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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1059-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARK DUBAS,

Defendant-Appellant.

Submitted December 8, 2016 – Decided March 1, 2017

Before Judges Hoffman and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 11-09-0767.

Joseph E. Krakora, Public Defender, attorney for appellant (Michael J. Confusione, Designated Counsel, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent (Lila B. Leonard, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Following a bench trial on an eight-count Passaic County indictment, the trial judge convicted defendant Mark Dubas of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a); theft

by unlawful taking, N.J.S.A. 2C:20-3; theft of a motor vehicle, N.J.S.A. 2C:20-2(b)(2)(b); and possession of a controlled dangerous substance; N.J.S.A. 2C:35-10(a)(1). The judge sentenced defendant to twenty-four years in prison for the aggravated manslaughter conviction, subject to an eighty-five percent period of parole ineligibility pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. The judge also sentenced defendant to a concurrent six-month term of imprisonment and two concurrent four-year terms for the other convictions.

On appeal, defendant raises the following arguments:

> Point 1
>
> The trial court erred in denying defendant's motion for suppression of statements of defendant and evidence seized by police.
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> Point 2
>
> Defendant's sentence is improper and excessive.

After reviewing the record in light of the contentions advanced on appeal, we affirm.

I.

We briefly summarize the facts from the record. At approximately 6:30 a.m. on the morning of April 1, 2011, Clifton Police arrested defendant after discovering heroin, cocaine, and related paraphernalia next to and inside the car he was driving.

The car belonged to defendant's grandmother. Defendant had stayed at her home the previous week.

After learning defendant had been arrested, defendant's mother called defendant's grandmother, at approximately 7:30 a.m. When she received no response, she called the Clifton Police Department and then traveled to the grandmother's house with her husband. When Clifton Police Officer Victor Reyes arrived at the home, he found all the doors and windows locked except for one open window on the second floor. After a Clifton firefighter entered the window and came downstairs to open the door, defendant's mother entered the home and found the grandmother lying dead on the basement floor in a pool of blood, her body covered by a rug, with a pair of scissors sticking out of her back. According to the medical examiner's testimony at trial, the cause of death was cut wounds to the head, neck, and torso, and the manner of death was homicide.

Prior to questioning defendant at the police station, detectives presented defendant with a Miranda[1] waiver form, which he signed. At the end of the interview, police collected defendant's clothing; the State police lab determined through DNA analysis that the blood on defendant's shoes and pants belonged to the victim. Police also determined that the bloody

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

footprints found at the scene matched defendant's sneaker treads. Police further searched a sports bag and found in the car during his arrest and discovered ten items of jewelry inside the bag. Defendant's mother told police that three of these items belonged to defendant's grandmother.

On March 12 and May 13, 2014, the trial judge conducted a Miranda hearing regarding defendant's motion to suppress his statements to police. On May 14, 2014, the judge denied defendant's motion, and then began the bench trial. Following all of the testimony, the judge heard arguments on defendant's motion to suppress the physical evidence. The judge granted the motion with regard to the cocaine, but denied suppression of all other evidence. The judge then found defendant guilty of the offenses noted above.

II.

Defendant argues on appeal that the trial judge should have granted his motion to suppress his statements to police, contending: (1) he invoked his right to counsel, (2) he invoked his right to silence, (3) police did not properly advise him that he was a suspect in a murder investigation, and (4) his statements were not voluntary because he needed medical treatment during the interrogation. We reject these arguments.

The events of defendant's interrogation proceeded as follows. After arriving at the police station, defendant waited there for approximately twelve hours; questioning began around 5:50 p.m. At the beginning of his interview, defendant complained of a pain in his leg and told the detectives he wanted to go to the hospital. Detective Aliano, one of the interrogating officers, asked defendant whether he would be willing to speak with him regarding "some things that we're looking into" before going to the hospital. Defendant responded, "I mean without a lawyer present?" Aliano then explained that he had a _Miranda_ form for defendant to review, and that he could not talk to him without reviewing the form. Defendant replied that he would "answer what questions I can without a lawyer present."

