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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1318-13T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TIANLE LI,

Defendant-Appellant.

Argued January 23, 2018 – Decided April 24, 2018

Before Judges Fisher, Fasciale and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 11-05-0690.

Alan Dexter Bowman argued the cause for appellant.

Nancy A. Hulett, Assistant Prosecutor, argued the cause for respondent (Andrew C. Carey, Middlesex County Prosecutor, attorney; Nancy A. Hulett, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant Tianle Li appeals from her conviction after jury trial for first-degree murder, N.J.S.A. 2C:11-3(a)(1), (2), and

third-degree hindering apprehension, N.J.S.A. 2C:29-3(b)(4), in connection with the thallium poisoning of her husband, Xiaoye Wang. She argues in her merits brief:

> POINT I
>
> THE COURT ERRED IN DENYING APPELLANT HER RIGHT TO RAISE INTERVENING CAUSE AS A CHALLENGE TO THE STATE'S PROOFS OF PURPOSEFUL MURDER THEREBY PLACING THE BURDEN ON THE STATE TO DISPROVE THE DEFENSE BEYOND A REASONABLE DOUBT.
>
> POINT II
>
> THE COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE SEIZED FROM THE 2006 TOYOTA RAV-4.
>
> POINT III
>
> THE TRIAL COURT ERRED IN DENYING APPELLANT'S REQUEST FOR A MISTRIAL.
>
> POINT IV
>
> ADMISSION OF THE ALLEGED ATTACK ON APPELLANT'S MOTHER NOT CHARGED IN THE INDICTMENT SUBVERTED THE FAIRNESS OF THE TRIAL.
>
> POINT V
>
> THE INSUFFICIENT TRANSLATION OF MIRANDA[1] WARNINGS AND THE ATTENDANT CONDITIONS REQUIRED THAT THE ENTIRE STATEMENT BE SUPPRESSED.
>
> POINT VI
>
> THE COURT ERRED IN PERMITTING STEFANELLI TO TESTIFY.

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

In her supplemental pro se brief she adds:

POINT I

THE COURT ERRED IN PERMITTING THE STATE TO ADMIT HIGHLY INFLAMMATORY AUTOPSY PHOTOGRAPHS.

POINT II

THE PROSECUTOR DELIBERATELY VIOLATED N.J.R.E. 104(c) AND THE TRIAL JUDGE ERRED IN DENYING DEFENSE COUNSEL'S REQUESTS FOR A MISTRIAL.

POINT III

THE TRIAL JUDGE ERRED IN BARRING DEFENSE WITNESS CHAPLAIN WHITE [FROM] TESTIFY[ING] TO THE SUBMISSION OF APPELLANT'S REQUEST FOR A PRAYER FOR WANG.

POINT IV

THE TRIAL COURT ERRED IN DENYING THE DEFENSE COUNSEL'S WAIVER OF A LIMITING JURY INSTRUCTION REGARDING THE STATE'S WITNESS MING WANG.

POINT V

APPELLANT WAS DEPRIVED OF HER RIGHT TO A PUBLIC TRIAL.

POINT VI

THE TRIAL COURT JUDGE ERRED IN DENYING DEFENSE COUNSEL'S REQUEST TO REVEAL THE CIVIL SUIT AND IDENTIFY THE STATE DOCTOR WITNESSES AS DEFENDANTS IN ESTATE OF XIAOYE WANG V. DOCTOR'S A-Z AND PRINCETON HEALTHCARE SYSTEM.

POINT VII

THE PROSECUTOR'S FLAGRANT MISCONDUCT DENIED APPELLANT A FAIR TRIAL.

POINT VIII

THE PROSECUTOR IMPROPERLY VOUCHED FOR A WITNESS.

POINT IX

THE TRIAL COURT ERRED IN ADMITTING A TIMELINE CREATED BY INVESTIGATOR TEMPLE INTO TRIAL.

POINT X

THE JURY WAS MISLED BY THE UNTRANSLATED CHINESE PRINTOUT AND THE WRONG SPECULATION OF THE PROSECUTOR AND STATE'S WITNESSES.

