SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5470-13T4
A-0421-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JEREMY GRANT, a/k/a JAY GRANT,

Defendant-Appellant.

---

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

STEPHEN MAURRASSE,

Defendant-Appellant.

---

Submitted January 10, 2017 - Decided March 13, 2017

Before Judges Yannotti, Fasciale, and Gilson.

On appeal from Superior Court of New Jersey, Law Division, Somerset County, Indictment No. 12-03-0208.

Joseph E. Krakora, Public Defender, attorney for appellants (Margaret McLane, Assistant Deputy Public Defender, of counsel and on the brief for appellant Jeremy Grant; Frank M.

Gennaro, Designated Counsel, on the briefs for appellant Stephen Maurrasse).

Christopher S. Porrino, Attorney General, attorney for respondent (Sarah Lichter, Deputy Attorney General, of counsel and on the briefs).

Appellant Stephen Maurrasse filed a pro se supplemental brief.

PER CURIAM

A victim was robbed at knife-point by two men after responding to a Craigslist advertisement for discounted iPads and iPhones. In separate jury trials, defendants Jeremy Grant and Stephen Maurrasse were convicted of first-degree armed robbery, N.J.S.A. 2C:15-1(a), and third-degree possession of a weapon (knife) for unlawful purposes, N.J.S.A. 2C:39-4(d). Grant was sentenced to fifteen years in prison with a period of parole ineligibility as prescribed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Maurrasse was sentenced to thirteen years in prison subject to NERA. We address both appeals in this opinion and affirm defendants' convictions and sentences.

I.

The facts were developed at the trials and pre-trial hearings concerning defendants' motions to suppress their statements and evidence seized when Maurrasse was arrested.

In February 2012, the victim, J.S.,[1] saw a Craigslist advertisement for discounted Apple products. The advertisement listed a telephone number. In a series of conversations, J.S. was directed to an address in Somerville to meet the purported seller. When J.S. arrived, initially no one was present. Eventually, a man directed J.S. into an apartment building where another man was waiting in the hallway. When J.S. tried to leave, both men pulled out knives, demanded money, and took approximately $2500 in cash from him. The two men then fled on foot.

J.S. immediately reported the robbery, and later that same day he participated in a photographic identification procedure. An officer who was not involved in the investigation gave J.S. instructions on the photograph array procedure and then conducted that array. J.S. was twice shown seven photographs and each time he identified Grant's photograph as depicting one of the robbers.

Approximately two weeks later, on February 28, 2012, Grant was arrested on an outstanding municipal warrant and he was brought to the police station for questioning. Grant was given his

[1] To protect privacy interests, the victim and certain witnesses are identified by their initials.

Miranda[2] warnings. He then waived his rights, agreed to talk, and gave a recorded statement.

In his statement, Grant made a number of incriminating statements against himself and Maurrasse. While Grant denied being involved in the robbery itself, he admitted that he had exchanged text messages with Maurrasse on the day of the robbery, he had given the victim directions near the scene of the robbery, and he was near the scene of the robbery around the time that it occurred. Grant also stated that he believed Maurrasse was involved in the robbery.

As part of their investigation, the police also checked the Craigslist advertisement. A detective located another advertisement on Craigslist that listed the same telephone number as the one to which J.S. had responded. That second advertisement stated that Maurrasse was seeking employment and it identified his address in Somerville.

The police then obtained a communication data warrant (CDW) for the listed telephone number. Through the CDW, the police learned that the phone subscriber was S.C., who was Maurrasse's girlfriend and lived with Maurrasse.

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

The police also obtained copies of text messages from the phone. At his trial, Maurrasse admitted that the text messages included those he exchanged with Grant on the day of the robbery. Maurrasse also admitted that he used the same phone to call the victim.

In the text messages exchanged between Grant and Maurrasse, they discussed their need to quickly obtain money. They then discussed a potential plan to "steal" from Wal-Mart. Shortly thereafter, Maurrasse sent Grant a text message stating that someone who wanted to purchase iPhones and iPads was coming with "5K." Grant replied that "I dnt wana fuk wit it dats to much bread to get a nigga nakd as we is." Maurrasse then responded that the victim was "here" and Grant replied: "Mak sure he got da bread on him." A few hours later, Maurrasse messaged Grant asking if "[y]ou gud ova der?"

On February 28, 2012, after obtaining the statement from Grant, the police went to Maurrasse's residence. When the police knocked, S.C. answered the door. S.C. informed the police that Maurrasse was not home, but as they were talking, the police saw a man in the back of the apartment. An officer called out Maurrasse's name, stated that he wanted to talk with him, and Maurrasse began walking towards the officer. The police then entered the apartment and arrested Maurrasse.