The detectives then reviewed the _Miranda_ form with defendant, going line-by-line over each statement of rights. When the officer asked defendant if he understood the line advising that he had the right to speak with a lawyer, defendant responded, "Mm-hm. But I don't have a lawyer present 'cause I'd have to get one, right?" The detective began to respond, "Exactly. 'If you want . . . ,'" but defendant cut him off and continued reading the portion regarding his right to counsel. Upon reaching the bottom waiver paragraph, defendant read the

line, "I am willing to talk," and then stated, "[A]nd answer certain questions I'll add to that." Defendant continued reading and then said, "You're making me sign . . . that I don't want a lawyer."

Following this statement, Detective Aliano explained the purpose of the waiver form, stating, "At any time you have the right to stop talking. So if there's anything that you don't want to talk about you can always stop talking to us about that and ask for an attorney." In order to ensure defendant understood, Detective Aiello had defendant read the waiver paragraph again. The following exchange then occurred:

> Q: Do you understand that? Are you willing to talk to us and answer questions whatever – like you said certain questions . . .
>
> A: Yeah
>
> Q: . . . without a lawyer right now?
>
> A: Mm-hm.
>
> Q: Okay. Then sign the form right there. I just want to make sure that you understand it and we're clear as to – as to what, you know, it is that you're reading.

Defendant signed the waiver form and the officers proceeded with questioning. At one point during the interview, defendant stated he needed "physical help" and was "craving a doctor right now." The detectives requested emergency medical services and informed defendant an ambulance was on the way, and they

obtained defendant's permission to continue talking while they waited. Shortly thereafter, approximately thirty-five minutes after the Miranda warnings, the detectives informed defendant his grandmother was dead and they believed he killed her. The detectives also told defendant he was being charged with murder and attempted to induce defendant to confess. Defendant eventually responded, "I'm pleading the Fifth. I'm not talking to you guys anymore." The detectives then ended the interview.[2]

Following the Miranda hearing regarding these events, the trial judge denied defendant's motion to suppress his statements. The judge determined defendant did not invoke his right to counsel, finding defendant "made reference to . . . not having a lawyer at this time and perhaps getting one or needing one. But he doesn't say when." The judge noted defendant made some ambiguous references to counsel, but determined the detectives clarified these statements "several times" in order to determine "exactly what it was that the defendant Dubas wanted[,]" in accordance with State v. Alston, 204 N.J. 614 (2011).

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[2] The record shows one of the detectives asked defendant several additional questions after this point. The trial judge noted this final portion should be suppressed but found defendant did not make any additional admissions. The judge also acknowledged defendant planned to use some of his statements as part of his defense strategy.

The trial judge then found defendant invoked his right to remain silent near the end of the interview when he stated "I'm not talking to you guys anymore." Last, the judge discussed how the detectives did not tell defendant he would be questioned about his grandmother at the beginning of the interview. Noting it was a "close call," the judge found the police did not purposely delay filing formal charges in "bad faith" in order to interview defendant without informing him of the situation.

In reviewing a motion to suppress, we "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Elders, 192 N.J. 224, 243 (2007) (citation omitted). However, the trial court's application of the law to the factual findings is not given the same deference. State v. Handy, 206 N.J. 39, 45 (2011).

We first address defendant's argument regarding his right to counsel. When a defendant challenges a statement made during a police interrogation, the State must prove beyond a reasonable doubt that the waiver of the defendant's Miranda rights "was knowing, intelligent, and voluntary in light of all the circumstances." State v. Presha, 163 N.J. 304, 313 (2000). If an individual "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before

speaking there can be no questioning." Miranda, supra, 384 U.S. at 444-45, 86 S. Ct. at 1612, 16 L. Ed. 2d at 707.

Our Supreme Court has held that "a suspect need not be articulate, clear, or explicit in requesting counsel; any indication of a desire for counsel, however ambiguous, will trigger entitlement to counsel." State v. Reed, 133 N.J. 237, 253 (1993). To determine whether an individual has invoked his or her right to counsel, our courts employ a "totality of the circumstances approach that focuses on the reasonable interpretation of [the] defendant's words and behaviors." State v. Diaz-Bridges, 208 N.J. 544, 564 (2012).