POINT XI

[]THE COURT ERRED IN THE ENTIRETY OF THE DENYING DEFENSE COUNSEL'S REQUEST TO PLAY AUDIOTAPE OF DR. DAS'[S] STATEMENT ON JANUARY 27, 2011 TO INVESTIGATOR[S] TEMPLE AND GROSSER.

POINT XII

THE CUMULATIVE PREJUDICIAL IMPACT OF THE PROSECUTOR'S IMPROPER COMMENTS DENIED APPELLANT A FAIR TRIAL.

We affirm.

I

Defendant contends the trial court erred by denying her motion to suppress the video-recorded statement she provided to police on January 26, 2011, the day her husband passed away. She argues the police provided "inadequate and indecipherable" Miranda warnings — which were given in English by Monroe Police

Investigator Jeffery Temple, then translated to defendant's native Mandarin Chinese by Monroe Police Officer Rob Wei — and that police continued to interview her after she indicated she wanted to terminate the interview.

Our standard of review of a trial court's decision on a motion to suppress requires our deference to the court's factual findings so long as they are "supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014). The deferential standard applies to factual findings based on a video-recorded statement. State v. S.S., 229 N.J. 360, 379-81 (2017). "By contrast, the task of appellate courts generally is limited to reviewing issues of law. Because legal issues do not implicate the fact-finding expertise of the trial courts, appellate courts construe the Constitution, statutes, and common law 'de novo — with fresh eyes . . . .'" Id. at 380 (quoting State v. Morrison, 227 N.J. 295, 308 (2016)). We need not defer to a trial judge's interpretive conclusions "unless persuaded by their reasoning." Morrison, 227 N.J. at 308.

"The right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution and this state's common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." S.S., 229 N.J. at 381 (quoting State v. Nyhammer, 197 N.J. 383, 399 (2009)). The Miranda

protections provide "a meaningful opportunity to exercise" that right by requiring the police to advise a suspect prior to a custodial interrogation that: she has the right to remain silent; anything she says can be used against her; she has the right to an attorney; and an attorney will be provided if she cannot afford one. Id. at 382; see also Miranda, 384 U.S. at 478-79. "In resolving the adequacy of the language of a Miranda warning a court should give precedence to substance over form." State v. Melvin, 65 N.J. 1, 13 (1974). Police need not read the Miranda warning from a script but must "convey the substance of the warning along with the required information." Id. at 14.

The judge, after conducting a two-day suppression hearing during which he heard testimony from three police witnesses and watched the video-recording, concluded defendant understood the warnings as given because she

> appropriately answered questions in English that were posed to her in English. There was little delay between the questions asked and her answers, indicating that she had a good grasp on the English language. Defendant asked clarifying questions when she did not understand or needed additional information before answering a question.

The judge also found "defendant was [a forty-one]-year[-]old, well educated . . . chemist" who "had been in the United States for

approximately thirteen years and had been educated at Washington University and [the] University of Pennsylvania."

The judge acknowledged the Mandarin translation was not "verbatim,"[2] but found the translation satisfactorily "conveyed to . . . [d]efendant her right to remain silent, that what she said could be used against her in court, that she could have an attorney present and that if she could not afford an attorney one would be supplied."

The record amply supports the judge's findings including those relating to his review of the video-recording that showed defendant's reactions to the spoken-English warnings and questions, and those regarding the translation which substantially conveyed defendant's rights. See Melvin, 65 N.J. at 13-14 (recognizing that variation in Miranda warnings is permissible so long as the words used convey the substance of the rights).

We also agree with the judge's rejection of defendant's argument that the police failed to honor her invocation of rights when she stated, "Oh I wish I can — we can do whatever you want with me next day, not today."[3]

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[2] The judge's written decision set forth the English warnings, and both the State's version and defendant's version of the Mandarin translations.

[3] The judge noted the quote appeared on page forty-six, line twelve of the transcript of defendant's statement.