After arresting Maurrasse, a detective informed S.C. that he would like her to come to the police station. S.C. responded that she needed to bring her child and gather her belongings. The police then accompanied S.C. into her bedroom. While in the bedroom, a detective saw a cell phone on the bed. After confirming that it was the same phone with the number used in the Craigslist advertisement, the detective seized the phone.

Maurrasse was taken to the police station for questioning. He was advised of his Miranda rights, waived those rights, agreed to speak, and gave a recorded statement. As part of that process, Maurrasse reviewed and signed a Miranda waiver form. During his statement, Maurrasse implicated himself and Grant. Maurrasse admitted he had made the Craigslist advertisement and directed the victim to the scene of the robbery. He also admitted that he was present during the robbery, but claimed that he was acting as a look out. Maurrasse went on to explain that Grant and another individual actually robbed the victim.

After they were indicted, Grant and Maurrasse moved to suppress their statements. An evidentiary hearing was conducted and the trial court denied both motions.[3] The court found that

[3] The court denied these motions in separate orders and opinions. Grant's motion was denied in an order issued on June 10, 2013, with an opinion that was dated April 9, 2013. Maurrasse's motion

both defendants were advised of their Miranda rights, knowingly and intelligently waived those rights, and gave voluntary statements. The trial court rejected Maurrasse's argument that he was tricked or coerced into giving his statements. In that regard, the court found that the police's statements to Maurrasse regarding his girlfriend were not, under the totality of the circumstances, coercive.

Maurrasse also filed a pre-trial motion to suppress the cell phone seized when he was arrested on February 28, 2012. The trial court found that the police had probable cause to arrest Maurrasse and made that arrest at his apartment. The trial court also found that the cell phone was then discovered inadvertently. Finally, the trial court found that when the police saw the cell phone, it was immediately apparent that the cell phone was subject to seizure given the police's prior investigation and knowledge of the involvement of the cell phone. Thus, the court concluded that the cell phone was lawfully seized under the plain-view exception.

As previously noted, defendants were tried separately. Grant was tried first and his trial was conducted in January 2014. Maurrasse was tried over a year later in February and March of

---

was denied in an order issued on August 28, 2013, with an accompanying opinion dated the same date.

2015. At both trials, portions of defendants' statements were admitted into evidence against them.

The State also sought to introduce redacted portions of the text messages recovered through the CDW. Defendants objected and the court in Grant's trial conducted a N.J.R.E. 104 hearing. The court rejected Grant's argument that the State had failed to give prior notice of its intention to use the text messages. In that regard, the court found that the State had produced the text messages to defendants well before either trial. The court also found that the text messages were admissible both as intrinsic evidence related to the robbery and as evidence of prior bad acts admissible under N.J.R.E. 404(b) and the Cofield[4] analysis.

Thus, redacted portions of the text messages exchanged between Grant and Maurrasse on the day of the robbery were admitted into evidence. In connection with those text messages, the State called a detective to explain some of the terminologies used in the text messages. The trial court also gave limited instructions to the jury on the allowable use of the text messages.

At his trial, Grant elected not to testify. Maurrasse, in contrast, testified in his own defense at his trial. Maurrasse claimed that he created the Craigslist advertisement at Grant's

[4] State v. Cofield, 127 N.J. 328, 338 (1992).

request. He admitted he provided the victim with the address in Somerville and that he was present when the victim arrived. Maurrasse denied being involved in the robbery, but testified that he was present when the robbery occurred and that he accepted $150 from Grant to buy food and diapers for his children. Maurrasse also testified that the text messages he exchanged with Grant discussed their need to raise money for their families. He claimed the messages were not part of a plan to commit a robbery.

The jury in each trial convicted each defendant of armed robbery and possession of a weapon for an unlawful purpose. In May 2014, Grant was sentenced to fifteen years in prison subject to NERA on the first-degree robbery conviction. A year later, in May 2015, Maurrasse was sentenced to thirteen years in prison subject to NERA on his first-degree robbery conviction. The weapons convictions against both defendants were merged with the robbery convictions.

II.

Grant and Maurrasse filed separate appeals challenging their convictions and sentences. In Grant's appeal, he raises the following six arguments:

> POINT I – DEFENDANT WAS DENIED A FAIR TRIAL BY THE COURT'S ERRONEOUS ADMISSION OF TEXT MESSAGES BETWEEN THE CO-DEFENDANTS.