Should a suspect's "words amount to even an ambiguous request for counsel, the questioning must cease, although clarification is permitted; if the statements are so ambiguous that they cannot be understood to be the assertion of a right, clarification is not only permitted but needed." Alston, supra, 204 N.J. at 624. In responding to an ambiguous statement, the officer must limit himself or herself to clarification, "not questions that operate to[] delay, confuse, or burden the suspect in his assertion of his rights." State v. Johnson, 120 N.J. 263, 283 (1990) (citation omitted).

Defendant argues his statements indicating his willingness to answer questions without a lawyer present were "at least

ambiguous," requiring the detectives to "confirm or clarify whether he was asserting his right to counsel." Although the trial judge found the detectives did so "several times," defendant maintains the detectives "did not clarify defendant's inquiries or references to obtaining counsel; they bypassed it."

Defendant's argument lacks merit. The record clearly shows that in response to defendant's ambiguous statements regarding counsel, the detectives took the time to carefully ensure he understood he was waiving this right. Although the detectives may not have asked defendant point-blank, "Do you want a lawyer," as the interrogating officer did in Alston, supra, 204 N.J. at 626, the detectives made significant efforts to ensure defendant understood his rights before he signed the waiver form. Under the totality of the circumstances, we discern no basis for disturbing the trial judge's conclusion that defendant waived his right to counsel knowingly, intelligently, and voluntarily.

Defendant similarly argues his statements to police were inadmissible because he invoked his right to remain silent. When a defendant unambiguously invokes his right to silence, interrogation must immediately cease. State v. Maltese, 222 N.J. 525, 545 (2015). However, where the invocation is ambiguous, the officers must "stop the interrogation completely"

or "ask only questions narrowly directed to determining whether defendant [is] willing to continue." Ibid. (alteration in original) (quoting Johnson, supra, 120 N.J. at 284). Whether the defendant has invoked his or her right turns on the totality of the circumstances. Diaz-Bridges, supra, 208 N.J. at 569.

In Maltese, supra, 222 N.J. at 546, our Supreme Court held a suspect's repeated statements to interrogating officers that he wanted to speak with his uncle before answering questions constituted an invocation of the right to remain silent. Defendant argues the same conclusion applies here, contending he invoked his right to silence at several points during the interrogation; specifically, when he told the detectives he would only answer "certain questions" and that there were some questions he could not answer, when he said, "You're making me sign that I don't want a lawyer," and when he told the officers he needed "help." We disagree. Based on the totality of the circumstances, we find these statements do not constitute ambiguous invocations of the right to silence. We therefore reach the same conclusion as the trial judge, that defendant did not invoke his right to silence until he said he was "pleading the Fifth" in response to the questions about his grandmother's death.

Next, defendant argues his Miranda waiver was involuntary because the detectives did not inform him he was a murder suspect at the beginning of the interview, in violation of State v. A.G.D., 178 N.J. 56 (2003), and its progeny. Defendant contends the trial court's finding was erroneous because there is no "bad faith" requirement in the A.G.D. test.

In A.G.D., our Supreme Court held a defendant's Miranda waiver was invalid because the police "did not inform him that an arrest warrant had been issued against him." Id. at 66. The Court continued, "Without advising the suspect of his true status when he does not otherwise know it, the State cannot sustain its burden to the Court' satisfaction that the suspect has exercised an informed waiver of rights . . . ." Id. at 68. Defendant contends he did not knowingly waive his rights under this standard because police did not inform him he was being charged with murder until approximately thirty-five minutes after the Miranda warnings.

This argument lacks merit. In State v. Nyhammer, 197 N.J. 383, 404-05, cert. denied, 558 U.S. 831, 130 S. Ct. 65, 175 L. Ed. 2d 48 (2009), our Supreme Court distinguished A.G.D., noting in the absence of an arrest warrant or criminal complaint, a defendant's status as a suspect "is not an objectively verifiable and discrete fact" for the interrogating officers.

Rather than applying a bright-line rule, the Court held the failure to inform a defendant of his suspect status at the time of the Miranda warnings is a factor in the totality-of-the-circumstances test for determining whether the suspect validly waived his rights. Id. at 405, 407-08.

