SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5006-18

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LIAM P. MCATASNEY,

Defendant-Appellant.

Submitted October 24, 2022 - Decided February 3, 2023

Before Judges Currier, Mayer and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 17-04-0560.

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

Raymond S. Santiago, Acting Monmouth County Prosecutor, attorney for respondent (Maura K. Tully, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

In this case, the State presented evidence, including a consensual videotaped recording in which defendant confessed his guilt, that defendant strangled his childhood friend, Sarah Stern, on December 2, 2016 and threw her body over a bridge. The body was never found.

Defendant appeals from his convictions of murder and other charges. He asserts he was denied a fair trial because a particular question asked during voir dire impermissibly indoctrinated the jury. He also alleges multiple instances of prosecutorial misconduct in the State's opening statement and closing argument and that the court erred in allowing inflammatory PowerPoint slides to be presented to the jury and admitted into evidence. In addition, defendant asks this court to expand his constitutional rights to counsel and to remain silent, and find the videotaped consensual recording was inadmissible.

After a careful review of defendant's arguments in light of the record and applicable principles of law, we affirm.

I.

Defendant was charged in an indictment with: (1) first-degree murder, contrary to N.J.S.A. 2C:11-3(a)(1) and/or N.J.S.A. 2C:11-3(a)(2)(count one); (2) first-degree robbery, contrary to N.J.S.A. 2C:15-1; (3) first-degree felony murder, contrary to N.J.S.A. 2C:11-3(a)(3); (4) second-degree conspiracy to

commit robbery, contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1; (5) second-degree disturbing or desecrating human remains, contrary to N.J.S.A. 2C:22-1(a)(1) and/or N.J.S.A. 2C:22-1(a)(2); (6) fourth-degree tampering with physical evidence, contrary to N.J.S.A. 2C:28-6(1); and (7) third-degree hindering apprehension of oneself, contrary to N.J.S.A. 2C:29-3(b). On the same date, the grand jurors issued a Notice of Aggravating Factors as to count one as the murder was committed while defendant was engaged in the "commission of, or an attempt to commit, or in flight after committing or attempting to commit the crime of Robbery."

Pre-trial, defendant moved to suppress statements and Snapchat messages made to high school friend Anthony Curry. After a four-day hearing, the trial court denied the motion on March 23, 2018.

Defendant's trial took place over a number of days in January and February 2019. Because the issues raised on appeal are limited, we only include an abbreviated version of the evidence presented at trial necessary for a consideration of the contentions on appeal.

A.

Prior to the start of jury selection, the court conducted a pretrial hearing on the voir dire questions to be asked of the potential jurors. The State requested an open-ended question:

> The [S]tate has the burden of proving each and every element of a crime beyond a reasonable doubt. That burden never shifts . . . . to the defendant . . . . [I]f you found all credible evidence and determine the [S]tate has met their burden would the fact that a body was not found affect your ability to return a fair and impartial verdict in this case? Why or why not?

Defendant initially objected to the question in its entirety but then suggested this iteration: "The [S]tate has the burden of proving each and every element of the crime beyond a reasonable doubt. This burden never shifts. Would the fact that a body was not found affect your ability to return a fair and impartial verdict? Why or why not?" After further discussion, both sides agreed to this simplified question: "Would the fact that a body was not found in this case affect your ability to return a fair and impartial verdict? Why or why not?"

Several minutes later, defense counsel again raised the wording of question two, saying "it just strikes me that the way it's worded could be misinterpreted that—that the fact that a body was not found can affect somebody's ability to return a fair and impartial verdict." He asked that "we just

add, at the end of the sentence, one way or the other, so, that it kind of flattens the playing field." The State responded that "it gets wordy" and "a fair and impartial verdict is either guilty or not guilty." The court agreed with the State and said it would leave the question "as it is."

B.

A co-conspirator, Preston Taylor, testified on behalf of the State. The court informed the jury Taylor had pleaded guilty to several charges arising out the same events for which defendant was indicted.

Taylor, who was nineteen years old in 2016, met defendant in high school. Several weeks before Sarah was killed, Taylor lived with defendant in defendant's "parents' back house" located in Neptune City, directly behind defendant's parent's house. Taylor also knew Sarah; they were friends in high school and had gone to junior prom together. Taylor testified that defendant and Sarah had been friends since childhood.

In 2016, Taylor "learned" from defendant that Sarah had "found a shoe box full of money at her house in Avon" with a note from her mother, who had passed away a few years earlier. Sarah lived in Neptune City but had a "second house" in Avon "that they used mostly for storage." Taylor never saw the money or the note, but defendant told him "it was in the range of about $100,000."

Taylor testified that one night, defendant came to Taylor's workplace with two other friends and commented "that it was the type of money that somebody would kill for." Taylor said defendant brought up the money in several other conversations. Taylor, who admitted that he was also interested in getting that money, testified that the conversations "started off as plans to either burglarize her house or to rob her personally" but "progressed to . . . killing her in order to obtain that money" to avoid being caught.

Taylor admitted that he and defendant had made one unsuccessful attempt to get the money about a month before Sarah was killed. They purchased "walkie-talkies" from Walmart to communicate with each other and even did a "dry run" to see "how long the events would take," including parking the car on the bridge, throwing Sarah over the bridge, and then running across the road to Taylor's car.[1] However, on the night of the first planned attempt, the conspirators learned that Sarah had deposited the money in a safe deposit box. Because Sarah had talked about traveling to Canada, defendant saw an "opportunity to convince her to take the money out of the bank, count [it], and start discussing taking a trip."

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[1] Taylor conceded on cross-examination he had not mentioned this "dry run" to police in any of their interviews.

Taylor testified he and defendant continued to discuss and "follow through" with the plan to rob and kill Sarah. They decided defendant would strangle Sarah because "any type of weapon would have been too messy, [and] would have left a whole lot of evidence." They discussed burying her body at a campsite owned by defendant's father or "just leaving her at the house" but decided "the best way to go about it would be to make it look like a suicide."

On the morning of December 2, 2016, Taylor went to work with his father. He received a Snapchat message[2] from defendant saying he was with Sarah and "they were at the bank and this is his chance." Taylor understood this to mean that defendant had convinced Sarah "to take the money out of the safety deposit box and that the plan would move forward that night." Defendant asked Taylor when he would be home from work and Taylor said, "roughly [4:00] or 5:00" and told defendant to "wait until it got dark out."

After he finished work, Taylor returned to the house he shared with defendant. A minute or two later, defendant came in and was "frantic," telling Taylor he "had killed Sarah," "lost his phone," and needed Taylor to go over "to Sarah's house to look for his phone and to move Sarah's body" because Sarah's

[2] Taylor explained that Snapchat is "an instant messaging social medial app" that they used "purposely because after the messages are sent and read, they delete themselves."

aunt and grandmother were going to the house "later." Defendant told Taylor he had strangled Sarah near the front of the house, "it took a[]while but she did finally die," and he moved her body to the back bathroom. Defendant then left to go to work.

Taylor walked about two blocks to Sarah's house, "went through the dead-end street behind her house, hopped the fence and went through the back door" that defendant left unlocked for him. He found Sarah's body in the back bathroom. He knew she was dead because "her eyes were closed. She was pale. She wasn't moving." He looked for defendant's phone but could not find it even though he called the number a couple of times from his own phone.

According to Taylor, the plan was for him to put Sarah's body in the trunk of her car until they took her to the bridge later that night. However, the keys defendant had given him did not open her car so Taylor picked up Sarah's body by the shoulders, "dragged her out through the back" and then "hid her in the bushes" by covering her with "some leaves and some sticks." He then left by hopping over the back fence and returning to his residence to wait for defendant to come home.

When defendant returned, Taylor told him he moved Sarah's body but could not find his phone. He said defendant "got mad, stormed back out of the

house and went to work." Defendant came back a second time again looking for his phone, and then went back to work. When defendant returned home for the final time, he had a blue drawstring backpack with him containing about $7,000 in cash. He told Taylor Sarah had a "small personal stash" in a safe at the house. Defendant said they would go to Sarah's house, get her into the car and take her to the bridge but they decided to wait "to let traffic die down" so they would not be seen. While they waited, defendant "went into detail about how he killed [Sarah]," stating

> that he strangled her. That it took quite a while for her to actually stop breathing, about a half hour. And then in the process she peed herself. She vomited. She, when she started throwing up he stuffed a scarf down her throat. And all the while she said his name a couple times.

