningful appellate review, trial judges must explain how they arrived at a particular sentence." State v. Case, 220 N.J. 49, 65 (2014) (citing State v. Fuentes, 217 N.J. 57, 74 (2014)).

Pursuant to N.J.S.A. 2C:44-5(a), when a defendant receives multiple sentences of imprisonment "for more than one offense, . . . such multiple

sentences shall run concurrently or consecutively as the court determines at the time of sentence . . . ." A trial court must apply the following guidelines when determining whether to impose concurrent or consecutive sentences:

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

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

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

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

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

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

(d) any of the crimes involved multiple victims;

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

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

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

[Yarbough, 100 N.J. at 643-44 (footnote omitted).]<sup>5</sup>

The Yarbough guidelines leave "a fair degree of discretion in the sentencing courts." State v. Carey, 168 N.J. 413, 427 (2001). "[A] sentencing court may impose consecutive sentences even though a majority of the Yarbough factors support concurrent sentences," id. at 427-28, but "the reasons for imposing either a consecutive or concurrent sentence should be separately stated in the sentencing decision," State v. Miller, 205 N.J. 109, 129 (2011) (quoting Yarbough, 100 N.J. at 643). As our Supreme Court noted, "[a]n explicit statement, explaining the overall fairness of a sentence imposed on a defendant for multiple offenses in a single proceeding or in multiple sentencing

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<sup>5</sup> "The Yarbough factors are qualitative, not quantitative; applying them involves more than merely counting the factors favoring each alternative outcome." State v. Cuff, 239 N.J. 321, 348 (2019). Sentencing judges should "be mindful that aggravating and mitigating factors and Yarbough factors, as well as the stated purposes of sentencing in N.J.S.A. 2C:1-2(b), in their totality, inform the sentence's fairness." State v. Torres, 246 N.J. 246, 272 (2021). The judge "must explain [his or her] decision to impose concurrent or consecutive sentences in a given case" because "[a] statement of reasons is a necessary prerequisite for adequate appellate review of sentencing decisions." Cuff, 239 N.J. at 348 (second alteration in original) (quoting State v. Miller, 108 N.J. 112, 122 (1987)).



proceedings, is essential to a proper Yarbough sentencing assessment." Torres, 246 N.J. at 268.

Here the court noted at sentencing it was considering, under Yarbough, "the overall outer limit and culmination of any sentence that is going to be imposed." However, the Supreme Court noted in Cuff:

In Yarbough, the Court identified a sixth factor: "there should be an overall outer limit on the cumulation of consecutive sentences for multiple offenses not to exceed the sum of the longest terms (including an extended term, if eligible) that could be imposed for the two most serious offenses." That factor is no longer part of the Yarbough inquiry because the Legislature amended N.J.S.A. 2C:44-5(a) to provide that "[t]here shall be no overall outer limit on the cumulation of consecutive sentences," thereby eliminating guideline number six."

[239 N.J. at 348 n.4 (citations omitted).]

Although arguably the court's utilization of this factor may have benefited defendant, it is not clear how the consideration of this factor ultimately impacted the court's analysis and the sentence imposed. Regardless, defendant is entitled to an analysis of the correct factors. Despite improperly referencing this factor, we are unpersuaded by defendant's arguments the court misapplied the other Yarbough factors. We do agree with defendant, however, that the court did not clearly address the overall fairness of the sentence. Accordingly, we vacate the

sentence and remand for resentencing and direct the court to address "the fairness of the overall sentence, and the . . . court should set forth in detail its reasons for concluding that a particular sentence is warranted." Torres, 246 N.J. at 267-68 (quoting Miller, 108 N.J. at 122).

C.

We reject defendant's argument in his pro se brief that his due process rights were violated when he was not informed of his charges when he was arrested and prior to his interrogation. This issue was not raised before the trial court and therefore our review is under the plain error standard. R. 2:10-2. Under that standard, we disregard any errors or omissions "unless [they are] of such a nature as to have been clearly capable of producing an unjust result . . . ." Ibid. "Plain error is a high bar . . . ." State v. Santamaria, 236 N.J. 390, 404 (2019). "The 'high standard' used in plain error analysis 'provides a strong incentive for counsel to interpose a timely objection, enabling the trial court to forestall or correct a potential error.'" Ibid. (quoting State v. Bueso, 225 N.J. 193, 203 (2016)).

In State v. Sims, this court held that to make a knowing and intelligent waiver of one's Miranda rights, a suspect who is under arrest must be informed of the crime for which he or she was arrested, even if no formal complaint had

yet been issued. 466 N.J. Super. 346, 354 (App. Div. 2021). Our Supreme Court, however, reversed our decision in Sims and held a suspect needs to be advised about pending charges but not those charges for which he likely will be charged. State v. Sims, 250 N.J. 189, 214-16 (2022). The Court noted:

even when there is probable cause for an arrest, there may be insufficient information about the victim's injuries, the arrestee's mental state, and other key issues to enable an officer to accurately identify the charges. An officer acting in good faith might inadvertently misinform an arrestee as to the charges that he will eventually face.

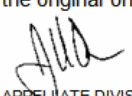
[Id. at 215.]

Here, it is undisputed defendant had no pending charges when he was arrested and subsequently questioned after being advised of his Miranda rights. Consequently, there was no violation of the rule identified by the Supreme Court in Sims, and there is no basis to suppress defendant's statement.

To the extent we have not addressed any remaining contentions, it is because we determine they lack sufficient merit to warrant discussion in a written decision. R. 2:11-3(e)(2).

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

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

  
CLERK OF THE APPELLATE DIVISION