If during an interrogation a person makes "a request, 'however ambiguous,' to terminate questioning or to have counsel present[,] [it] must be diligently honored." State v. Hartley, 103 N.J. 252, 263 (1986) (quoting State v. Kennedy, 97 N.J. 278, 288 (1984)). "Any words or conduct that reasonably appear to be inconsistent with defendant's willingness to discuss [her] case . . . are tantamount to an invocation of the privilege against self-incrimination." State v. Bey, 112 N.J. 123, 136 (1988). If the police are unsure whether the suspect invoked the right, they must "(1) terminate the interrogation or (2) ask only those questions necessary to clarify whether the defendant intended to invoke [her] right to silence." S.S., 229 N.J. at 383; see also State v. Johnson, 120 N.J. 263, 275-76, 284 (1990) (holding officers had a duty to end the interview or "to ask only questions narrowly directed to determining whether defendant was willing to continue" when he said, "I can't talk about it right now," and remained silent at various points during the interrogation).

The judge compared the circumstances here to those in Johnson, Hartley and Bey and found defendant's comment was analogous to the defendant's statement in Bey, 112 N.J. at 133, 134-43, where the Court held a defendant's mid-interrogation request "to lie down so that he could think about what happened" did not constitute an invocation of his right to remain silent. We agree with the

judge's conclusion that defendant was not seeking to end her statement to the police. The judge acknowledged defendant "was emotional around page [forty-six] of the [transcript of her] statement" but that "her emotional state . . . did not indicate to the investigating officers that [she] was asserting her right to remain silent," citing State v. Diaz-Bridges, 208 N.J. 544, 568-69 (2012) (holding a defendant's emotional display, including "weeping or moaning" is not a basis to conclude "he or she intend[ed] to invoke the right to silence"). In fact, she stopped crying as she continued to answer questions without protest. As the judge observed, "the record shows that [d]efendant continued to speak to police and remained cooperative until page [ninety-nine,] line [six] when the police accused her of poisoning her husband," and she responded, "Oh, my God. I don't want to talk anymore."

We determine the balance of defendant's arguments that she did not knowingly and intelligently waive her rights before giving her statement, including her contention that we "must be mindful that [her] husband was expiring as she wrestled with [the police officers] for her release," to be without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(2). As the judge said:

> Evidence suggests that while her husband was in the hospital [d]efendant was making plans to leave the country with her young son. Additionally, [she] remained mostly calm, except for a few emotional moments, and conversant throughout the statement. Defendant was not under the influence of medication. At no point was [d]efendant's will overborne as she did not confess.[4]

The judge's careful consideration of the totality of the circumstances led to conclusions that are supported by sufficient credible evidence in the record; the motion to suppress defendant's statement was properly denied.

II

Defendant avers the trial court erred by denying her motion to suppress evidence seized, pursuant to a search warrant, from her motor vehicle and a purse located therein. She reprises the argument made to the trial court that "past trivial domestic disputes" and "the hypothetical existence of insurance policies" did not establish probable cause to believe that evidence of the homicide would be found in the Toyota RAV4 registered in her name.

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution prohibit the issuance of a search warrant "except upon probable cause, supported by oath or affirmation, and particularly describing the place to

[4] Defendant admits in her merits brief that the interview was "exculpatory."

be searched and the papers and things to be seized." State v. Marshall, 199 N.J. 602, 610 (2009) (quoting N.J. Const. art. I, ¶ 7). A warrant should issue only if the totality of the circumstances establish "probable cause to believe that a crime has been committed, or is being committed, at a specific location or that evidence of a crime is at the place sought to be searched." Ibid. (quoting State v. Sullivan, 169 N.J. 204, 210 (2001)). "Probable cause exists where the facts and circumstances within . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed." State v. O'Neal, 190 N.J. 601, 612 (2007) (quoting State v. Moore, 181 N.J. 40, 46 (2004) (alterations in original)). The court can consider only the facts contained in the supporting affidavit and any sworn statements. Marshall, 199 N.J. at 611.

A search conducted pursuant to a warrant is presumed valid; defendant bears the burden of establishing that the warrant was not supported by probable cause or was "otherwise unreasonable." Id. at 612 (quoting State v. Jones, 179 N.J. 377, 388 (2004)). We "accord substantial deference to a trial court's determination that there was probable cause to issue a warrant." Ibid.