Later that night, Taylor and defendant drove to Sarah's house, jumped over the fence and went in the back door. Defendant retrieved the safe while Taylor looked for defendant's cell phone. Defendant gave Taylor the safe and they left the house. Defendant then drove Sarah's car and parked it behind Taylor's car. They then jumped the fence again, pulled Sarah's body out of the bushes, took it over the back fence and placed it in the front passenger seat of her car.

Defendant drove Sarah's car to the bridge. Taylor took the safe and drove his car to the bridge, taking a different route than defendant and keeping in touch

using the walkie-talkies. Taylor positioned himself on one side of the bridge to watch for traffic while defendant watched from the other side. When they saw a break in the traffic, Taylor drove to the top of the bridge on one side and defendant drove to the top on the other side and pulled onto the shoulder of the road. Defendant unsuccessfully tried to pull Sarah's body out of the car and then radioed Taylor for help. Taylor "loop[ed] around" and pulled up behind defendant, parked his car and put his hazard lights on. Two cars drove by. Defendant then grabbed Sarah by the shoulders and Taylor picked her up by her legs and they threw her body off the bridge. They heard a "metal bang" and then ran to Taylor's car and left.

The two returned to their home and opened the safe. They found about $9,000, far less than the $100,000 they expected. The men put the money in the blue drawstring bag and put it in the attic under the insulation. The safe also contained a red envelope with a safe deposit box key and two coins that Taylor put in his pocket while defendant was out of the room. Taylor later told police about these three items and police found them inside the heater vent in his bedroom.

Taylor testified that defendant woke him up later that morning, December 3, 2016, to tell him the police had come to the house to say that Sarah was

missing "but they didn't say anything about it being because of either of us." Later that day, the men went to Walmart to buy defendant a new phone and to defendant's mother's house, where there were a number of defendant's relatives and two of Sarah's relatives.

Before defendant killed Sarah, he told Taylor that if he was questioned by police he should tell them that Sarah "had had a falling out with her dad; that they had been having some arguments recently; that she quite possibly was a closet lesbian and some other things to just make her look unstable. Kind of stuff to make it look like she had eventually committed suicide that night."

When Taylor was interviewed by police on December 7, 2016, he told them that he thought Sarah had "jumped." He testified at trial that he knew this was not true and that Sarah was dead because he and defendant "threw her dead body off the Route 35 bridge." He also told police he was aware of problems between Sarah and her father, and that Sarah had "threatened to take her life in the past" as told to defendant's ex-girlfriend. That statement was also "part of the plan." Taylor told police that Sarah wanted to go to Canada or talked about a trip to Canada. At trial, defendant testified Sarah was not depressed or suicidal and she had been excited about taking a trip with defendant to Canada.

A few days later, Taylor learned from social media there was a planned search for Sarah and he told defendant that "it would look good if [they] went and did this, to make it look like [they]'re concerned about finding her." Defendant and another friend joined the search and talked to a news reporter on camera.

After time went by and neither Taylor nor defendant were contacted by police, they became "convinced" they had "gotten away with this." They eventually buried Sarah's empty safe in Shark River Park and put the money into defendant's safe and buried it in a bunker in Sandy Hook. Taylor testified he used some of the money (about $1,500) to buy "weed" and they buried what was left. Taylor thought the money was "completely useless" because "[i]t was all old and beat up, looked like it had been chewed up by mice, and some of it looked like it had been through a fire."

As the investigation continued, and the police gathered further information, law enforcement decided to surveil defendant's home and bring Taylor in for questioning. On February 1, 2017, police arrested Taylor. After waiving his Miranda[3] rights, Taylor admitted he and defendant designed a plan

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

to kill Sarah and he told them where the money was hidden. He later went with the police to show them where the safes were buried.

Taylor described for police the actions he had taken regarding Sarah on December 2, 2016. During the trial, a video depicting Taylor's re-creation of events at Sarah's house was played for the jury while Taylor described the events.

As stated, Taylor pleaded guilty to several charges including first-degree armed robbery. He told the jury if he failed to tell the truth, he would face first-degree felony murder charges which carried a much greater sentence.

C.

Numerous law enforcement officers testified as well. On December 3, 2016, at 2:46 a.m., Neptune Township police officer Shane Leaming arrived at the Route 35 bridge in Belmar following a report of an abandoned or disabled car. The car was registered to Lillian Stern (Sarah's grandmother), but it was reported that the car was normally driven by Sarah. The car was towed away. Leaming checked the land area under the bridge to look for "a possible suicide"; no body or personal effects were found in the area. Dispatch also contacted Sarah's cell phone carrier to "ping" her phone in order to locate it. The last ping of Sarah's phone was 7:49 p.m. on December 2, 2016, near her house.

Borough of Neptune City Sergeant Bradley Hindes arrived at Sarah's house. When no one responded to his knock, he entered the house using a key found under the doormat. He was in the house for less than five minutes and, although he was not looking for "anything like that," did not see blood, vomit, or urine anywhere. He then went to the house where defendant and Taylor lived around 2:00 or 3:00 a.m. after learning that defendant and Sarah were friends. Defendant told the officer he was with Sarah earlier in the day but had not spoken to her since 4:30 p.m. when he went to work. When Hindes asked about Sarah's mindset, defendant responded "[s]he's been telling me she's going to Canada," "[h]er dad is crazy" and her grandmother was sick.

Detective Wayne Raynor with the Monmouth County Prosecutor's Office testified he was asked to assist with a missing persons' investigation. Raynor proceeded to Sarah's house and was met by some relatives who informed him a cellphone had been found in the driveway. The phone was later identified as defendant's.

Raynor then went to defendant's parent's house where he spoke with defendant and his mother. Raynor testified that defendant did not seem surprised the detective wanted to speak to him. He described defendant as "calm, . . . quiet, very passive demeanor." During their conversation, in the

presence of his mother, defendant said he was "upset with what was going on" and was afraid for Sarah. He admitted knowing Sarah had found money which she was keeping at the bank.

When Raynor told defendant his phone had been found, defendant allowed the detective to look through it. Thereafter, Raynor reviewed defendant's recent calls and found the last outgoing call to Sarah was at 12:57 p.m. on December 2, 2016, which was consistent with defendant's statement. There were also calls to and from Taylor, including two missed calls from Taylor to defendant at 5:06 p.m. and 5:09 p.m. while defendant was at work and a call from an unidentified number to defendant at 4:51 p.m. When asked about the call from Taylor at 11:52 p.m. when defendant said the two were together, defendant said he "probably used [Taylor]'s phone to call his phone in an effort to hear it ringing so that he could try to find it."

D.

Detective Brian brot became involved in the investigation on December 5, 2016. He contacted defendant on December 6 and asked to meet with him regarding the search for Sarah. Defendant agreed and drove himself to the Belmar Police Department within twenty to thirty minutes. Weisbrot said the interview was recorded but defendant was not read his Miranda rights because

he was not "in custody" at the time; the case was still a missing persons' investigation.

In pertinent part, defendant said he lived with Taylor, worked at a restaurant and was in his second year at a community college. He had known Sarah since first grade, and they were "pretty close friends" who spoke at least once a week and texted often. Defendant said he believed Sarah could be a lesbian and she was "obsessed" with his ex-girlfriend and several "YouTubers" who are "known lesbians." He volunteered that, years earlier, Sarah told his ex-girlfriend that she was going to kill herself. He also said there were a "few occasions" where his ex-girlfriend went to a neighbor's house to help Sarah who said her father was going to "hurt" her.

Defendant told Weisbrot that Sarah had lost or been fired from several jobs and had not been going to school. According to defendant, Sarah had "been saying she needs to get away and go to Canada. Get away from her dad." He did not know if she was in Canada at the time and she had not said anything about leaving when they had last spoken. He did hear her say something to a relative such as "[t]his might be the last time I see you because I might be in Canada by the next time."

Defendant said Sarah's relationship with her father was "not good" and "there's a lot of fighting all the time" but no physical contact. He described a recent fight Sarah and her father had over the phone about a broken house key and that her father was screaming, shouting and "really angry" at Sarah. He also said Sarah was supposed to get money when her mother died but her father "took money from her" and there were "trust issues" because of that. It was for those reasons that Sarah packed her belongings into containers and moved them to other people's houses while her father was away. Defendant said he had several of Sarah's bins in his basement, and he had helped her move other containers to a neighbor's house. He denied knowing what was in the bins. Defendant said Sarah's father was "very nice" in public but Sarah would say "disparaging" things about him.

