SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1085-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY F. NOVELLINO,

Defendant-Appellant.

Submitted February 28, 2017 – Decided August 10, 2017

Before Judges Fisher and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Indictment No. 11-02-0199.

Joseph E. Krakora, Public Defender, attorney for appellant (Jay L. Wilensky, Assistant Deputy Public Defender, of counsel and on the brief).

Fredric M. Knapp, Morris County Prosecutor, attorney for respondent (Erin Smith Wisloff, Supervising Assistant Prosecutor and Paula C. Jordao, Assistant Prosecutor, on the brief).

PER CURIAM

Judith Novellino[1] was murdered on June 19, 2010. She had been stabbed eighty-four times and a pig mask covered her face. A jury convicted her former husband, defendant Anthony Novellino, of first-degree murder and other offenses. Finding no merit in defendant's arguments, which include challenges to the admission of evidence regarding the pig mask and the denial of a suppression motion, we affirm.

Defendant was charged in an indictment with knowing or purposeful murder, N.J.S.A. 2C:11-3(a)(1) and (2), third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d); hindering apprehension, N.J.S.A. 2C:29-3(b)(1); and tampering with physical evidence, N.J.S.A. 2C:28-6(1).

Prior to trial, Judge Robert J. Gilson conducted an evidentiary hearing on defendant's motion to suppress statements he made on four separate occasions after he was taken into custody. The judge issued an order and a detailed written decision granting the motion in part and denying it in part. The matter then proceeded to trial.

[1] Because defendant and the victim share a surname, for ease of reference we refer to the victim by her first name. We intend no disrespect in doing so.

The trial evidence showed that on June 8, 2010, defendant and Judith were divorced following a thirty-seven year marriage. Under their divorce property settlement agreement, defendant retained the marital residence but was required to pay Judith $110,000 within sixty days for her interest in the home. Judith was required to remove her property from the home by June 22, 2010. She retained all of the couples' collectible figurines except one, a figurine of a pig, which defendant retained.

Eleven days later, on June 19, 2010, defendant and Judith's daughter, Christina, went to the former marital home. Christina walked upstairs to the bathroom, where she found Judith's blood-covered body with a pig mask draped over Judith's face. The police were called and responded to the scene.

The police attempted to contact defendant at his place of employment, but defendant had not shown up for his scheduled shift that day or the day before. The police also searched the house and found a large wood-handled knife and a smaller knife in an alcove on the first floor of the home.

The police obtained information from defendant's email account showing communications with a woman in Puyallup, Washington. They contacted the woman, confirmed she had been in contact with defendant, and on June 24, 2010, located defendant in a local Puyallup motel. Defendant was taken into custody by

U.S. Marshals on charges of terroristic threats against Judith's divorce attorney, and was turned over to the local Puyallup Police Department.

Photographs taken of defendant showed a cut on the palm of his right hand and bruising on his right hand and knuckles. A letter defendant had written was retrieved from his motel room. In part, it said, "Sorry for everything, but it was — wasn't my fault, she jabbed me first."

On June 28, 2010, Morris County Prosecutor's Office Detective Steven Wilson, who had flown to Washington, transported defendant back to New Jersey and to the Morris County Jail. On July 29, defendant made a request in the jail to speak with Denville Police Captain Paul Nigro.[2] He also completed a written inmate request form asking that Nigro contact him "ASAP." Wilson and Nigro met with defendant in the jail, advised defendant of his Miranda[3] rights, and recorded their conversation. Defendant discussed the divorce and explained that on June 19, 2010, he arrived home to find Judith's car at the house. He said he did not park his car

[2] Defendant and Nigro had a prior personal relationship. While defendant was in the Puyallup jail, defendant asked to speak with Nigro. On June 26, 2010, Nigro met with defendant in the Puyallup jail and their conversation was recorded.

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

in the driveway because he was concerned a moving truck might arrive. Instead, he parked near a neighbor's house, walked through his backyard, and entered the rear door of the house. He heard a toilet flush upstairs, and went upstairs where he saw Judith in the bathroom.