The factual assertions in the warrant application established probable cause that evidence of thallium poisoning — the cause of Wang's death — and other evidence related to the homicide would be found in the vehicle. Wang was admitted to the hospital on January 14, 2011. His condition plummeted and he died twelve days later. Tests showed levels of thallium in his body so high that the medical director of the New Jersey Poison Information and Education System at the University of Medicine and Dentistry of New Jersey opined the amount of thallium detected in Wang's urine was not from accidental poisoning.

Other evidence presented to the issuing judge included: the police response to seventeen domestic calls at the marital home between April 2009 and December 2010, during two of which defendant and Wang separately leveled accusations — acknowledged by defendant in her statement to police — of poisoning; defendant's employment as a research chemist at Bristol-Myers Squibb; the rarity of thallium poisoning, thallium's inaccessibility to the general public, and the sole-central location of the antidote for thallium poisoning in Tennessee; observation by hospital personnel of defendant feeding homemade soup and applying lip balm to Wang; Wang's statement to hospital personnel on January 21, 2011, that he believed defendant poisoned him; defendant's statement on January 21 that she knew Wang had been poisoned with thallium —

knowledge she had initially denied – despite the unavailability of test results that confirmed thallium poisoning until January 25; defendant's use of the vehicle – registered in her name – for travel to and from work, and to and from the hospital.

We agree with the motion judge that these facts established probable cause to justify the issuance of the warrant for the RAV4 which provided the probable means to transport thallium from defendant's workplace to her home or the hospital. We determine defendant's argument that the search of defendant's purse, found in the vehicle during the execution of the search warrant, was improper to be without sufficient merit to warrant discussion. R. 2:11-3(e)(2). A warrant to search a vehicle

> would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between . . . glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.
>
> [State v. Reldan, 100 N.J. 187, 195 (1985) (quoting United States v. Ross, 456 U.S. 798, 821-22 (1982)); see State v. Jackson, 268 N.J. Super. 194, 208-09 (Law Div. 1993) (establishing that a search warrant which authorizes the search of a specific area also "permits the search and seizure of containers found therein which might reasonably contain the evidence sought by the warrant").]

The motion to suppress evidence was properly denied.

III

Turning to the trial errors defendant contends require the reversal of her conviction, we carefully reviewed this record and conclude our intervention is unwarranted.

A

During direct examination, Monroe Police Lieutenant Jason Grosser, while recounting the calls for service to the home of the victim and defendant, was asked if the computer-aided dispatch (CAD) report to which he had been referring was dated August 31. The following colloquy ensued:

> [GROSSER]: Yeah. We found . . . two other reports for — I believe was August 31st of 2010. And the reason why they weren't listed with this is because they didn't happen[] at this particular address. They happened at various addresses around that area. And the reports were labeled as welfare checks but those again, those were the same day, first thing in the morning.
>
> [ASSISTANT PROSECUTOR]: And what member of the household did it involve?
>
> [GROSSER]: That involved the defendant's mother who alleged that she was attacked that morning by her daughter.

The assistant prosecutor elicited defendant's mother's name from the lieutenant. No other questions were asked by the assistant prosecutor about that call.[5]

Defendant argues the testimony regarding defendant's mother was impermissible under Evidence Rule 404(b);[6] the bad acts evidence regarding defendant's alleged attack on her mother was "highly prejudicial and devoid of probative value," which denied her a fair trial by portraying her as a "deranged and volatile person capable of assaulting her own mother."

Defense counsel made no objection to the comment.[7] Where the defendant raises a 404(b) argument for the first time on appeal,

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[5] Defense counsel asked Grosser some questions about that call, but only to establish that it had no connection to Wang and the allegations against defendant.

[6] N.J.R.E. 404(b) provides:

> [E]vidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to show that such person acted in conformity therewith. Such evidence may be admitted for other purposes, such as 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.

[7] Defense counsel, prior to cross-examining Grosser, told the judge, "I didn't object at the time, because it basically was part of the CAD log sheet and the history of the responses to that address by the [p]olice, so I didn't object."

we consider it under the plain error standard and will order a new trial only if the challenged evidence was "clearly capable of producing an unjust result." State v. Macon, 57 N.J. 325, 336-37 (1971) (quoting R. 2:10-2).