Defendant repeated that he last saw Sarah when he left her house at 4:45 p.m. to go to work that Friday night. He did not talk to Sarah after that because he lost his phone at some point that day and left work a couple times to go home and search for it. Defendant said he "could have" lost the phone while he was with Sarah after he learned his phone was found in the driveway.

Defendant described the last day he and Sarah spent together. He called her sometime after noon and asked, "if she wanted to get some food." After

getting take-out, they went to Sarah's house, ate, and then played video games. At some point, Sarah said "her dad was coming home. She had to get the stuff out. She just needed to get to Canada." He said she had talked about it for weeks, but he did not think she would actually go through with it. Defendant also told the detective Sarah wanted to go to bartending school so she could be a bartender in Canada.

According to Weisbrot, defendant asked, "[o]ne thing I want to talk to you guys about was, um, if she, she did jump off the bridge, what are the odds that she's not somewhere all the way out in the ocean by now"? He said Sarah did not tell him that she was going to jump and he would not have gone to work that night if she had said that. He also said he understood the importance of telling law enforcement everything and that was why he told them about the suicide threat Sarah made to his ex-girlfriend and that Sarah had cut her wrist with a knife three years earlier when they were sixteen years old.

When Weisbrot asked defendant why he did not tell them he had gone to the bank with Sarah, defendant said "[w]ell, I told him about the bank," gesturing at the other detective.[4] He then admitted they stopped at the bank on the way

[4] When the second detective testified, he stated defendant had not mentioned going to the bank.

home from getting take-out but he stayed in the car while Sarah went inside. He then told the detectives that it had "[s]omething to do with her money" that she had found in the Avon house a few months before. Defendant said he did not know if she was taking money out or putting it in the bank. Sarah had told him about finding the money that "must have [] belonged to her mother" and that "it could be from 20 grand to 100 grand." Sarah was not sure how much money it was because the bills were in bad condition and "all stuck together." He claimed that he never saw the money and she never gave any of it to him.

When asked why four calls were made from Sarah's landline to his cellphone on December 2, 2016, defendant said he did not know. The four calls were made just prior to defendant clocking into work at 5:01 p.m. and before Taylor was seen in the backyard at 5:04 p.m. Defendant stated he did not know he had lost his phone until he got to work.

E.

The jury viewed surveillance video from defendant's workplace that showed defendant arriving at work at 5:00 p.m. and leaving the restaurant two times before leaving for the night at 10:00 p.m. They also saw video of defendant and Sarah at the take-out drive-thru and going to the bank on December 2, 2016.

Law enforcement retrieved video footage from an external camera located on a residence across the street from Sarah's home. It depicted defendant arriving at Sarah's driveway in a black vehicle on December 2, 2016. During the afternoon, Sarah's car left and returned twice. In late afternoon, defendant left in the black vehicle that was parked in the driveway. Approximately twenty minutes later, a vehicle approached the property from the rear and then "a person [was] seen in the backyard" walking towards the back of the property.

Sarah's car was still in her driveway at midnight and a light from a vehicle driving by the rear yard was seen. The lights inside Sarah's house were on. Minutes later, the interior light of Sarah's car went on and the car was seen leaving her house for the last time. A minute later, headlights could be seen in the rear of the residence. Sarah's aunt and her grandmother arrived at the house an hour later and remained there for ten minutes.

Police searched the interior and exterior of Sarah's home but found nothing related to her disappearance. Sarah's passport, her social security card, and United States and Canadian currency were found in her bedroom. Police found a key in the center console of Sarah's car that opened her safe deposit box. Inside they found "[a] significant amount of cash" that was old and "[m]ost of it

was dry-rot, stuck together, falling apart. It was very brittle." The cash totaled $25,250.

In searching defendant's car, police recovered two Sentry safe keys, a cell phone, and a brown leather wallet. The keys opened the safe recovered from Sandy Hook in which was found $9,390 in cash "similar in condition as the money that was recovered from Sarah's safety deposit box." The police also retrieved the safe buried in Shark River Park. It had several index cards inside that matched some found in Sarah's safe deposit box used to separate the deteriorated cash.

F.

Hugh Roarty, Ph.D., a research project manager in the Department of Marine and Coastal Sciences at Rutgers University and expert in ocean engineering, provided expert testimony about the water conditions in Shark River and where it exits to the Atlantic Ocean at the time of Sarah's disappearance.[5] He looked at the tide, drift, and current conditions between 11:45 p.m. on Friday, December 2 to 2:46 a.m. on Saturday, December 3, 2016 to see where the body had traveled. Because the tide was going out during the

[5] Defendant objected to Roarty's testimony. The objection to Roarty's report and PowerPoint slides will be addressed in our analysis of defendant's contentions.

estimated time period, a body thrown into the water at that time would have traveled into the bay in about fifty-three minutes. Roarty concluded that "an object dropped in the Shark River and then exiting into the ocean would have traveled 10 kilometers [or seven miles] offshore within 24 hours" of entering the water. He testified the body was never recovered because it would have been "well to the east" by the time they started the search at the bridge.

G.

Curry, who was twenty-one years old and working as a film director in New York at the time of the trial, testified on behalf of the State; he said he was testifying because he was "[d]oing the right thing" and had not been given or promised anything in return. He was "good friends" with defendant in high school and they continued to be friends after graduation. Curry made horror or "slasher" films. He said defendant would "often" give him "ideas for films" and that they talked about movies "all the time."

In November 2016, when Curry visited Neptune, he would "hang out" with defendant and stay at his house. They stayed in touch using text messages or Snapchat, and the occasional phone call. Curry recalled seeing defendant on Thanksgiving Day 2016 around 11:00 p.m. and they had a conversation about

Sarah and the "[$]50,000" she had found. Curry testified about their conversation:

> He told me he was going to meet up [with] Sarah. She found this money and they were going to count it together. He was going to choke her, choke her out. Bring her to the bridge. Throw her off. And [Taylor] was going to drive the escape vehicle. And, . . . they were going to bury the money and leave the keys in the ignition, make it look like she killed herself.

Defendant said "it would be a great idea for a movie." Curry did not think defendant was serious as defendant had lied to him in the past. However, a week later, when Curry learned from social media that Sarah was missing, he changed his mind about whether defendant was serious.

At first, Curry ignored defendant's messages but defendant then became "[p]ushy. Asking [him] to hang out all the time." Curry became "alarmed" after defendant sent him a Snapchat asking if the police had questioned him. When Curry said no, defendant responded that "they talked to everybody I know. If they haven't by now, they won't." Curry took a screen shot of the message to show to police.

After speaking with his father, Curry decided to contact police and "agree to help them." Weisbrot met with Curry and heard about the Thanksgiving conversation and saw the screenshot.

Curry agreed to put a recording device in his car "[t]o get [defendant] to explain what happened." Police stated a consensual recording was when "one party agrees to record the other."

In the presence of police, Curry sent defendant a Snapchat saying "Yo, what's good." He then told defendant he was going to come to New Jersey because he found someone who would sell him a camera for a thousand dollars and he wanted to meet up to borrow money from defendant. Defendant responded on Snapchat, "I'm trynna to link [sic] but I don't have the money to lend you a G. I only had seven to begin with and that was months ago." Curry responded: "You said you had bread. What the fuck happened? I got to shoot this shit."

Defendant told Curry that he needed to tell him what happened in person and he had "like five Gs left and [was] unemployed." Defendant also said "[w]e're not at that stage in our lives where we're lending each other money yet. I can't afford it." Defendant suggested Curry ask his parents for the money and said his "cash [was] low quality. They won't take it. That's all I can say." Defendant repeated that his situation was serious and that he could not say anything on the phone but they would talk that night.

On January 31, 2017, Weisbrot was present and recorded the phone conversation between Curry and defendant. The jury heard the recording. In the call, Curry told defendant his camera was broken and he had no money to buy a new camera for his next shoot. Defendant responded, "I wish I could fucken' help you out, dude." Curry told defendant he needed "like two Gs" and asked "you couldn't like spot me some cash from that, like, that girl's money. Right?" Defendant said "[u]h, maybe. How much you need?" The following exchange then took place:

> [CURRY]: I need like 2, 2. I mean I will pay you back after all these jobs work out, like the money would still be, like coming back to me so—
>
> [DEFENDANT]: I don't think I could do that. We need to talk about that, too.
>
> [CURRY]: All right.
>
> [DEFENDANT]: Come see me in person some time.
>
> [CURRY]: How much—like, do you have, like, anything left from it or no?
>
> [DEFENDANT]: Yeah. I don't know. I don't really want to talk about it right now.
>
> . . . .
>
> [CURRY]: Yeah. Trying to pay that fucken' rent, yo. That fucken' rent is killing me.