A. The Text Messages About Shoplifting Were Inadmissible As N.J.R.E. [404(b)] Evidence And The Court's "Limiting" Instruction Was Insufficient[.]

B. The Co-Defendant's Text Messages Are Inadmissible Hearsay[.]

POINT II — THE ADMISSION OF IMPERMISSIBLE LAY OPINION TESTIMONY WITHOUT FOUNDATION DEPRIVED DEFENDANT OF HIS RIGHT TO A FAIR TRIAL. (Not Raised Below)

POINT III — THE ADMISSION OF TESTIMONIAL HEARSAY INDICATING THAT ANONYMOUS WITNESSES HAD IMPLICATED DEFENDANT VIOLATED DEFENDANT'S RIGHTS TO CONFRONT WITNESSESS AND TO DUE PROCESS OF LAW. U.S. CONST. AMENDS. VI, XIV; N.J. CONST. ART. I, ¶¶ 1, 10. (Partially Raised Below)

POINT IV — THE PROSECUTOR'S MISSTATEMENT OF THE LAW SURROUNDING EYEWITNESS INDENTIFICATIONS CONFUSED THE JURY AND REQUIRES REVERSAL OF DEFENDANT'S CONVICTIONS. (Not Raised Below)

POINT V — THE CUMULATIVE IMPACT OF THE ERRORS DENIED DEFENDANT A FAIR TRIAL. (Not Raised Below)

POINT VI — DEFENDANT'S SENTENCE IS EXCESSIVE BECAUSE THE COURT ERRONEOUSLY FAILED TO FIND MITIGATING FACTORS [EIGHT] AND [NINE], IMPROPERLY APPLIED AGGRAVATING FACTORS [THREE], [SIX], AND [NINE], AND FAILED TO ADEQUATELY WEIGH THE AGGRAVATING AND MITIGATING FACTORS.

In Maurrasse's appeal, he makes three arguments:

POINT ONE — DEFENDANT'S STATEMENT WAS NOT THE PRODUCT OF A VOLUNTARY, KNOWING, AND INTELLIGENT WAIVER OF HIS RIGHT TO REMAIN

> SILENT AND, THEREFORE, SHOULD HAVE BEEN SUPPRESSED BY THE TRIAL COURT
>
> POINT TWO — DEFENDANT'S MOTION TO SUPPRESS EVIDENCE WAS IMPROPERLY DENIED
>
> POINT THREE — DEFENDANT'S THIRTEEN YEAR SENTENCE WAS EXCESSIVE

Maurrasse also filed a pro se supplemental brief. In that supplemental brief, he makes additional arguments concerning why his statement should have been suppressed and his brief included the following heading:

> POINT ONE — DEFENDANT'S STATEMENT WAS NOT THE PRODUCT OF A VOLUNTARY, KNOWING, AND INTELLIGENT WAIVER OF HIS RIGHT TO REMAIN SILENT AND, THEREFORE, SHOULD HAVE BEEN SUPPRESSED BY THE TRIAL COURT.

We will begin our review with Grant's arguments, which primarily focus on evidentiary errors that allegedly occurred at his trial.

A. Grant's Appeal

1. The Admission of the Text Messages

Grant argues that the text messages sent between him and Maurrasse were erroneously admitted into evidence. First, he contends that it was an error under N.J.R.E. 404(b) to admit the text messages sent on the day of the robbery discussing a plan to steal merchandise from Wal-Mart. Second, he argues that the text messages sent from Maurrasse to him were inadmissible hearsay.

We reject both of these arguments because the text messages were part of a conversation that discussed defendants' need for money, their initial potential plan to get money by stealing from Wal-Mart, and their plan to commit robbery. Viewed in context, the text messages were admissible as intrinsic evidence of the robbery or as prior bad acts admitted for purposes of proving motive, intent, or plan.

Intrinsic evidence is "'inextricably intertwined' with the crime charged because it is not totally separate from the crime charged." State v. Rose, 206 N.J. 141, 178 (2011) (quoting Jennifer Y. Schuster, Special Topics in the Law of Evidence: Uncharged Misconduct Under Rule 404(b): The Admissibility of Inextricably Intertwined Evidence, 42 U. Miami L.Rev. 947, 950 (1988)). There are two types of intrinsic evidence. "First, evidence is intrinsic if it 'directly proves' the charged offense . . . . Second, 'uncharged acts performed contemporaneously with the charged crime may be termed intrinsic if they facilitate the commission of the charged crime.'" Id. at 180 (quoting United States v. Green, 617 F. 3d 233, 248-49 (3d Cir. 2010), cert. denied, 562 U.S. 942, 131 S. Ct. 363, 178 L. Ed. 2d 234 (2010)). Evidence that is intrinsic to the charged crime is not subject to N.J.R.E. 404(b), but needs to satisfy N.J.R.E. 403. Id. at 179.