Grosser's remark was not solicited by the assistant prosecutor. It was a fleeting, unresponsive statement, unrelated to his other testimony about domestic violence calls involving defendant and Wang. Grosser did not provide any details about the allegation, and no evidence was presented that the allegation was proven. The assistant prosecutor neither repeated nor referred to that testimony at any time during the trial. These two lines of testimony, juxtaposed against the overwhelming evidence presented over twenty-one days of trial testimony, were not clearly capable of producing an unjust result.

B

Defendant argues the trial judge erred by allowing Christina Stefanelli's trial testimony about defendant's admissions — made while they were incarcerated in the same cell at the Middlesex County jail — detailing how and why she poisoned Wang. Defendant points to information Stefanelli provided to Investigator Temple — prior to being housed with defendant — about another murder, and also claims that Stefanelli had Xanax in the jail to ensure she would be housed with defendant in protective custody, as evidence

that Temple arranged for Stefanelli to elicit incriminating statements from defendant in contravention of her right to counsel.

The Sixth Amendment guarantees the immediate right to counsel when the State initiates formal criminal proceedings against a suspect. State v. Leopardi, 305 N.J. Super. 70, 76 (App. Div. 1997). Once the right attaches, the State may not dilute, circumvent or interfere with that right by directly questioning the suspect, or by eliciting incriminating information through a confidential informant. See, e.g., id. at 77-80.

A defendant seeking to suppress a statement made to someone other than law enforcement on the ground that the statement was elicited on behalf of the State "must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks." Id. at 79 (quoting Kuhlmann v. Wilson, 477 U.S. 436, 459 (1986)). In deciding whether a defendant has met this burden, the trial court must consider the circumstances surrounding the statement including: the existence of any agreement between the State and the informant; whether the government was involved in placing the informant with the defendant; and whether the State made any promise to the informant for obtaining information. Id. at 79-80.

Again, in reviewing a trial court's decision on a motion to suppress evidence, we do not "weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence." State v. Barone, 147 N.J. 599, 615 (1997). Rather, we consider whether the trial court's findings were supported by "sufficient credible evidence present in the record." Ibid. (quoting State v. Johnson, 42 N.J. 146, 162 (1964)).

Under that lens we conclude the trial judge's rejection of the now-repeated argument that defendant was denied her right to counsel was sufficiently supported by the record. The judge — after hearing testimony from Stefanelli, Temple and Lieutenant Robert Grover of the Middlesex County Department of Corrections at a hearing on a motion to suppress defendant's statement to Stefanelli — credited Temple's and Stefanelli's testimony. Despite defendant's present contention that the "circumstances under which the State procured Stefanelli's testimony are malodorous," the judge fully explained in a thoughtful and thorough oral opinion that Stefanelli received no benefit from the State in return for her cooperation and found no evidence that the State arranged to place Stefanelli in defendant's cell or that Stefanelli was acting at the State's behest when she spoke with defendant.

C

Defendant's argument that the trial court erred in denying her request for a mistrial is based on one question the assistant prosecutor asked of a hospital chaplain who was called by the defense and testified that he had prayed with defendant prior to and after Wang's death. The assistant prosecutor asked, "Chaplain, are you . . . aware that chaplains also offer prayer to people who are in jail, accused of a crime?"

The trial judge sustained defense counsel's immediate objection; counsel did not request a limiting instruction. The judge denied the subsequent motion for a mistrial in which defendant argued that the mention of "jail" in the assistant prosecutor's question was "highly inappropriate" and "inherent[ly] prejudicial," ruling that the question was not "unduly harmful, or prejudicial" in light of prior evidence regarding defendant's confinement.

Defendant now argues, for the first time, that the question was an "impermissible attack on [her] character." "A mistrial is an extraordinary remedy" that should be granted "[o]nly when there has been an obvious failure of justice." State v. Mance, 300 N.J. Super. 37, 57 (App. Div. 1997). "Whether manifest necessity mandates the grant of a mistrial depends on the specific facts of the case and the sound discretion of the court." State v. Allah,

170 N.J. 269, 280 (2002). When "the court has an appropriate alternative course of action" it should deny the request. Id. at 281. The decision to grant or deny a mistrial is within the trial court's "sound discretion" and "will not be reversed absent a clear showing of prejudice to defendant." State v. Provoid, 110 N.J. Super. 547, 558 (App. Div. 1970).

