FILED, Clerk of the Appellate Division, February 22, 2024, **A-000431-23**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0431-23

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division, Essex County.
v.	:	
STEPHANIE MARTINEZ,	:	Indictment No. 22-02-395-I
Defendant-Appellant.	:	Sat Below:
	:	Hon. Patrick J. Arre, Jr., J.S.C., and a Jury

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

The State charged Stephanie Martinez with murder, felony murder, robbery, kidnapping, and various weapons and theft offenses on the theory that she stabbed Raul Rios and hit him with a tire iron to steal his 20-year-old car and his sneakers. Stephanie testified that Rios, intoxicated on PCP, cocaine, and alcohol, violently raped her, and she stabbed him in self-defense. The jury rejected the State's theory of the case, acquitting Stephanie of murder, felony murder, kidnapping, and robbery, and instead convicting her of passion/provocation manslaughter and the weapons and theft offenses. But the jury's verdict on these charges remains critically flawed for multiple reasons.

First, following the court's instructions and the verdict sheet, the jury unanimously found that Stephanie acted in self-defense when she killed Rios. This decision amounts to an acquittal on all homicide charges. Thus, the jury's subsequent verdict of guilt on passion/provocation manslaughter must be vacated and a judgment of acquittal entered.

Second, the court erred in denying the defense request to instruct the jury on the related offense of aggravated assault. Although the jury rejected almost all of the State's theory of the case, the jury still had to decide between two possible versions of events. In one version, Stephanie stabbed Rios in self-defense and believed she had killed him. She later hit him with the tire iron

because, although she believed him to be dead, she saw him move and hit him reflexively. If the jury credited this testimony, the stabbing was not a crime because it was justified by self-defense, and hitting Rios with the tire iron was not a crime because Rios was already dead. In another possible version, supported by the medical examiner's testimony, Rios was still alive when he was hit with the tire iron, even though the tire iron did not cause his death. If the jury credited this version of events, then it would have been an aggravated assault when Stephanie hit Rios with the tire iron. But the jury was deprived of the legal framework necessary to return a verdict if they believed this second version of events. By preventing the jury from considering aggravated assault, the court improperly risked that the jury would compromise on a verdict of guilt for a greater homicide offense rather than acquit Stephanie completely.

Third, the court erred in permitting the medical examiner to testify, over defense objection, that the amount of blood found in Rios's car was inconsistent with the defense. The medical examiner was not an expert in bloodstain pattern analysis, and his testimony about the amount of blood in the car exceeded his expertise as a forensic pathologist. This inappropriate expert testimony, used by the State repeatedly in summation, would have been highly persuasive to the jury yet devasting to the defense.

Fourth, the court erred in failing to instruct the jury on how to consider Stephanie's silence after she was raped. Stephanie's defense depended on her testimony that she killed Rios as he was violently sexually assaulting her. The State repeatedly argued that Stephanie was not raped because she did not report it. More than thirty years ago, our Supreme Court recognized that this kind of argument is based on sexist notions of how a "normal" woman responds to rape and proposed a jury instruction to counter these inappropriate prejudices. The need for such a jury instruction in Stephanie's case was clear, and the court erred in failing to give such an instruction to the jury. Without this instruction, the jury did not have the necessary legal framework to evaluate Stephanie's defense, and so Stephanie's convictions should be reversed.

Fifth, the court erred in failing to instruct the jury that self-defense applied to the weapons possession charges. Stephanie's testimony that she spontaneously picked up the knife in response to Rios's violent assault was a defense to that charge. And Stephanie had a constitutional right to possess the tire iron for the purpose of self-protection in case of confrontation. The court erred in failing to provide either of these necessary instructions to the jury.

For any or all of these reasons, Stephanie's trial was unfair, and her convictions must be reversed.

PROCEDURAL HISTORY

Essex County Indictment 22-02-395-I charged Stephanie Martinez with first-degree murder, N.J.S.A. 2C:11-3(a)(1), (2) (Count 1); first-degree felony murder in the course of a robbery, N.J.S.A. 2C:11-3(a)(3) (Count 2); first-degree robbery, N.J.S.A. 2C:15-1 (Count 3); first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1) (Count 4); third-degree theft, N.J.S.A. 2C:20-3(a) (Count 5); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (Counts 6 and 8); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (Counts 7 and 9); fourth-degree credit card theft, N.J.S.A. 2C:21-6(c)(1) (Count 10); and third-degree fraudulent use of a credit card, N.J.S.A. 2C:21-6(h) (Count 11). (Da 1-12)[1]

A trial was held before the Honorable Patrick J. Arre, J.S.C., and a jury between April 17 and 28, 2023. (4T-11T) The jury acquitted Stephanie of felony

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[1] Da – Defendant's Appendix
1T – April 4, 2023 – Motion
2T – April 10, 2023 – Motion
3T – April 11, 2023 – Motion
4T – April 17, 2023 – Trial
5T – April 18, 2023 – Trial
6T – April 19, 2023 – Trial
7T – April 24, 2023 – Trial
8T – April 25, 2023 – Trial
9T – April 26, 2023 – Trial
10T – April 27, 2023 – Trial
11T – April 28, 2023 – Trial
12T – July 14, 2023 – Sentencing

murder, robbery, kidnapping, and murder, convicting her of the lesser-included offense of passion/provocation manslaughter. (Da 13-16; 11T 9-18 to 12-2) The jury also convicted Stephanie of the theft and weapons offenses. (Da 16-18; 11T 9-18 to 12-2)

On July 14, 2023, Judge Arre sentenced Stephanie to seven years in prison, 85% without parole pursuant to NERA, for passion/provocation manslaughter. (12T 37-16 to 20; Da 23-26) The court sentenced Stephanie to five years for theft (Count 5), 18 months for each of the two fourth-degree weapon possession offenses (Counts 6 and 8), 18 months for credit card theft (Count 10), and three years for fraudulent use of a credit card (Count 11). (12T 37-21 to 38-14; Da 23-26) All sentences were run concurrently with each other. (12T 37-8 to 15; Da 23-26) A Notice of Appeal was filed on October 12, 2023. (Da 27-29)

STATEMENT OF FACTS

Stephanie Martinez testified that on September 28, 2021, Raul Rios sexually assaulted her, choked her, and threatened to kill her and then himself. (6T 121-9 to 14) She testified, "I fought him back to protect myself and in the process he died." (6T 121-13 to 14) She testified that her only options were "to protect my life or his life, and I had to choose my life." (6T 121-19 to 21)

Stephanie testified that in 2021, she had known Rios for five or six years. (6T 122-15 to 22, 123-2 to 3) They would try out different places to eat, snowboard together, or talk over FaceTime. (6T 123-6 to 13) Rios would drive Stephanie to doctor's appointments or pick her up from night school if she needed a ride. (6T 123-16 to 21) Stephanie testified that when she and Rios initially met "years back," their circle of friends used to drink and get high together on marijuana or PCP. (6T 123-24 to 124-8) By September 2021, Stephanie was no longer using PCP, but it did not bother her to spend time with friends who were still using drugs. (6T 124-9 to 20)

Stephanie testified that she and Rios were never romantically involved and never had sex, though about two years before the incident, Rios "starting insinuating" that they should date. (6T 124-21 to 125-9) She told Rios that she was not looking "for something like that with him," and while Rios was initially understanding, about a year before the incident, he became more persistent about

a romantic relationship. (6T 125-10 to 126-23) He wanted to spend more time with Stephanie alone, was more physically affectionate, and would show up at Stephanie's home if she did not answer his phone calls. (6T 125-17 to 126-3)

Stephanie testified that on September 27, 2021, she bumped into Rios in Newark, and he offered to give her a ride to her friend's house. (6T 126-7 to 23) She testified that she had not seen Rios for a few days, so she was "just excited to see him." (6T 127-13 to 16) Stephanie testified that Rios was "being funny and silly," telling her that she should go with him as he met up with one of his friends, and she agreed. (6T 127-19 to 128-1) Rios picked up his friend, went to a liquor store, and then parked the car. (6T 128-4 to 9, 128-10 to 11) Stephanie testified that Rios and his friend talked, smoked marijuana and PCP, and used cocaine, while she listened to music. (6T 128-14 to 25) She drank two or three cans of White Claw, but she was being cautious and "basically babysitting" Rios and his friend. (6T 129-1 to 8) Rios had told his friend that he and Stephanie were dating, and Rios "started trying to be silly" by putting his arm around her "and stuff like that." (6T 129-12 to 14) Stephanie did not say anything about this but did tell Rios that it was getting late and that she wanted to get to her friend's house. (6T 129-14 to 16)

Rios dropped his friend off and then continued to drive with Stephanie. (6T 129-20 to 21, 130-3 to 4) Stephanie testified that Rios began asking her

questions about where she had been for the last few days as she had not been answering her phone. (6T 130-7 to 12) She told Rios that her boyfriend had just come back from Puerto Rico, so she had been spending the weekend with him. (6T 130-12 to 14) Stephanie testified that at this point, Rios's demeanor changed: he was "[d]isappointed. He started getting agitated, starting asking me more questions." (6T 130-15 to 17) When Stephanie did not answer Rios's questions in "the way he wanted," he got "furious." (6T 130-18 to 20, 130-23 to 131-2) Stephanie testified that Rios "starting acting out of hand," but since she knew "he was under the influence," she "allowed him to ramble." (6T 131-3 to 4) Stephanie repeatedly asked Rios to take her to her friend's house, but Rios refused and instead drove faster. (6T 131-5 to 14)

As he was driving, Rios grabbed Stephanie's phone and refused to give it back to her. (6T 131-17 to 22) In addition, Stephanie knew that Rios was armed. She knew he had a knife because he and his friend had used it earlier to break down the cocaine they used, and Rios told Stephanie that "he had a gun" and that if she "tried to even get out of the car that [she] wasn't getting out of the car." (6T 131-23 to 132-8)

At some point, Rios parked the car, with the passenger-side so close to a brick wall that Stephanie could not open her door. (6T 132-9 to 16) Rios told Stephanie that they needed to talk, asked her to climb into the backseat with

him, and then grabbed her arm to move her into the backseat. (6T 132-18 to 23, 133-2 to 7) There, Rios began talking to Stephanie about mutual friends who had committed suicide or died by drug overdose, and told Stephanie that he and Stephanie "didn't have to die like that," and instead could "die[ ] young together." (6T 133-10 to 20) Rios kept squeezing Stephanie's leg while she kept trying to "push his hand off." (6T 133-20 to 25)

Rios told Stephanie "that he wanted to have sex with [her] before [they] die." (6T 133-25 to 134-1) Stephanie said no and asked Rios to stop and "chill out." (6T 134-1 to 6) Rios told Stephanie "that he was going to kill [her]," and "it was going to be fast." (6T 134-25 to 135-1) Stephanie testified that she was afraid because "[t]here wasn't much space between" her and Rios, and she "could see in his face that he was being so serious." (6T 135-1 to 5)

Rios "started getting upset" and pushed Stephanie against the door. (6T 135-14 to 16) Stephanie told Rios "to stop," but he "pulled [her] down" so her head hit the armrest on the door. (6T 135-14 to 18) Rios started trying to pull down Stephanie's wide-legged yoga pants and pry her legs apart, while Stephanie was trying to squeeze her legs together to stop him. (6T 135-19 to 24) Rios held Stephanie down with one arm, and her leg was pressed against the door so she could not move. (6T 136-4 to 7) Stephanie testified that she "couldn't breathe" and "was gasping for air." (6T 136-12) Whenever she could

get enough breath to speak, she kept telling Rios, “no, stop, chill.” (6T 136-12 to 16)

Rios pulled one side of Stephanie’s underwear down. (6T 136-19) She also lost one of her shoes. (6T 136-20) Stephanie testified that she could feel Rios “pulling his pants down” with the arm that wasn’t choking her. (6T 136-21 to 24) She testified that when he started to penetrate her, she was trying to squeeze her legs closed, but “he was forcing himself and he was hurting the inside of [her] thighs.” (6T 137-1 to 4) Rios penetrated her vaginally. (6T 137-8 to 9) Stephanie testified that she kept trying to move, but “he was so strong that day. He had all his weight on [her].” (6T 137-5 to 7)

Stephanie testified that as Rios was raping her, she “felt hopeless, violated,” “couldn’t breathe,” and “thought [she] was going to pass out.” She “was trying to find a way to push him off of [her], but there’s not a lot of room in that space.” (6T 137-12 to 15) She testified that she “couldn’t really move too much” but she reached around with her arm and “felt something cold and metal.” (6T 137-15 to 17) She initially thought it was the seat belt buckle, but as she grabbed more of the object, she realized it was a handle. (6T 137-17 to 20) She grabbed it, and using all the energy she had left, she “just hit him.” (6T 137-20 to 22) She explained that “by the second time that [she] hit him [she] realized it was a knife.” (6T 137-22 to 23) Once she realized that she was holding a knife,

she "got even more scared" because she "thought he was going to take the knife from [her] if he got his hands on it." (6T 137-23 to 138-2) So, she "kept hitting him and hitting him." (6T 138-2 to 3) Stephanie testified that after she had stabbed Rios, blood started falling onto her, and she pushed Rios forward until he was sitting upright. (6T 138-3 to 6) She testified that Rios "wasn't alive" because, although his eyes were open, "[h]e wasn't moving" his arms or legs, and "his chest wasn't moving up and down." (6T 138-19 to 23)