Applying this standard, we find the trial court appropriately determined defendant knowingly and voluntarily waived his rights. Unlike A.G.D., at the time of the interrogation, police obtained search warrants but they had not filed an arrest warrant or criminal complaint against defendant. Moreover, shortly after completing the Miranda waiver form, the detectives began asking defendant questions about his grandmother's car. Although this occurred after the initial waiver, defendant clearly demonstrated later in the interview he had the mental capacity to assert his rights. The detectives further asked defendant if he knew why he was being questioned, to which defendant replied, "[b]ecause of drugs." Detective Aliano responded, "Well, and – other things, too[,]" and asked defendant if he knew what else they might ask about. Defendant responded, "The fact that I was in my grandma's car."

Based on these exchanges, as well as defendant's review of the Miranda waiver form, it is clear defendant was generally aware of the relevant circumstances and therefore made a valid

waiver of his Miranda rights. We are satisfied the trial court's conclusion was not erroneous.

Last, defendant contends the State did not prove his statements were voluntary, arguing because he was in custody for twelve hours prior to the interrogation, and because he needed medical treatment, his decision-making ability was impaired. We disagree. Based on our review of the record, it is clear that despite defendant's alleged medical issues he was attentive and competent during the interview. We find no basis to disturb the trial judge's ruling on defendant's motion to suppress.

III.

Defendant next argues the trial judge erred by denying his motion to suppress the physical evidence seized from his person and his grandmother's car. Defendant contends the police violated his Fourth Amendment rights by stopping him without reasonable suspicion and subsequently seizing the items during a warrantless search. Defendant further argues, because the police violated his rights, the court should have suppressed the physical evidence and his statements as "fruits" of the illegal search and seizure. We disagree.

During trial, three Clifton police officers testified to the events of defendant's initial arrest. On April 1, 2011, at approximately 6:30 a.m., Officer Justin Varga arrived at

Maplewood Avenue, a residential neighborhood, due to a report of a suspicious individual ringing doorbells asking for a drink. Upon arriving at the scene, Officer Varga observed a parked 1992 Saturn car. Officer Varga approached the vehicle in his marked police car and activated his overhead lights. At this point, defendant exited the Saturn car and walked toward Officer Varga, stating to the officer that his car would not start.

Officer Varga walked with defendant back to the Saturn. Defendant got into the driver's seat, but the car did not start when defendant turned the key. Varga noted he was not investigating a crime during this time, but was trying to help defendant as a "community caregiver." Officer Varga's backup, Officer Hriczov, arrived at the scene, and defendant was asked to produce his license. When the police noticed defendant's license said he lived in Wayne, defendant told police he had been living with his grandmother in Clifton, at her home on Knapp Avenue, for approximately one week. Defendant stated he borrowed the car from his grandmother.

While speaking with defendant, the officers observed hypodermic needles and an open needle in the front passenger seat of defendant's vehicle. The officers asked defendant where he was coming from, and defendant responded he had been at a needle exchange in Paterson and was now returning home to Knapp

Avenue. However, when the officers asked defendant why his car was facing Paterson since he had come from that direction, defendant became "nervous [and] flustered." Officer Varga further noticed "six glassine baggies" and a used hypodermic needle outside defendant's driver-side window.

Another officer, Officer Eliasz, arrived at the scene. Without entering the vehicle, Officer Eliasz looked through the car windows and observed two hypodermic syringes and glassine envelopes consistent with heroin use on the back seat and floor. Defendant told the officers these items "must be one of my friend's." Officer Eliasz proceeded to search the car and further discovered purple bags, which he suspected contained cocaine, under an ashtray in the center console. Defendant again denied the substances were his. Police then placed defendant under arrest for possession of controlled substances.

Reviewing this testimony, the trial judge found the police acted appropriately in arresting and searching defendant. The judge noted Officer Varga first approached defendant's car as a community caretaker, and then observed the needles and heroin outside the car under the plain view exception to the warrant requirement. Officer Eliasz further looked in the vehicle and noticed a syringe and heroin envelopes in plain view. At that point, the judge determined the officers had probable cause to

arrest defendant for heroin possession, and therefore the officers appropriately searched defendant's car and backpack under the search incident to arrest doctrine. The judge ruled all the physical evidence was admissible except the cocaine, which was not in a position where defendant could have reached it during the arrest.