We find no such showing. The question went unanswered after the judge sustained defense counsel's objection. The judge charged the jury at the trial's conclusion:

> I have sustained an objection to some questions asked by counsel which may have contained statements of facts. The mere fact that an attorney asked a question and inserts facts or comments or opinions in that question in no way proves the existence of those facts. You will only consider such facts which in your judgment have been proven by the testimony of witnesses or from exhibits admitted into evidence by the [c]ourt.
>
> . . . .
>
> As I instructed you when we started the case I explained to you that you are the judges of the facts, and as judges of the facts you are to determine the credibility of the various witnesses as well as the weight to be attached to their testimony. You, you alone, are the sole and exclusive judges of the evidence, of the credibility of the witnesses and the weight to be attached to the testimony of each witness.
>
> Regardless of what counsel said or I may have said recalling the evidence in this case, it is your recollection of the evidence that

> should guide you as judges of the facts. Arguments, statements, remarks, the openings and summations of counsel are not evidence and must not be treated as evidence. Although the attorneys may point out what they think important in this case, you must rely solely upon your understanding and recollection of the evidence that was admitted during the trial.
>
> Whether or not the defendant has been proven guilty beyond a reasonable doubt is for you to determine based on all the evidence presented during the trial. Any comments by counsel are not controlling. It is your sworn duty to arrive at a just conclusion after considering all the evidence which was presented during the course of the trial.

The jury is presumed to have followed those instructions. State v. Manley, 54 N.J. 259, 271 (1969).

In her merits brief, defendant conflated the assistant prosecutor's statement in summation with his argument regarding the court's denial of a mistrial — although a mistrial was never requested based on that comment. The argument lacks merit. No objection was lodged to the statement:

> And poor Mr. Wang[8] endured a day-and-a-half of cross examination. To what end, members of the jury? To what end? Are we really questioning that there was a threat? We know there was a threat. Why? Because ten months later Xiaoye is reporting to the police that he thinks his wife is poisoning him. Of course she was threatening him. And she probably started when her in-laws were in town. And we know she's thinking about poison because

[8] The witness, Ming Wang, was the victim's father.

> she's alleging the victim did it to her on [December 13]. Of course there were prior threats. Ming Wang testified, and I submit to you that his testimony was credible.

The comment, contrary to defendant's argument was not an attack on defense counsel. The assistant prosecutor merely urged the jury to find that, after a day and a half of cross-examination, counsel was unable to discredit Ming Wang's testimony that defendant and Wang — his son — fought often, and that defendant threatened to poison Wang if he tried to divorce her. The unchallenged comment was not "clearly capable of producing an unjust result," Macon, 57 N.J. at 337-38 (quoting R. 2:10-2), and did not warrant a mistrial. Nor was it so "clearly and unmistakably improper" that it "substantially prejudiced defendant's fundamental right to have a jury fairly evaluate the merits of [her] defense." State v. Smith, 167 N.J. 158, 181-82 (2001) (quoting State v. Timmendequas, 161 N.J. 515, 575 (1999)).

D

Defendant's additional arguments that the assistant prosecutor improperly: used a PowerPoint in her opening statement and summation; asserted that defendant "wanted death" for her husband; claimed defendant poisoned her husband to obtain full custody of the child; made a comment regarding the duration of Ming Wang's testimony; vouched for the credibility of Ming Wang,

Grosser and Stefanelli; referred to defendant looking for her "next victim" on a dating website while her husband was in the hospital; distorted Chaplain White's testimony on the prayer he offered defendant; referred to a list of lawyers in China who defendant contacted regarding inheritance; presented that Wang was too weak to tell defendant to leave the hospital; proffered that defendant administered EDTA to Wang to remove or mask some of the thallium; and urged the jury to find that defendant acted intentionally in killing her husband, lack sufficient merit to warrant discussion here. R. 2:11-3(e)(2). The alleged conduct was either proper or not capable of producing an unjust result.