Defendant said Judith had a knife in the bathroom and threatened him with it. He said Judith attempted to jab him with the knife, a struggle ensued, and he cut his hand on the knife. He recalled hitting Judith twice with the knife but denied stabbing her eighty-four times. Defendant said everything happened in fifteen seconds and his heart was pounding. According to defendant, he then picked up the knife from the floor, washed his hands, and washed the knife because it was covered in blood. Defendant denied being angry, but admitted "what happened was wrong."

Defendant also stated that when he left the bathroom, he saw the messy hall closet, picked a pig mask out of it, and threw the mask into the bathroom. He denied placing the mask on Judith's face. He told the officers he threw the mask because "the closet is a pigpen."

Defendant then went downstairs and washed his hands in the kitchen. Defendant denied planning anything and stated that when he went downstairs he threw the knife under the stairwell. Defendant removed his bloody shoes, put them in a bag, and later

discarded the bag at a restaurant somewhere between New Jersey and Ohio. When he left the house, he did not know where he was going, but eventually traveled to Washington. He said he went to Washington to give his car to a woman's daughter and intended to return to New Jersey to "own up to everything."

On July 1, 2010, defendant again requested to speak with Wilson and Nigro. They met with defendant in the jail, advised him of his Miranda rights, and recorded their conversation with him. Defendant admitted that in the days preceding the murder, he sent pictures to Judith's family members showing the "smelly" and "messy" conditions of the house due to an incontinence condition from which she suffered. He explained, however, that he was not "upset to the point that [he] would do something like" what was done to Judith.

Defendant told the officers that when he found Judith in the house, he asked her if she needed help moving things. He said Judith was upset and that he was nervous when he saw the knife in the bathroom because he feared Judith intended to use it or was carrying it for protection. He said Judith was upset that he was in the house and picked up the knife when she saw him.

Defendant claimed he "was in the wrong place at the wrong time" and "was a different person" during the fifteen-second incident. He said that when Judith pointed the knife at him, he

felt threatened. Defendant recalled struggling for the knife, stabbing Judith twice, and feeling, "like something was controlling him." He denied being physically capable of stabbing Judith eighty-four times. He was afraid Judith was dead, but nevertheless washed his hands, took the pig mask from the closet, and threw it into the bathroom. Defendant denied placing the mask on Judith's face. Defendant also acknowledged throwing the knife under the stairs to hide it.

A sheriff's officer collected evidence from the scene. He retrieved the pig mask, which was on Judith's face, and he testified it was oriented in alignment with Judith's facial features. He also recovered two knives from underneath the stairs, one covered in dust and the other without any dust. The knife that was not covered in dust had an eight-inch blade and a wooden handle.

Swabs of blood were collected from various places and items within the home. DNA testing showed that Judith's blood was found in the sink, on the pig mask, and on the eight-inch knife blade found under the staircase. Defendant was identified as the source of the DNA profile from a blood swab collected near the nozzle of the kitchen sink.

The State presented the testimony of an expert in bloodstain analysis, who testified that based on the blood found at the scene,

and the lack of visible blood on the mask, the mask was "introduced" after Judith was stabbed. He also testified that the blood patterns showed Judith had attempted to defend herself.

The medical examiner determined that Judith suffered eighty-four stab wounds, including: five to her face; eleven to her neck; nineteen to her right shoulder; three to her right breast; three to her left breast; four to her chest; thirteen to her abdomen; fifteen to her hands; and seven to her back. The medical examiner testified that the wood-handled knife found under the stairs was consistent with certain of Judith's wounds that measured between eight to ten inches in depth.

The wounds resulted in numerous internal injuries, including the perforation of the small intestine and diaphragm, and a puncture to the right lobe of the right lung. The medical examiner opined that the cause of death was multiple sharp force injuries and the manner of death was homicide.

Defendant's neighbors testified that defendant expressed anger about Judith coming to the house and removing items when he was not present. He also complained about the messiness of their house, and the condition of their furniture due to Judith's incontinence condition. Defendant showed the neighbors pictures of furniture that he said Judith stained and referred to Judith as a "pig." Defendant told a neighbor that he intended to show

photographs of the stained furniture in court during the divorce proceeding to humiliate Judith. He also asked neighbors to telephone him if they saw Judith entering the home when he was not present.