The Fourth Amendment to the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution preclude the police from undertaking a warrantless search or seizure unless the search or seizure falls within one of the few exceptions to the warrant requirement. State v. Rodriguez, 172 N.J. 117, 125 (2002) (quoting State v. Maryland, 167 N.J. 471, 482 (2001)). These exceptions include limited instances where police are performing a community caretaking function, State v. Vargas, 213 N.J. 301, 305 (2013); when items are found in plain view, State v. Gonzales, 227 N.J. 77, 101 (2016); and when a search is incident to a lawful arrest, State v. Minitee, 210 N.J. 307, 318 (2012).

First, the community caretaking doctrine excuses the warrant requirement when police officers are acting "to ensure the safety and welfare of the citizenry at large." State v. Diloreto, 180 N.J. 264, 276 (2004) (citation omitted). Police must be acting in a way that is unrelated to their criminal

investigatory duties, and courts should use a reasonableness standard to determine whether police conduct was appropriate under the circumstances. Id. at 275-76.

Next, our Supreme Court developed a three-part test to determine whether the plain view exception may excuse a warrantless search. State v. Earls, 214 N.J. 564, 592 (2013). Specifically, the doctrine requires (1) the officer must be "lawfully in the viewing area"; (2) it must be "immediately apparent" to the officer that the items in plain view "were evidence of a crime" or are contraband; and (3) the evidence must be discovered "inadvertently." Ibid. (quoting State v. Mann, 203 N.J. 328, 341 (2007)).[3]

Finally, under the search incident to arrest doctrine, police may search a person and the area within his immediate grasp during a legal arrest in order to ensure their safety and prevent the destruction of evidence. See Minitee, supra, 210 N.J. at 318; State v. Pena-Flores, 198 N.J. 6, 20 (2009) ("[T]he search incident to arrest exception is focused on the arrestee himself and on eliminating his potential to endanger the police or destroy evidence."), overruled on other grounds by State v.

[3] Our Supreme Court recently eliminated the "inadvertence prong" from the plain-view exception to the warrant requirement, applying this new rule of law prospectively. See Gonzales, supra, 227 N.J. at 101. Therefore, we analyze the circumstances in the instant matter under the prior three-prong test.

Witt, 223 N.J. 409 (2015). The search can occur prior to the arrest if it is "part of a single uninterrupted transaction." State v. O'Neal, 190 N.J. 601, 614 (2007) (quoting State v. Bell, 195 N.J. Super. 49, 58 (1984)). However, the doctrine does not apply where a suspect "has no capacity to reach the interior of the vehicle to destroy evidence or to endanger the police." State v. Dunlap, 185 N.J. 543, 548-49 (2006).

Applying these standards, we find the trial judge did not abuse his discretion in denying defendant's motion to suppress the physical evidence. Although he activated his overhead lights upon arriving at the scene, it is clear Officer Varga first approached defendant's car pursuant to his role as a community caretaker in order to help defendant start his car. Therefore, he was lawfully beside defendant's car when he "inadvertently" noticed, in plain view, the "immediately apparent" evidence of contraband. Earls, supra, 214 N.J. at 592.

The trial judge appropriately determined the situation then evolved into a search incident to arrest. Although defendant was outside the vehicle, because he was not yet handcuffed, the judge found the officers had the right to "search the car [and] the immediate area within the defendant's grasp . . . to see if there [were] any weapons, to make sure they were not unsafe."

The judge included officer Eliasz's search of defendant's backpack under the reasoning, finding it also could have contained a weapon. The judge further determined the search occurred "simultaneously" with the arrest. We therefore discern no basis to disturb the trial judge's well-reasoned findings and conclusions regarding the arrest and search.

Defendant further contends the police unlawfully obtained his statements and seized the additional evidence without a warrant as "fruits" of the unlawful search, including a letter, cell phones, defendant's jeans and sneakers, the DNA sample, a receipt, and the jewelry. However, Detective Aliano testified police obtained search warrants for the car, the grandmother's home, and defendant's clothes and bag prior to his interrogation. Because defendant's initial arrest was valid, his argument with regard to the other evidence lacks merit.