IV

Defendant argues for a new trial because the trial judge granted the State's motion in limine and precluded the defense from asserting medical malpractice as an intervening cause, and declined to give a proffered jury charge on that issue. The alleged intervening cause

> related to repeated misdiagnosis at the hospital of Wang's condition and its origin, viz poison. The hospital failed to timely order medical, urine and blood tests identified as required by several treating physicians. Had the hospital provided proper medical care, the condition would have been diagnosed and the antidote to the poison administered.

Defendant contends "[i]ntervening cause is not an affirmative defense" but is "encompassed in a statutory definition of the elements of causation" and, inasmuch as the State's direct case set forth evidence of "the hospital's gross negligence," the trial court erred in requiring defendant to produce expert medical testimony to support her theory.

The trial judge, in his written opinion, analyzed the law of this and other jurisdictions and concluded, "Gross negligence or intentional medical malpractice constitutes a valid defense where it is disconnected from the culpable act of the defendant, because the intervening conduct is abnormal and not reasonably foreseeable." He continued:

> Mere negligence in treatment may be no defense even though it is the sole cause of death because it is a foreseeable intervening cause. However, death caused by grossly improper treatment is not the proximate consequence of . . . injury [caused by defendant] unless the injury is an actual contributing factor at the time of death because such treatment is not an unforeseeable intervening cause.

The judge also ruled defendant was required "to show that the cause of death was the intervening cause of negligence of the hospital and physicians," and that a "standard of care must be established through expert testimony except where common knowledge may furnish the standard of care." Finding that the affidavits

of merit submitted by the defense were not "substantial evidence" that Wang's death resulted from "any malpractice much less gross medical malpractice," the judge disallowed defendant's intervening cause assertion.

The judge's ruling on the admissibility of evidence is "subject to limited appellate scrutiny." State v. Buda, 195 N.J. 278, 294 (2008). The "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); see also State v. Handy, 206 N.J. 39, 45 (2011). We review de novo the judge's interpretation of the law, including applicable statutory provisions. State v. Nance, 228 N.J. 378, 393 (2017).

We need not parse this argument and decide the nature and extent, or the proofs, if any, of medical malpractice that must be shown before introduction of evidence of an intervening cause is permitted. This was not a case involving an intervening cause.

"Conduct is the cause of a result when: (1) [i]t is an antecedent but for which the result in question would not have occurred; and (2) [t]he relationship between the conduct and result satisfies any additional causal requirements imposed by the code or by the law defining the offense." N.J.S.A. 2C:2-3(a). In order to prove the charge of murder, the State had to prove

defendant purposely or knowingly caused Wang's death or serious bodily injury that resulted in his death. N.J.S.A. 2C:11-3(a)(1), (2). N.J.S.A. 2C:2-3(b) provides:

> When the offense requires that the defendant purposely or knowingly cause a particular result, the actual result must be within the design or contemplation, as the case may be, of the actor, or, if not, the actual result must involve the same kind of injury or harm as that designed or contemplated and not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

Recognizing that neither the New Jersey Criminal Code nor the Model Penal Code identifies "what may be an intervening cause," State v. Pelham, 176 N.J. 448, 461 (2003), our Supreme Court held:

> "Intervening cause" is defined as "[a]n event that comes between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury." Black's Law Dictionary 212 (7th ed. 1999). Generally, to avoid breaking the chain of causation for criminal liability, a variation between the result intended or risked and the actual result of defendant's conduct must not be so out of the ordinary that it is unfair to hold defendant responsible for that result. Wayne R. LaFave & Austin W. Scott, Jr., Handbook on Criminal Law § 35 (1972); see also State v. Martin, 119 N.J. 2, 14 (1990). A defendant may be relieved of criminal liability for a victim's death if an "independent" intervening cause has occurred, meaning "an act of an independent person or entity that destroys the causal connection between the defendant's act and the victim's

> injury and, thereby becomes the cause of the victim's injury." People v. Saavedra-Rodriquez, 971 P.2d 223, 225-26 (Colo. 1998).
>
> [Pelham, 176 N.J. at 461-62 (alteration in original).]