Defendant told a neighbor he was upset about the divorce, he would not go "down without a fight . . . [and he] would get the last laugh." Four days before Judith's murder, defendant brought the neighbor a plant and said, "Here, I was going to put it on Judy's grave, but it was too pretty."

The jury found defendant guilty of all of the charges. Defendant was sentenced to a fifty-year custodial term on the murder charge, subject to the requirements of the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Following an appropriate merger, the judge imposed concurrent three-year prison terms on the other offenses.

On appeal, defendant makes the following arguments:

> POINT I
>
> THE TRIAL COURT ERRED PREJUDICIALLY IN DENYING DEFENDANT'S MOTION TO EXCLUDE EVIDENCE OF A MASK ON THE VICTIM'S FACE.
>
> POINT II
>
> [] DEFENDANT WAS GREATLY PREJUDICED BY THE JURY'S HEARING OF HIGHLY INCRIMINATING STATEMENTS MADE BY QUESTIONERS DURING HIS RECORDED STATEMENT. (Not Raised Below).

POINT III

[] DEFENDANT'S STATEMENTS WERE NOT MADE KNOWINGLY AND VOLUNTARILY, AND WERE TAKEN IN VIOLATION OF HIS ASSERTION OF THE RIGHT TO COUNSEL, NECESSITATING SUPPRESSION. [U.S. Const. amends. V, VI, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10].

POINT IV

[] DEFENDANT RECEIVED AN EXCESSIVE SENTENCE, NECESSITATING REDUCTION.

I.

We first turn our attention to defendant's contention the court erred by denying his motion to exclude evidence that the victim was found with a pig mask placed over her face. Defendant claims the evidence should have been excluded under N.J.R.E. 401 and 403, and as other bad acts evidence under N.J.R.E. 404(b). We are not persuaded.

"A trial court's ruling on the admissibility of evidence is reviewed on appeal for abuse of discretion." State v. Rose, 206 N.J. 141, 157 (2011); State v. Hess, 207 N.J. 123, 182 (2011). Under this standard, the trial court's decision to allow evidence should not be overturned "unless it can be shown that the trial court palpably abused its discretion, that is, that its finding was so wide [of] the mark that a manifest denial of justice resulted." State v. Lykes, 192 N.J. 519, 534 (2007) (alteration in original) (quoting Verdicchio v. Ricca, 179 N.J. 1, 34 (2004)).

If the trial court does not determine the admissibility of evidence under the correct legal standard, however, its decision is not afforded any deference and we review the issue de novo. State v. Reddish, 181 N.J. 553, 609 (2004).

Judge Gilson denied the motion to exclude the evidence in a detailed and well-reasoned oral decision, and subsequent written order and statement of reasons. We have carefully considered defendant's assertions, find they are without merit sufficient to warrant discussion in a written opinion, Rule 2:11-3(e)(2), and affirm the court's order denying defendant's motion substantially for the reasons set forth in Judge Gilson's oral and written decisions.

We add only the following brief comments. Defendant's arguments rest on the contention that the mask had little probative value and substantial prejudicial effect, and thus should have been excluded under N.J.R.E. 401 and 403, and under N.J.R.E. 404(b) based on an application of the State v. Cofield, 127 N.J. 328 (1992) standard. As the trial court correctly determined, however, the evidence was highly probative because it showed that prior to Judith's murder defendant expressed anger about her perceived messiness in the house, that he referred to her as a "pig," and that he admitted to police that after stabbing Judith, he threw the pig mask at her. Defendant also retained only one figurine in

the divorce property settlement agreement reached eleven days before Judith's death — a figurine of a pig.

Contrary to defendant's assertions, evidence of the mask inferentially established defendant's identity as the murderer, corroborated defendant's admissions that he stabbed Judith, and supported the credibility of his statements to the police. It also provided proof of defendant's motive, intent, and state of mind for the stabbing, and supported the State's theory that defendant knowingly and purposely killed Judith in part because of his anger about her messiness in the household. Further, evidence concerning the mask undermined defendant's theories that he acted in self-defense or by passion or provocation. We are therefore convinced that the premise for defendant's various arguments that the court erred in admitting the evidence — that the mask had little probative value — is wholly contradicted by the record.