Pursuant to N.J.R.E. 404(b), evidence of other crimes or bad acts is generally not admissible, unless used for "proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident when such matters are relevant to a material issue in dispute." In Cofield, our Supreme Court set forth a four-pronged test to govern the admission of such evidence:

> 1. The evidence of the other crime must be admissible as relevant to a material issue;
>
> 2. It must be similar in kind and reasonably close in time to the offense charged;
>
> 3. The evidence of the other crime must be clear and convincing; and
>
> 4. The probative value of the evidence must not be outweighed by its apparent prejudice.
>
> [State v. Cofield, 127 N.J. 328, 338 (1992) (quoting Abraham P. Ordover, Balancing The Presumptions of Guilt and Innocence: Rules 404(b), 608(b) And 609(a), 38 Emory L.J. 135, 160 (1989)); see also State v. Carlucci, 217 N.J. 129, 140-41 (2014) (reaffirming the Cofield test).]

The Court has also explained that the second Cofield prong "is not one that can be found in the language of [N.J.R.E.] 404(b). Cofield's second prong, therefore, need not receive universal application in [N.J.R.E.] 404(b) disputes." State v. Williams, 190 N.J. 114, 131 (2007).

Once evidence is found to be admissible, "the court must instruct the jury on the limited use of the evidence." Cofield,

supra, 127 N.J. at 340-41. "[T]he court's instruction 'should be formulated carefully to explain precisely the permitted and prohibited purposes of the evidence, with sufficient reference to the factual context of the case to enable the jury to comprehend and appreciate the fine distinction to which it is required to adhere.'" Id. at 341 (quoting State v. Stevens, 115 N.J. 289, 304 (1989)).

An appellate court gives "great deference" to a trial judge's determination on the admissibility of "other bad conduct" evidence. State v. Goodman, 415 N.J. Super. 210, 228 (App. Div. 2010) (citing State v. Foglia, 415 N.J. Super. 106, 122 (App. Div.), certif. denied, 205 N.J. 15 (2010)), certif. denied, 205 N.J. 78 (2011). We apply an abuse of discretion standard; there must be a "clear error of judgment" to overturn the trial court's determination. State v. Castagna, 400 N.J. Super. 164, 183 (App. Div. 2008) (quoting State v. DiFrisco, 137 N.J. 434, 496 (1994), cert. denied, 516 U.S. 129, 116 S. Ct. 949, 133 L. Ed. 2d 873 (1996).

Here, when the State moved to introduce the text messages at Grant's trial, the trial court conducted a N.J.R.E. 104 hearing to address the admissibility of those text messages. The court found that the text messages were admissible both as intrinsic evidence of the robbery and as evidence of Grant's motive, intent,

or plan under N.J.R.E. 404(b). We agree with the trial court's analysis.

The text messages at issue were all exchanged between Grant and Maurrasse on February 12, 2012, between 10:10 a.m. and 8:21 p.m. The text messages are part of an ongoing conversation during which defendants discussed their need to immediately obtain money. Defendants then discussed whether they could "steal" from Wal-Mart. Within hours of discussing that plan, Maurrasse informed Grant that someone, who would have "5K," was coming and wanted to buy six iPhones and four iPads. Maurrasse then stated "WE NOT LETTING THIS GO! Now way no how[.]" Shortly thereafter, Maurrasse texted, "[h]e here" and Grant responded: "Mak sure he got da bread on him[.]"

Viewed in context, this exchange is intrinsic evidence of defendants' plan to illegally obtain money. Initially, they discuss stealing from Wal-Mart. Then the plan turns to rob somebody who wanted to purchase iPhones and iPads.

The discussion concerning a potential theft from Wal-Mart is also admissible under the traditional analysis set forth in Cofield, supra, 127 N.J. at 338. Grant denied involvement in the robbery, thus his motive, intent, and plan were at issue. The text messages regarding the potential theft from Wal-Mart were sent on the same day as the robbery, and thus were close in time

and similar in design, namely to get money illegally. The text messages were authenticated and reliable. Finally, the text messages were highly probative of Grant's motive, intent, and plan and that probative value was not outweighed by the prejudice.

Furthermore, the trial court gave the jury proper instructions regarding the limited use of the text messages concerning the discussion to steal from Wal-Mart. Specifically, the court used the model instruction for N.J.R.E. 404(b) evidence, as tailored to the facts of Grant's case. Thus, the jury was instructed that they could not use those text messages as propensity evidence; rather, they could only be used to determine Grant's intentions and plan.