Nothing broke the causal chain between defendant's administration of thallium to Wang and his death. Considering the extremely high levels of that heavy metal detected in Wang's urine, and its general unavailability, his death did not differ in kind from that which was designed or contemplated by the person found by the jury to have administered it, nor was the death "too remote, accidental in its occurrence, or dependent on another's volitional act to justify a murder conviction." Id. at 461 (quoting Martin, 119 N.J. at 13). Once the high level of thallium found in Wang was administered, the occurrence of death — the intended consequence of the administration — was never in doubt. No action or inaction of the hospital staff altered the natural course of events between the administration and Wang's death.

The judge, therefore, did not err in precluding defendant's assertion of the hospital personnel's treatment failures as an intervening cause. As such, the judge was not required to instruct the jury on intervening cause, as requested by defendant.

V

We carefully considered the closure of the courtroom for a brief period during Stefanelli's testimony. The door was locked by an officer absent any request or direction from the trial judge.

An improper closure of the courtroom is considered a structural error in the trial, entitling the defendant to relief, regardless of whether the defendant establishes specific prejudice. Waller v. Georgia, 467 U.S. 39, 49-50 (1984); State v. Cuccio, 350 N.J. Super. 248, 260-61 (App. Div. 2002). In fixing a remedy for an improper closure, however, the court must consider the nature and extent of the violation, as "the remedy should be appropriate to the violation." Waller, 467 U.S. at 49-50 (ordering a new suppression hearing, as opposed to a new trial, where the trial court erroneously closed the hearing to the public, reasoning that "[i]f, after a new suppression hearing, essentially the same evidence is suppressed, a new trial presumably would be a windfall for the defendant, and not in the public interest"). Where the courtroom is accidentally closed for an "extremely short" period of time, the court may find no violation of the right to a public trial, and thus, may order no remedy. Cuccio, 350 N.J. Super. at 268 (discussing Peterson v. Williams, 85 F.3d 39 (2d Cir. 1996)). See also Snyder v. Coiner, 365 F. Supp. 321, 324 (N.D.W. Va. 1973) (finding no Sixth Amendment violation where a sheriff,

misunderstanding the judge, briefly closed the courtroom during summation), aff'd, 510 F.2d 224, 230 (4th Cir. 1975).

In light of the brief period the courtroom was locked, the judge's open-court statement that Stefanelli's "testimony is open to the public and so is a CD [recording of the testimony] . . . if someone wants to get a copy of it," and the absence of any suggested cure by the defense after the judge investigated the reason for the closure, we do not conclude a new trial is warranted.

VI

We determine the balance of defendant's arguments that the trial judge erred by: giving the jury an instruction on prior bad acts, N.J.R.E. 404(b); allowing the admission of autopsy photographs; not permitting defendant to play the entirety of her supervisor's statement to police; prohibiting testimony on the basis of cleric-penitent privilege, N.J.R.E. 511; permitting the jury to be "misled by the untranslated Chinese printout and the wrong speculation of the prosecutor and the State's witness"; allowing the admission of "a timeline created by Investigator Temple"; denying defendant's motion for a mistrial based on comments by the assistant prosecutor in front of the jury; and denying defendant's request that members of the venire be notified during jury selection of a related civil action are without

sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add only that we find no abuse of discretion as to the judge's evidentiary rulings or his rulings on jury voir dire; none of the issues raised for the first time on appeal were clearly capable of producing an unjust result under the plain error standard; and the judge's curative instruction in lieu of the mistrial defendant requested after the assistant prosecutor asked the court – in front of the jury – for an instruction that he found defendant's statement to be "constitutionally okay" was appropriate notwithstanding that the statement clearly violated N.J.R.E. 104(c).[9] See Allah, 170 N.J. at 280-81 (providing that when an appropriate alternative to a mistrial exists, the court should employ the alternative).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION

[9] N.J.R.E. 104(c) provides:

> Where by virtue of any rule of law a judge is required in a criminal action to make a preliminary determination as to the admissibility of a statement by the defendant, the judge shall hear and determine the question of its admissibility out of the presence of the jury. . . . If the judge admits the statement the jury shall not be informed of the finding that the statement is admissible but shall be instructed to disregard the statement if it finds that it is not credible.