> [DEFENDANT]: All right. You're fucking telling me, dude. I need a job.
>
> . . . .
>
> [DEFENDANT]: Yeah. Let's just say I'm not as good off as I thought I was gonna be.

They then agreed to get together.

After making arrangements via Snapchat to meet, Curry texted defendant to meet him "by the spot in Bradley near Avon." Before the meeting, Curry met with detectives from the prosecutor's office for the installation of the recording devices. The video of the meeting, with certain redactions, was played for the jury.

After defendant got into Curry's car, Curry asked defendant what he had been doing. Defendant responded "[h]iding from the cops." When Curry asked what happened, defendant said "[d]ude, you can't blame me for doing this. All right. I got to feel you up, Bro, real quick. All right." Defendant told Curry he had "the FBI on [his] ass" and they were questioning him "a lot." When Curry asked what they were questioning him about, the following exchange took place:

> [DEFENDANT]: About killing Sarah. They [sic] been there, they've been, uh, they were up my ass. First it was just normal police, they were on my ass, and I had to go in and get interrogated by them multiple times. But then it kept moving up levels and now it's a federal case. It [sic] got the FBI.

> [CURRY]: So you've been laying low, I guess.
>
> [DEFENDANT]: Oh yeah. And not even, that's not even the worst part. The worst part of it is, I thought I was walking out 50 grand, 100 grand in my pocket. She had one safe and she took money out and she only had 10 grand. And this money, I don't know if it was burnt or something, it's fucking old money. Terrible quality. I don't even know if I can put any of it in the fucking bank.
>
> [CURRY]: Right, because it will probably . . . look sketchy. Right?
>
> [DEFENDANT]: Look sketchy and it will look like it's Sarah's money, especially the federal investigation.

Defendant then told Curry how Sarah found the money in her house and it was "from the 80's" and that he "didn't even get a quarter of it." Defendant said he had not spent any of the money because "it [was] in such bad shape" and he "need[ed] to []lay low and then maybe like tape some shit up and see if [he] could put it in the bank." He said he had the money hidden in his house for a while but then hid it in Sandy Hook because he "stopped trusting" Taylor. Curry asked "[w]hat was the deal with [Taylor]" and whether he ended up "helping" defendant. Defendant responded "oh, yeah" and "he's cool." Defendant continued:

> Sarah's whole deal was my thing. But I had planned Sarah's situation for me to be interrogated by cops.

> Like, that was the whole part of my plan to make me look not guilty.
>
> [CURRY]: Like what did you end up (indiscernible).
>
> [DEFENDANT]: You didn't hear about it? It was all over the news.
>
> [CURRY]: Right. But I didn't know if you heard it from anybody.
>
> [DEFENDANT]: Yeah. And the worst part is we threw her off the bridge and the body never showed up.
>
> [CURRY]: It's probably frozen.
>
> [DEFENDANT]: It's probably all the way out in the ocean.

Defendant then described how he killed Sarah:

> So I'm hanging out with her. She has—we went to the bank. She took some money out, not all of her money. We're carrying it out. And then she goes to walk out the front door. I choke her out. Drag her. My biggest problem was the dog, and her dog laid there and watched as I killed her.

Defendant also said he lost his phone at Sarah's house but had to go to work because he "had timed everything out." When Curry asked why he took his phone out of his pocket and what was he doing, defendant responded "[s]trangling someone." He said his phone was later found in the driveway and that he "must have dropped it when [he] was crawling to get in the car."

Defendant continued:

> But I choke her out. Dragged her into the back. Put her in the bedroom. And then I had to go straight to work. So [Taylor] came over, took the body, put it in the bushes. And then I was at work. I had a full, like, night of work, except I left work a couple times, which looks sketchy, looking for my phone, though.
>
> . . . .
>
> Which it's kind of, like, me losing my phone is kind of a good thing, because the cops are like, 'Oh, he's hanging out with her. He lost his phone. He's going back and forth between his house looking for it.' And then I get off work that night. Go straight over. Uh, [Taylor] and I go over to her house. Take her safe. Bring that over to my house before we do anything. When we take her body out of the bushes and drag it over to her back fence. And I crawl, get into her car and I backed up. She had, there is security camera across the street.
>
> . . . .
>
> So I had to back, [sic] I had to act like her. I watched her every time she backed out, she does the same thing. So I backed out exactly like she did and drove off.
>
> [CURRY]: You didn't put her in the trunk?
>
> [DEFENDANT]: No. Put her in the passenger seat of her own car. And then [Taylor] and I had these walkie-talkies to communicate with. We just used them again. So I was driving. And I had her buckled in, in the passenger seat.

Defendant also described how he threw Sarah off the bridge:

> I got up on top of the bridge to throw her off. My problem was I was going to throw her off, run over, jump over the divider and get into [Taylor]'s car. And I go up, open the door, unhook her, pull her out, start dragging her to throw her over, and then cars start coming up. I see, like, headlights coming. I try to get her over and I can't. Fucked my leg up, like, the weight from her body, like, made me fall. And my leg, like, went up. So now I'm my [sic] limping and my leg's [sic] fucked and there's three cars coming up. So I grab her body. Dude, I had super-human strength. And I threw it in the car. And I fucken' picked it up. And her feet were up here and her foot—her head was down there and three cars go by. And I'm fucking losing my shit because that easily could have been a cop.
>
> . . . .
>
> And then [Taylor] comes over the bridge, goes around and makes a u-turn, comes up behind me. The two of us throw the body over and then we're out.

Defendant also told Curry that Sarah said his name and "pissed herself." He explained:

> it took me a half an hour to kill her. I thought I was going to be able to choke her out and have her out in like a couple minutes.
>
> [CURRY]: Choked her out for 30 minutes?
>
> [DEFENDANT]: I choked her out. And then she was just laying there having a seizure or something. So then I just—I had the—I got a shirt and I just shoved it down her throat so she wouldn't throw up or anything and held

> my finger over her nose. And set a timer. That's the only time that I had my phone. And it took me like a half an hour after I hit start on the timer. This is—this is the thing about, like, heists. There's so much shit that you can't account for it.

Defendant then said he had been interrogated by police "over and over again" in the last month and that he planned all the phone calls because he "needed to make it seem like we were better friends than we actually were."

Defendant said that, other than Taylor, Curry was "the only person on this planet" that knew what they did and Taylor was unaware that Curry knew about their actions. Curry said he was "no fucken' rat" and that the cops were not even questioning him. Defendant replied that they had to "play it safe" and he did not "want [Taylor] to think that he has to kill [Curry] and take [Curry] out because [Curry was] the only person that [knew]." Curry suggested not telling Taylor that Curry knew they had killed Sarah. Defendant said he "planned this thing out for like six months" and Curry replied "[l]ike a fucking movie, bro." Curry told defendant to "be careful" and defendant responded that "[t]hat's all over now."

Curry also testified he never saw defendant or spoke to him again after the meeting in the car. Curry later found a walkie-talkie on the passenger floor mat in his car and turned it over to police.

Defendant was arrested the next day. After apprising defendant of the charges, Weisbrot asked him if he knew the attorneys who had previously contacted police. Defendant responded that his "parents would know better about the attorney" and he did not want to talk to police. Defendant was indicted three months after the Curry meeting.

II.

Prior to the trial, defendant moved to suppress the statements and Snapchat messages he made to Curry. Defendant contended the evidence should be suppressed because the State violated his Sixth Amendment right by speaking to him without counsel present and in using Curry as an informant. After a four-day hearing, the trial court denied the motion on March 23, 2018.

During the hearing, Weisbrot testified that while they were questioning defendant on December 6, 2016 about Sarah's disappearance, they were notified that two different attorneys had contacted the police department inquiring about defendant. Defendant's parents had each contacted counsel. After learning this, Weisbrot ended the interview. The court found defendant had driven himself to the questioning, was always free to leave, and he was not searched. At the time of the questioning, Weisbrot said he considered the case to be a missing persons investigation.