The text messages from Maurrasse were admissible hearsay under N.J.R.E. 803(b)(5) because the statements were made in furtherance of defendants' conspiracy to rob the victim. Grant admitted that he had been text messaging with Maurrasse on the day of the robbery. The evidence clearly supports a conspiracy between defendants.

N.J.R.E. 803(b)(5) provides that a hearsay statement is admissible against a party if "made at the time the party and the declarant were participating in a plan to commit a crime or civil wrong and the statement was made in furtherance of that plan." A

three-part test determines the admissibility of a co-conspirator's statement:

> First, the statement must have been made in furtherance of the conspiracy. Second, the statement must have been made during the course of the conspiracy. Lastly, our courts have held that there must be evidence, independent of the hearsay, of the existence of the conspiracy and defendant's relationship to it.
>
> [State v. Phelps, 96 N.J. 500, 509-10 (1984) (citations omitted).]

Here, all three parts of this test were satisfied. The text messages discussed a conspiracy to commit robbery. Maurrasse's text messages were made as part of that conspiracy. Finally, there was evidence of the conspiracy between the defendants. The victim identified Grant. Grant admitted he was text messaging Maurrasse on the day of the robbery. Moreover, the text messages were properly authenticated. Accordingly, we see no abuse of discretion in the trial court's decision to admit the text messages into evidence.

2. The Detective's Testimony Concerning the Text Messages

At Grant's trial, a detective testified as to the meaning of the slang terms used by defendants in their text messages. Although Grant did not object to that testimony during trial, on appeal he argues that it was inadmissible lay opinion testimony.

The opinions of non-expert witnesses are admissible if it "(a) is rationally based on the perception of the witness and (b) will assist [the jury] in understanding the witness' testimony or in determining a fact in issue." N.J.R.E. 701. The detective testified he was familiar with the slang terms "IDK," "SMH," "strapped," "bread," and "nakd." He then explained that "IDK" meant "I don't know," "SMH" meant "shaking my head," "strapped" meant being armed with a weapon, "bread" referred to money, and "nakd" meant being without a weapon.

The detective's knowledge regarding those terms was based on his experience as a police officer for eleven years. Thus, the testimony met the criteria of N.J.R.E. 701 and we find no abuse of discretion in the trial court's decision to admit the testimony. Indeed, we have previously held that a knowledgeable police officer can give testimony about street or gang terminology. State v. Johnson, 309 N.J. Super. 237, 263 (App. Div.), certif. denied, 156 N.J. 387 (1998) (holding that the lay-opinion of a police officer on street slang was admissible because it was of assistance to the jury in determining the meaning and context of the defendant's conversation).

Furthermore, we find no plain error in the admission of the detective's testimony. The testimony was not of the nature to

have been clearly capable of producing an unjust result. See R. 2:10-2; see also State v. Singleton, 211 N.J. 157, 182 (2012).

3. Statements Made by the Detective During Grant's Interview

During Grant's interview, one of the detectives informed him that a witness had seen him on the street talking with the victim. At trial, the detective explained that there was no such witness and that he had made up the statements as a technique to get Grant to confess to the robbery. On appeal, Grant argues that the admission of his statement made during this portion of the interview violated his constitutional right to confront a witness against him. We reject this argument for two reasons.

First, since there was no witness and the detective explained this to the jury, there was no violation of the confrontation clause. U.S. Const. amends. VI, XIV; N.J. Const. art. I ¶¶ 1, 10. Second, in interviewing suspects, police officers can make untruthful statements as part of their interrogation techniques. See State v. Cooper, 151 N.J. 326, 355-56 (1997); State v. Patton, 362 N.J. Super. 16, 30-32 (App. Div.), certif. denied, 178 N.J. 35 (2003).

Here, read in context, the detective's statements to Grant were not impermissible interrogation techniques. The victim himself had identified Grant in a photo array. Moreover, the text

messages provided strong support for Grant's involvement. Thus, to the extent that the reference to an unidentified witness was included as part of Grant's statement admitted into evidence, such inclusion was harmless error. R. 2:10-2; Singleton, supra, 211 N.J. at 182.

4. The Prosecutor's Closing Argument

Grant contends that during the closing arguments, the prosecutor misstated the law concerning eyewitness identification and because those misstatements could have confused the jury, his conviction should be reversed. Grant, however, raised no objection at trial. Moreover, the trial judge correctly informed the jury that they were to follow his instruction on the law and the court then gave the standard jury charge for in-court and out-of-court eyewitness identification. Grant raises no objection to those parts of the trial court's jury instruction.