II.

For the first time on appeal, defendant argues that his recorded statements that were played for the jury were unduly prejudicial. Defendant contends the recordings included questions and statements by Nigro and Wilson that characterized the evidence and defendant's conduct, or constituted statements of unproven fact. Defendant asserts the court erred in admitting the recordings

because the officers' questions and statements "essentially argued the State's case."

We first note that trial counsel did not object to the introduction of the recordings based on any claim the officers' questions and statements were prejudicial or improper. We therefore review for plain error, and "disregard any alleged error 'unless it is of such a nature as to have been clearly capable of producing an unjust result.'" State v. Funderburg, 225 N.J. 66, 79 (2016) (quoting R. 2:10-2). We find no plain error here.

The recordings that were played for the jury were redacted to delete any statements by the officers and defendant that were unrelated to the commission of the crimes charged in the indictment or otherwise unduly prejudicial to defendant. Counsel reviewed and agreed to the redacted versions. There was no request to redact the officers' questions and statements defendant now claims were prejudicial, and there was no objection to the admission of the recordings into evidence. We may presume based upon trial counsel's failure to object that the officers' statements and questions were not considered by defendant to be prejudicial. See, e.g., State v. McGraw, 129 N.J. 68, 80 (1992) (finding that defendant's failure to object to a jury charge "gives rise to a presumption that he did not view its absence as prejudicial to his client's case").

Moreover, the court ensured that defendant would not suffer any prejudice as a result of any of the officers' statements or questions. After playing the July 29 interrogation recording, the court gave the following limiting instruction:

> [D]uring the playing of the interview from June 29, 2010, . . . and in the upcoming video that you're about to see concerning his interview on July 1st, 2010, you are going to hear, and you probably already heard some statements by the detectives and law enforcement personnel that interviewed him that include comments or opinions related to the credibility of the [d]efendant, and what may or may not have happened. You are not to give those comments any weight. Determining the credibility of defendant's statement and what weight to give to it is for you and you alone to determine. Similarly, you are to determine the facts. As I have instructed you, you are the sole judges of the facts.

Likewise, after the July 1, 2010 interrogation recording was played, the court repeated the limiting instruction. In the court's final instructions to the jury, it reminded the jury that where it "gave a limiting instruction as to how to use certain evidence, that evidence must be considered . . . for that purpose only."

Defendant does not challenge the substance of the limiting instructions and acknowledges they were "accurate." Nevertheless, he claims it was "impossible" for the jury to heed the judge's instruction and, as a result, he suffered "severe prejudice." We disagree. We presume that the jury followed the court's

instructions, State v. Smith, 212 N.J. 365, 409 (2012), and the jury therefore did not give "any weight" to the "comments or opinions" expressed by the officers during the interrogation. There is no basis in the record to support a contrary conclusion. Thus, despite defendant's contention, he cannot demonstrate that the officers' statements about which he now complains caused him any prejudice.

Defendant relies on our decision in State v. Laboy, 270 N.J. Super. 296, 302-09 (App. Div. 1994), where we held that it was reversible error to permit an officer to testify about a non-testifying co-defendant's statement implicating the defendant. We rejected the State's contention the statement was admissible because it showed what prompted the defendant to confess and reasoned that the defendant's confrontation rights as defined in Bruton v. United States, 391 U.S. 123, 126, 88 S. Ct. 1620, 1622, 20 L. Ed. 2d 476, 479 (1968), are violated when a co-defendant's confession implicating the defendant is admitted without an opportunity to question the co-defendant. Id. at 305. Here, admission of the officers' statements and questions during the interrogation do not implicate his confrontation rights under Bruton and, therefore, our holding in Laboy is inapposite.

