SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4637-18
A-0769-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILLIAM CONYERS,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAVID WASHINGTON, a/k/a
DAVID WILLIAMS,

Defendant-Appellant.

Submitted (A-4637-18) and Argued (A-0769-19)
February 13, 2023 – Decided April 12, 2023

Before Judges Whipple, Smith and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 17-10-0669.

Terry Law Group, LLC, attorney for appellant in A-4637-18 (Rasheedah R. Terry, on the brief).

Esther Suarez, Hudson County Prosecutor, attorney for respondent in A-4637-18 (Colleen Kristan Signorelli, Assistant Prosecutor, on the brief).

Kayla E. Rowe, Designated Counsel, argued the cause for appellant in A-0769-19 (Joseph E. Krakora, Public Defender, attorney; Kayla E. Rowe, on the brief).

Colleen Kristan Signorelli, Assistant Prosecutor, argued the cause for respondent in A-0769-19 (Esther Suarez, Hudson County Prosecutor, attorney; Colleen Kristan Signorelli, on the brief).

PER CURIAM

In these back-to-back appeals following a joint jury trial, co-defendants William Conyers and David Washington appeal from their convictions of three counts of conspiracy to commit aggravated assault, contrary to N.J.S.A. 2C:5-2(a) and 2C:12-1(b). Both defendants contend the trial court erred in admitting a variety of evidence; they are entitled to new trials because of prosecutorial misconduct and cumulative error; and their sentences are excessive. Washington also argues the trial court abused its discretion in controlling the security presence in the courtroom, and engaged in impropriety

when interacting with his counsel. Conyers argues his counsel was ineffective. Following our consideration of the record, we affirm.

I.

At approximately 1:30 p.m. on April 26, 2017, Kourtney Evans, Gary Floyd, and Faron Wilson were driving in Wilson's red Nissan on Bramhall Avenue in Jersey City. Evans, who was driving, heard "booming noises," and immediately sped up. Wilson, who was sitting in the backseat, recognized the noises as gunshots and quickly laid down.

Moments later, Officer Christopher Theobald of the Jersey City Police Department (JCPD), who had also heard "five to seven gunshots" while directing traffic in the area, spotted the red Nissan heading towards him. He saw the driver's front window was broken; the glass had cracked in a manner resembling a spiderweb.

Theobald stopped the car and discovered three bullet holes in the driver's side of the vehicle. A deformed bullet was later found in the backseat. Theobald noticed Evans had a small cut on his cheek, but the passengers were otherwise uninjured. None of the passengers within the Nissan were willing to give statements to police.

Meanwhile, after receiving dispatch reports of "shots fired" and a description of a vehicle seen leaving the scene, Officers Joseph Labarbera and Justin Lopez of the JCPD located a silver two-door Dodge Challenger with Florida plates and pulled it over. The officers ordered the two occupants, Adam Wideman and defendant Washington, out of the car and conducted a search.

Police seized a .38 caliber bullet from the Dodge's rear passenger seat, along with certain items of clothing, two cell phones, and a Buick keyless entry remote. The car also contained a flyer for an April 24, 2017, memorial service for nineteen-year-old Jimmy Gregory, who had been murdered on April 16, 2017. During the stop, numerous calls continued coming in on the two cell phones.

Neither Wideman nor Washington were willing to give statements, and neither identified anyone else as being involved in the shooting. The officers released Washington, but arrested Wideman. They ultimately charged him with three counts of attempted murder after a witness to the incident identified him as being at the scene of the shooting.

Police recovered four .38 caliber shell casings on Bramhall Avenue, all of which were later determined to have been discharged from the same

firearm. Although the deformed bullet found in the Nissan was also a .38 caliber, police could not definitively ascertain whether it was fired from the same firearm as the shell casings.

The JCPD also located two surveillance cameras on a nearby residence, both of which captured a portion of the shooting incident. The footage from the camera mounted on one residence showed the silver Dodge turn left onto Bramhall Avenue. The red Nissan followed less than one minute later.