One of the counsel provided police with a letter advising he had been retained to represent defendant. Weisbrot spoke to counsel and explained they "were conducting a missing persons investigation and that [defendant] was a close friend of Sarah Stern's, and that he was the last person to be with her prior to her disappearance." Counsel replied that he "had no problems with [police] continuing to speak with [defendant] to assist [them] in locating Sarah." The second attorney requested that law enforcement contact him with any future requests to speak to defendant. Later that month, the police contacted counsel because Sarah's relatives wanted to retrieve some storage bins Sarah had left at defendant's house; the bins were later retrieved and returned to Sarah's father. Police had no further interaction with defendant until Curry contacted them in late January 2017.

Weisbrot also explained to the court that Curry approached police voluntarily. Curry felt if he did not work with police, defendant "would kill him and/or hurt or harm his family." Weisbrot said the prosecutor advised him he could proceed with the consensual recording application process. According to Weisbrot, defendant, who was nineteen at the time of the December 6 interview, was not in custody at that time and never specifically "indicated to [Weisbrot] that [the lawyer] was his attorney." Even on the day of his arrest, defendant

"still did not know whether or not he [had retained] an attorney." Weisbrot reiterated defendant was not "a suspect in [the] case" until January 24, 2017, when Curry contacted police.

In its written decision, the court found the Sixth Amendment right to counsel had not yet attached before defendant's January 31, 2017 meeting with Curry because defendant had not been arrested, charged or indicted. As to the applicability of the Fifth Amendment, the court noted it "is not self-executing and must be invoked by the person claiming its protection," citing to State v. P.Z., 152 N.J. 86, 101 (1997). In addition, the court found "[a] suspect's statements to an undercover agent are typically voluntary under the Fifth Amendment because there is no element of compulsion present," citing Illinois v. Perkins, 496 U.S. 292, 299 (1990).

In addressing the December 6 police interview, the court found defendant voluntarily agreed to the interview, he was not in custody during the interview, nor was he a suspect at that time. Therefore, the Miranda protections were not yet triggered. Alternatively, the court noted that even if defendant was in custody on December 6, 2016 and invoked his right to counsel, the conversations with Curry took place weeks later.

Moreover, the court stated, defendant "never invoked his right to silence or his right to counsel" either "explicitly or impliedly." When counsel contacted police, Weisbrot informed defendant of the calls and ended the interview. Defendant himself never invoked his Miranda rights.

As for Curry, the court found he approached police out of fear for his own life and "willingly met up with . . . defendant to speak with him and agreed to be recorded while he was doing so." The court noted defendant "voluntarily and, seemingly, boastfully told [Curry] the entire story of what happened to Sarah Stern on December 2, 2016." The court found no evidence of coercion by police and, stated "almost all of the communications between [Curry] and . . . defendant were prompted, and insisted upon, by . . . defendant." The court found defendant was not compelled to give Curry an involuntary statement. Defendant was not in custody when he spoke to Curry and Curry was not an "agent of the State," but was "acting initially on his own behalf out of fear of . . . defendant." In addition, Curry did not "interrogate[]" defendant; rather defendant "dominated the conversation" recounting "the story of what he physically did to Sarah Stern on December 2, 2016, without any hesitation."

The court concluded defendant's statements to Curry were not obtained in violation of defendant's Fifth or Sixth Amendment rights and the motion to suppress was denied.

Defendant was found guilty on all counts, and as to count one (murder), the jury found the aggravating factors—that he committed "the homicidal act resulting in the death of Sarah Stern by his own conduct" and that it was committed while he "was engaged in the commission of, or an attempt to commit the crime of Robbery." He is serving a sentence of life imprisonment without the possibility of parole.

III.

On appeal, defendant raises the following points for our consideration:

> POINT I
>
> DEFENDANT WAS DENIED HIS RIGHT TO A FAIR TRIAL BY THE IMPERMISSIBLE INDOCTRINATION OF THE JURY DURING JURY SELECTION.
>
> POINT II
>
> MULTIPLE INSTANCES OF PROSECUTORIAL ERROR DENIED DEFENDANT DUE PROCESS AND A FAIR TRIAL.
>
> A. Introduction
>
> B. Bolstering of Taylor in Summation

C. Appeals to Emotion in the Opening Statement

D. Use of Inflammatory PowerPoint Slides

E. Conclusion

POINT III

ARTICLE I, PARAGRAPH 10 OF THE NEW JERSEY CONSTITUTION SHOULD BE APPLIED TO FILL THE GAPS BETWEEN THE RIGHTS TO COUNSEL EMBODIED IN THE 5TH AND 6TH AMENDMENTS TO THE UNITED STATES CONSTITUTION IN THE PRESENT SITUATION, WHERE THE POLICE KNEW DEFENDANT HAD RETAINED COUNSEL, WHICH THEY CIRCUMVENTED BY USING AN INFORMANT TO ELICIT A CONFESSION PRIOR TO THE FILING OF FORMAL CHARGES.

A.

In Point I, defendant asserts he was "denied his right to a fair trial by the impermissible indoctrination of the jury during jury selection" because the court asked prospective jurors "whether the non-recovery of Sarah's body would affect the juror's ability to return a verdict." He contends "this question both indoctrinated the jury and also diluted the State's burden of proof, creating a jury partial to the prosecution and rendering defendant's trial unfair."

As discussed above, after a lengthy discussion with counsel, the judge asked each prospective juror during voir dire "Would the fact that a body was

not found in this case affect your ability to return a fair and impartial verdict? Why or why not?"

Rule 1:8-3(a) "vest[s] discretion in trial courts with respect to preliminary questioning of prospective jurors." State v. Manley, 54 N.J. 259, 269 (1969). We review a trial court's conduct of voir dire "in accordance with a deferential standard." State v. Little, 246 N.J. 402, 413 (2021). Its "decisions regarding voir dire are not to be disturbed on appeal, except to correct an error that undermines the selection of an impartial jury." Ibid. (quoting State v. Winder, 200 N.J. 231, 252 (2009)). The "court's exercise of discretion in dealing with requests for specific inquiries of prospective jurors in the voir dire examination is subject to reversal only on a showing of prejudice in that the voir dire examination failed to afford the parties an opportunity to select an impartial and unbiased jury." Id. at 413-14 (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 1.2 on R. 1:8-3 (2021)).

A defendant is entitled to be tried "before an impartial jury," State v. Loftin, 191 N.J. 172, 187 (2007), or one that "is free of outside influences and will decide the case according to the evidence and arguments presented in court in the course of the criminal trial itself." State v. Williams, 93 N.J. 39, 60 (1983). "A 'vital aspect' of that responsibility is to ensure the impaneling of only

impartial jurors by ferreting out potential and latent juror biases." Little, 246 N.J. at 414 (quoting State v. Fortin, 178 N.J. 540, 575 (2004) (additional internal citations omitted)). To accomplish this, the Supreme Court "has sought to distinguish between questioning of prospective jurors that is intended to reveal biases and inquiry that may improperly indoctrinate jurors as to the outcome they should reach in a given case." Ibid.

In Little, the Court considered a voir dire question posed to the prospective panel regarding the non-recovery of a weapon allegedly used in the charged crimes. Id. at 419. The Court cautioned that the "trial court must ensure . . . [the] questioning is not partisan and that it will not indoctrinate prospective jurors in favor of either side's position. The court must present the issue to prospective jurors in balanced and impartial terms." Id. at 407. The Court found that "[i]n appropriate cases, the State's inability to present a particular category of evidence can be a legitimate subject for the trial judge to address in voir dire." Id. at 417.

Here, defendant argues the question was "inherently lopsided" because it "gave the State's version" that it could prove murder without producing a body but "it omitted the defense position: the absence of a body could create reasonable doubt, by itself." In support of this argument, defendant points to

the two jurors who "were actually excused based on their answers" to the particular voir dire question.

Initially, Juror 1634 answered "no" to the question but when asked why, the juror stated, "I really don't have an answer for that." The following colloquy occurred:

> THE COURT: Could you listen to the evidence in this case despite that, that the body was not found to make a fair and impartial decision?
>
> JUROR NO. 1634: Well, I didn't know that, but—the only thing that I heard was that it was an accident that had happened.
>
> THE COURT: Okay. Okay. Well, let me read the question to you again. Would the fact that a body was not found in this case affect your ability to return a fair and impartial verdict?
>
> JUROR NO. 1634: I don't think it would.
>
> THE COURT: Okay. And probably because somebody else will ask you is when you say you don't think it would, tell me—just explain that a little bit.
>
> JUROR NO. 1634: I guess because—well, I guess you're saying that it wasn't found, but I'm not sure about that. So, I—really don't know, but I would like to hear what—if I was on the case to see what was going on, and if anything was found for evidence or anything like that.

In follow-up, the prosecutor questioned the juror about her statement that there was "an accident," asking her what she had heard. The juror responded: "The only thing that I heard was that the car was found and that it might have been like some type of foul play or that the girl was like (indiscernible) herself. So, . . . I thought maybe it was an accident or (indiscernible) or something." The juror said she heard this information from "word of mouth" but "can't really go by what people said, because it's hearsay."

The prosecutor then asked whether it was her opinion that it was an accident. The juror responded that she "thought it was . . . from what [she] heard and the little piece of information that [she] saw in the paper." The prosecutor asked "[s]o, you already pre-judged what you think happened here?" The following exchange took place:

> JUROR NO. 1634: I don't know if you would—I don't know if I would call it that, but I just said maybe it was an accident. I don't know.
>
> [THE STATE]: So, right now, based on everything you know is that what you think?
>
> JUROR NO. 1634: That it was an accident? No.
>
> . . . .
>
> THE COURT: So, could you listen to the evidence in this case and then make a decision?

JUROR NO. 1634: Yes.

The State used a peremptory challenge to remove the juror.

Defendant also relies on the following colloquy with Juror No. 3167:

> THE COURT: Okay. And, number two, would the fact that a body was not found in this case affect your ability to return a fair and impartial verdict?
>
> JUROR NO. 3167: No.
>
> THE COURT: Why wouldn't—why not, I should say?
>
> JUROR NO. 3167: Well, you said—
>
> THE COURT: I'll read it to you again. Yeah. Would the fact that a body was not found in this case affect your ability to return a fair and impartial verdict?
>
> JUROR NO. 3167: Yeah. It—yeah, because I wish that her body would have been found.
>
> THE COURT: So, it could affect your ability?
>
> JUROR NO. 3167: Yeah.

The prosecutor followed up on that response:

> [THE STATE]: You indicated not having a body would affect your ability to be fair and impartial.
>
> JUROR NO. 3167: (Indiscernible) a body, you know, so the case can be (indiscernible). I just feel that it should have been found.

[THE STATE]: So, knowing that the body wasn't found in this case, would that make up your mind a little bit as to whether or not—

JUROR NO. 3167: No.

[THE STATE]: So, if the body is not found do you think you could be fair and impartial?

JUROR NO. 3167: Yes.

[THE STATE]: So, when you originally said that you—I would expect them to find the body is that true or untrue?

JUROR NO. 3167: That's true. That's true.

[THE STATE]: Okay. So, how would that impact your ability to listen to all the other evidence, knowing that there's no body?

JUROR NO. 3167: Well, if the signs say—if there's no body (indiscernible) there's nothing you can do, there's no body, but in a way I would prefer there would have been a body found in—(indiscernible) case.

[THE STATE]: So, is your mind made up a little bit about guilt or innocence knowing that there's no body?

JUROR NO. 3167: No. At this point (indiscernible) because there's no body, and nothing there.

THE COURT: It's—what was the word you said? It's what?

JUROR NO. 3167: I said (indiscernible) just like (indiscernible) there's nothing there. There's no body. (indiscernible) body.

After this exchange, the court determined the juror had to be excused because she said "not guilty." The prosecutor agreed that the juror "said not guilty" and that she was "predisposed to a verdict" or that "there's reasonable doubt now because there's no body." Defense counsel disagreed the juror should be removed for cause. The court excused the juror for cause, stating the juror did not understand the question "and she's kind of given some different answers back and forth."

We do not see how the questioning of these two jurors supports defendant's contentions regarding the voir dire question. Both jurors equivocated in their answers whether they could be fair and impartial. That is sufficient grounds for an excusal for cause, or a preemptory challenge. Both jurors appeared to have prejudged the case based on information learned outside the courtroom. The questioning of these jurors does not support defendant's contention that he was prejudiced in any manner by the voir dire question.

This was an appropriate question under Little to ask prospective jurors. The wording was neutral and non-partisan. And the court properly asked jurors to explain their answers. We discern no error.

B.

In Point II, defendant contends multiple instances of prosecutorial error denied him a fair trial. He points to three specific areas of error: comments made in summation; comments made in opening statement; and the use of PowerPoint slides.

1.

"Prosecutors are afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented." State v. Frost, 158 N.J. 76, 82 (1999). Even in criminal cases, attorneys "are expected to make vigorous and forceful closing arguments to juries." State v. Smith, 167 N.J. 158, 177 (2001) (citations omitted). However, a prosecutor's summation should generally be "limited to commenting on the evidence and to 'drawing any reasonable inferences supported by the proofs.'" State v. Bauman, 298 N.J. Super. 176, 207 (App. Div. 1997) (quoting State v. Zola, 112 N.J. 384, 426 (1988)). Prosecutors are obligated to "refrain from improper methods that result in a wrongful conviction," and they are "obligated to use legitimate means to bring about a just conviction." Smith, 167 N.J. at 177.

Prosecutors are "'not permitted to cast unjustified aspersions' on defense counsel or the defense" and "[d]efense counsel should not be subjected to disparaging remarks for simply doing his or her job." Frost, 158 N.J. at 86 (quoting State v. Lockett, 249 N.J. Super. 428, 434 (App. Div. 1991)). Improper comments by a prosecutor are grounds "for reversal where the prosecutor's misconduct was so egregious that it deprived the defendant of a fair trial." Id. at 83. Arguments that are "otherwise prejudicial . . . may be deemed harmless if made in response to defense arguments." State v. McGuire, 419 N.J. Super. 88, 145 (2011).

Defendant asserts, for the first time, that the State made improper comments in its summation in "repeatedly argu[ing] that Taylor was a credible witness because he pled guilty to charges related to the present matter." He contends the "cumulative effect of these arguments was to push the jury into crediting Taylor's testimony, and by inescapable extension, finding defendant guilty." He specifically objects to four passages from the State's closing.

In the first passage, the prosecutor stated:

> Preston Taylor must be a liar. Right? He's getting a deal. Right? He's avoiding however many hundred years or whatever in prison. And he got 10 to 20 years. That's the argument. He must be lying. Right? He's got an incentive. He got a deal. Right? He must be lying. The problem with that argument, though, in this

> case is that it's ignoring the fact that [Taylor] pled guilty to something that didn't happen[.] He's going to spend up to 7,300 days in state prison, admit[ed] to being involved with [defendant] in the robbery—and this is a robbery—killed her to get her money—and murder of Sarah Stern when she's not dead. That makes no sense. Just to get that out of the way.

Defendant objects to the next passage, asserting the State "undermined the defense that no murder had been committed because Taylor admitted guilt."

> And when you look at [Taylor], I mean it's easy to say, hey, [Taylor] must be lying. Right? We talked about that. But again [Taylor] is going to admit to something that he wasn't even charged with? He's going to admit to involvement in a murder that never occurred? Doesn't really make any sense.

In the third set of remarks, defendant states the prosecutor improperly "[h]ighlight[ed] the interconnectedness of Taylor's testimony with the allegations against defendant":

> What does [Taylor] say? He says, "I walked in the back door. It was unlocked. I went straight to the bathroom because that's where he told me that she would be." Remember his reaction to finding her? Is she dead? Yes. She was dead. I mean think about this. He pleaded guilty to something they want you to believe didn't happen. . . . Yet this man, by his own admission, touched her body after death numerous times, as did this man. There's only two people in this world who can say, "We threw her off a bridge." And they both did with absolute certainty and credibility.

Lastly, defendant argues that the State "denigrated the defense while also asserting that Taylor should be believed because he admitted to more crimes than the police originally suspected him of committing:"

> I do not understand how you can make any argument that logically would suggest why [Taylor] would plead guilty to all of the charges that [defense counsel] told you about if she wasn't murdered and robbed. He actually—you heard this through his testimony, he actually pleaded guilty, when he pleaded guilty, to crimes that he hadn't yet been charged with. Remember through the testimony I believe it came out today, he was initially charged with hindering and desecration. Right? They didn't know everything that he did at the time, so ultimately he winds up admitting to more than he had been previously charged with. His credibility, it is what it is.