We are also convinced that even assuming the statements of the officers were admitted in error, they were not clearly capable

of producing an unjust result. R. 2:10-2. Again, we are convinced the evidence against defendant was overwhelming. See Sowell, supra, 213 N.J. at 107-08; Nero, supra, 195 N.J. at 407. And, even if all of the officers' questions and statements and defendant's responses were redacted from the recordings, defendant's remaining responses included numerous and detailed admissions that he stabbed Judith, threw a pig mask on her face, hid the knife, discarded his shoes covered with Judith's blood, and fled. Thus, any alleged error in failing to sua sponte redact the recordings to eliminate the officers' statements and questions was not clearly capable of producing an unjust result.

III.

Defendant also contends the court erred by denying his motion to suppress statements he made during the June 29 and July 1, 2010, recorded police interrogations that were introduced as evidence at trial. Defendant argues he was questioned by the police on four occasions, that his invocations of his right to counsel were not honored, he was deprived of a right to contact counsel, and the officers misled him by making statements that "could be construed as an offer of leniency in return for his confession to

the crime." Defendant therefore asserts the June 29 and July 1 statements should have been suppressed.[4]

At a hearing challenging the admission of statements made during a custodial interrogation, the "State must prove beyond a reasonable doubt that a defendant's confession was voluntary and was not made because defendant's will was overborne," State v. Knight, 183 N.J. 449, 462 (2005), and "the defendant was advised of his rights and knowingly, voluntarily and intelligently waived them," State v. W.B., 205 N.J. 588, 602 n.3 (2011).

When reviewing a trial court's denial of a motion to suppress a defendant's statements, we must "engage in a 'searching and critical' review of the record." State v. Maltese, 222 N.J. 525, 543 (2015) (quoting State v. Hreha, 217 N.J. 368, 381-82 (2014)), cert. denied, ___ U.S. ___, 136 S. Ct. 1187, 194 L. Ed. 2d 241 (2016). We defer to findings supported by sufficient credible evidence in the record, particularly when they are grounded in the judge's feel of the case and ability to assess the witnesses' demeanor and credibility. State v. Robinson, 200 N.J. 1, 15 (2009); State v. Elders, 192 N.J. 224, 243-44 (2007). This standard of

[4] The court suppressed statements made by defendant to the police while being transported from Washington to New Jersey. The court denied defendant's request to suppress the recorded statements he made to Nigro on June 26, 2010, in Washington, but none of those statements were introduced at trial.

review applies even when the motion court's "factfindings [are] based on video or documentary evidence," such as recordings of custodial interrogations by the police. State v. S.S., ___ N.J. ___, ___ (2017) (slip op. at 24-25).

We will not reverse a motion court's findings of fact based on its review of a recording of a custodial interrogation unless the findings are clearly erroneous or mistaken. Id. at 27. We review issues of law de novo. Id. at 25; State v. Shaw, 213 N.J. 398, 411 (2012).

The determination of whether the State has satisfied its burden of proving beyond a reasonable doubt that a defendant's statement was voluntary requires "a court to assess 'the totality of the circumstances, including both the characteristics of the defendant and the nature of the interrogation.'" Hreha, supra, 217 N.J. at 383 (quoting State v. Galloway, 133 N.J. 631, 654 (1993)). The court must determine "whether, under the totality of the circumstances, the confession is 'the product of an essentially free and unconstrained choice by its maker' or whether 'his will has been overborne and his capacity for self-determination critically impaired.'" State v. Pillar, 359 N.J. Super. 249, 271 (App. Div.) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225-26, 93 S. Ct. 2041, 2046-47, 36 L. Ed. 2d 854, 862 (1973)), certif. denied, 177 N.J. 572 (2003). The "factors relevant to that analysis

include 'the suspect's age, education and intelligence, advice concerning constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment and mental exhaustion were involved.'" Hreha, supra, 217 N.J. at 383 (quoting Galloway, supra, 133 N.J. at 654). The court should also consider defendant's prior encounters with law enforcement and the period of time that elapsed between the administration of Miranda warnings and defendant's confession. Ibid.

Defendant argues that the June 29 and July 1, 2010 statements should have been suppressed because the officers failed to honor his invocation of his right to counsel. We disagree. "Once an accused invokes the right to counsel, that right must be 'scrupulously honored.'" State v. Chew, 150 N.J. 30, 61 (1997) (quoting Michigan v. Mosley, 423 U.S. 96, 103, 96 S. Ct. 321, 326, 46 L. Ed. 2d 313, 321 (1975)). That "entails terminating all questioning 'until counsel has been made available [or] unless the accused [] initiates further communication, exchanges, or conversations with the police.'" Ibid. (quoting Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378, 386 (1981)).