Prosecutors are permitted to make vigorous and forceful closing arguments. State v. Jenewicz, 193 N.J. 440, 471 (2008) (quoting State v. Rose, 112 N.J. 454, 517 (1988)). To warrant reversal, the prosecutor's conduct must have substantially prejudiced defendant's fundamental right to a fair jury trial and "[t]here must be a palpable impact." State v. Roach, 146 N.J. 208, 219, cert. denied, 519 U.S. 1021, 117 S. Ct. 540, 136 L. Ed. 2d 424 (1996). Moreover, if no objection was made at the time of

trial, the remarks will generally not be deemed prejudicial. State v. Timmendequas, 161 N.J. 515, 576 (1999); State v. Ingram, 196 N.J. 23, 42-43 (2008).

Here, the prosecutor made arguments concerning the issue of identification during his closing. In that regard, he stated: "Yes, this was a stressful situation for [the victim] and in stressful situations I submit to you people are very keyed into what's happening and their surrounding and who they are dealing with." The prosecutor also argued that "two minutes might not seem like a long time in a casual event, but in a robbery where you are dealing with the folks that are robbing you, it's an eternity." In reference to the involvement of a knife, the prosecutor stated "[w]hat did [the victim] tell you? I saw the knife but I wasn't focusing on it because they had my head up and I could see their faces and I was looking right at them." The prosecutor also referenced the lighting conditions and the victim's ability to clearly see defendants. Thus, he argued that the robbery took place in the afternoon in a well-lit hallway and, while the victim stated that defendants had their hoods up, their faces were not covered.

Viewing these statements in the full context of the trial, we see no reversible error. The prosecutor fairly commented on the facts of the robbery and facts that would support the victim's

identification of Grant. Just as important, the trial court gave the proper charges to the jury regarding identification.

5. The Argument Concerning Cumulative Errors

Grant also argues that the cumulative effect of the errors he identified requires the reversal of his conviction. As we have found no merits in any of his arguments, there is no cumulative error. Furthermore, our review of the record in this matter establishes that Grant received a fair trial. See Pellicer ex rel. Pellicer v. St. Barnabas Hosp., 200 N.J. 22, 55 (2009).

6. Grant's Sentence

Appellate review of sentencing decisions is deferential and governed by an abuse of discretion standard. State v. Blackmon, 202 N.J. 283, 297 (2010). "The reviewing court must not substitute its judgment for that of the sentencing court." State v. Fuentes, 217 N.J. 57, 70 (2014). "At the time of sentencing, the court must 'state reasons for imposing such sentence including . . . the factual basis supporting a finding of particular aggravating or mitigating factors affecting sentence.'" Id. at 73 (quoting R. 3:21-4(g)); see also State v. Case, 220 N.J. 49, 54 (2014); State v. Lawless, 214 N.J. 594, 608 (2013). An appellate court must affirm a sentence unless:

> (1) the sentencing guidelines were violated;
> (2) the aggravating and mitigating factors found by the sentencing court were not based

> upon competent and 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."
>
> [Fuentes, supra, 217 N.J. at 70 (alteration in original) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).]

Whether a sentence violates sentencing guidelines is a question of law that we review de novo. State v. Robinson, 217 N.J. 594, 603-04 (2014).

Grant contends that the sentencing court improperly balanced the aggravating and mitigating factors and failed to explain the facts supporting those factors. Grant also contends that the court failed to find mitigating factors eight and nine as requested by defense counsel.

At sentencing, the court found aggravating factors three, N.J.S.A. 2C:44-1(a)(3) (the risk that defendant will commit another offense); six, N.J.S.A. 2C:44-1(a)(6) (defendant's prior criminal record); and nine, N.J.S.A. 2C:44-1(a)(9) (the need for deterrence). The court then found mitigating factor six, N.J.S.A. 2C:44-1(b)(6) (defendant would pay restitution). The sentencing judge provided sufficient explanation for the facts supporting each of these factors. The court also explained that it considered the other mitigating factors, including those argued for by defense

counsel, but did not believe those mitigating factors were applicable.

We discern no abuse of discretion in the trial court's analysis in weighing the mitigating and aggravating factors. Moreover, we perceive no abuse of discretion in the sentence imposed.

Thus, Grant's convictions and sentence are affirmed.