Stephanie explained that "at first," she "didn't do anything" and "just balled up and . . . was just crying." (6T 139-10 to 11) Her clothes were wet from the blood, so she took them off and put on some clothes from the floor of the car. (6T 139-5 to 18) The clothes she put on did not belong to her — "[i]t looked like a mechanic shirt" — which she assumed belonged to Rios. (6T 139-19 to 140-4) After changing clothes, she "didn't know what to do." (6T 140-18 to 21) She testified, "I thought about getting help, but I was scared. I didn't know how to explain what had happened." (6T 140-23 to 25)

She explained that she was trying to find her cigarettes because her "nerves [were] shot" but was unable to find any of her things because Rios had moved them. (6T 141-5 to 7) She was "freaking out" and "just wanted to calm down," so she went to a store to buy cigarettes. (6T 141-8 to 10) After driving Rios's car to the store, she still could not find her wallet, so she took Rios's card

from the cup holder and went inside to buy a pack of cigarettes and a cup of coffee. (6T 141-11 to 22) The State introduced surveillance stills and a receipt from a gas station showing that Stephanie bought cigarettes and coffee for $12.75 a little after 3:15 a.m. (4T 159-2 to 10; 6T 31-3 to 13, 32-7 to 34-13)

After leaving the gas station, she "didn't know what to do" so she started driving around. (6T 142-12 to 13) She followed a garbage truck into a parking lot that looked well-lit and parked in the back of the lot. (6T 142-13 to 17) The parking lot was behind a Domino's Pizza restaurant on Springfield Avenue in Newark. (4T 89-8 to 14)

Surveillance cameras captured much of what happened after Stephanie parked the car, and Stephanie explained what the video showed as it was played for the jury. (6T 17-16 to 25, 142-24 to 165-10) Stephanie explained that after she parked the car, she felt that she needed to "basically face the situation" and check the backseat of the car where Rios's body was. (6T 143-13 to 18) She opened the rear door, and Rios was "still sitting up with his eyes open," which caused her to "freak out" and close the door. (6T 144-1 to 9) She then began to search the car for her cellphone and wallet. (6T 144-13 to 17) Although she did not find her things, she did find a tire iron in the front of the car. (6T 145-1 to 8, 145-15 to 21) She explained that even though she knew Rios "wasn't alive at

that point," she "didn't feel safe" so she picked up the tire iron because it made her feel "a little more secure" and able to protect herself. (6T 145-23 to 146-1)

Over the next several minutes, Stephanie continued to search the car for her phone. (6T 146-2 to 10) She walked around to the back of the car, thinking that Rios may have put her phone back there. (6T 146-12 to 25) She again opened the rear door where Rios's body was, and "out of nowhere," his arm moved.[2] (6T 147-4 to 9, 147-15 to 22) In response to seeing Rios's arm twitch, Stephanie "swung the tire iron" two or three times. (6T 147-25 to 148-2) At the moment she hit him, she "was just reacting." (6T 149-12 to 16) It was only afterwards that Stephanie recognized that Rios's eyes had remained open throughout, so she "knew for certain that he was not alive." (6T 148-4 to 5)

Stephanie testified that she then began thinking about getting Rios's body out of the car. (6T 149-17 to 22) She put the tire iron inside of the car and returned to the backseat. (6T 150-16 to 152-8) She stood near Rios's body for a few moments, praying, "asking God for strength to forgive" her, and forgiving Rios for what he had done. (6T 152-9 to 25) She then got Rios out of the car and moved him away from it. (6T 154-17 to 155-19) She testified that she looked

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[2] The forensic pathologist who performed the autopsy on Rios testified that even when someone is unconscious and in the process of dying, there might be some reflexive movements "[l]ike involuntary twitching of the extremities." (5T 111-16 to 112-8, 151-7 to 15, 153-20 to 154-13)

through Rios's pockets because she still had not found her phone anywhere in the car and believed that it must therefore have been in Rios's pockets. (6T 156-8 to 15) Stephanie testified that once Rios was on the ground, his eyes were still open, and "he was in the same position from when he was raping [her,]" and she "didn't want to just leave his body like that." (6T 156-22 to 25) The surveillance video shows Rios's leg move slightly, but Stephanie testified that she did not see it at the time. (6T 157-1 to 17) Stephanie then put her shawl over Rios. (6T 157-22) She also took Rios's shoes off, though she testified that she did not know why she did this. (6T 162-16 to 24) Just before she left, she decided to "double-check[ ]" that her wallet and phone were not in Rios's pockets. (6T 163-12 to 15)

She explained that after the end of what is shown on the surveillance video, she was "driving around aimlessly, pulling over sometimes and just crying." (6T 166-15 to 20) She testified that she eventually found her phone, and she called her boyfriend, though she felt like she could not "tell anybody what happened." (6T 165-11 to 24, 166-4 to 8) Although she initially did not want to leave the area because she wanted to get help, she thought that nobody "was going to believe" her, so she instead called her friend who lived in Pennsylvania. (6T 166-21 to 167-4) She testified on cross-examination that she slept in the car the night of the 28th and contacted her friend the afternoon of the

29th. (7T 43-13 to 47-3) She started driving to her friend's house, but she was tired, and had barely eaten or slept, so she pulled over into a well-lit parking lot with some trucks. (6T 167-7 to 9, 167-13 to 22) She testified that she was thirsty, but the only thing in the car were the cans of White Claw from earlier, so she drank two of them and then fell asleep. She did not wake up until an ambulance arrived. (6T 167-24 to 168-4)

Paul Shoemaker testified that around 2 a.m. on September 30, he was finishing his shift as a truck driver at an industrial area just off the Kutztown exit in Pennsylvania. (4T 51-1 to 10, 52-18 to 20) He saw a parked car with someone inside, knocked on the door to try to wake the person, and when she did not wake, called 9-1-1. (4T 54-9 to 13, 54-20 to 55-7, 55-12, 56-22 to 60-11) He waited for EMS to arrive, briefly talked to them, and then went home. (4T 60-18 to 61-2)

Pennsylvania State Police Trooper Kyle Easly testified that around 2 a.m. on September 30, he responded to a call to assist an EMS crew. (5T 53-25, 54-9 to 16, 55-5 to 13, 55-16 to 18, 56-21 to 22, 58-8 to 11) When he arrived, EMS was already on the scene with a Toyota 4Runner and a woman who had identified herself as Jill Biggs. (5T 59-9, 60-6) Easley spoke with the woman, and she again identified herself as Jill Biggs but gave a different birthdate than she had given EMS. (5T 60-9 to 15, 60-24 to 61-10) He asked the woman for

identification, but she could not provide it and instead began to look "aimlessly, and sort of frantically" around the car. (5T 61-20 to 21, 61-25 to 62-3) Easley testified that the woman was "very disheveled" and "seemed dazed." (5T 62-6 to 9) Stephanie admitted that she gave a false name to EMS and the police officer who found her. (6T 168-8 to 18, 169-4 to 11) She explained that she was not trying to mislead anyone, but that the fake ID was the only identification card she had with her at the time. (6T 169-11 to 14) Stephanie did not mention anything about the sexual assault or Rios's death to the police. She explained that she knows she should have done things differently, but when the police found her, she "wasn't ready" to tell anybody what happened and "[i]t took [her] a long time . . . to talk." (6T 169-20 to 170-2, 170-10 to 17)

Easley testified that he went back to his patrol car to conduct a database search for Jill Biggs, and when he could not find anything, he ran a search on the car's license plate. (5T 65-3 to 13) He learned that the car had been reported stolen and was wanted in a homicide investigation by the Newark police. (5T 65-15 to 23) He contacted Newark police, then returned to speak with the driver. (5T 66-22 to 67-2) He placed Stephanie, whom he had not yet identified, under arrest, handcuffed her, and transported her to the police station. (5T 67-15 to 19, 68-18 to 20) He later learned from the Newark police that their "main suspect" in the homicide was Stephanie Martinez, and Easley then identified the person

he arrested as Stephanie from pictures sent by the Newark police. (5T 69-22 to 70-3, 70-2 to 13) Easley testified that when police searched Stephanie, they found a New Jersey driver's license belonging to Jill Biggs, a debit card belonging to Raul Rios, and $27.40 in cash. (5T 77-11 to 14, 78-5 to 12, 79-18)

Regarding the investigation by the Newark police, a 9-1-1 operator testified that at 8:53 a.m. on September 28, she got a call about a possible dead body in the parking lot of the Domino's on Springfield Ave. (4T 41-21 to 24, 43-12 to 18, 44-19 to 48-20) Newark Police Sergeant Luan Serrano was dispatched to the scene and found the body of a deceased man. (4T 88-3 to 4, 89-8 to 14, 99-1 to 6) He testified that there was a black and white blanket over the decedent's body, and the decedent's pants were unbuttoned and pulled down below his hips and groin. (4T 104-3 to 8, 104-24 to 105-5) Newark Police Detective Victor Williams, the lead detective, provided a similar description of Rios's body, adding that there was "an enormous amount of blood." (6T 12-19 to 21, 14-12 to 21, 16-1 to 9) A detective from the Essex County Prosecutor's Office crime scene unit testified that she also responded to the scene, found the victim lying face down, with his pants pulled down, bleeding from the head, missing his shoes, and with cigarettes around him. (4T 112-25 to 113-1, 113-6 to 7, 113-17 to 23, 115-14 to 116-3) Subsequent DNA testing of the cigarette butts showed a single male source that did not match Rios. (5T 23-23 to 24-15)

Detective Williams described many of the steps he took in his investigation. He collected and reviewed the surveillance footage from the parking lot. (6T 17-16 to 25) He used automatic license plate readers to track the car seen on the surveillance video — a Toyota 4Runner — after it left the Domino's parking lot, noting that the car remained in Newark until the last license plate reading at 12:37 a.m. on September 29, near interstate I-78. (6T 20-15 to 25, 38-12 to 39-21, 48-20 to 50-22) Williams spoke to Rios's mother, Loraly. (6T 41-7 to 43-1) Loraly met with detectives, gave them her son's phone number, identified her 2000 Toyota 4Runner from pictures, and reported the car as stolen. (4T 68-21 to 69-15, 75-11 to 14) Loraly testified that she last saw her son on September 25 when she lent him her car, and last spoke to Rios on the morning of September 27 when he had not returned the car like he was supposed to. (4T 63-14 to 15, 64-2 to 23, 65-10 to 21, 67-1 to 14, 68-2 to 5, 68-15 to 20)

Williams testified that he also investigated Rios's social media and determined that he was "friends" with Stephanie on Facebook, (6T 59-18 to 61-17, 67-16 to 23) and checked Stephanie's phone records, determining that there had been a call from Rios to Stephanie on September 25. (6T 91-2 to 3, 94-1 to 22, 95-2 to 3)

Following Stephanie's arrest in Pennsylvania, an Essex County Prosecutor's Office Detective with the crime scene unit was assigned to process

the Toyota 4Runner Stephanie had been driving. (4T 127-1 to 9, 127-16 to 128-25) He testified that he saw suspected blood in the car, found a black purse that contained a pocketknife, and a tire iron wrapped in towels. (4T 133-24 to 134-8, 135-18 to 25, 146-21 to 147-19) He testified that the blood was "[m]ostly toward the back seat on the driver's side of the vehicle," and "[t]here was also blood on some of the objects" in the car. (4T 154-12 to 15) Both the knife and tire iron tested positive for blood, with a mixture of Rios and Stephanie's DNA on the handles, and Rios's DNA on the knife blade and end of the tire iron. (5T 11-4 to 15, 14-25 to 15-2, 17-3 to 6, 25-1 to 26-16, 27-2 to 28-22, 29-1 to 16, 30-4 to 31-3)

Dr. Paul Uribe, qualified as an expert in forensic pathology, performed an autopsy on Rios. (5T 111-16 to 112-8) He concluded that the cause of death was sharp force injuries to the neck and blunt force injuries to the head, and the manner of death was homicide. (5T 114-7 to 11) Dr. Uribe testified that Rios was alive when both sets of injuries were inflicted, (5T 128-12 to 13) and that Rios had no offensive or defensive wounds. (5T 131-14 to 16, 131-17 to 18) Regarding the blunt injuries, Dr. Uribe testified that Rios had three lacerations on the left side of his head, with no underlying injuries to the skull or brain. (5T 145-8 to 9, 146-7 to 12, 146-20 to 24) These blunt force injuries were not fatal by themselves. (5T 144-24 to 145-4)

Rios had five superficial and four deep wounds to his neck that were made by “a sharp instrument” that was “[p]ossibly a knife.” (5T 124-12 to 16, 125-3) One of these wounds injured the neck muscles and went through the right jugular vein. (5T 126-11 to 18) Dr. Uribe explained that the stab injuries to the neck were the fatal injuries. (5T 141-22 to 24, 147-24 to 25) These injuries would cause death in one of two ways – hemorrhage or air embolism – though he was unable to determine which occurred in this case. (5T 126-23 to 127-15, 142-11 to 15, 143-16 to 24) An air embolism would cause death more quickly than a hemorrhage. (5T 144-4 to 8)

Dr. Uribe testified that generally, when someone is stabbed in the jugular vein, the bleeding is primarily external, so if someone were stabbed in a car, he would expect there to be a lot of blood. (5T 129-18 to 130-8) Over defense objection, the State showed Dr. Uribe pictures of the Toyota 4Runner, and he opined that these pictures were “not consistent” with “someone being stabbed in the backseat of that vehicle” because “there’d be a lot more blood” than what the pictures showed.[3] (5T 137-1 to 23, 139-4 to 7, 139-14 to 23, 140-1 to 14) The State used Dr. Uribe’s testimony about the crime scene photos to try to discredit Stephanie’s testimony that she stabbed Rios in self-defense in the car. (8T 30-10 to 21)

[3] The improper admission of this testimony is addressed in Point III.

Dr. Uribe explained that after the fatal neck wounds were inflicted, it would have taken somewhere "on the order of minutes" for Rios to exsanguinate. (5T 148-15 to 24, 129-1 to 14) However, Rios would have lost consciousness more quickly, "on the order of . . . seconds to minutes." (5T 149-2 to 8) He explained that once Rios lost consciousness, he would not have been talking or moving, and it would have been possible for a lay person to think Rios was dead. (5T 150-11 to 21) Dr. Uribe further explained that, even when someone is in the process of dying and has already lost consciousness, they may still exhibit some involuntary movements or reflexes. Thus, it is possible that someone's foot or arm could "twitch" even though the person is unconscious and dying. (5T 153-20 to 154-13)

Dr. Uribe also testified about the results of the toxicological testing performed on Rios. Rios tested positive for both PCP and cocaine, and his blood alcohol concentration was .46%. (5T 135-4 to 23, 136-9 to 11) Dr. Uribe explained that the effects of alcohol "depends a lot on their tolerance," though generally, when blood alcohol levels are .4% or higher, the person will usually be "comatose or dead." (5T 135-1 to 4) However, Dr. Uribe concluded that neither the drugs nor alcohol contributed to Rios's death. (5T 136-7 to 8, 136-12 to 14) On cross-examination, Dr. Uribe described the effects of the various drugs Rios had taken. He explained that the amount of cocaine in Rios's blood

was "high." (5T 157-23 to 25) Dr. Uribe further explained that PCP can make someone agitated or feel like they are incredibly strong because it "is a very, very powerful stimulant," and it "commonly" makes people aggressive or angry. (5T 155-22 to 156-7) PCP can also have psychotic effects, can cause hallucinations, and can cause major changes in a person's behavior and personality. (5T 156-19 to 157-1) Dr. Uribe agreed that the combination of PCP, cocaine, and alcohol can have an "especially serious" impact, could "seriously affect a person's behavior," and "make them act like a very different person." (5T 159-6 to 14)

LEGAL ARGUMENT

POINT I

THE PASSION/PROVOCATION MANSLAUGHTER CONVICTION MUST BE VACATED AND A JUDGMENT OF ACQUITTAL ENTERED BECAUSE THE JURY FOUND THAT THE STATE DID NOT DISPROVE SELF-DEFENSE. (Not Raised Below)

"Self-defense, if proven, is a justifiable homicide for which there is no criminal liability." State v. Chavies, 345 N.J. Super. 254, 267 (App. Div. 2001). Here, the first unanimous decision reached by the jury was that the State "did not disprove the applicability of self-defense. . . ." (11T 9-20 to 23; Da 13) This finding by the jury amounts to a complete acquittal on all homicide offenses. Thus, Stephanie's passion/provocation manslaughter conviction must be vacated, and a judgment of acquittal entered.

The first question on the verdict sheet in this case was: "Did the State disprove, beyond a reasonable doubt, the applicability of self-defense as to Count 1, Murder?" (Da 13) The jury checked, "No." (Da 13) Posing this special interrogatory was within the court's discretion. State v. Branch, 301 N.J. Super. 307, 328 (App. Div. 1997), rev'd in part on other grounds, 155 N.J. 317 (1998). By including this question, the court was bound by the jury's response. And both the verdict sheet and the reading of the verdict in open court confirm that the jury found that the State had not disproven self-defense. (Da 13; 11T 9-20 to 23)

The jury's unanimous finding that the State had not disproven self-defense necessarily meant that Stephanie's use of deadly force against Rios was justified. Such justification is a complete defense to all homicide offenses, not just murder. As our courts recognize, "a person who acts in self-defense and 'kills in the honest and reasonable belief that the protection of his own life requires the use of deadly force' cannot be convicted of murder, aggravated manslaughter, or manslaughter." State v. Gentry, 439 N.J. Super. 57, 67 (App. Div. 2015) (quoting State v. Rodriguez, 195 N.J. 165, 172 (2008)); see also State v. O'Neil, 219 N.J. 598, 617 (2014) ("If the jury found that defendant had an honest and reasonable belief that the use of deadly force was necessary to save his own life, that he was not the aggressor, and that he could not have safely retreated, then self-defense applied not only to the murder charge, but also to the aggravated-manslaughter and manslaughter charges.").

The fact that the jury was asked if self-defense had been disproven specifically as to murder makes no difference. Self-defense is about whether the use of deadly force is justified or not. See N.J.S.A. 2C:3-4(b)(2) ("The use of deadly force is not justifiable under this section unless the actor reasonably believes that such force is necessary to protect himself against death or serious bodily harm.") (emphasis added). If deadly force is justified, then, that deadly force is a justification to any and all homicide offenses where that deadly force

was used. O'Neil, 219 N.J. at 617; Chavies, 345 N.J. Super. at 267; Gentry, 439 N.J. Super. at 67; Rodriguez, 195 N.J. at 172 (2008) ("Self-defense exonerates a person who kills in the reasonable belief that such action was necessary to prevent his or her death or serious injury") (emphasis added).

In sum, the first unanimous decision the jury here came to was that the State did not disprove that Stephanie acted in self-defense.[4] (Da 13; 11T 9-20 to 23) Upon finding that the State did not disprove the applicability of self-defense, the jury should have stopped deliberating and entered not guilty verdicts on all homicide charges. This Court should therefore vacate the passion/provocation manslaughter conviction and enter a judgment of acquittal.

[4] This was the first question answered by the jury because the jury asked the court if it could deliberate in a different order than what appeared on the verdict sheet, and the court said no. (9T 10-18 to 19 ("The verdict sheet must be completed in the order that it[']s written."))

POINT II

THE COURT ERRED IN REFUSING TO INSTRUCT ON THE REQUESTED RELATED OFFENSE OF AGGRAVATED ASSAULT. (7T 106-7 to 107-6)

As our courts have repeatedly held, "[a]ppropriate and proper jury instructions are essential to a fair trial." State v. McKinney, 223 N.J. 475, 495 (2015). In certain cases, appropriate jury instructions include instructing the jury on related offenses when requested by defense counsel. State v. Alexander, 233 N.J. 132, 144-45 (2018); State v. Maloney, 216 N.J. 91, 108 (2013); State v. Thomas, 187 N.J. 119, 123 (2006). Stephanie's case is just such a case — the evidence required granting the defense request to instruct on the related offenses of aggravated assault. (7T 77-18 to 85-13) The court's denial of the defense request was harmful error that deprived Stephanie of her rights to due process and a fair trial. U.S. Const. amend. XIV, N.J. Const. art. I, ¶¶ 1, 9, and 10. Her convictions should be reversed.

Related offenses "share a common factual ground, but not a commonality in statutory elements, with the crimes charged in the indictment." Alexander, 233 N.J. at 144 (citing Thomas, 187 N.J. at 132). To determine whether an offense is related to a charged offense, "the focus is whether the offense charged and the related offense share a common factual nucleus." Thomas, 187 N.J. at 130. Instructing the jury on related offenses that are not charged in the

indictment raises "constitutional concerns because criminal defendants have rights to a grand jury presentment and fair notice of criminal charges against them." Alexander, 233 N.J. at 144. Thus, to protect a defendant's constitutional rights, a trial court may instruct the jury on a related offense only when the defendant requests or consents to the related charge, and there is a rational basis in the evidence to sustain the related offense. Id. at 144-45 (citing Thomas, 187 N.J. at 133); see also Maloney, 216 N.J. at 108 (same).

Here, that standard was met. The defense asked the court to instruct the jury on the related offense of aggravated assault. (7T 79-16 to 80-8; see generally 77-18 to 85-13) There was a rational basis in the evidence to sustain this related offense. Stephanie's defense was that she stabbed Rios in the neck because he was violently raping her. She later hit Rios with the tire iron, because, although she believed Rios was dead, she had seen him move and hit him reflexively. Thus, under the defense theory of the case, there were two incidents — the stabbing, justified by self-defense, and the hitting with the tire iron, which was not a crime because Rios was already dead. However, as defense counsel explained when requesting the charge, there was some evidence presented that Rios was still alive when he was hit with the tire iron, even though the tire iron did not cause his death. (7T 79-16 to 80-8; see also 5T 128-12 to 13, 144-24 to 145-4 (Dr. Uribe's testimony)) If the jury credited this evidence, then hitting

Rios with a tire iron would be aggravated assault, separate and apart from the homicide.

The court's denial of the request to charge on aggravated assault, finding no rational basis to sustain the charge, was harmful error. (7T 106-7 to 107-6) Rios was unquestionably stabbed with a knife and hit with a tire iron. Yet if the jury credited both Stephanie's testimony that she stabbed Rios in self-defense and Dr. Uribe's testimony that Rios was alive when he was hit with the tire iron, the jury was left in an impossible position. The jury was required to either acquit Stephanie of all charges related to harming Rios, even if the jury believed that Rios was alive when he was hit with the tire iron, or to convict Stephanie of a homicide offense. As our Supreme Court has recognized, "a jury reluctant to acquit [a] defendant might compromise on a verdict of guilt on the greater offense. 'Where one of the elements of the offense charged remains in doubt, but the defendant is plainly guilty of <u>some</u> offense, the jury is likely to resolve its doubts in favor of conviction.'" <u>State v. Sloane</u>, 111 N.J. 293, 299 (1988) (quoting <u>Keeble v. United States</u>, 412 U.S. 205, 212-13 (1973)) (emphasis in original). Thus, the jury in this case reasonably could have "resolve[d] its doubts in favor of" a conviction for passion/provocation manslaughter, despite its earlier finding that Stephanie had acted in self-defense, because the jury was not given any other way to address the harm from hitting Rios with the tire iron.

This risk that the jury here "compromise[d] on a verdict of guilt on the greater offense" because it was not offered the option of aggravated assault deprived Stephanie of her rights to due process and a fair trial and requires reversal.

FILED, Clerk of the Appellate Division, February 22, 2024, **A-000431-23**

POINT III

DEFENDANT'S CONVICTIONS MUST BE REVERSED BECAUSE THE MEDICAL EXAMINER'S TESTIMONY IMPROPERLY EXCEEDED THE SCOPE OF HIS EXPERTISE. (5T 139-4 to 7, 139-14 to 23; 7T 92-8 to 97-11)

The trial court functions as a gatekeeper to ensure that only sound scientific evidence is presented to the jury. "Properly exercised, the gatekeeping function prevents the jury's exposure to unsound science through the compelling voice of an expert. . . . Difficult as it may be, the gatekeeping role must be rigorous." In re Accutane Litig., 234 N.J. 340, 346, 390 (2018). Scientific evidence must be reliable to be admissible, and experts must not stray beyond the bounds of their expertise. State v. Kelly, 97 N.J. 178, 208 (1984).

In Stephanie's trial, the court erred in its role as gatekeeper, permitting the medical examiner, Dr. Uribe, to testify over defense objection that the amount of blood seen in the crime scene photos of the car was inconsistent with Rios being stabbed in the car. (5T 139-4 to 7, 139-14 to 23, 140-1 to 14; 7T 92-8 to 97-11) This testimony exceeded the scope of Dr. Uribe's expertise as a forensic pathologist and was therefore inadmissible. The improper admission of this testimony unfairly strengthened the State's case while severely undermining Stephanie's testimony that she stabbed Rios in self-defense in the car. This inappropriate testimony deprived Stephanie of her rights to due process and to

a fair trial and requires reversal of her convictions. U.S. Const. amend. XIV, N.J. Const. art. I, ¶¶ 1, 9, and 10.

N.J.R.E. 702 governs the admissibility of expert testimony. The rule provides: "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." One of the requirements of this rule requires that "the proponent of expert evidence" establish that the witness has "sufficient expertise to offer the testimony." State v. Olenowski, 253 N.J. 133, 143 (2023) (citing State v. J.L.G., 234 N.J. 265, 280 (2018); State v. Kelly, 97 N.J. 178, 208 (1984)). Here, Dr. Uribe's testimony about what a car would look like if someone had been stabbed in the jugular vein inside that car ran afoul of this requirement; Dr. Uribe did not have sufficient expertise to offer that testimony.

Our Supreme Court has previously addressed the appropriate scope of testimony from a forensic pathologist, reversing the defendant's convictions after a fatal car accident in part because of improper expert testimony from the forensic pathologist. State v. Jamerson, 153 N.J. 318, 324-25 (1998). The Court explained that the medical examiner's "testimony should have been limited to describing the physical properties of the implement that caused the [victims']

deaths, narrating the physiological status of the bodies at the time of death, and ruling out the possibility that the injuries were self-inflicted or sustained as a result of mere inadvertence." Id. at 337. However, in addition to giving this appropriate testimony, the expert in Jamerson explained that as a medical examiner, he had to "be aware of the criteria by which one distinguishes what would be considered an accident versus a homicide," and that his consideration of all of the facts he had collected led him to the conclusion that the deaths were homicides. Id. at 330. Thus, the expert opined that the car accident was a homicide, that defendant's driving was reckless, and that defendant's recklessness caused the deaths. Id. at 339.

The Supreme Court held that these opinions went far beyond the appropriate scope of the expert's testimony. The Court explained that this kind of opinion had to be presented "through someone with special qualifications, such as an accident reconstructionist." Id. at 324. When the expert provided this opinion that exceeded his expertise, he was improperly testifying as a lay person without an adequate basis to do so. Id. at 340. The expert's improper testimony exceeding his area of expertise had the capacity to confuse and mislead the jury because the jury would not know where the witness's expertise ended and his lay opinion began. Ibid.; see also State v. Locascio, 425 N.J. Super. 474, 491-492 (App. Div. 2012) (reversing defendant's convictions because the State's

forensic pathologist improperly testified outside his area of expertise by opining about the mechanics and movement of bodies inside a vehicle during an accident).

Here, as in Jamerson, the medical examiner's testimony exceeded his expertise. Over defense objection, Dr. Uribe looked at crime scene photos of the car, pointed out "red staining which could be blood," (5T 137-1 to 23) and testified, "Even if all of those you know red stains are blood to me that's not consistent [with] someone being stabbed in the backseat of that vehicle. . . ." (5T 140-5 to 9) He followed up by agreeing with the prosecutor that if someone had been stabbed in the car, "there'd be a lot more blood" than what he "viewed thus . . . far." (5T 140-10 to 14)

Testimony about what a car would look like if someone had been stabbed inside it went far beyond describing the properties of the weapon that caused death, the physiological status of the victim, and ruling out the possibility of self-inflicted injuries — the proper subject of a forensic pathologist's testimony. Jamerson, 153 N.J. at 337. Instead, as defense argued, such testimony was of the kind that should have come from someone who "analyzes the crime scene and draws conclusions from this." (5T 139-4 to 7; see also 7T 94-19 to 95-1, 96-9 to 23)

There is an entire branch of forensics devoted to analyzing and drawing conclusions from blood stains: bloodstain pattern analysis. A bloodstain pattern analyst "assist[s] in the reconstruction of those events of an alleged incident that could have created the stains and stain patterns present at a crime scene" by examining the sizes, shapes, and distribution of stains. Minnesota Bureau of Criminal Apprehension, Bloodstain Pattern Analysis, https://dps.mn.gov/divisions/bca/bca-divisions/forensic-science/Pages/forensic-programs-crime-scene-bpa.aspx (last accessed Feb. 14, 2024). An analyst must be able to "[r]ecognize and describe the effects of textiles and clothing on bloodstain pattern formation including" the composition/construction, treatment, condition, and effect of fabric movement during interaction with blood." National Institute of Standards and Technology, Organization of Scientific Area Committees for Forensic Science, Standards for a Bloodstain Pattern Analyst's Training Program, at 4-5 (2020).[5] Bloodstain pattern analysis involves a standardized methodology, which involves, among other steps, characterizing the "surface the stains are present on" including whether the surface is porous or non-porous and the construction and composition of any fabrics of textiles. National Institute of Standards and

[5] Available at: https://www.aafs.org/sites/default/files/media/documents/032_Std_e1.pdf (last accessed February 14, 2024).

Technology, Organization of Scientific Area Committees for Forensic Science, Standard for Methodology in Bloodstain Pattern Analysis, at 3-4 (2022).[6]

Although Dr. Uribe was unquestionably a qualified forensic pathologist, he was not a bloodstain pattern analyst, had not undergone the training specific to that discipline, and did not follow the established methodology to analyze and draw conclusions from bloodstains. In short, Dr. Uribe did not "have sufficient expertise to offer" testimony about the bloodstain patterns in the car. Olenowski, 253 N.J. at 143. Thus, the court erred in permitting him to testify beyond his expertise.

The improper admission of this testimony was harmful error. As our case law recognizes, expert testimony is compelling, and juries tend to give experts great credence. This is why courts must carefully exercise their gatekeeping function: to "prevent[ ] the jury's exposure to unsound science through the compelling voice of an expert." Accutane, 234 N.J. at 389. "The danger of prejudice through introduction of unreliable expert evidence is clear": "While juries would not always accord excessive weight to unreliable expert testimony, there is substantial danger that they would do so, precisely because the evidence

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[6] Available at: https://www.nist.gov/system/files/documents/2024/01/05/OSAC%202022-S-0030%20Standard%20for%20Methodology%20in%20Bloodstain%20Pattern%20Analysis_CLEAN%20REGISTRY%20VERSION%202.0.pdf (last accessed February 14, 2024).

is labeled 'scientific' and 'expert.'" Id. at 389-90 (quoting State v. Cavallo, 88 N.J. 508, 518 (1982)).

The State understood the importance of this aspect of Dr. Uribe's testimony, repeatedly referring to it in summation as a reason to discredit Stephanie's defense. The State argued that Dr Uribe

> said if he was killed in a car, there would be blood everywhere. I showed him every picture from inside that Toyota Forerunner, every picture that crime scene had taken. . . . He looked through all of those pictures. He said, well, I see red stains, you know, that I'm assuming are blood. He said looking at all this there's no way he was stabbed in this car. He said that. There's no way. The -- the blood, an amount of blood, did not jive with what would have happened with a jugular vein injury. That's what he said.

[(8T 30-10 to 21) (emphasis added)]

The State referred again to Dr. Uribe's testimony, arguing that he said "hey, there isn't blood everywhere, right. There was not. There was blood there, but not a lot in the scheme of things, correct?" (8T 32-20 to 23) In essence, the State argued that the jury should discredit Stephanie's testimony that she stabbed Rios in the neck in self-defense as he was raping her because, if she were telling the truth, there would be more blood inside the car. The jury easily could have relied on Dr. Uribe's opinion as a highly qualified forensic pathologist that the evidence did not support Stephanie's defense. The serious risk that the jury did just that, particularly in light of the State's closing arguments, was harmful error

that deprived Stephanie of her rights to due process and a fair trial. Her convictions should be reversed.

POINT IV

THE COURT ERRED IN FAILING TO INSTRUCT THE JURY ON HOW TO CONSIDER DEFENDANT'S FAILURE TO REPORT HER SEXUAL ASSAULT. (Not Raised Below)

Stephanie testified that Rios raped her and threatened to kill her, so she stabbed him in self-defense. The prosecutor, both when cross-examining Stephanie and in summation, sought to convince the jury that Stephanie was not raped because she did not report it. As our Supreme Court recognized more than thirty years ago, arguments like what the State made here are "rooted in sexist notions of how the 'normal' woman responds to rape." State v. Hill, 121 N.J. 150, 170 (1990). Because Stephanie's self-defense claim fully depended on whether the jury believed she was raped, the court should have instructed the jury on how to consider Stephanie's silence after the rape. See Model Criminal Jury Charge, "Fresh Complaint: Silence or Failure to Complain," (Apr. 15, 2013). Although not requested by defense counsel, the need for this instruction was clearly indicated by the record, and the court erred in its role by failing to provide this instruction to the jury. The erroneous omission of this critical instruction was clearly capable of producing an unjust result and deprived Stephanie of her rights to due process and a fair trial. U.S. Const. amend. XIV, N.J. Const. art. I, ¶¶ 1, 9, and 10. Her convictions should be reversed.

A key theme of the prosecutor's cross-examination of Stephanie was to repeatedly point out all the opportunities she had had to report the rape yet failed to do so. When asked, Stephanie agreed that she did not ask the cashier at the gas station or the garbage truck driver to call the police. (7T 17-3 to 5, 25-22 to 26-5) Stephanie agreed that, when she spoke to her boyfriend and her friend, she did not report the rape. (7T 40-22 to 41-16, 42-14 to 21, 46-15 to 24) She agreed that when she was driving around after the incident, she did not drive to a "police precinct" or "to a hospital" or "to urgent care" or to her boyfriend for help. (7T 43-13 to 24, 46-7 to 14) She equally did not tell the EMTs or the female state trooper who arrived to help her in Pennsylvania what had happened, nor did she ask them for any kind of help. (7T 55-5 to 16, 57-10 to 58-5)

In case the jury did not understand the purpose of these questions, the State made it clear in summation. Over and over again, the State argued that the jury should not believe Stephanie was raped because she did not report it:

- "She never says to the female trooper, hey, something terrible has happened, I need help, I need to see somebody. She never said that to the EMS people either." (8T 28-12 to 15)

- "Now, if in that 48 hours when she says she was driving around Newark, not bothering to call the police, not bothering to go to the hospital, not bothering to go to Urgent Care, in that 48 hours if she had just told anyone that store, she'd gone to any of those – a rape crisis center, anywhere, her

aunt, she'd gone anywhere and told anyone we would have investigated it."[7] (8T 55-2 to 9)

- "Keep in mind that she didn't call 911 or even a hospital or even a – a – an urgent care. She didn't call them cause she wasn't raped." (8T 66-10 to 12) (emphasis added)

The validity of the State's argument — that Stephanie "wasn't raped" because "she didn't call" anyone — is dubious at best. As the Supreme Court detailed in State v. Hill, 121 N.J. 150, the idea that a woman who was raped would report it is rooted in centuries' old sexist ideas about how a "normal" woman would respond to such a violation. Id. at 170. See also State v. P.H., 178 N.J. 378, 392 (2004) ("The myth that a victim of sexual assault will naturally cry out and alert others to the crime ('hue and cry') harkens back to thirteenth-century notions of feminine behavior. Even though scientific studies have shown that this 'timing myth' is utterly false, the mistaken perception that a victim will report a sexual assault immediately has proven to be one of the most refractory of modern jurisprudence.").

As the Hill Court explained, at common law, the prosecution was required to prove that the victim of a violent crime immediately cried out and alerted neighbors about the crime. Hill, 121 N.J. at 157. Even after this "hue and cry"

[7] Defense counsel objected to this portion of the State's argument, explain that "it wasn't her obligation to speak after an arrest," but the court overruled the objection because this silence occurred before Stephanie was arrested, rather than afterwards. (8T 55-21 to 25, 57-8 to 13)

requirement for most violent felonies was abandoned, "courts continued to require hue and cry in rape cases, and held it against the State if the woman had not confided in anyone after the attack." Ibid. As the Court explained, "[t]his continued adherence to the hue and cry in rape cases willfully ignored both its ineffectiveness in every other context, and the possibility that women would keep silent about rape because more than any other violent crime it could shed shame and embarrassment on the victim." Id. at 158-59.

Once the hearsay rules developed, the hue and cry rule in rape cases was replaced by the fresh complaint rule, intended "to negate any inference that because the victim had failed to tell anyone that she had been raped, her later assertion of rape could not be believed." Id. at 159. But even with this new rule, juries "were permitted to draw a negative inference from the lack of a fresh complaint," "courts continued to adhere to the prevailing idea that it was 'natural' for a woman to complain, and that if she failed to complain, the only rational explanation was that she had not really been raped." Id. at 159-60.

Despite the sexist history of the fresh complaint rule, the Court in Hill declined to abandon it altogether in part because, without the rule, "rape victims would suffer whenever members of the jury held prejudices that women who do not complain have not really been raped." Id. at 165. Although acknowledging the fresh complaint "doctrine's misguided history," the Court explained that it

had "attempt[ed] to cure the defects underlying the rule that could infect rape proceedings with anti-female bias." Id. at 170. Thus, in recognition of the harm it could cause to rape victims to comment on their silence, the Court ruled that "if a defendant introduces or elicits evidence of a victim's silence to prove that a rape did not occur," the trial court "may instruct the jury that a woman may respond to rape in a variety of ways, including silence." Id. at 166; see also P.H., 178 N.J. at 397 (holding that "the jury should be permitted to consider all relevant testimony," including "the timing of the report of abuse," and concluding that "[s]o long as the jury is instructed that such silence or delay, in and of itself, is not inconsistent with a claim of abuse, the proper balance is struck").

A Model Jury Charge exists to implement the balance struck by the Supreme Court regarding a rape victim's silence. Model Criminal Jury Charge, "Fresh Complaint: Silence or Failure to Complain," (Apr. 15, 2013). The model charge tells the jury "that stereotypes about sexual assault complainants may lead some of you to question [complaining witness's] credibility based solely on the fact that [he or she] did not complain about the alleged abuse sooner." Ibid. However, "[y]ou may or may not conclude that [complaining witness's] testimony is untruthful based only on [his or her] silence/delayed disclosure. You may consider the silence/delayed disclosure along with all of the other

evidence including [complaining witness's] explanation for his/her silence/delayed disclosure when you decide how much weight to afford to [complaining witness's] testimony." Ibid. This instruction should have been given in Stephanie's case.

Jury instructions are an essential roadmap for the jury and necessary to a fair trial. State v. Martin, 119 N.J. 2, 15 (1990); McKinney, 223 N.J. at 495. Therefore, the trial court has an independent responsibility to provide complete instructions to the jury, whether or not the defense has requested the instruction. State v. Grunow, 102 N.J. 133, 148-49 (1986); see also McKinney, 223 N.J. at 495; State v. Green, 86 N.J. 281, 287 (1981).

Although not requested by the defense, the "Silence or Failure to Complain" model charge was necessary for the jury to assess Stephanie's testimony and her behavior after the assault. Without this instruction, the jury did not have the legal framework to assess this case. Instead, the jury was left without any guidance to grapple with Stephanie's testimony that she was raped and the State's arguments that Stephanie "didn't call them cause she wasn't raped." (8T 66-10 to 12) In light of the State's intensive cross-examination of Stephanie about her silence and the State's arguments that the jury should discredit Stephanie's testimony that she was raped because she did not report it, there was a real risk that the jury did exactly what our Supreme Court was

worried jurors would do — fall back on "sexist notions of how the 'normal' woman responds to rape." Hill, 121 N.J. at 170. This jury needed an instruction to "neutralize[ ] jurors' negative inferences concerning the woman's silence after having been raped." Ibid. The trial court's failure to give this necessary instruction was clearly capable of producing an unjust result: allowing the jurors in this case to conclude that Stephanie's silence necessarily meant that she was not violently raped. R. 2:10-2. Stephanie's convictions should be reversed.