If an accused "'initiates further communication, exchanges, or conversations with the police,' the police officer may continue

the interrogation in the absence of counsel." State v. Melendez, 423 N.J. Super. 1, 29 (App. Div. 2011) (quoting Edwards, supra, 451 U.S. at 485, 101 S. Ct. at 1885, 68 L. Ed. 2d at 386), certif. denied, 210 N.J. 28 (2012). "This type of waiver requires the suspect to 'personally and specifically' initiate conversation." Id. at 30 (quoting State v. Burris, 145 N.J. 509, 519 (1996)); see also State v. Wright, 97 N.J. 113, 122 (1984) ("An accused who has expressed his desire to deal with the police only through his counsel is not subject to further interrogation until counsel has been made available, unless the accused himself initiates further communication."). "The state must prove that the initiation constituted a 'knowing, intelligent, and voluntary waiver beyond a reasonable doubt.'" Ibid. (quoting Chew, supra, 150 N.J. at 61).

The record developed on defendant's suppression motion supports Judge Gilson's determination that defendant's invocations of his right to counsel were scrupulously honored. Following the June 24, 2010 arrest, a Puyallup officer advised defendant of his Miranda rights, defendant invoked his right to counsel, and no interrogation by the Puyallup police took place.

Defendant subsequently initiated his June 26 conversation with Nigro in Washington by requesting to speak with Nigro. During the recorded conversation defendant confirmed he requested to speak with Nigro, and Nigro again advised defendant of his Miranda

rights before the conversation continued. The conversation immediately ended when defendant again invoked his right to counsel.

After being transported to New Jersey, defendant again requested to speak with Nigro. He was given a written request form in the jail which he completed. Based on his request, he met with Nigro and Wilson on June 29, confirmed he requested to speak with Nigro, and was again advised of his Miranda rights. The interrogation then commenced and subsequently ended when defendant invoked his right to counsel.

A few days later, defendant requested to speak with Nigro and again completed a written form confirming the request. On July 1, defendant met with Nigro and Wilson, confirmed he requested to speak with them, and was given his Miranda rights. The interrogation that followed ended when defendant exercised his right to not speak without counsel.

As the court correctly determined, the evidence showed that following defendant's initial invocation of his right to counsel when he first spoke to the Puyallup police captain, defendant initiated all subsequent conversations with the officers. In each instance, the officers confirmed that defendant initiated the communications, informed defendant of his Miranda rights, and questioned him only until he invoked his right to counsel. There

is sufficient credible evidence in the record amply supporting the judge's factual findings. The State therefore satisfied its burden of proving defendant knowingly and voluntarily waived his right to counsel during the recorded interrogations that were admitted as evidence at trial.

We reject defendant's contention that he was denied the opportunity to contact an attorney. There is no evidence supporting the contention. To the contrary, the record supports the court's determination that the State took no action to prevent defendant from contacting an attorney and that defendant never requested an opportunity to contact an attorney. Moreover, the officers did not have an obligation to contact or obtain an attorney for defendant and, as the court found, the officers satisfied their constitutional obligations by fully and repeatedly advising defendant that he had a right to counsel and by honoring each of his invocations of that right.

We are also not persuaded by defendant's claim that the officers enticed defendant into speaking with them by entering into an agreement with him or by promising leniency in exchange for his confession. The record supports the court's finding that there was no credible evidence of any agreement between the officers and defendant.

Defendant also claims that his statements were involuntary because during the June 26, 2010 conversation between Nigro and defendant in Washington, Nigro at one point said, "Let me help you." Defendant's assertion that the statement began a pattern of Nigro's offering "help" to the defendant finds no support in the evidence. Similarly, our review of the record does not reveal any evidence supporting defendant's claim that he was offered "leniency" in exchange for his confession.