B. Maurrasse's Appeal

1. Maurrasse's Statements To Police

Maurrasse first argues that his statements to the police were the result of psychologically coercive police tactics. Thus, he contends that his statements were not voluntary. Prior to trial, the court conducted an evidentiary hearing and determined that the police had advised Maurrasse of his Miranda rights, Maurrasse had voluntarily and intelligently waived his rights, and he agreed to speak with the police.

In reviewing the denial of a motion to suppress, we give deference to the fact-findings of the trial court so long as those findings are supported by sufficient evidence in the record. State v. Hubbard, 222 N.J. 249, 262 (2015). The trial court's interpretation and application of the relevant law, however, are reviewed de novo. State v. Gandhi, 201 N.J. 161, 176 (2010).

The Fifth Amendment of the United States Constitution guarantees all persons with the privilege against self-incrimination. U.S. Const. amend. V. This privilege applies to the states through the Fourteenth Amendment. U.S. Const. amend. XIV, ¶ 1. Moreover, in New Jersey, there is a common law privilege against self-incrimination, which has been codified in statutes and rules of evidence. N.J.S.A. 2A:84A-19; N.J.R.E. 503; State v. Reed, 133 N.J. 237, 250 (1993).

Accordingly, it has long been established that when a person is taken into custody or otherwise deprived of his or her freedom, that person is entitled to certain warnings before he or she can be questioned. Miranda v. Arizona, 384 U.S. 436, 478-79, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 726 (1966). Before any questioning, the suspect must be advised that he or she has certain rights. Id. at 479, 86 S. Ct. at 1630, 16 L. Ed. 2d at 726. After receiving Miranda warnings, a suspect may voluntarily, knowingly and intelligently waive those rights and agree to answer questions or make a statement. Ibid. The State, however, must establish beyond a reasonable doubt that a waiver of Miranda rights was intelligent, voluntary and knowing. State v. Nyhammer, 197 N.J. 383, 400-01, cert. denied, 558 U.S. 831, 130 S. Ct. 65, 175 L. Ed. 2d 48 (2009); State v. Presha, 163 N.J. 304, 313 (2000).

In determining whether a statement is voluntary, courts consider the totality of the circumstances, including the characteristics of the accused and the details of the questions. State v. Knight, 183 N.J. 449, 462-63 (2005) (quoting State v. Galloway, 133 N.J. 631, 654 (1993)). "Relevant factors include the defendant's age, education, intelligence, advice concerning his [or her] constitutional rights, [the] length of detention, and the nature of the questioning[.]" State v. Bey, 112 N.J. 123, 135 (1988).

Here, the record supports the trial court's finding that Maurrasse voluntarily, knowingly, and intelligently waived his Miranda rights. The recorded statement establishes that Maurrasse understood his rights and waived those rights. At no time did Maurrasse claim that he did not understand his Miranda rights. Indeed, Maurrasse initialed the Miranda waiver form and told the officer that he understood his rights.

Maurrasse, however, contends that the police coerced him into giving inculpatory statements by threatening to arrest and charge his pregnant girlfriend. The trial judge rejected those arguments and determined that Maurrasse had not been psychologically coerced. After reviewing Maurrasse's recorded interview, the trial court found, based on the totality of the circumstances,

that he had not been persuaded to make incriminating statements by the threats made against his girlfriend.

All of the trial judge's findings are amply supported by the evidence at the hearing. Thus, we discern no error.

2. The Motion to Suppress the Cell Phone

Next, Maurrasse argues that the cell phone should have been suppressed because the police entered his apartment without a warrant, and saw and seized the phone when they illegally followed his girlfriend into a bedroom.

After conducting an evidentiary hearing, the trial court found that the police went to Maurrasse's apartment after Grant gave a statement implicating Maurrasse in the robbery. When the police arrived, S.C. opened the door and informed the police that Maurrasse was not there. As the police were speaking with S.C., however, they saw a man in the apartment. One officer called out Maurrasse's name, and the man began walking towards the police. At that point, the police entered the apartment and arrested Maurrasse.

The trial court then went on to find that S.C. agreed to come to police headquarters and, as the police followed S.C. so that she could gather her belongings, one detective saw a cell phone on the bed. The police verified that the cell phone was the same

one Maurrasse used to contact the robbery victim and they seized the cell phone.

Based on those facts, the court found that the cell phone had been lawfully seized under the plain-view exception. Specifically, the trial court reasoned:

> The detectives were lawfully in the viewing area since the detectives had probable cause to arrest [Maurrasse] and did so at his apartment. Next, the discovery of the items were inadvertent. The detectives did not know beforehand that they would be there. The detective confirmed before he seized the cellular telephone that it was the one associated with . . . the number utilized by the robbers. Thus, all three elements of the [plain-view] doctrine have been satisfied and the cellular telephone shall be admissible under the [plain-view] doctrine.