POINT V

THE FAILURE TO INSTRUCT THE JURY THAT SELF-DEFENSE APPLIED TO THE WEAPONS-POSSESSION CHARGES REQUIRES REVERSAL OF THESE CONVICTIONS. (Not Raised Below)

Stephanie was charged with two counts of unlawfully possessing a weapon, contrary to N.J.S.A. 2C:39-5(d): count 6 involved her possession of the tire iron, while count 8 involved her possession of the knife. (8T 129-7 to 16; Da 7, 9, 16-17) In instructing the jury on these offenses, the court erroneously failed to explain that self-defense applied to both charges. (8T 129-6 to 133-10) The failure to instruct the jury on the defense was clearly capable of producing an unjust result, particularly as the jury specifically asked "is self[-]defense relevant to the charge of . . . unlawful possession of a weapon." (10T 121-12 to 15) R. 2:10-2. The absence of this necessary instruction violated Stephanie's rights under the Second Amendment as well as to due process and a fair trial. These convictions should be reversed. U.S. Const. amend. II, XIV, N.J. Const. art. I, ¶¶ 1, 9, and 10.

A. The Court Erred In Failing To Instruct The Jury On Possession Of The Knife In Self-Defense.

N.J.S.A. 2C:39-5(d) prohibits possessing "any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have." "An instruction on self-defense is often not applicable to an alleged violation of

N.J.S.A. 2C:39-5(d)." State v. Oguta, 468 N.J. Super. 100, 109 (App. Div. 2021) (citing State v. Kelly, 118 N.J. 370, 381 (1990)). However, a self-defense instruction is needed "when a defendant makes spontaneous use of a weapon in response to an immediate danger." Ibid. (citing Kelly, 118 N.J. at 385). Those are the exact facts present in this case: Stephanie testified that she spontaneously found and used a knife as Rios was violently sexually assaulting her. Thus, the court erred in failing to instruct the jury that Stephanie's self-defense claim applied to the unlawful possession of the knife charge, particularly in response to the jury's question as to whether self-defense applied to this charge. (10T 121-11 to 24)

This Court recently recognized the applicability of self-defense to a defendant's possession of a knife and reversed the defendant's conviction due to the erroneous omission of this charge. Oguta, 468 N.J. Super. 100. In Oguta, the defendant testified that he usually carried a pocketknife because he used it for work to cut up boxes. Id. at 110. He further testified that he "spontaneously pulled out the knife in self-defense" after he was attacked. Ibid. This Court held that, "[g]iven that testimony, the judge should have instructed the jury that self-defense could be a justification to the charge of unlawful possession of a weapon if the jury found facts supporting self-defense." Ibid.

The court held that the omission of this self-defense instruction was clearly capable of producing an unjust result because "[t]here was really no dispute that an altercation took place and that [the victim] had been stabbed. The critical question in this case was whether defendant acted in self-defense." Id. at 111. The harm from the omitted self-defense instruction was particularly acute as the court had provided a self-defense instruction to the charges of aggravated assault and possession of a weapon for an unlawful purpose. Id. at 110. The court explained, "[b]y not giving that same instruction in connection with the charge of unlawful possession of a weapon, the jury could have reasonably concluded that self-defense was not relevant." Ibid. Thus, this Court concluded that "the error of not giving the self-defense instruction in connection with the charge of unlawful possession of a weapon was sufficient to raise reasonable doubt as to whether it led the jury to a verdict it otherwise might not have reached." Id. at 111.

Here, as in Orguta, Stephanie testified that she grabbed the knife in self-defense after she was attacked by Rios. Thus, the trial court should have instructed the jury that self-defense could be a justification to the charge of unlawful possession of a knife. As in Orguta, the omission of this self-defense instruction was particularly harmful because the jury was instructed that self-defense applied to the homicide and possession of weapons for an unlawful

purpose charges. Thus, as in Orguta, Stephanie's conviction for unlawful possession of the knife should be reversed because of the omission of this critical instruction.

B. The Court Erred In Failing To Instruct The Jury That Defendant Could Lawfully Possess The Tire Iron In Public For Self-Protection.

The United States Supreme Court has definitively held that the Second Amendment's plain text "guarantees petitioners . . . a right to 'bear' arms in public for self-defense." N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 33 (2022) (emphasis added). The Court's prior cases had "held that the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense," and "[i]n doing so, . . . held unconstitutional two laws that prohibited the possession and use of handguns in the home." Id. at 17 (citing District of Columbia v. Heller, 554 U.S. 570 (2008); McDonald v. City of Chicago, Ill., 561 U.S. 742 (2010)). In Bruen, the Court reaffirmed that the Second Amendment grants the right to bear arms in self-defense and held that this right to bear arms in self-defense applies whether someone is in her own home or in public. As the Court explained, "confining the right to 'bear' arms to the home would make little sense given that self-defense is 'the central component of the [Second Amendment] right itself." Id. at 32-33 (quoting Heller, 554 U.S. at 599 (emphasis in original). "After all, the Second Amendment guarantees an 'individual right to possess and carry weapons in case

of confrontation,' and confrontation can surely take place outside the home." Ibid. (quoting Heller, 554 U.S. at 592). Thus, following Bruen, everyone has the right to possess a weapon in public for the purpose of self-defense, whether or not the need for self-defense is imminent.

New Jersey's prior cases on when someone can lawfully possess a weapon in public conflict with Bruen. Kelly held a person cannot preemptively arm herself in anticipation of a future need for self-defense. 118 N.J. at 385-86. Following Bruen, this holding no longer comports with the Second Amendment. Because everyone has the right to bear arms in public for purposes of self-defense, a person can preemptively arm herself so long as her purpose in possessing the weapon is self-defense. In other words, possessing a weapon for self-defense in public, even if there is not an immediate need to act in self-defense, is lawful; it certainly is not a "circumstance[ ] not manifestly appropriate for lawful use." N.J.S.A. 2C:39-5(d).

Thus, here, if Stephanie possessed the tire iron for self-defense, she could not be found guilty of illegally possessing that weapon. However, the jury never received an instruction communicating this essential principle, even after they asked the court if self-defense applied. (10T 121-11 to 24) The jury was not told that self-defense is a lawful reason to possess a weapon rather than a circumstance not manifestly appropriate for lawful use. The court's failure to

instruct the jury that Stephanie could lawfully possess the tire iron if her purpose in possessing the weapon was to defend herself requires reversal of this conviction.

Our Supreme Court has previously reversed a weapons-possession conviction because the jury was not appropriately instructed on Second Amendment principles. State v. Montalvo, 229 N.J. 300 (2017). In Montalvo, the trial court instructed the jury consistent with Kelly — that it was unlawful to anticipatorily arm oneself with a weapon, even if that weapon was possessed for the purpose of self-defense. Id. at 312. After receiving this instruction, the jury convicted the defendant of unlawfully possessing a machete in his home. Id. at 213.

Reviewing the instructions for plain error, our Supreme Court recognized that they did not comport with the Second Amendment. Citing Heller, 554 U.S. at 582, the Court affirmed that "the Second Amendment protects the right of individuals to possess weapons, including machetes, in the home for self-defense purposes." Montalvo, 229 N.J. at 323. Despite the prior holding from Kelly that a defendant could not lawfully arm himself in anticipation of a future need for self-defense, the Montalvo Court held that "[t]he right to possess a weapon in one's own home for self-defense would be of little effect if one were required to keep the weapon out-of-hand, picking it up only 'spontaneously.'"

Ibid. Thus, the Court concluded that the defendant "had a constitutional right to possess the machete in his home for his own defense," and that, "[b]ecause the court's instructions did not convey this principle, the instructions were erroneous." Ibid. The failure to provide this necessary instruction constituted plain error, requiring reversal of defendant's conviction. Ibid.

Heller's holding that a person may lawfully possess a weapon at home for self-defense compelled the Court's ruling in Montalvo that the jury had to be told that self-defense is a lawful reason to possess a weapon. Although Heller, and thus Montalvo, were limited to the possession of a weapon inside someone's home, Bruen is not. Bruen expands Heller's reasoning and recognizes that the Second Amendment also protects the possession of weapons in public for self-defense. Bruen, 597 U.S. at 33. Thus, just as the jury in Montalvo had to be told that possessing a weapon for self-defense inside a home is lawful, the jury here had to be told that possessing a weapon for self-defense outside a home is lawful.

Specifically, the court should have instructed the jury that possessing the tire iron for self-protection is not a circumstance that is manifestly inappropriate for lawful use. The court's failure to instruct the jury that Stephanie had a constitutional right to possess a tire iron in public for self-defense risked violating her Second Amendment rights and deprived her of her rights to due process and a fair trial.

In conclusion, Stephanie's defense was self-defense: that she picked up the knife spontaneously in order to defend against Rios's unlawful and violent sexual assault, and that she possessed the tire iron to make her feel safer and provide protection in case of any additional, unlawful assault. The court erroneously failed to instruct the jury that, if it credited Stephanie's testimony, this would constitute a defense to both weapons-possession charges. The omission of these instructions was clearly capable of producing an unjust result and requires reversal of both convictions.

POINT VI

THE THEFT CONVICTION MUST BE REVERSED BECAUSE THE JURY DID NOT SPECIFY THE AMOUNT STOLEN. (Not Raised Below)

Count 5 of the indictment charge Stephanie with third-degree theft of moveable property, contrary to N.J.S.A. 2C:20-3(a). (Da 6) The court appropriately instructed the jury as to all elements of the offense and provided a supplemental instruction on the grading of theft offenses. (8T 125-5 to 129-5) However, the court did not ask the jury to return a finding on the element of the amount involved in the theft. Neither the verdict sheet nor the jury's reporting of its verdict in court established what amount it found that Stephanie had stolen. (Da 16; 11T 12-20 to 22)

The law is clear that "[t]he amount involved in a theft or computer criminal activity shall be determined by the trier of fact." N.J.S.A. 2C:20-2(b)(4). The "amount of the theft constitutes an element of the offense" and must be proven "beyond a reasonable doubt." State v. D'Amato, 218 N.J. Super. 595, 606-07 (App. Div. 1987) (citing N.J.S.A. 2C:20-2(b)(4)). Here, while the jury unanimously found that Stephanie committed some form of theft, the jury did not make any finding as to the amount of that theft. Without a jury verdict on this essential element of the theft offense, Stephanie's third-degree theft conviction cannot stand. State v. Vick, 117 N.J. 288, 291 (1989) ("[T]here is

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simply no substitute for a jury verdict."). The theft conviction should be reversed.

POINT VII

MULTIPLE SENTENCING ERRORS RENDER DEFENDANT'S SENTENCE EXCESSIVE. (12T 31-15 to 38-19)

The court sentenced Stephanie to concurrent terms of seven years, subject to NERA, for passion/provocation manslaughter, five years for third-degree theft, three years for fraudulent use of a credit card, and 18 months for the fourth-degree weapons and credit card theft charges. (12T 37-16 to 38-14; Da 23-26) In imposing this sentence, the court found aggravating factors 3, the risk of re-offense, and 9, the need to deter. (12T 37-4 to 7) The court also found mitigating factors 3, strong provocation, 4, substantial grounds tending to excuse, 5, the victim's conduct induced the offense, 7, no history of prior convictions, 8, defendant's conduct was the result of circumstances unlikely to recur,[8] and 9, defendant's character and attitude indicate she is unlikely to reoffend. (12T 32-17 to 18, 32-21 to 35-21, 36-3 to 10, 36-13 to 37-2) If Stephanie's convictions are not all reversed, then her sentence should be vacated and remanded for resentencing because multiple errors render the sentence excessive.

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[8] The court found mitigating factor 8 at sentencing but this mitigating factor does not appear on the judgment of conviction. (12T 36-13 to 18; Da 25) Thus, if the sentence is not vacated and remanded for resentencing, the judgment of conviction must be amended to reflect the mitigating factors the court actually found.

When imposing a sentence, a court must consider the applicability of the aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1 to determine the length of a defendant's prison term within the available range. This step requires a court to "identify the aggravating and mitigating factors and balance them to arrive at a fair sentence." State v. Natale, 184 N.J. 458, 488 (2005). In order to ensure proper balancing of the relevant factors, at the time of sentencing, a court must "state the reasons for imposing such sentence, including . . . the factual basis supporting a finding of particular aggravating and mitigating factors affecting sentence." State v. Fuentes, 217 N.J. 57, 73 (2012). A clear explanation of the balancing process is "particularly important," and that explanation "should thoroughly address the factors at issue." Ibid. (internal citations omitted).

A remand for resentencing is required when the trial court considers an improper aggravating factor, State v. Carey, 168 N.J. 413, 424 (2001), fails to find mitigating factors supported by the evidence, State v. Dalziel, 182 N.J. 494, 504 (2005), or if the trial court's reasoning in finding aggravating and mitigating factors is not based on factual findings "supported by substantial evidence in the record." State v. O'Donnell, 117 N.J. 210, 216 (1989).

Here, the court erred in its finding and weighing of the aggravating and mitigating factors, rendering Stephanie's entire sentence, and particularly the

maximum sentences imposed for the theft and weapons offenses, excessive. If Stephanie's convictions are not reversed, her sentence should be vacated and remanded for resentencing.

First, the court erred in finding aggravating factors 3 and 9 because there was no real risk that Stephanie would reoffend nor any need for deterrence. Demonstrating the inapplicability of these aggravating factors, the court's entire explanation regarding both of these aggravating factors was: "The Court does find aggravating factor three because there's always the risk of another offense. And aggravating factor nine, the need to deter this defendant and others from criminal activity." (12T 37-4 to 7) But finding aggravating factors because "there's always a risk of another offense" is a clear violation of our sentencing law. State v. McFarlane, 224 N.J. 458, 465 (2016) ("each '[d]efendant is entitled to [an] individualized consideration during sentencing.'") (quoting State v. Jaffe, 220 N.J. 114, 122 (2014)) (alterations in McFarlane). And insofar as the court considered general deterrence as an aggravating factor, "general deterrence has relatively insignificant penal value." Fuentes, 217 N.J. at 79. Aggravating factors are factors that render this particular crime more severe than others of its class. Here, there was simply no reason to believe that Stephanie, in particular, was at risk of reoffending nor that there was any need to deter her, in particular, from committing future crimes.

Even if there were some conceivable basis for finding these aggravating factors, the court's failure to explain why these factors applied was error. The law is clear that it is improper to fail to explain the factual bases for aggravating factors. Case, 220 N.J. at 65 ("trial judges must explain how they arrived at a particular sentence") (emphasis added); R. 3:21-4(h) ("At the time sentence is imposed the judge shall state reasons for imposing such sentence including. . . the factual basis supporting a finding of particular aggravating or mitigating factors affecting sentence") (emphasis added). Thus, a remand for resentencing is required in this case because the sentencing court merely listed the aggravating factors it found without providing the required explanation.

Second, the error with the court's finding of aggravating factors 3 and 9 is both further demonstrated and heightened by the court's finding of inconsistent mitigating factors: 8, circumstances unlikely to recur, (12T 36-13 to 18) and 9, character and attitude indicate defendant is unlikely to reoffend. (12T 36-19 to 37-2) It was appropriate for the court to find both of these mitigating factors, though the court erred in giving these mitigating factors insufficient weight. Regarding mitigating factor 8, the court explained that it would only give this factor "very light weight" because the court "cannot read the future." (12T 36-13 to 18) This weighing of mitigating factor 8 was error because the circumstances that led to the commission of these offenses were

unique; they were not going to recur. The jury convicted Stephanie of passion/provocation manslaughter and the weapons and theft offenses after a trial where Stephanie explained that all these offenses occurred because Rios violently raped her. Stephanie was not going to be in that same position again in the future.

Moreover, the defense presented, and the court credited, evidence about Stephanie's rehabilitative efforts since the commission of these offenses. (12T 9-22 to 11-20, 36-19 to 37-2) As defense counsel explained, during Stephanie's nearly two-year pretrial incarceration, she "has sought out every program, every opportunity to use that time well." (12T 9-22 to 10-4) Defense counsel submitted fourteen certificates from programs that Stephanie had completed, explained that Stephanie is "actively engaged in other programs," and was "working on her OSHA certification." (12T 10-4 to 8) In short, Stephanie "is doing everything she can to see out the rehabilitative opportunities that are available to her" as well as the "work opportunities . . . that will help her have a career" when she reenters society. (12T 10-8 to 11) Particularly in light of Stephanie's rehabilitative efforts, the court should have given more weight to mitigating factor 9. Stephanie's exemplary conduct demonstrates that she is unlikely to commit any new offenses when she is released from prison.

Third, the court erred in giving insufficient weight to mitigating factors 3, strong provocation, 4, substantial grounds tending to excuse, and 5, victim's conduct facilitated the crime. The court found these factors, though gave them "strong weight." (12T 32-21 to 35-21, 36-3 to 10) The court explained its weighing in part by making findings that were inconsistent with the jury's acquittals – something prohibited by our law. State v. Melvin, 248 N.J. 321, 349 (2021) ("In order to protect the integrity of our Constitution's right to a criminal trial by jury, we simply cannot allow a jury's verdict to be ignored through judicial fact-finding at sentencing. Such a practice defies the principles of due process and fundamental fairness."). For example, the court explains that in its review of the surveillance video, Stephanie is "casually" sifting through the car and "There's no apparent distress. There's no apparent urgency." (12T 33-13 to 20) This finding by the court directly contradicts the jury's verdict that Stephanie did not commit murder but instead was adequately provoked and did not have time to cool off. The court was not permitted to substitute its judgment for that of the jury's. The court's impermissible weighing of these mitigating factors also requires a remand for resentencing.

Fourth, although the court did not conduct the necessary overall weighing of the aggravating and mitigating factors at sentencing, the court noted on the judgment of conviction that the aggravating factors substantially outweigh the

mitigating factors. (Da 25) This statement should be removed from the judgment of conviction because it was not made by the court at sentencing. Moreover, and more substantively, it was error to find that aggravating factors 3 and 9, which the court acknowledged apply in every case, outweighed the case-specific mitigating factors present here. Even if the court's finding of aggravating factors 3 and 9 was not error, the risk of re-offense and the need to deter Stephanie simply could not outweigh the unique and terrible circumstances that led to the commission of these crimes, Stephanie's lack of any criminal history, and Stephanie's exemplary rehabilitative efforts during her nearly two-year pretrial incarceration.

Finally, and in sum, the multiple errors at sentencing render Stephanie's sentence excessive and require a remand for resentencing. If the court had made appropriate findings regarding the applicable mitigating and aggravated factors, it would have imposed a shorter sentence. Stephanie's sentence of seven years NERA for passion/provocation following a violent sexual assault is excessive. Moreover, the court's imposition of the maximum sentence of five years for theft and 18 months for the various fourth-degree offenses was equally excessive. These offenses represented Stephanie's first convictions, and they were the result of a traumatic and violent assault by someone she considered a friend. If

this Court does not reverse all of Stephanie's convictions, then it should vacate her sentence and remand for resentencing.

CONCLUSION

For the reasons set forth in this brief, defendant's passion/provocation manslaughter conviction should be vacated and a judgment of acquittal entered. In addition, her other convictions should be reversed and remanded for a new trial. Alternatively, this Court should vacate defendant's sentence and remand for resentencing.

Respectfully submitted,

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STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Plaintiff-Respondent,	:	DOCKET NO. A-000431-23T4
v.	:	
STEPHANIE MARTINEZ	:	CRIMINAL ACTION
Defendant-Appellant.	:	

On Appeal from a Judgment of Conviction, entered in the Superior Court of New Jersey, Law Division, Essex County.

Sat Below:
Hon. Patrick J. Arre, Jr., J.S.C., and a Jury

BRIEF AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

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Counterstatement of Procedural History

For purposes of this appeal, the State adopts the defendant's Statement of Procedural History and adopts the defendant's transcript designation codes. See (Db 4-5, n. 1).

Counterstatement of Facts

On September 28, 2021, Newark Police responded to the rear parking lot of a Domino's Pizza in response to a 911 call reporting a dead body. (4T 87:17 to 99:4). Police arrived to find the body of a man, later identified as Raul Rios, lying in the lot. (6T 15:23 to 16:16, 40:15 to 41:23). Police retrieved surveillance video from the Domino's showing a Toyota 4Runner pulling into the lot and dumping Raul out of the Toyota and into the parking lot before driving off. (6T 17:23 to 20:23). When police identified Lorely Rios as the owner of the vehicle, she came to the police station and identified a photo of the Toyota as her SUV and identified the body of Raul Rios as her son. (6T 40:15 to 41:23). She reported the Toyota as stolen. (6T 43:2-23).

A Pennsylvania State Trooper testified that he spotted the stolen Toyota two days later in Lehigh County and arrested the defendant as she was sitting in the driver's seat. (5T 54:2 to 55:18, 59:7-9, 67:3-16). She had the victim's Visa card in her pocket. (5T 78:5-12).

DNA from a knife and a tire iron recovered from the Toyota belonged to Raul Rios and the defendant. (4T 135:17 to 136:5, 146:21 to 148:14, 5T 25:1 to 31:3). An analysis of a cellular telephone found in the SUV determined that it belonged to the defendant. (4T 151:17 to 152:6, 5T 39:15 to 45:5).

The medical examiner testified that the cause of death was "sharp force injuries to the neck and blunt force injuries to the head." (5T 114:4-9).

The defendant testified that Raul Rios sexually assaulted her that day, so she stabbed him repeatedly with a knife. (6T 121:9-21, 137:10 to 138:23). She then drove the Toyota with Raul in it to an Exxon and bought cigarettes with his credit card. (7T 13:15 to 16:1). She then drove to the Domino's parking lot. (27:12-16). The defendant identified herself on the surveillance video pulling Raul out of the Toyota. (7T 35:19 to 36:4). The defendant said she hit Raul a number of times with a tire iron when she saw him move. (6T 147:15 to 148:5, Pa 1 at 3:34:07). The defendant got back into the Toyota and drove away. (6T 163:11 to 165:7).

Legal Argument

Point I

The jury clearly found that the State disproved self-defense with regard to passion / provocation manslaughter.

The defendant asserts that her conviction must be overturned because the jury found that the State did not disprove self-defense. But in this case, the

verdict sheet was written so that self-defense was a separate question relating to the charges of murder, passion / provocation manslaughter, aggravated manslaughter, and reckless manslaughter. (Da 13-18). The verdict sheet clearly shows that the jury found that the State failed to disprove self-defense with respect to the charge of murder. (Da 13). The verdict sheet also shows that the State disproved self-defense regarding the charge of passion / provocation manslaughter and the jury found the defendant guilty of passion / provocation manslaughter. (Da 14).

The verdict in this case is a valid, inconsistent verdict. "An inconsistent verdict may be the product of jury nullification." State v. Banko, 182 N.J. 44, 54 (2004). "We permit inconsistent verdicts to be returned by a jury because it is beyond our power to prevent them." Id. "Such verdicts are permitted normally so long as the evidence was sufficient to establish guilt on the substantive offense beyond a reasonable doubt." Id. (quotations omitted).

The jury in this case found that the State failed to disprove self-defense regarding murder but disproved self-defense with regard to passion / provocation manslaughter. (Da 13-14). While we do not know the reason the jury arrived at this inconsistent verdict, there was ample evidence to support the manslaughter conviction beyond a reasonable doubt. The defendant herself testified that she cut the defendant in the neck and repeatedly hit him in the

head with a tire iron. The jury saw video of the defendant striking the defendant with the tire iron and dumping his body in a parking lot. The jury saw a moment on the video when the victim's foot moved, indicating that he was still alive when the defendant hit him with the tire iron. (Pa 1 at 3:50:00 to 3:50:20). If the jury believed that the victim was still alive, the victim's foot movement was sufficient evidence to disprove the defendant's claim of self-defense.

Although the verdict was inconsistent, it was supported by evidence in the record and must be accepted.

Point II

The trial court properly declined to instruct the jury on aggravated assault.

The defendant asked the trial judge to instruct the jury on aggravated assault –which was not charged in the indictment – while also instructing the jury on murder and the lesser-included charges to murder. (7T 81:16 to 83:11). The defendant relied on testimony regarding the stabbing and the assault with the tire iron to argue that the jury could treat the stabbing and the tire iron assault as two separate incidents. The State argued that the stabbing and the tire iron assault were not charged as separate incidents and were treated as one incident in the indictment, so no separate charge was warranted. (7T 87:1-21).

The trial court declined to charge aggravated assault, finding no rational basis to charge a related offense when the testimony of the defendant indicated that her intent was to kill the victim to save her own life and the evidence showed that the nature and number of wounds showed an intent to kill. (7T 106:7 to 107:6).

The trial court made the proper decision. Unlike lesser-included offenses, related offenses "are those that share a common factual ground, but not a commonality in statutory elements, with the crimes charged in the indictment." State v. Alexander, 233 N.J. 132, 144 (2018)(quoting State v. Thomas, 187 N.J. 119, 132 (2006). A trial court "may instruct the jury on a related offense only when the defendant requests or consents to the related offense charge, and there is a rational basis in the evidence to sustain the related offense." Id. at 144-145.

In this case, there was no rational basis to charge aggravated assault. The defendant asked for the aggravated assault charge in addition to the murder charge and lesser-included charges. But the forensic pathologist in this case testified that the cause of death "was sharp force injuries to the neck and blunt force injuries to the head." (5T 114:7-9). The death of the victim was caused by both the stab wounds to the neck and the strikes from the tire iron.

There was no rational basis to separate the jury instructions into two separate incidents when both incidents caused the death of the victim.

If the trial court had included a charge on aggravated assault, the jury could have found the defendant guilty of murder and aggravated assault, even though the tire iron attack was a cause of the death. The aggravated assault charge would have only confused the jury and could have led to an absurd verdict. The trial court properly declined to provide the related charge of aggravated assault.

Point III

The expert in forensic pathology properly testified within his expertise.

The defendant asserts that Dr. Uribe testified beyond the bounds of his expertise. This assertion is baseless.

A forensic pathologist "has been defined as an expert in investigating and evaluating cases of sudden, unexpected, suspicious, and violent death, as well as other specific classes of death defined by law." State v. Locascio, 425 N.J. Super. 474, 490 (App. Div. 2012). The testimony of a forensic pathologist is "restricted to describing the mechanics of death." Id. (quoting State v. Jamerson, 153 N.J. 318, 337 (1998)).

In this case, there was no dispute that Dr. Uribe was qualified as an expert in forensic pathology. (5T 111:16-21). Dr. Uribe testified as to the

cause of death and manner of death of the victim. (5T 114:4-11). He discussed photos taken of the victim's body and the "sharp force" injuries to the victim's neck, one of which severed the victim's jugular vein. (5T 123:14 to 126:18). Dr. Uribe also discussed the blunt force injuries to the victim. (5T 125:4-25). After viewing photos of the Toyota, Dr. Uribe testified that the blood stains in the Toyota were not consistent with someone being stabbed in the back seat of the Toyota and "exsanguinating which is when you die from blood loss." (5T 136:25 to 140:15). The amount of blood found in the Toyota was minimal, while a severed jugular vein would have expelled an enormous amount of blood into the Toyota.

Dr. Uribe's testimony was entirely appropriate for a forensic pathologist. His testimony related to the "mechanics of death:" namely, how much blood would be lost from a severed jugular vein as was found on the victim's body.

The case at hand is clearly distinguishable from Jamerson. The forensic pathologist in Jamerson testified that the defendant was driving recklessly, a legal conclusion clearly beyond the scope of a forensic pathologist. No such testimony took place in this case.

Similarly, in Locascio, the forensic pathologist testified as to the likely movements of occupants and objects within a car as it struck a tree, which was beyond his qualifications. No such testimony took place in this case. Dr.

Uribe merely testified that the photos of the Toyota did not show an amount of blood that would be lost through a severed jugular vein, which the victim had.

Even if it was error to allow Dr. Uribe's testimony regarding blood loss from a severed jugular, it was harmless error because there was no possibility that Dr. Uribe's testimony could have led to an unjust result. R. 2:10-2. The case depended on the testimony of the defendant, who testified that she stabbed the victim in self-defense. (6T 137:10 to 138:10). The location of the stabbing was not a major issue in the case. Dr. Uribe's testimony that the amount of blood in the Toyota was not consistent with someone being stabbed in the jugular did not affect the outcome of the case. There was no possibility that testimony could have led to an unjust result, rendering it harmless error.

Point IV

No jury instruction was necessary on the defendant's failure to report the alleged sexual assault.

The defendant asserts that the trail court should have instructed the jury concerning the defendant's failure to report the alleged sexual assault in this case. The defendant's attorney did not request such an instruction at trial and the trial judge had no obligation to issue one.

When reviewing a claim of error related to jury charges, the "charge must be read as a whole in determining whether there was any error." State v.

Torres, 183 N.J. 554, 564 (2005). If, like here, defense counsel did not object to the jury charge at trial, the plain error standard applies. Id. Reversal is warranted only if the error was "clearly capable of producing an unjust result." Id. at 559 (quoting R. 2:10-2).

“[T]he fresh-complaint doctrine is a common law exception to [the rules barring the admission of hearsay] that ‘allows witnesses in a criminal trial to testify to a victim’s complaint of sexual assault.’” State v. C.W.H., 465 N.J. Super. 574, 599 (App. Div. 2021) (quoting State v. Hill, 121 N.J. 150, 151 (1990)). “The purpose of the doctrine is to ‘allow[] the admission of evidence of a victim's complaint of sexual abuse, otherwise inadmissible as hearsay, to negate the inference that the victim's initial silence or delay indicates that the charge is fabricated.’” Id. (quoting State v. R.K., 220 N.J. 444, 455 (2015)).

The fresh complaint rule has no bearing on this case at all. There was no witness that testified concerning the alleged sexual assault other than the victim and the victim had not previously filed any complaint or notified anyone of the sexual assault. The jury instruction was inappropriate in a case where no sexual assault was charged.

The assistant prosecutor’s comments were entirely appropriate for cross-examination. The outcome of the case turned on the credibility of the

defendant because there were no other direct witnesses to the death of the victim.

The jury was given ample instruction on how to evaluate the credibility of the defendant. First, they were given the general instruction on credibility of witnesses. (8T 77:5 to 78:1). They were also given the false-in-one, false-in-all instruction. (8T 82:2-7). And, most relevant to the facts and testimony offered at trial, the jury was instructed on how to consider the defendant's silence before her arrest. (8T 83:3-21)

Because the defendant's attorney did not request a jury instruction regarding the fresh complaint rule and the jury was adequately instructed, the defendant's claim for a new trial on this point fails.

Point V

It was not necessary to instruct the jury that self-defense could apply to the weapons charges.

The defendant incorrectly argues that the jury should have been instructed that self-defense could apply to the unlawful possession of a weapon charges. The jury was instructed that self-defense applied to the possession of a weapon for an unlawful purpose charges.

A. The Sharp Object

'[A] jury charge on self-defense is largely inapplicable in the context of section 5d offenses." State v. Kelly, 118 N.J. 370, 381 (1990). "If a person

possesses an instrument for a legitimate purpose and makes immediate use of that instrument as a weapon in order to fight off an impending threat, then, and only then, is self-defense a justification to a section 5d offense." Id.

Such is not the case here. There was no evidence adduced at trial that the defendant possessed the sharp object for any legitimate purpose. The defendant herself testified that she grabbed the knife from the victim. (6T 137:10 to 138:10). Thus, the instruction was not necessary.

The defendant's reliance on State v. Oguta, 468 N.J. Super. 100 (App. Div. 2021), is not persuasive. Oguta involved a "relatively rare set of facts requiring a self-defense jury instruction when a defendant is charged with unlawful possession of a weapon..." Id. at 103. The defendant in Oguta testified that he had the knife for a legal purpose: to cut up boxes at his job. Id. at 110. He testified that he intended to go to work on the day of the incident, which is why he was carrying the knife, and he spontaneously pulled out the knife when he was attacked. Id.

Unlike the defendant in Oguta, the defendant in this case did not testify that she possessed the sharp object for any legitimate purpose. Thus, no jury instruction on self-defense was necessary for the unlawful possession of a weapon charge for the sharp object.

Even if it was error to charge self-defense on the possession of a weapon for an unlawful purpose charge but not the unlawful possession of a weapon charge, it was harmless error. Failure to give a warranted jury instruction can constitute harmless error "so long as the error at issues does not categorically vitiate all the jury's findings." State v. Camacho, 218 N.J. 533, 550 (2014)(quoting Hedgpeth v. Pulido, 555 U.S. 57, 60-61 (2008).

The error in this case was harmless because the results of the trial would have been the same even if the jury was instructed that self-defense applied to the unlawful possession of a weapon charge. The jury found the defendant guilty of possession of a weapon for an unlawful purpose for the sharp object, even after they were instructed that self-defense applied to that charge. Thus, it is certain that the jury would have found the defendant guilty of unlawful possession of the sharp object even if they had been instructed that self-defense applied to that charge. Because the result of the trial would not have been different, the error was harmless. R. 2:10-2.

B. The Tire Iron

The defendant asserts that the jury should have been instructed on self-defense regarding the defendant's charge for unlawful possession of a tire iron. This charge was not warranted by the evidence in the case.

The defendant testified that she found the tire iron in the front passenger seat of the victim's car. (6T 145:12-19). Even though she testified that she "knew that Raul wasn't alive at that point," she swung the tire iron at his head "two or three times" because she saw his arm move. (6T 145:20 to 148:2). This was shown on the surveillance video. (Pa 1).

Because she took the tire iron from the victim's car and swung it repeatedly at his head even though she was in no danger at all, there was no factual basis for the trial court to instruct the jury on self-defense for the unlawful possession of the tire iron charge.

Even if it was error, it was a harmless error as discussed above. The jury found the defendant guilty of possession of the tire iron for an unlawful purpose even after being instructed that self-defense applied to that charge. The jury clearly did not believe that the defendant possessed the tire iron for self-defense and therefore the omission of a self-defense charge related to the unlawful possession of the tire iron did not have the ability to affect the outcome of the trial. R. 2:10-2.

Point VI

The jury was properly instructed on the degree of theft involved and properly found the defendant guilty of third-degree theft.

The jury was properly instructed on the grading of theft offenses. (8T 128:1 to 129:5). The trial judge's instruction regarding theft of moveable property mirrored the model jury charge. (8T 125:5 to 133:10).

During the jury charge, the jury was told that "the State alleges that the movable property taken or over which control was unlawfully exercised is a silver 2001 Toyota Forerunner SUV." (8T 126:11-14). While the trial judge instructed the jury that "the value of the moveable property determines the degree or severity of the crime," the judge went on to say, "Theft is a crime of the third degree if the amount involved exceeds $500 but is less than $75,000, the property stolen is a firearm, motor vehicle, vessel, boat, horse, domestic companion animal or airplane." (8T 127:20 to 129:2). It was clear from the jury instructions that the defendant was charged with theft for stealing the Toyota. The jury was instructed that theft of a motor vehicle was a third-degree crime. While the verdict sheet does not explicitly say "third-degree theft," it is clear from the record that the jury was instructed that the only theft involved in this case was a third-degree theft. There was no dispute that the Toyota was a "motor vehicle" as that term is used in N.J.S.A. 2C:20-3(a).

Because the defendant's attorney did not object to the jury charge regarding theft or the portion of the verdict sheet showing theft, the alleged error is reviewed for plain error: the defendant must show that the alleged error

was "of such a nature as to have been clearly capable of producing an unjust result." R. 2:10-2. No such error occurred here. Because it is clear from the record that the only theft alleged was the theft of a motor vehicle, and the value of the motor vehicle is not relevant to grading, it was not necessary to include the value of the stolen motor vehicle on the verdict sheet.

Point VII

The defendant's sentence is legal and fair.

A sentence is reviewed on appeal for an abuse of discretion. State v. Miller, 237 N.J. 15, 28 (2019). Appellate courts are not to substitute their judgment for those of our sentencing courts. Id. An appellate court must affirm the sentence unless: (1) the sentencing guidelines were violated, (2) the aggravated and mitigating factors found by the sentencing court were not based on competent credible evidence in the record, or (3) the application of the guidelines to the facts of the case makes the sentence clearly unreasonable so as to shock the judicial conscience. Id.

None of those circumstances exist here. The sentencing judge in this case conducted a thorough, well-reasoned analysis of the aggravating and mitigating factors and arrived at a fair sentence. The sentence must be affirmed.

The sentencing judge properly found aggravating factor 3 applied: the risk that the defendant will commit another offense. The defendant's presentence report showed that the defendant was 41 years old at sentencing and had been arrested 23 times as an adult. The defendant also admitted to past use of marijuana and PCP.

"A court's findings assessing the seriousness of a criminal record, the predictive assessment of chances of recidivism, and the need to deter the defendant and others from criminal activity, do all relate to recidivism, but also involve determinations that go beyond the simple finding of a criminal history and include an evaluation and judgment about the individual in light of his or her history." State v. Thomas, 188 N.J. 137, 153 (2006). In this case, it was proper to find that there was a risk that the defendant would commit another offense based on her long history of arrests and prior drug use. Thus, this factor was supported by competent, credible evidence in the record.

The sentencing judge also properly found aggravating factor 9: the need for deterring the defendant and others from violating the law. Deterrence is one of the most important factors in sentencing. State v. L.V., 410 N.J. Super. 90, 92 (App. Div. 2009). Given the seriousness of the charges for which the defendant was found guilty, it was appropriate to find this factor. The defendant was found guilty of serious crimes, warranting a lengthy sentence.

People must be deterred from killing each other, even if done in the heat of passion.

The sentencing judge found mitigating factor 8 (circumstances unlikely to recur) and 9 (the character and attitude of the defendant indicate that the defendant is unlikely to commit another offense). These findings were not inconsistent with the aggravating factors; a finding of a need to deter is not inconsistent with a finding that the circumstances are unlikely to recur, but the need to deter will be entitled to less weight. Id.

In sum, the court found aggravating factors 3 and 9 and mitigating factors 3, 4, 5, 7, and 9. Although the amended Judgment of Conviction says that "the aggravating factors substantially outweigh the mitigating factors," that finding was not made on the record and should be removed from the Judgment of Conviction.

Regardless, the judge arrived at a fair sentence after evaluating the aggravating and mitigating factors. On count 1, second-degree manslaughter, the defendant was sentenced to seven years, which is the middle of the range for a second-degree crime. The defendant was sentenced to the top of the range for count 5: 5 years for third-degree theft. The defendant was sentenced to the top of the range for counts 6, 8, and 10, but those sentences were all 18 months of incarceration for fourth-degree crimes to be run concurrently to the

sentence on count 1. The resulting sentence does not shock the judicial conscience.

The sentencing judge properly evaluated the aggravating and mitigating factors and arrived at a fair sentence for the defendant.

Conclusion

Other than the minor modification to the judgment of conviction suggested in Point VII, this Court should affirm the defendant's judgment of conviction in all respects. The defendant received a fair trial and sentence.

Respectfully submitted,

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0431-23
INDICTMENT No. 22-02-395-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior
v.	:	Court of New Jersey, Law Division, Essex County.
STEPHANIE MARTINEZ,	:	
		Sat Below:
Defendant-Appellant.	:	Hon. Patrick J. Arre, Jr., J.S.C.,
	:	and a Jury.

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

DEFENDANT IS CONFINED

FILED, Clerk of the Appellate Division, May 31, 2024, **A-000431-23**

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REPLY PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Stephanie Martinez relies on the procedural history and statement of facts from her initial brief.

LEGAL ARGUMENT

Ms. Martinez relies on the legal arguments from her initial brief, adding the following in response to the State's brief:

POINT I

THE PASSION/ PROVOCATION MANSLAUGHTER CONVICTION MUST BE VACATED AND A JUDGMENT OF ACQUITTAL ENTERED BECAUSE THE JURY FOUND THAT THE STATE DID NOT DISPROVE SELF-DEFENSE.

In her initial brief, Stephanie explained that the passion/provocation manslaughter conviction must be vacated and a judgment of acquittal entered because the jury found that the State did not "disprove, beyond a reasonable doubt, the applicability of self-defense as to Count 1, Murder." (Da 13; Db 23-25)[1] The State agrees that "[t]he verdict sheet clearly shows that the jury found that the State failed to disprove self-defense with respect to the charge of murder." (Sb 3) However, the State asserts that the jury's finding that the State failed to disprove self-defense does not amount to an acquittal for all homicide

[1] This reply uses the same abbreviations as the initial brief. In addition, Db refers to the initial defense brief while Sb refers to the State's response brief.

charges but instead is merely "a valid, inconsistent verdict." (Sb 3) The State reasons that because there was sufficient evidence to convict of manslaughter, the inconsistent verdict provides no grounds to vacate the conviction. (Sb 3-4) The State's assertions should be rejected for several reasons.

First, as explained in Stephanie's initial brief, the problem here is not any inconsistency between the verdicts on different counts; it is that the very first unanimous decision the jury reached was that the State failed to disprove self-defense. This verdict is an acquittal of all homicide charges because it is a jury finding that Stephanie "act[ed] in self-defense and 'kill[ed] in the honest and reasonable belief that the protection of [her] own life require[d] the use of deadly force'" such that she "cannot be convicted of murder, aggravated manslaughter, or manslaughter." State v. Gentry, 439 N.J. Super. 57, 67 (App. Div. 2015) (quoting State v. Rodriguez, 195 N.J. 165, 172 (2008)) (emphasis added). The jury found that Stephanie acted in self-defense, thereby necessarily acquitting her of all homicide offenses since "[s]elf-defense, if proven, is a justifiable homicide for which there is no criminal liability." State v. Chavies, 345 N.J. Super. 254, 267 (App. Div. 2001) (emphasis added). Thus, a judgment of acquittal should be entered by this Court for passion/provocation manslaughter.

Second, and alternatively, if this Court does not enter a judgment of acquittal as to all homicide charges, the passion/provocation manslaughter

charge nonetheless must be reversed. Although a defendant generally cannot challenge a conviction on one count simply by arguing that it is inconsistent with an acquittal on another count, this rule only applies "when the reason for the inconsistent verdicts cannot be determined." State v. Gray, 147 N.J. 4, 11 (1996). If the reason for the inconsistent verdicts can be determined and that reason is due to a mistaken instruction by the court, then the conviction cannot stand. Id. at 17 (reversing defendant's felony murder conviction because "this case is not about speculation as to the reasons for the inconsistent verdict but, rather, about a misleading charge that led to a verdict not permitted under our law").

Such is the case here. The first question on the verdict sheet asked if the State had disproven self-defense as to murder, and the jury answered "no." (Da 13) We know that this was the first question the jury answered because the jury specifically asked the court if it could deliberate in a different order than what appeared on the verdict sheet, and the court said no. (9T 10-18 to 19 ("The verdict sheet must be completed in the order that it[']s written.")) Following the jury's finding that the State did not disprove that Stephanie acted in self-defense, the jury should have been instructed to acquit Stephanie of all homicide offenses. See State v. O'Neil, 219 N.J. 598, 617 (2014); Chavies, 345 N.J. Super. at 267; Gentry, 439 N.J. Super. at 67; Rodriguez, 195 N.J. at 172.

Instead of providing this correct instruction, the court gave an incorrect one: telling the jury, "you have found the defendant Not Guilty of Murder" and "If you have found the defendant Not Guilty of Murder, go to Question 3," which asked about the applicability of self-defense as to passion/provocation manslaughter. (Da 13-14) The court's incorrect instructions to the jury — that they should go on to consider other homicide offenses even though they already found that Stephanie acted in self-defense — explains why the jury returned an inconsistent verdict. As in Gray, where the cause of this inconsistency is the court's incorrect instructions, reversal of defendant's convictions is required. Gray, 147 N.J. at 17.

Courts in New York have repeatedly recognized that this kind of instructional error requires reversal at a minimum. For example, in People v. Castro, 516 N.Y.S.2d 966, 966, 968 (App. Div. 1987), the jury acquitted the defendant of murder and first-degree manslaughter but convicted him of second-degree manslaughter. The appellate court found that the jury should have been instructed "that a finding of not guilty by reason of justification as to any one of the counts would preclude a verdict of guilty as to its lesser included offenses." Id. at 968. The court elaborated: "Stated otherwise, once the jury found the defendant not guilty of the greater offense on the basis of justification, it could not properly reach a contradictory finding that the defendant was guilty of a

lesser charge despite its finding of justification." Ibid. Thus, the court reversed the conviction because "the jury should have been instructed at the outset that in the event it reached a verdict of not guilty by reason of justification as to any of the offenses submitted to it, it should simply render a verdict of acquittal and cease deliberation, without regard to any remaining lesser included offenses." Ibid.

New York courts consistently apply this principle and reverse the defendant's convictions if the court fails to instruct the jury that if it finds a defendant not guilty "based on a finding of justification," the jury "must not consider the lesser" offenses. People v. Wah, 99 N.Y.S.3d 19, 21 (App. Div. 2019). See, e.g., People v. Bracetty, 628 N.Y.S.2d 739, 741 (App. Div. 1995) (reversing defendant's conviction for criminally negligent homicide in part because "[t]he court failed to instruct the jury that a finding of not guilty by reason of justification . . . on the count of manslaughter in the second degree would preclude a verdict of guilty with regard to the lesser-included offense of criminally negligent homicide, and that the jurors were only to consider the lesser offense if they found the defendant not guilty of the greater offense for a reason other than justification") (citation omitted); People v. Roberts, 721 N.Y.S.2d 49, 50-51 (App. Div. 2001) (reversing conviction because "trial court erred in failing to instruct the jurors that a finding of not guilty of a greater

charge on the basis of justification precluded consideration of any lesser counts"); People v. Ross, 767 N.Y.S.2d 819, 819-20 (App. Div. 2003) (same); People v. Feuer, 782 N.Y.S.2d 858, 859 (App. Div. 2004) (same); People v. Velez, 13 N.Y.S.3d 354, 355, 357-58 (App. Div. 2015) (same); People v. Delin, 43 N.Y.S.3d 47, 48 (App. Div. 2016) (same); People v. Flores, 41 N.Y.S.3d 890, 890 (App. Div. 2016) (same); People v. Blackwood, 46 N.Y.S.3d 413, 414 (App. Div. 2017) (same); People v. Herrera, 142 N.Y.S.3d 59, 62 (App. Div. 2021) (same); People v. Harris, 168 N.Y.S.3d 592, 598 (App. Div. 2022) (same). Here, if this Court does not enter a judgment of acquittal for homicide given the jury's finding that Stephanie acted in self-defense,[2] it should, at minimum, reverse the passion/provocation manslaughter conviction because such a conviction was the result of the erroneous jury instruction to consider other homicide offenses.

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[2] In all of these cases, reversal was the required remedy because it was unclear why the jury acquitted the defendant of the greater homicide charges. See, e.g., Roberts, 721 N.Y.S.2d at 51 ("As there is no way of knowing whether the acquittal of the two murder counts was based on a finding of justification, so as to require acquittal on the two manslaughter counts as well, the judgment must be reversed, and the indictment dismissed" and "[t]he highest offense for which defendant may be re-indicted, however, is manslaughter in the first degree"); Ross, 767 N.Y.S.2d at 820 ("Since there is no way of knowing whether the acquittal on the top counts was based on a finding of justification, so as to require acquittal on the lesser-included offense as well, a new trial is necessary."); Feuer, 782 N.Y.S.2d at 860 (same). Here, we know exactly why the jury acquitted Stephanie of murder — the jury found that the State did not disprove that Stephanie acted in self-defense. (Da 13) Thus, as argued in Stephanie's initial brief and here, an acquittal is the appropriate remedy here.

Caselaw from other state courts adds further support for the need to, at minimum, reverse the manslaughter conviction given the jury's legally inconsistent prior verdict on self-defense. This kind of irreconcilable legal inconsistency within a jury's verdict violates defendants' constitutional rights, undermines faith in the justice system, and offends notions of fundamental fairness.

Most basically, legal inconsistencies should be prohibited because they result in the "absurd" and "legally impossible" situation, Pleasant Grove City v. Terry, 478 P.3d 1026, 1031 (Utah 2020), in which "the same essential element or elements of each crime were found both to exist and not to exist." State v. Arroyo, 844 A.2d 163, 171 (R.I. 2004). In other words, when a legal inconsistency arises, the "acquittal on one count negates a necessary element for conviction on [the other] count[,]" State v. Powell, 674 So. 2d 731, 733 (Fla. 1996), such that the State "could not possibly have proved the elements of both crimes with respect to the defendant." Commonwealth v. Elliffe, 714 N.E.2d 835, 838 (Mass. App. Ct. 1999). Accordingly, and unlike with factual inconsistencies where two of more verdicts merely "suggest inconsistent interpretations of the evidence[,]" Commonwealth v. Gonzalez, 892 N.E.2d 255, 262 n.8 (Mass. 2008), legal inconsistencies are wholly irreconcilable and particularly noxious. See also Doubleday v. People, 364 P.3d 193, 197 (Colo.

2016); Conroy v. State, 202 S.E.2d 398, 401 (Ga. 1973); Commonwealth v. Magliocco, 883 A.2d 479, 493 (Pa. 2005). The jury's verdict in Stephanie's case was legally impossible: that Stephanie's use of force as to murder was justified by self-defense yet that exact same use of force amounted to the crime of passion/provocation manslaughter. In other words, the use of force was simultaneously justified by self-defense and not justified by self-defense.

Legal impossibilities like what occurred here create unsustainable risks to the defendant and the justice system. The only conclusion to be drawn from a legally inconsistent verdict is that the jury misapplied the law. State v. Halstead, 791 N.W.2d 805, 815 (Iowa 2010); Price v. State, 949 A.2d 619, 627 (Md. 2008). A verdict based on a mistake of law, of course, creates a real "possibility of a wrongful conviction[,]" Powell, 674 So. 2d at 733, and "insults the basic due process requirement that guilt must be proved beyond a reasonable doubt." Halstead, 791 N.W.2d at 815. Accepting such a verdict, moreover, runs counter to New Jersey's doctrine of fundamental fairness, which is meant to guard against unfair and arbitrary results in the criminal justice system. State v. Saavedra, 222 N.J. 39, 67 (2015) (citation omitted); State v. Ruffin, 371 N.J. Super. 371, 385 (App. Div. 2004) (citations omitted).

This unfairness and lack of reliability also undermines faith in the justice system. One would be hard-pressed to explain why a defendant is incarcerated

after being acquitted of a necessary element of the charged offense. And the average person, let alone the affected defendant, would only be further troubled to know this was due to a mistake of law. Halstead, 791 N.W.2d at 815; Price, 949 A.2d at 627. Stated differently, "allowing a potentially long prison term. . . to stand when a defendant has been found not guilty of predicate offenses" bespeaks a "lack of reliability" that causes "confidence in the outcome of the trial [to be] undermined" and "a corrosive effect on confidence in the criminal justice system" as a whole. Halstead, 791 N.W.2d at 815.

Thus, legally inconsistent verdicts create a legal absurdity that increases the risk of wrongful convictions, undermines defendants' constitutional rights, and erodes faith in the verdict and the justice system. These interests counsel heavily in favor of disallowing legally inconsistent verdicts. Moreover, they far "outweigh[] the rationale for allowing [those] verdicts to stand." Powell, 674 So. 2d at 733.

Originally, inconsistent verdicts were accepted mostly based on the idea that they would be permitted if "separate indictments had been presented" and separate verdicts reached. Dunn v. United States, 284 U.S. 390, 393 (1932). That justification, however, was later discarded and replaced by a focus on (1) the impossibility of knowing the jury's reasoning, including whether it acted out of mistake, compromise, or lenity; and (2) the government's inability to appeal.

United States v. Powell, 469 U.S. 57, 64-69 (1984). Our courts have primarily focused on the first justification, while also noting that courts have no "power to prevent" factually inconsistent verdicts. State v. Banko, 182 N.J. 44, 54 (2004). None of these factors, however, warrants acceptance of legally inconsistent verdicts.

The sanctity of the jury cannot be used to shield legally inconsistent verdicts. "[L]egally impossible verdicts do not require inquiry into the jury's intent[,]" Terry, 478 P.3d at 1034, because it takes no speculation to know that "a legal error has occurred[,]" and that trust in the verdict cannot be had. Halstead, 791 N.W.2d at 815. Moreover, our courts already prohibit legally inconsistent verdicts in the case of civil trials, despite the jury playing the same role as in criminal trials, thus suggesting that any interest in shielding this kind of impossible verdict is not substantial. Lancos v. Silverman, 400 N.J. Super. 258, 271-72 (App. Div. 2008) (citation omitted); see also Price, 949 A.2d at 628 ("If the traditional reasons for tolerating inconsistent jury verdicts are not sufficient in civil cases, those reasons are clearly not sufficient in criminal cases."). The prohibition in civil trials also belies the idea that inconsistent verdicts must be accepted because of their unavoidability. There is no reason to believe that inconsistent verdicts are more avoidable, or less common, in civil trials, or that they should be tolerated more in criminal trials. To the contrary,

such verdicts should be less accepted in criminal trials, where a person's liberty is at stake.

In addition, the inconsistency between the jury's finding of self-defense and the manslaughter conviction in this case was wholly capable of being anticipated and prevented. The trial court here, in line with both our law on self-defense and supported by New York's comparable jury-instruction requirements, should have simply told the jury that if they found Stephanie acted in self-defense, then they must acquit of all homicide offenses rather than continue on to consider the lesser-included homicide offenses.

In sum, there is little justification for allowing legally inconsistent verdicts. What reasons may exist to preserve such verdicts, moreover, are far outweighed by the concomitant constitutional violations, unreliable and absurd verdicts, and loss of trust in the justice system. This jury here found that Stephanie acted in self-defense as to the murder charge. This specific finding amounts to an acquittal of all homicide charges, and this Court should enter a judgment of acquittal. In the alternative, the irreconcilable legal impossibility in the jury's finding of self-defense as to murder and conviction of passion/provocation manslaughter requires reversal and a new trial. This Court, like the courts cited above, should vacate Stephanie's passion/provocation manslaughter conviction.

CONCLUSION

For the reasons set forth here and in defendant's initial brief, the manslaughter conviction should be vacated and a judgment of acquittal entered. Alternatively, the manslaughter conviction should be reversed. For the reasons set forth in defendant's initial brief, all of her convictions should be reversed and remanded for a new trial, or alternatively, her sentence vacated and remanded for resentencing.

Respectfully submitted,

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