As there was no objection to these remarks at trial, we review for plain error. R. 2:10-2. We note first that defense counsel repeatedly discussed in his closing argument Taylor's plea deal and his motivation to lie as well as the defense theory that Sarah was not dead.

During his summation, defense counsel described Taylor as a "cooperating codefendant" and stated it was the jury's job to "determine whether or not what he told you, what he testified to, and the evidence that he brings in is credible, believable, or whether it raises a reasonable doubt which would require acquittal [of defendant]." He also stated that

> evidence of . . . Taylor's plea of guilty may be used only in determining the credibility or believability of the witness's testimony. And you have a right to consider whether a person who has admitted that he's failed with society's rules that he would be more likely to ignore the oath requiring truthfulness on the witness stand than a person who has never been convicted of a crime.

Counsel argued that Taylor's testimony required "careful scrutiny" and the jury needed to consider whether he had a "special interest in the outcome of the case" or whether "his testimony was influenced by the hope or expectation of any favorable treatment or reward, or by any feelings of revenge or reprisal." Counsel repeated that instead of facing more than fifty-one years in prison, Taylor would be sentenced to "no more than 20 years and he could get as little as 10." He then explained why Taylor had "a motivation to lie here," including the fact that Taylor did not accuse defendant until after Taylor was arrested and the fact that the plea agreement says it is only valid "if and only if [Taylor's] cooperation is productive and of substantial value to the State as determined and defined by the State."

Defense counsel also commented on Taylor's "appearance and demeanor" and the fact that he was "[m]onotone" during his testimony and "didn't show any emotion. Almost as if he was rehearsed." He further stated that Taylor knew defendant met with Curry and "he admitted that he knew the story that was being

concocted." He reiterated "[t]here's nothing here to corroborate Preston Taylor's lies and finger-pointing at my client."

"It is within the sole and exclusive province of the jury to determine the credibility of the testimony of a witness." State v. Vandeweaghe, 351 N.J. Super. 467, 481 (App. Div. 2002). "A prosecutor may argue that a witness is credible, so long as the prosecutor does not personally vouch for the witness or refer to matters outside the record as support for the witness's credibility." State v. Walden, 370 N.J. Super. 549, 560 (App. Div. 2004); State v. Scherzer, 301 N.J. Super. 363, 445 (App. Div. 1997).

It is clear the prosecutor responded to defense counsel's summation in which counsel repeatedly called Taylor a liar and challenged his credibility. "A prosecutor is not forced to idly sit as a defense attorney attacks the credibility of the State's witnesses; a response is permitted." State v. Hawk, 327 N.J. Super. 276, 284 (App. Div. 2000). In addressing Taylor's credibility, the prosecutor stated, "it is what it is." It is well established that a review of a prosecutor's summation for prosecutorial misconduct "must take into account defense counsel's 'opening salvo.'" State v. Morais, 359 N.J. Super. 123, 133 (App. Div. 2003) (quoting State v. Munoz, 340 N.J. Super. 204, 216 (App. Div. 2001)).

Prior to Taylor's testimony, the court advised the jury Taylor had pleaded guilty to several charges in connection with the "same events" that defendant had been charged with, including robbery, conspiracy to commit robbery, desecration of human remain, tampering with physical evidence, hindering the apprehension of oneself and hindering apprehension of another. The judge instructed the jury that the guilty plea "may be used only in determining the credibility or believability of the witness' testimony" and was not to be used as evidence that defendant was also guilty.

The court gave a limiting instruction and Taylor testified about his involvement in the crime and was subjected to intensive cross-examination regarding his credibility. Moreover, the jury was charged that it was "the sole and exclusive judges of the evidence, of the credibility of the witnesses and the weight to be attached to the testimony of each witness." The court also instructed that "[r]egardless of what counsel said or I may have said in recalling the evidence in this case, it's your recollection of the evidence that should guide you as judges of the facts" and that "[a]rguments, statements, remarks, openings, and summations of the attorneys are not evidence and must not be treated as evidence."

In addition, defense counsel's failure to timely object weighs against a finding of prosecutorial misconduct. State v. Echols, 199 N.J. 344, 360 (2009) (quoting State v. Timmendequas, 161 N.J. 515, 576 (1999)) ("Failure to make a timely objection indicates that defense counsel did not believe the remarks were prejudicial at the time they were made."). Defendant has not demonstrated prosecutorial misconduct to warrant a reversal of his convictions.

2.

Defendant also raises, for the first time, assertions regarding the fairness of the State's opening statement which the prosecutor began by stating:

> Sarah Stern will not be walking through those doors into this courtroom at any point. She will never send her father another text. She will never hug him or tell him she loves him. Her friends and family will never get to enjoy her company, her smile, her laugh, or being with her. That's not because she drove her bridge [sic] to the top of the Route 35 bridge in Belmar. It's not because she disappeared to Canada, created some false identity and is living her best life. It's because this defendant murdered her and set into action a course of events that assured her body would never be found.

In his brief, defendant also cites eight instances where the State improperly "repeatedly sought to portray Sarah as [a] small, innocent child, contrasted with defendant's monstrosity." These examples mostly include the State calling her young or little or mentioning that she was nineteen and that she was thrown over

the fence "like garbage," or that her "lifeless body" was thrown over the bridge into the "freezing waters" or "ripping currents of the Shark River." Defendant argues these references "had no legitimate function" in an opening statement and instead "only served to inflame the passions of the jury."

Prior to the opening statements, the court instructed the jury that "[w]hat is said in opening statements is not evidence. The evidence will come from the witnesses who will testify and from whatever documents or tangible, other tangential items are received into evidence."

As with the closing argument, defendant's failure to object "gives rise to the inference that he did not find the prosecutor's remarks to have crossed the bounds of permissible advocacy when they were made." State v. Cherry, 289 N.J. Super. 503, 527 (App. Div. 1995). Therefore, "reversal is warranted only if defendant can show that the remarks constitute plain error clearly capable of producing an unjust result." Ibid.

"A prosecutor's opening statement 'should provide an outline or roadmap of the State's case' and 'should be limited to a general recital of what the State expects, in good faith, to prove by competent evidence.'" State v. Land, 435 N.J. Super. 249, 269 (App. Div. 2014) (quoting State v. Walden, 370 N.J. Super. 549, 558 (App. Div. 2004)). It is generally "well-established that prosecuting

attorneys, within reasonable limitations, are afforded considerable leeway in making opening statements and summations." State v. Williams, 113 N.J. 393, 447 (1988). With respect to a prosecutor's remarks in opening and closing statements, "any deviation from perfection 'must be clear and unmistakable and must substantially prejudice the defendant's fundamental right to have the jury fairly evaluate the merits of his defense.'" Cherry, 289 N.J. Super. at 527 (quoting State v. Bucanis, 26 N.J. 45, 56 (1958)).

We discern no error. The prosecutor's opening statement sought to challenge defendant's theory that Sarah either killed herself or voluntarily moved to Canada. The references to her young age and her size were factual and were supported by evidence presented at the trial. Defendant has not established that the "sole purpose" of the references was to "inflame the passions of the jury," especially in the absence of any objection. The prosecutor's remarks in the opening statement can be considered a fair comment on the evidence the State intended to present at trial.

C.

We turn to defendant's contention regarding the PowerPoint slides admitted into evidence during Dr. Roarty's testimony. Defendant raises this argument on appeal as prosecutorial error but we review it as an evidentiary

ruling by the trial court on the admission of the slides and the expert's report and will review it accordingly.[6]

A set of slides entitled "time window for when the victim was thrown from the bridge." Defendant asserts the court erred in admitting these slides because "whether a 'victim [had been] thrown from the bridge' was the ultimate issue in the case, and the exclusive province of the jury." (alteration in original). According to defendant, the language on the slides "presuppose[s] that someone—i.e., Sarah—had been killed and thrown from the bridge."

"[A] trial court's evidentiary rulings are 'entitled to deference absent a showing of an abuse of discretion, i.e., there has been a clear error of judgment.'" State v. Brown, 170 N.J. 138, 147 (2000) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)). "Under that standard, an appellate court should not substitute its own judgment for that of the trial court, unless 'the trial court's ruling was so wide of the mark that a manifest denial of justice resulted.'" Ibid. (quoting State v. Kelly, 97 N.J. 178, 216 (1984) (additional internal quotation marks omitted)).