Recently in State v. Gonzales, 227 N.J. 77, 99 (2016), our Supreme Court held that the "inadvertence prong" of the plain-view exception is no longer required. Under the new standard for plain-view exception, "the constitutional limiting principle is that the officer must lawfully be in the area where he observed and seized the incriminating item or contraband, and it must be immediately apparent that the seized item is evidence of a crime." Id. at 101.

The rule announced in Gonzales, however, was a new rule and thus, it only applies prospectively. Ibid. Since Gonzales was

issued on November 15, 2016, and this case involves the seizure of a cell phone in 2012, the "inadvertence prong" is still a required element of the plain-view exception in the present case.

As noted previously, in reviewing the denial of a motion to suppress, we give deference "to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record." Hubbard, supra, 222 N.J. at 262. The trial court's interpretation and application of the law are reviewed de novo. Gandhi, supra, 201 N.J. at 176.

The trial court found that the police had probable cause to arrest Maurrasse when they went to his apartment. When they arrived, they were met by his girlfriend. They then saw Maurrasse in the apartment and stepped into the apartment to arrest him. Those fact-findings are supported by the testimony of the detectives given during the hearing.

Maurrasse argues that the police did not have a warrant and they entered the apartment without consent. He goes on to argue that there were no other exceptions justifying the entry into the apartment. In response, the State argues that Maurrasse never challenged the entry into the apartment before the trial court.

We need not over analyze those contentions. The record developed during the suppression hearing demonstrates that Maurrasse raised an issue as to the entry into the apartment. The

trial court, however, properly rejected that argument finding that there was probable cause to arrest Maurrasse. Thus, when the detectives saw Maurrasse in the apartment, they had the right to step into the apartment and arrest him.

The facts as found by the trial court are clearly distinguishable from the facts in State v. Legette, ____ N.J. ____ (2017). In Legette, the court held that it is not permissible for the police to follow the suspect into his home during an investigatory stop. Here, in contrast, the trial court found that the police had probable cause to arrest Maurrasse. Moreover, the police did not enter the apartment until they saw and verified that Maurrasse was present. Under these circumstances, the entry into the apartment was lawful. See Washington v. Chrisman, 455 U.S. 1, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982); State v. Bruzzese, 94 N.J. 210 (1983), cert. denied, 465 U.S. 1030, 104 S. Ct. 1295, 79 L. Ed. 2d 695 (1984) (overruled in part by Gonzales, supra, 227 N.J. at 99).

After arresting Maurrasse in the apartment, the trial court found that S.C. agreed to accompany the police to police headquarters. The trial court went on to find that while the police were speaking with S.C., they observed the cell phone. The trial court did not analyze the facts of exactly where the observation of the cell phone was made. Nevertheless, the

testimony at the suppression hearing was that the police stepped into the bedroom with S.C. when she went to get her child and some belongings. There was no testimony that S.C. objected to the police accompanying her into the bedroom.

Just as critically, there was no testimony that the police were conducting a search of the apartment. Given this record, we discern no basis to disagree with the trial court's finding that the cell phone was observed and seized in accordance with the plain-view exception. See State v. Earls, 214 N.J. 564, 592 (2013) (iterating the three elements necessary to satisfy the plain-view exception: (1) the police must lawfully be in the viewing area; (2) the police must discover the evidence "inadvertently"; and (3) it is "immediately apparent" to the police that the item viewed is evidence of a crime, contraband or otherwise subject to seizure).

3. Maurrasse's Sentence

Finally, Maurrasse contends that the trial court erred in sentencing him to thirteen years in prison for his conviction of first-degree robbery. We have already explained that we use a deferential abuse of discretion standard to review a trial court's sentencing. See Blackmon, supra, 202 N.J. at 297. Here, we find no abuse of discretion in the sentence imposed on Maurrasse.

The trial court found aggravating factor three, N.J.S.A. 2C:44-1(a)(3) (the risk that defendant will commit another offense) and nine, N.J.S.A. 2C:44-1(a)(9) (the need for deterrence). The trial court also found mitigating factor six, N.J.S.A. 2C:44-1(b)(6) (defendant will compensate the victim). The court then weighed those factors and found that the aggravating factors preponderated over the mitigating factors.

There are sufficient facts supporting the court's findings on both the aggravating and mitigating factors. We are also satisfied that the court considered other mitigating factors, but appropriately found those factors inapplicable. Accordingly, we discern no abuse of discretion.

The convictions and sentences of both Grant and Maurrasse are affirmed.