The second camera was mounted on a residence facing Bramhall Avenue. It showed the silver Dodge stop at the side of the road. Wideman got out of the driver's seat and let another individual out from the back seat. This individual ran around the rear of the Dodge, produced a pistol, and shot at the passing Nissan, which did not stop. Wideman let the individual back into the rear seat, then got back in himself and drove away. It was the State's contention at trial that this video, when zoomed in, also showed the front passenger—allegedly Washington—get out of the Challenger, look down the street, look into the approaching Nissan, and then get back into the car before the shooter emerged.

On May 2, 2017, one week after the shooting, twenty-year-old defendant Conyers gave a statement as a witness in an unrelated case. During the

statement, he indicated he lived in Jersey City and his nickname was "Savage Will." He also stated he lost his car keys approximately one week earlier and provided his cell phone number to the police.

Two weeks later, on May 18, 2017, the JCPD stopped a blue four-door Buick, being driven by Conyers. The car had a broken taillight, a broken headlight, and a finger-sized hole on the driver-side rear passenger door.

In July 2017, Wideman's counsel contacted police and related that Wideman, who was still in custody, was willing to cooperate with police. In the presence of counsel, he gave a recorded statement to Sergeant Anthony Goodman of the JCPD. Wideman explained on the day of the shooting, he spoke with both Conyers, whom he referred to as "Savage," and Washington about meeting up. Washington arrived at Wideman's house first; Conyers subsequently arrived in a blue Buick with three other people. Wideman specified:

> [S]avage pulled up in a car with three other people . . . in a dark blue Buick with dark, dark tinted windows. They all got out and were standing outside the car and they were speaking about . . . not specific but about a incident that occurred that . . . led to . . . I guess a bullet, there was a bullet hole in the passenger side of the car . . . and they was talking about how they gonna retaliate for a little boy that got killed in front of the store.

Wideman claimed that he did not know exactly what the individuals from the Buick were talking about, "but . . . could put pieces together what they were basically implying." Wideman, Conyers, and Washington then got in Wideman's rented silver two-door Dodge Challenger, which Wideman drove. Wideman insisted that Conyers expressed the desire to "scare" somebody with his gun, but was not specific about how he intended to do so. Wideman also told police Conyers, who was in the back seat, borrowed Washington's phone to text someone.

Wideman then stated he drove to a location desired by Conyers and let him out, at which point Conyers fired at the red Nissan. Wideman insisted Conyers was not specific about how he intended to "scare" his intended target with the gun. In the moments following the shooting, Wideman drove Conyers several blocks away and let him out, prior to being pulled over by the police. Wideman reviewed still images taken from the surveillance video and identified the vehicles, himself, and Conyers. The police then arrested Conyers and Washington.

On October 5, 2017, a Hudson County grand jury returned Indictment No. 17-10-0669, charging co-defendants Conyers and Washington with: (1) three counts of first-degree attempted murder, N.J.S.A. 2C:11-3(a) and

N.J.S.A. 2C:5-1(a) (counts one, two and three); (2) three counts of first-degree conspiracy to commit murder, N.J.S.A. 2C:11-3(a) and N.J.S.A. 2C:5-2(a) (counts four, five and six); (3) second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b) (count seven); and (4) second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count eight). In separate counts, Conyers and Washington were also charged with second-degree certain persons offenses, N.J.S.A. 2C:39-7 (counts nine and ten). Defendants pled not guilty.

The matter proceeded to trial. The State's theory of the case was the shooting was carried out in retaliation for the prior murder of Jimmy Gregory. In the State's view, Evans and the other occupants were targeted because of their alleged association with Corey Pickett, who had been charged with Gregory's murder.