[6] At trial, defendant objected to the admission of Dr. Roarty as an expert. The court disagreed and found Dr. Roarty's education, training and experience qualified him to testify as to a current and drift analysis. On appeal, defendant has not challenged the trial judge's ruling on this issue.

Dr. Roarty stated that his analysis was premised on information "that someone . . . either jumped or [was] thrown off the bridge," and his task was to determine how the body moved, based on the current, tide and wind existing at the time. The expert used the timeframe and location of the car provided by Weisbrot. During his testimony and explanation of the slides, Dr. Roarty did not mention the title on the slides that defendant objects to on appeal.

During Dr. Roarty's direct testimony, defendant objected to the language—"time window for when the victim was thrown from the bridge." The court overruled the objection, stating the expert had not referred to the caption or used the words in his testimony. In addition, the court noted the defense was in possession of the reports and the slides well prior to the trial and at one point filed a motion to either object to the expert report or redact it but the motion was withdrawn.

On cross-examination, defense counsel questioned Dr. Roarty about the "slides that mentioned the word 'victim'" and the slides "that said 'time window for when victim was thrown from the bridge.'" Dr. Roarty stated he used the language "based on a hypothetical as to whether or not a body was actually in the water" and that he had no "direct knowledge of whether or not a body went into the water . . . during that time period." Dr. Roarty also agreed the word

"victim" was really "alleged victim" and that all the slides were "just based on an assumption that a body was in the water that night."

At the end of the case, in a discussion of the PowerPoint slides, defense counsel stated "there [were] some redactions that we discussed" and he had "no objection subject to those redactions." The State agreed there were redactions to the PowerPoint presentation but not the expert's report. The record does not reflect what redactions were discussed or agreed upon. However, the next day, defendant continued to object to "the description time window for when the victim was thrown off the bridge." The court suggested the following limiting instruction:

> "You will have the expert's report as well as his Power Point with you in the jury room as both have been moved into evidence. The information contained in the statement is based on the State's allegation Sarah was thrown from the Route 35 bridge in Belmar." As—it should say, "as the triers-of-fact it is for you to determine whether the facts relied on are true." And then the ultimate determination as to whether or not the State has proven the defendant's guilt beyond a reasonable doubt is to be made only by the jury.

After conferring with defendant, defense counsel stated, "this would suffice in curing any objection to this." After the full charge was given to counsel for review, defense counsel reported "[n]o changes, Judge." The court also instructed the jury on their consideration of an expert's testimony.

We are satisfied from our review of the record that Dr. Roarty was clear in his testimony that his opinion was premised on information given to him by law enforcement to develop a conclusion as to where a body would have drifted had it entered the water during the time frame in question. The verbiage on the slides was not addressed on direct examination. It was defense counsel who highlighted it during cross-examination. The jury was instructed on the State's burden of proof and that it was free to accept or reject the expert's opinion.

The trial court did not abuse its discretion in admitting the expert's report or allowing the use of the slides. Dr. Roarty did not address or opine whether defendant was guilty. His testimony discussed the limited issue of how far out a body would have drifted by the time of the police search and why. The foundation of his analysis, the window of time and location of where the body entered the water, were supported by evidence in the record including the testimony of Taylor and Curry as to the sequence of events that night, the surveillance footage showing the time when Sarah's car was last seen pulling out of her driveway and the reported time the abandoned car was found on the bridge.

D.

We turn to Point III in which defendant contends the trial court erred in denying his pretrial motion to suppress the "surreptitious recording by Curry of defendant's alleged confession."[7] He acknowledges the trial court was correct that, under a strict interpretation of the Fifth and Sixth Amendments, defendant was not entitled to their protection because he was not in custody while seated in Curry's vehicle, and he had not been formally charged. However, he contends the New Jersey Constitution should "fill the gap in the protections under these unique circumstances," to "bar the State's deceptive practice" of asking Curry to be a cooperating witness despite knowing that each of defendant's parents had hired counsel for defendant.

In reviewing a trial court's decision on a motion to suppress, we "defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record." State v. Vincenty, 237 N.J. 122, 131-32 (2019) (quoting State v. Hubbard, 222 N.J. 249, 262 (2015)). The court will "disregard . . . findings of fact that are clearly mistaken" and will "review de novo any legal conclusions reached by the trial court." Id. at 132.

[7] Defendant does not challenge the admission of his three statements to police recorded on body-worn cameras on December 3, 4 and 6, 2016.

"The privilege against self-incrimination, as set forth in the Fifth Amendment to the United States Constitution, is one of the most important protections of the criminal law." State v. Sims, 250 N.J. 189, 211 (2022) (first quoting State v. Presha, 163 N.J. 304, 312 (2000); then citing U.S. Const. amend. V; and then citing State v. Hartley, 103 N.J. 252, 262 (1986)). New Jersey's privilege against self-incrimination, which "stems from the common law and is codified at N.J.S.A. 2A:84A-19 and N.J.R.E. 503," has been found to "'offer broader protection than' the Fifth Amendment." State v. O.D.A.-C., 250 N.J. 408, 420 (2022) (quoting State v. Ahmad, 246 N.J. 592, 610 (2021) (internal citation omitted)). However, "[l]ike the right embodied in the Fifth Amendment to the federal Constitution, the state privilege against self-incrimination is not self-implementing." State v. Reed, 133 N.J. 237, 251 (1993).

It is undisputed that defendant, who was over eighteen at the time he was questioned by police on December 6, 2016, did not invoke his right to counsel at any time. When police were contacted by counsel retained by defendant's parents, they advised defendant of the information and concluded the interview without further questions. There is no claim of any deception about counsel or denial of access to them. Defendant does not contend he was in custody at the

time of that interview. In addition, defendant was not a suspect in what was then still a missing persons investigation.

Defendant relies on cases in support of his argument that he is entitled to "greater protections, specifically in the right to counsel context," that are inapposite to the circumstances presented here. See State v. A.G.D., 178 N.J. 56, 66-68 (2003) (the defendants were not informed about the issuance of arrest warrants); State v. Tucker, 137 N.J. 259, 291 (1994) (the defendant was not informed about the filing of a complaint); State v. Chew, 150 N.J. 30, 63 (1997) (the defendants made an "equivocal request for an attorney").

Before this court, defendant does not contend error in the denial of the suppression of his statements made to police in December 2016. Rather, he asks this court to extend his entitlement to protection of counsel to the statements he made to Curry eight weeks later when he requested Curry meet him and told him what he did to Sarah. There is no legal precedent or support for the "modest extension" defendant requests—namely that "where the police know defendant is represented, they must not only advise him of that fact, but they must receive his attorney's permission to further speak with defendant, even when defendant is not in custody, and even when he had not yet been formally charged."

We find the Court's holding in P.Z.[8] instructive. There, the Court addressed whether Miranda warnings must be given to a parent who is represented by counsel before being interviewed by "a caseworker from [Division of Youth and Family Services]." Id. at 92. The defendant parent "was not the subject of a criminal prosecution since, at that time, he had not been arrested, indicted or arraigned." Id. at 110. Therefore, the Court found that "a law enforcement officer could have questioned defendant without implicating his Sixth Amendment or Article I right to counsel," and "[i]t follows that an interview by a social worker would not trigger the right to counsel during this [pre-indictment] period." Id. at 110-11.

Similarly, law enforcement was aware on December 6 that defendant was represented by counsel. Many weeks later, after Curry approached police with information regarding the events surrounding Sarah's disappearance, Curry agreed to meet with defendant with a recording device supervised by police. Defendant had not been arrested, indicted or arraigned at the time of the consensual recording with Curry.

Moreover, defendant agreed to meet with Curry, after already communicating with him and voluntarily described his killing of Sarah. See

[8] 152 N.J. at 117.

Perkins, 496 U.S. at 299 ("Where the suspect does not know that he is speaking to a government agent there is no reason to assume the possibility that the suspect might feel coerced."); State v. Harris, 181 N.J. 391, 436 (2004) (quoting Perkins, 496 U.S. at 296) ("'Coercion is determined from the perspective of the suspect,' and when a suspect considers himself speaking to cellmates—or to a friend—there is no concern about coercion that prompts the need to give Miranda warnings.").

We are not persuaded to extend the well-established protections afforded under the Fifth and Sixth Amendments. The trial court did not err in admitting the statements defendant made to Curry.

Affirmed.