In sum, although defendant invoked his right to counsel at different times, in each instance the invocation was scrupulously honored by the officers, and questioning continued only after defendant initiated further communications and was again fully advised of his Miranda rights. The court therefore correctly denied defendant's suppression motion and his June 29 and July 1, 2010 recorded statements were properly admitted.

IV.

Defendant argues that his aggregate fifty-year custodial sentence subject to the requirements of NERA is excessive. More particularly, he argues the court erred in its weighing of the aggravating factors and mitigating factors under N.J.S.A. 2C:44-1(a) and (b). He contends an appropriate weighing of the factors permitted only the imposition of a thirty-year sentence with a thirty-year period of parole ineligibility.

We review a "trial court's 'sentencing determination under a deferential standard of review.'" State v. Grate, 220 N.J. 317, 337 (2014) (quoting State v. Lawless, 214 N.J. 594, 606 (2013)). We may "not substitute [our] judgment for the judgment of the sentencing court." Lawless, supra, 214 N.J. at 606. We must affirm a sentence if: (1) the trial court followed the sentencing guidelines; (2) its findings of fact and application of aggravating and mitigating factors were based on competent, credible evidence in the record; and (3) the application of the law to the facts does not "shock[] the judicial conscience." State v. Bolvito, 217 N.J. 221, 228 (2014) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).

Here, the court found aggravating factor one, N.J.S.A. 2C:44-1(a)(1), "[t]he nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner," and nine, N.J.S.A. 2C:44-1(a)(9), "[t]he need for deterring the defendant and others from violating the law." The court also found mitigating factor seven, N.J.S.A. 2C:44-1(b)(7), the fact that "[t]he defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense." Defendant does not claim there is insufficient evidence in the record

supporting the court's finding of the aggravating and mitigating factors, but instead asserts that the court erred in weighing and balancing them.

Following its finding of aggravating and mitigating factors, a court must then weigh and balance the factors in a process that requires more than a quantitative comparison of "the number of pertinent aggravating factors with the number of applicable mitigating factors." State v. Fuentes, 217 N.J. 57, 72 (2014). The sentencing court must "qualitatively assess[] and assign[] weight in a case-specific balancing process." Id. at 72-73. "When the aggravating and mitigating factors are identified, supported by competent, credible evidence in the record, and properly balanced," we will not "second-guess the sentencing court" and must affirm the sentence provided it does not shock our judicial conscience. State v. Case, 220 N.J. 49, 65 (2014). If the sentencing court "forgoes a qualitative analysis" of the aggravating and mitigating factors "or provides little 'insight into the sentencing decision,' then" our deferential standard of review of a sentence will not apply. Ibid.

Applying these principles, we discern no basis to upset the sentence imposed. Judge Gilson engaged in a qualitative assessment of the aggravating and mitigating factors. The judge placed "heavy" weight on aggravating factor one because the evidence showed

defendant's actions were particularly heinous, cruel and depraved. The judge found the evidence established defendant's actions went well beyond what was required to cause Judith's death because defendant violently and brutally stabbed Judith eighty-four times, including repeated stabbings after she had already fallen to the floor. Moreover, the judge noted defendant's decision to place the pig mask on Judith's face following the brutal assault and murder as further evidence of his depravity.

The judge also placed heavy weight on aggravating factor nine. The judge reasoned there was a need for deterrence because defendant committed a serious and brutal crime but accepted no responsibility for it and expressed no remorse about it. Again, the record supports the judge's finding and its weighing of the factor.

The judge gave mitigating factor seven limited weight under the circumstances presented by the offense. The judge's finding is supported by the record because, as our Supreme Court has observed, "[t]he proper weight to be given to each [factor] is a function of its gravity in relation to the severity of the offense." Roth, supra, 95 N.J. at 368.

The judge also performed the requisite balancing of the factors, and determined the aggravating factors "substantially preponderate[d]" over the mitigating factors. The judge's careful

and thoughtful analysis and weighing of the aggravating and mitigating factors is supported by the record, was in accord with the sentencing guidelines, and did not result in a sentence that shocks our judicial conscience.

To the extent we discern any other arguments made on defendant's behalf, they are without merit sufficient to warrant discussion in a written opinion. Rule 2:11-3(e)(2).

Affirmed.