Wideman's statement was key to this theory. However, once on the stand, Wideman claimed he did not remember details of the day of the shooting. Even after being shown his previous statement to police, Wideman continued to insist he could not say what happened that day as he had "a lot of stuff on [his] mind." He stated he knew he was with defendants at some point on the day in question, but that he: (1) did not remember what happened after

they left his house; (2) did not remember the shooting; (3) did not remember being arrested; and (4) did not know if his statement would refresh his memory.

Given this discrepancy, the prosecutor sought permission to introduce Wideman's statement to police as a prior inconsistent statement per N.J.R.E. 803(a)(1). The court held a Gross[1] hearing, and ultimately determined the prior inconsistent statement was admissible.

Evans also testified. He stated he had not noticed a hole in the window of his car door until after Officer Theobald stopped the Nissan, and he did not know what caused the glass to break. He identified a photo of himself, Kenny, and a person referred to as "Core," which had been pulled from his Facebook account.

Detective Josh Skolnick of the Hudson County Prosecutor's Office testified he extracted data from one of the cell phones seized from the silver Dodge Challenger. Skolnick determined the phone had been used to log into two Facebook accounts, one bearing the name "David Washington" and the other "Savage Rip Gzz." Skolnick extracted browser history from the phone

[1] State v. Gross, 121 N.J. 1 (1990).

which reflected it had been used between April 19 and April 24, 2017, to access websites with articles related to Jimmy Gregory's murder.

Facebook representative Raquel Morgan testified because no identification is needed to create a Facebook account, an account cannot be definitively linked to a specific person. She explained, for verification purposes, Facebook sends a link to either the email address or the phone provided by the account holder, but an account is created even if the account holder never clicks on it. According to Morgan, the account holder is generally the one who posts status updates, but another person might be able to access an account and modify the posted status.

Officers testified to the fact the registered email accounts associated with the Facebook account "Savage Rip Gzz" were "willmoney.conyers.39@facebook.com" and "willmoney550@yahoo.com." The "vanity name" on the account was "willmoney.conyers," and it included several photos of Conyers, including recent pictures in front of a memorial for Gregory. Several status posts on the account can be read as a threat to those who attacked Gregory, though they generally remain non-specific.

Facebook messenger records revealed communication between "Savage Rip Gzz" and accounts named "David Washington" and "Troy Wideman" on

the day of the shooting. Between 1:59 p.m. and 2:09 p.m. on the day of the shooting, "Savage Rip Gzz" made five unanswered calls to the "Troy Wideman" account. Between 1:59 p.m. and 2:16 p.m., "Savage Rip Gzz" made three calls and sent two messages to the "David Washington" account. The two messages read "Yo" and "I need the car key."

On November 2, 2018, the jury acquitted both defendants of the three counts of attempted murder, the three counts of conspiracy to commit murder, and both counts charging weapons offenses. The jury was hung on the counts of the lesser-included offense of aggravated assault. Both defendants were convicted on the three counts of the lesser-included offense of conspiracy to commit aggravated assault.

On March 29, 2019, the trial court merged counts five and six into count four and sentenced Conyers to a ten-year term of imprisonment, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2(a). The same day, the court performed the same merger and sentenced Washington to seven years in prison, subject to NERA.

This appeal followed. Defendant Conyers raises the following arguments:

POINT I.
THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING THE EMBEDDED HEARSAY CONTAINED IN WIDEMAN'S STATEMENT BECAUSE THE INCOMPETENT HEARSAY DID NOT FALL WITHIN AN INDEPENDENT HEARSAY EXCEPTION AND HAD THE CLEAR CAPACITY TO PRODUCE AN UNJUST RESULT.

POINT II.
THE JUDGMENT OF CONVICTION MUST BE REVERSED BECAUSE THE TRIAL COURT DID NOT PROVIDE A RATIONAL BASIS FOR ITS FINDINGS AND IGNORED IMPORTANT GROSS RELIABIL[ITY] FACTORS IN ADMITTING WIDEMAN'S STATEMENT AS A WHOLE.

POINT III.
THE JUDGMENT OF CONVICTION MUST BE REVERSED BECAUSE DEFENDANT RECEIVE[D] INEFFECTIVE ASSISTANCE OF COUNSEL IN THE PROCEEDINGS BELOW BECAUSE COUNSEL FAILED TO INTRODUCE VITAL EVIDENCE WHICH ESTABLISHED THAT THE FACEBOOK POSTS WERE RAP LYRICS.

POINT IV.
THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ADMITTING THE FACEBOOK POSTS BECAUSE THE COURT FAILED TO ANALYZE THE POSTS USING THE [COFIELD/MARRERO[2]] TEST AND THE ERROR HAD A CLEAR CAPACITY TO PRODUCE AN UNJUST RESULT.

[2] State v. Marrero, 148 N.J. 469 (1997); State v. Cofield, 127 N.J. 328 (1992).

POINT V.
THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FAILING TO PROVIDE THE JURY WITH A PRIOR BAD ACT INSTRUCTION WHEN THE JURY HEARD PREJUDICIAL PRIOR BAD ACT EVIDENCE AND THE ERROR HAD THE CLEAR CAPACITY TO PRODUCE AN UNJUST RESULT.

POINT VI.
THE COURT ERRED IN ADMITTING THE COMPOSITE VIDEO BECAUSE THE OPENING PRESENTATION SLIDE CONTAINED ANIMATED TEXT WITH THE WORDS "CRIMINAL ATTEMPTED HOMICIDE" WHICH HAD THE CLEAR CAPACITY TO PREDISPOSE THE JURY TO TAKE THE STATE'S VIEW OF THE EVIDENCE THAT FOLLOWED THE OPENING SLIDE WITHOUT APPLYING THEIR OWN INDEPENDENT JUDGMENT.

POINT VII.
THE COURT ABUSED ITS DISCRETION IN ADMITTING THE COMPOSITE VIDEO BECAUSE THE STATE PRESENTED NO CORROBORATING EYEWITNESSES TO AUTHENTICATE THE FIRST VIDEO CLIP OR WITNESS TO EXPLAIN THE METHODS USED TO EDIT THE CLIPS TO CREATE THE COMPOSITE VIDEO.

POINT VIII.
THE TRIAL [COURT] ABUSED ITS DISCRETION IN ADMITTING THE PHOTOGRAPH OF EVANS STANDING WITH COREY PICKETT BECAUSE THE PHOTOGRAPH HAD NO LOGICAL CONNECTION TO A FACT IN ISSUE.

POINT IX.
THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTOR TO MAKE IMPROPER ARGUMENTS IN SUMMATION ABOUT MOTIVE BECAUSE THE THEORY WAS NOT REASONABLY INFERABLE FROM THE EVIDENCE ADDUCED AT TRIAL.

POINT X.
THE JUDGMENT OF CONVICTION MUST BE REVERSED BECAUSE THE PROSECUTOR'S REPEATED DISREGARD OF THE TRIAL COURT'S PRIOR RULINGS, FAILURE TO PROVIDE NOTICE OF THE STATE'S INTENT TO INTRODUCE N.J.R.E. 803(b) AND N.J.R.E. 404(b) EVIDENCE, PRESENTATION OF AN IMPROPER COMPOSITE VIDEO AND IMPROPER COMMENTS DURING SUMMATION DEPRIVED THE DEFENDANT OF A FAIR TRIAL.

POINT XI.
THE ABOVE TRIAL ERRORS EITHER INDVIDUALLY OR CUMULATIVELY DEPRIVED THE DEFENDANT OF A FAIR TRIAL.

POINT XII.
THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SENTENCED DEFENDANT TO TEN YEARS OF IMPRISONMENT BECAUSE THE COURT DID NOT FIND MIT[IGA]TING FACTOR THIRTEEN WHICH WAS SUPPORTED BY THE RECORD.

POINT XIII.
THE [TRIAL] COURT ABUSED ITS DISCRETION IN SENTENCING DEFENDANT TO A SUBSTANTIALLY HIGHER PRISON TERM THAN THE CO-DEFENDANT[].

Defendant Washington raises the following arguments:

> POINT I.
> THE TRIAL JUDGE ERRED IN ADMITTING EVIDENCE OF THE SO-CALLED BULLET HOLE IN MR. CONYER[S]'S BUICK, RESULTING IN PREJUDICE TO BOTH MR. CONYERS AND MR. WASHINGTON.
>
> POINT II.
> THE TRIAL JUDGE ERRED IN ADMITTING THE FACEBOOK COMMUNICATIONS BASED ON SPECULATION ABOUT WHO THE ACTUAL COMMUNICANTS WERE.
>
> POINT III.
> THE TRIAL COURT ERRED IN ADMITTING THE IMPROPERLY AUTHENTICATED VIDEO OF THE ALLEGED SHOOTING, WHICH UNFAIRLY PREJUDICED MR. WASHINGTON.
>
> POINT IV.
> THE TRIAL JUDGE ERRED IN ADMITTING MR. WIDEMAN'S RECANTED STATEMENT, AS IT WAS UNRELIABLE AND SELF-SERVING AND WRONGFULLY IMPLICATED MR. WASHINGTON.
>
> POINT V.
> THE TRIAL JUDGE ERRED WHEN HE ALLOWED THE CONTINUED PRESENCE OF UNINVOLVED LAW ENFORCEMENT OFFICERS TO SIT BEHIND MR. WASHINGTON'S FAMILY AND FRIENDS DURING THE TRIAL.

POINT VI.
THE TRIAL JUDGE ERRED WHEN HE IMPROPERLY DENIED MR. WASHINGTON'S MOTION FOR AN ACQUITTAL.

POINT VII.
THE PROSECUTOR'S CLOSING WAS INAPPROPRIATELY SPECULATIVE.

POINT VIII.
THE SENTENCE IMPOSED ON MR. WASHINGTON WAS EXCESSIVE AND WAS BASED ON AN INAPPROPRIATE ANALYSIS OF THE AGGRAVATING AND MITIGATING FACTORS.

POINT IX.
THE ABOVE ERRORS, COMBINED WITH THE TRIAL JUDGE'S OBVIOUS DISREGARD FOR MR. WASHINGTON'S ATTORNEY, RESULTED IN CUMULATIVE ERROR THAT DEMANDS REVERSAL IN THIS CASE.

We consider each argument in turn, combining our discussion where appropriate.

II.

Evidentiary Issues.

We first address the several evidentiary arguments raised by defendants on appeal. At the outset, we observe we are charged to review the trial court's evidentiary rulings "under the abuse of discretion standard because . . . the decision to admit or exclude evidence is one firmly entrusted to the trial court's

discretion." 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)). "[T]he latitude initially afforded to the trial court in making a decision on the admissibility of evidence—one that is entrusted to the exercise of sound discretion—requires that appellate review, in equal measures, generously sustain that decision, provided it is supported by credible evidence in the record." Est. of Hanges, 202 N.J. at 384 (footnote omitted). We reverse only to correct a "clear error in judgment." State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)); see also R. 2:10-2 (describing plain error standard); State v. Jackson, 243 N.J. 52, 73 (2020) (alteration in original) (citation omitted) (noting harmful error requires error "sufficient to raise a reasonable doubt as to whether [it] led the jury to a result it otherwise might not have reached").

Defendants assert, generally speaking: admission of Wideman's prior statement to police as a prior inconsistent statement was improper; certain Facebook records were inadmissible because they could not be definitively linked to defendants by a Facebook records custodian; certain references to the hole in Conyers's Buick were irrelevant or unduly prejudicial; the surveillance footage from the scene was improperly authenticated because the timestamp on

the camera was incorrectly calibrated; and certain photographs relied on by the prosecution to establish motive were irrelevant.

We have extensively reviewed the record in order to evaluate these evidentiary claims and find no abuse of discretion or harmful error requiring reversal. We add the following brief comments.

The judge followed the correct procedure in determining the admissibility of a prior inconsistent statement. Gross, 121 N.J. at 10. The trial court's decision to admit Wideman's statement was clear, well-reasoned, and comprehensive. There is no error.

The Facebook records were properly admitted. Although not definitively established by the Facebook representative, the jury was entitled to evaluate the circumstantial inference the "Savage Rip Gzz" Facebook account belonged to Conyers, and that he posted the suggestive language or lyrics to announce some retaliatory event was pending. Viewed in this light, the posts were clearly relevant on the issue of motive and intent. Any failure to issue a limiting instruction constitutes harmless error, because the posts were not, of themselves, criminal or prejudicial in nature.

The video recording was properly admitted. The police were able to locate the pertinent footage by rewinding the tape by the amount of time

elapsed since the shooting occurred, after being given access to the surveillance system by the homeowner. The footage depicted the shooting described by Wideman in his statement. Officers testified to this process. The judge's decision to accept this authentication was sound. State v. Wilson, 135 N.J. 4, 14 (1994) ("[A]ny person with the requisite knowledge of the facts represented in the photograph or videotape may authenticate it.").

Wideman's previous statement referencing the hole in Conyers's Buick was offered for identification purposes. We agree a limiting instruction to that effect would have been proper, however, its omission does not rise to the level of harmful error.

Based upon our review of the record, we agree with the State, contrary to Conyers's contention, the jury was never shown a composite video that contained a slide which read "Criminal Attempt Homicide JCPD File #9430-17." The duration of the composite video does not match the durations noted in the record or the discussion that took place while the video was played.

Finally, the photograph on Facebook depicting Evans and Pickett was plainly relevant because it is circumstantial evidence of a motive—retaliation. Given Conyers's inability to retaliate against Pickett due to Pickett's incarceration, it is a permissible inference to conclude Conyers chose to

retaliate against one of Pickett's friends instead. The photograph was properly admitted.

III.

Prosecutorial Misconduct.

Defendants next assert the trial court erred in allowing the prosecutor to argue in summation defendants shot at Evans, Wilson, and Floyd in retaliation for the death of Gregory. They contend doing so amounts to impermissible speculation, warranting reversal. We disagree.

A prosecutor is expected to make a "vigorous and forceful" closing argument to the jury. State v. Lazo, 209 N.J. 9, 29 (2012) (quoting State v. Smith, 167 N.J. 158, 177 (2001)). A conviction may be reversed based on prosecutorial misconduct only where the misconduct is so egregious in the context of the trial as a whole as to deprive the defendant of a fair trial. State v. Pressley, 232 N.J. 587, 593 (2018); State v. Wakefield, 190 N.J. 397, 435-38 (2007). "[W]hen counsel does not make a timely objection at trial, it is a sign 'that defense counsel did not believe the remarks were prejudicial' when they were made." Pressley, 232 N.J. at 594 (quoting State v. Echols, 199 N.J. 344, 360 (2009)). When prosecutorial misconduct is being raised for the first time on appeal, a reviewing court need only be concerned with whether "the

remarks, if improper, substantially prejudiced the defendant['s] fundamental right to have the jury fairly evaluate the merits of [his or her] defense, and thus had a clear capacity to bring about an unjust result." State v. Johnson, 31 N.J. 489, 510 (1960) (citing State v. Bucanis, 26 N.J. 45, 56 (1958)).

In her summation, the prosecutor asserted that Washington, Conyers, and Wideman were "[t]hree people in a conspiracy . . . centered around the death of Jimmy Gregory." In support of her "retaliation" theory of the case, the prosecutor highlighted numerous pieces of circumstantial evidence presented at trial. Simply because her theory of the case against defendants was predicated upon multiple inferences does not mean it was necessarily invalid. There was no misconduct.

IV.

Ineffective Assistance of Counsel.

Next, Conyers contends he was denied a fair trial because of his counsel's failure to introduce evidence establishing the Facebook posts were quoted lyrics from a rap song. We disagree.

To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate counsel's performance was deficient, and there is a reasonable probability that, but for counsel's errors, defendant would not have

been found guilty. Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); State v. DiFrisco, 137 N.J. 434, 457 (1994). We also note said claims are usually better situated for post-conviction relief, as opposed to direct appeal, "because such claims involve allegations and evidence that lie outside the trial record." State v. Preciose, 129 N.J. 451, 460 (1992).

During the pretrial motion regarding the admissibility of the status posts from the "Savage Rip Gzz" Facebook account, both defense attorneys asserted the posts were song lyrics. The trial court was satisfied that, if so, this fact merely went to the weight, and not the admissibility, of the evidence.

We agree. The fact the statuses may reflect song lyrics—a contention lacking evidentiary support, despite both counsel raising the issue numerous times at trial—does not render them innocuous or invalid. Counsel's alleged failure to contest this issue did not have the capacity to alter the outcome of the trial.

V.

Sentencing.

Next, Conyers contends the trial court erred by failing to find mitigating factor thirteen—his conduct was substantially influenced by another, more mature, person. N.J.S.A. 2C:44-1(b)(13). He also submits he should not have

received a sentence longer than that imposed on Washington and Wideman. Washington, for his part, argues the court erred in its findings regarding the applicable aggravating and mitigating factors, and by failing to consider counsel's request he be sentenced in the third-degree range.

In reviewing a criminal defendant's sentence, we determine whether the findings of fact regarding aggravating and mitigating factors were based on competent and reasonably credible evidence in the record; whether the trial court applied the correct sentencing guidelines; and whether the application of the factors to the law constituted such clear error of judgment as to shock the judicial conscience. State v. Fuentes, 217 N.J. 57, 70 (2014); State v. O'Donnell, 117 N.J. 210, 215-16 (1989); State v. Jarbath, 114 N.J. 394, 401 (1989).

"[U]niformity [is] one of the major sentencing goals in the administration of criminal justice." State v. Roach, 146 N.J. 208, 231 (1996); accord State v. Palma, 219 N.J. 584, 592 (2014). However, although equally culpable perpetrators should not receive disparate sentences, "[a] sentence of one defendant not otherwise excessive is not erroneous merely because a co-defendant's sentence is lighter." Id. at 232 (alteration in original) (quoting State v. Hicks, 54 N.J. 390, 391 (1969)).

While it is true both Washington and Wideman were significantly older than Conyers, there is nothing in the record to suggest they instigated the conspiracy or pressured Conyers to become involved. Neither Washington nor Wideman had a violent criminal history, whereas Conyers had twice been sentenced as a juvenile for simple assault, and once for possession of an unlawful firearm. The judge's decision to not apply mitigating factor thirteen was within his discretion, as was the difference in the lengths of the sentences.

As to Washington's arguments, we are also unpersuaded. The sentencing judge appropriately relied upon Washington's significant record in his analysis of the sentencing factors, and ultimately declined to impose an extended term—even though Washington qualified as a persistent offender. Additionally, Washington's argument in favor of downgraded sentencing was predicated only upon the same arguments he made in support of the applicability of mitigating factors two and seven. As such, the court lacked a compelling reason to depart from the relevant sentencing range.

VI.

To the extent we have not addressed defendants' remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(2). We specifically reject defendants'

assertion the courtroom contained a hostile or intimidating police presence because some members of the gallery may have been associated with law enforcement. All of the challenged spectators were dressed in everyday attire, and there is no indication from the record any of these individuals were doing anything but sitting quietly.

Affirmed.