IV.

Last, defendant argues his sentence was improper and excessive because the court failed to appropriately weigh the aggravating and mitigating factors during sentencing. We disagree.

We maintain a limited scope of review when considering the trial court's sentencing determinations on appeal. State v. Roth, 95 N.J. 334, 364-65 (1984). We will ordinarily not

disturb the sentence imposed unless it constitutes a clear error of judgment or "shocks the judicial conscience." State v. Blackmon, 202 N.J. 283, 297 (2010) (quoting Roth, supra, 95 N.J. at 363-65). We are bound to affirm so long as the judge properly identifies and balances the aggravating and mitigating factors, and their existence is supported by sufficient credible evidence in the record. State v. Cassady, 198 N.J. 165, 180-81 (2009). Remand may be required if we determine the sentencing judge failed to find mitigating factors that "clearly were supported by the record." State v. Bieniek, 200 N.J. 601, 608 (2010).

Here, the judge found aggravating factors N.J.S.A. 2C:44-1(a)(2) (seriousness of the harm including vulnerability of the victim); (3) (risk of reoffending); (6) (prior criminal record); (9) (need for deterrence); (12) (offense against a person sixty years or older); and (13) (using a stolen motor vehicle in the course of the crime), and gave specific reasons for his findings. The judge then found mitigating factors N.J.S.A. 2C:44-1(b)(4) (substantial ground excusing defendant's conduct); (7) (defendant led a law-abiding life); and (11) (excessive hardship).

Defendant argues the trial judge erred by failing to give more weight to the mitigating factors, particularly factor

N.J.S.A. 2C:44-1(b)(4), and also erred by rejecting defendant's offer of mitigating factors (3) (defendant acted under strong provocation); (8) (defendant's conduct was the result of circumstances unlikely to reoccur); and (9) (character of defendant indicates he is unlikely to reoffend). Defendant further contends the judge failed to explain the weight he applied to these factors. However, the record shows the trial judge thoroughly reviewed and credited defendant's evidence that his conduct was exacerbated by his use of Prozac. The trial judge also appropriately rejected mitigating factors (3), (8), and (9), as the record does not support their application. Moreover, although the trial judge did not explicitly state the weight he assigned to each mitigating factor, the record shows he clearly explained his reasoning for his findings.

Defendant also argues the judge's reasoning for finding aggravating factors N.J.S.A. 2C:44-1(a)(2), (3), (6), and (9) was erroneous. First, defendant argues the judge double counted factor (2) because the harm to the victim was already part of the aggravated manslaughter conviction. However, the trial judge did not base his finding solely on the harm defendant inflicted, but rather on the vulnerability of the victim.

Next, defendant contends the judge incorrectly found aggravating factor (3) (risk of reoffending) and (6) (prior

criminal record) because he also found mitigating factor (7) (defendant led a law-abiding life). However, the judge made clear he was only finding factor (7) to a "slight extent," noting although defendant lived most of his life without incident, he fell into the habit of using heroin, an illegal substance, almost every day. The judge found this drug use and his mental issues suggested he was at risk for reoffending. Last, defendant argues the judge erred by giving aggravating factor (9) significant weight. However, we find the judge provided adequate reasons for finding this factor based on the violence in the state and the nation at large.

In addition to challenging the judge's findings on the specific aggravating and mitigating factors, defendant also argues the twenty-four-year sentence for the aggravated manslaughter conviction was excessive because the judge did not properly balance and explain the weight assigned to these factors. However, the record clearly shows the judge "qualitatively assessed" each factor and assigned each factor the appropriate weight. State v. Fuentes, 217 N.J. 57, 72-73 (2014). We reject defendant's contention that the aggravating and mitigating factors were in "equipoise" and find the judge did not abuse his discretion by imposing a sentence closer to

the maximum term of thirty years for an aggravated manslaughter conviction. N.J.S.A. 2C:11-4(c).

Finally, defendant contends the trial judge erred by denying his motion for reconsideration of his sentence. Because we find the trial judge did not abuse his discretion during sentencing, this argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION