SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2074-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

THOMAS VANDERWEIT,

Defendant-Appellant.

Submitted January 17, 2018 – Decided March 8, 2018

Before Judges Hoffman, Gilson, and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 14-03-0379.

Faugno & Associates, LLC, attorneys for appellant (Paul Faugno, of counsel and on the brief).

Dennis Calo, Acting Bergen County Prosecutor, attorney for respondent (Elizabeth R. Rebein, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

On a Sunday morning in July 2012, defendant Thomas Vanderweit was driving on the Garden State Parkway. Another vehicle cut off

his vehicle and, thereafter, the two drivers began speeding down the roadway, weaving in and out of lanes, and cutting in front of each other's vehicles. While in front of the other vehicle, defendant hit his brakes to exit the parkway. The driver behind him lost control of the vehicle, hit a guardrail, spun into defendant's vehicle, flipped over, and a passenger was ejected and killed.

A jury convicted defendant of second-degree vehicular homicide, N.J.S.A. 2C:11-5, and he was sentenced to six years in prison, subject to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Defendant appeals. We affirm.

I.

On the morning of July 1, 2012, defendant was driving his black Chevy Trailblazer (Trailblazer) on the Garden State Parkway. At the same time, John Emili was driving to church with his girlfriend and A.B.,[1] who was sitting in the back seat of Emili's gray Honda Pilot (Honda). As Emili's Honda pulled onto the parkway, it cut in front of defendant's Trailblazer.

Three witnesses, who also were traveling on the Garden State Parkway, testified that they saw the Honda and Trailblazer speeding along the parkway, weaving in and out of traffic, and cutting in

[1] We use initials to protect the privacy interests of the victim. R. 1:38-3(c).

front of one another. One of the witnesses described that, at times, the Trailblazer and Honda were very close to each other and driving in an "erratic manner." That witness also testified that the Trailblazer appeared to be chasing the Honda and following it "at a very close distance."

Eventually, defendant's Trailblazer got in front of the Honda, and defendant applied his brakes to exit the parkway on the right-hand side. At that point, Emili lost control of his Honda. The Honda hit a guardrail, spun back into the lane, hit defendant's Trailblazer, and repeatedly flipped over. As the Honda was flipping over, A.B. was ejected from the vehicle and killed. The parties stipulated that A.B. died as a direct result of the injuries sustained when she was ejected from the Honda.

Multiple police and emergency personnel responded to the scene of the crash. Detective Sergeant Mark Smith of the New Jersey State Police was one of the first State police officers to arrive at the scene. After trying to "contain" the scene of the accident, Smith began to investigate the accident. Accordingly, Smith separately spoke with defendant and Emili. Smith's conversations with both defendant and Emili were recorded by a mobile audio and video recorder in Smith's police car.

Two other New Jersey State Police Officers, Trooper Russell Peterson and Trooper Juan Pachon, also responded to the scene.

Pachon and Peterson spoke with defendant on the roadside and that conversation was also audio recorded. Defendant told the officers that the driver of the Honda had cut him off and defendant then passed the Honda. While in the left lane of the parkway, and while the Honda was behind him, defendant applied his brakes "hard" to move to the right to get off at an exit. Defendant then saw the Honda swerve and hit a guardrail. The Honda thereafter swerved back onto the road and hit defendant's Trailblazer, propelling the Trailblazer to hit the guardrail.

Defendant and Emili were taken to the State Police barracks, where they were interviewed separately. Initially, defendant and Emili were given summonses for reckless driving, racing on the highway, and making unsafe lane changes. Thereafter, a grand jury indicted defendant and Emili for second-degree vehicular homicide.

Defendant and Emili moved to suppress the statements they had given at the roadside and at the police barracks. The trial court conducted two evidentiary hearings, and heard testimony from Trooper Peterson, Detective Smith, and Detective Christopher Kelly of the Bergen County Prosecutor's Office.[2] The court denied the

[2] Defendant and Emili initially moved to suppress the statements they had given at the police barracks. Thereafter, they filed a second motion to suppress the statements they had given at the roadside.

motion to suppress the roadside statements, but granted the motion to suppress the statements given at the police barracks because defendant and Emili had not been given their Miranda[3] rights before their formal interviews.

In written opinions, the motion judge found Trooper Peterson and Detective Smith to be credible. The judge then found that when Peterson and Smith spoke separately with defendant, defendant was not in custody, nor subject to a custodial interrogation. The judge based that finding on the facts that defendant was not under arrest, was not in handcuffs, was detained for less than an hour, and was not subject to coercive questioning. Instead, the judge found that the State police were trying to find out what had caused the accident and that defendant was questioned at the roadside, which was a public area.

Defendant and Emili were tried separately. At defendant's trial, the State presented testimony from six fact witnesses and an expert. The fact witnesses included three of the drivers who were traveling on the Garden State Parkway on July 1, 2012, and saw the Trailblazer and Honda. The State also presented testimony from Emili's girlfriend who was a passenger in the Honda. State Police Officers Smith and Pachon also testified. Finally, New

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

Jersey State Police Detective Sergeant Derek DiStaso testified as an expert in accident reconstruction.

DiStaso recreated what he believed was the crash sequence. Relying on witness statements, including statements made by defendant, and his observation and measurements of tire marks at the scene, DiStaso opined that defendant hit his brakes hard while in front of the Honda. The Honda then took evasive action and lost control. DiStaso acknowledged that Emili, who also gave statements about the crash, did not mention taking evasive action to avoid defendant's Trailblazer.

During the trial, an issue arose regarding the admission of evidence concerning A.B.'s failure to wear a seat belt. The trial judge ruled that such evidence was inadmissible and not relevant to the issue of causation. In support of that ruling, the trial court issued a written opinion, which was dated and filed on November 4, 2015.

At the close of evidence, the trial court conducted a charge conference. The court then charged the jury and gave them a written copy of the instructions. With regard to the substantive charge of vehicular homicide, the trial court instructed the jury using the model jury charges. In that regard, the court explained, in relevant part:

[I]n order for you to find the defendant guilty of this crime, the State must prove the following elements beyond a reasonable doubt: One, that the defendant was driving a vehicle; two, that the defendant caused the death of [A.B.]; and, three, that the defendant caused such death by driving the vehicle recklessly.

In order to find the defendant caused [A.B.'s] death, you must find that [A.B.] would not have died but for the defendant's conduct.

. . . .

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt: First, but for the defendant's conduct, the result in question would not have happened. In other words, without defendant's actions, the result would not have occurred. Second, for reckless conduct, that the actual result must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as the probable result and must also not be too remote, too accidental in its occurrence, or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his [] offense.

Now, I want to also advise you of another item. In this case, you heard evidence of the police questioning John Emili about whether or not [A.B.] was wearing a seatbelt. I instruct you that whether or not [A.B.] was wearing a seatbelt is not relevant to the causation issue. The issue of causation remains one that must be resolved by you, as instructed by this [c]ourt earlier in my charge to you. However, the status of the seatbelt is not to be part of your consideration.

At the end of the first day of jury deliberations, juror thirteen advised the court that his boss had contacted him and asked him to return to work as soon as possible. In response, the trial judge offered to write a letter to the juror's boss explaining that it was necessary that he remain on the jury until deliberations concluded. Juror thirteen accepted that offer, and both defense counsel and the State agreed that was the appropriate response. No one requested to voir dire the juror. Thus, the trial judge promptly wrote the letter, and juror thirteen returned for the second day of deliberations without any further issues.

During jury deliberations, the jurors sent out several notes to the court. One of the notes requested a clarification on a footnote relating to the issue of proximate cause. After conferring with counsel, the trial judge informed the jury that it was charged with the language of the statute referenced in the footnote and, then, reinstructed the jury on the relevant portion of the proximate cause charge.

On the second day of deliberations, the jury sent out a note indicating that they were not able to reach a unanimous decision and requested instructions on what to do. In response, the trial court gave the model jury charge on the jury's duty to continue to deliberate in good faith to see if they could reach a unanimous

verdict. Shortly thereafter, the jury unanimously found defendant guilty.

Following the verdict, defendant filed a motion for a judgment of acquittal or for a new trial. The trial court denied both motions. The trial court explained the reasons for its rulings in a written opinion issued on January 8, 2016.

II.

On appeal, defendant makes five arguments.

> POINT I — The Trial Court's denial of defendant's motion for a new trial was erroneous as the jury verdict was against the weight of the evidence and defendant should be granted a new trial
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> POINT II — The Trial Court's jury instruction on proximate cause was erroneous and led to confusion amongst the jury
>
> POINT III — The questioning of the defendant at the roadside given the totality of circumstances constituted an interrogation and triggered the Miranda Rule
>
> POINT IV — The testimony provided by the State's reconstruction expert constituted a net opinion and should have been barred
>
> POINT V — The Trial Court's failure to voir dire Juror 13 constitutes reversible error

We are not persuaded by any of these arguments and we therefore affirm defendant's conviction and sentence. We will address defendant's five arguments in turn.

1. The Weight of the Evidence

We review a trial court's decision to deny a motion for a new trial for abuse of discretion. State v. Russo, 333 N.J. Super. 119, 137 (App. Div. 2000). An appellate court will not reverse the trial court's ruling on whether a jury verdict was against the weight of the evidence "unless it clearly appears that there was a miscarriage of justice under the law." R. 2:10-1; State v. Afanador, 134 N.J. 162, 178 (1993). We will not disturb a jury verdict "[u]nless no reasonable jury could have reached [that] verdict . . . ." Afanador, 134 N.J. at 178; see also State v. Jackson, 211 N.J. 394, 413-14 (2012) (If "any trier of fact could rationally have found beyond a reasonable doubt that the essential elements of the crime were present[,]" there was no "miscarriage of justice." (quoting Afanador, 134 N.J. at 178)).

Here, the State's theory was that defendant's braking caused Emili to swerve and lose control of his vehicle, which resulted in A.B. being ejected from Emili's car. Defendant contends that there was no evidence that defendant applied his brakes and, thus, the State's theory was unsupported. This argument lacks merit.

Notably, defendant's argument ignores that in his roadside statement, which was played for the jury, he admits that he "broke hard" when he was exiting the Garden State Parkway. In addition to defendant's admission, the State presented evidence that

defendant was speeding, and that he and Emili were weaving in and out of traffic down the parkway. An accident reconstruction expert also recreated the crash sequence, in which defendant's braking caused Emili to swerve. Thus, there was sufficient evidence for a reasonable jury to determine that the State had proven its case beyond a reasonable doubt. Accordingly, we will not disturb the jury's verdict.

2. The Jury Instructions on Causation

Causation is one of three elements that the State must prove beyond a reasonable doubt for the jury to find a defendant guilty of second-degree vehicular homicide. N.J.S.A. 2C:11-5; State v. Buckley, 216 N.J. 249, 262 (2013). "Causation is a factual determination for the jury to consider, but the jury may consider only that which the law permits it to consider." State v. Pelham, 176 N.J. 448, 466 (2003).

To find causation, the jury must engage in a multi-step analysis. Buckley, 216 N.J. at 263; see N.J.S.A. 2C:2-3. Initially, the jury must determine whether the State has established "but for" causation, by demonstrating that the event would not have occurred absent the defendant's conduct. N.J.S.A. 2C:2-3(a); Buckley, 216 N.J. at 263. Next, because the State also has to prove the mens rea of recklessness to establish vehicular

homicide, the jury must conduct a "culpability assessment." N.J.S.A. 2C:2-3(c); Buckley, 216 N.J. at 263.

To find culpability in a vehicular homicide case, the jury must determine that "the actual result [either (1) was] within the risk of which the actor [was] aware or, . . . [(2)] involved the same kind of injury or harm as the probable result . . . ." N.J.S.A. 2C:2-3(c). Thus,

> the first prong of N.J.S.A. 2C:2-3(c) requires the jury to assess whether defendant was aware that his allegedly reckless driving gave rise to a risk of a fatal motor vehicle accident. . . . The second prong of N.J.S.A. 2C:2-3(c) . . . requires proof that the actual result -- in this case the victim's death -- "involves the same kind of injury or harm as the probable result" of the defendant's conduct.
>
> [Buckley, 216 N.J. at 264-65 (quoting Pelham, 176 N.J. at 461).]

"If the jury determines that the State has proven beyond a reasonable doubt that the defendant understood that the manner in which he or she drove created a risk of a traffic fatality, the element of causation is established under the first prong of N.J.S.A. 2C:2-3(c)." Ibid. (citing State v. Martin, 119 N.J. 2, 12 (1990)).

The second prong requires "the jury to determine whether intervening causes or unforeseen conditions lead to the conclusion that it is unjust to find that the defendant's conduct is the

cause of the actual result." State v. Pelham, 176 N.J. 448, 461 (2003) (quoting Martin, 119 N.J. at 13). "'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.'" Ibid. (quoting Black's Law Dictionary (7th ed. 1999)); see also Buckley, 216 N.J. at 265 ("[An] 'intervening cause' denotes an event or condition which renders a result 'too remote, accidental in its occurrence, or dependent on another's volitional act' to fairly affect criminal liability or the gravity of the offense.").

In Buckley, our Supreme Court held that evidence that the deceased victim was not wearing a seat belt at the time of the motor vehicle accident "is irrelevant to both 'but for' causation under N.J.S.A. 2C:2-3(a)(1) and the jury's causation determination under the first prong of N.J.S.A. 2C:2-3(c)'s statutory test —— whether defendant was aware that the manner in which he [or she] drove posed a risk of a fatal accident." Buckley, 216 N.J. at 255. Additionally, this court has held that "[even] [i]f the careless driving of another or the victim's failure to wear a seat belt also were contributing causes of the accident and resulting fatality, this would not absolve defendant of responsibility." State v. Radziwil, 235 N.J. Super. 557, 570 (App. Div. 1989), (citing N.J.S.A. 2C:2-3(c)), aff'd o.b., 121 N.J. 527 (1990).

In Pelham, the Court held that the victim's removal from life support, five months after a motor vehicle accident, was not "an independent intervening cause capable of breaking the chain of causation triggered by defendant's wrongful actions." Pelham, 176 N.J. at 468. Accordingly, the Court held that the jury could not consider a victim's removal from life support to negate a defendant's criminal liability. Id. at 467.

"Adequate and understandable jury instructions in criminal cases are essential to a defendant's right to a fair trial." State v. McKinney, 223 N.J. 475, 495 (2015) (quoting State v. Green, 86 N.J. 281, 287 (1981)). Jury instructions serve as "a road map to guide the jury, and without an appropriate charge a jury can take a wrong turn in its deliberations." State v. Galicia, 210 N.J. 364, 386 (2012) (quoting Martin, 119 N.J. at 15).

Here, defendant raises two arguments regarding the jury instructions on causation. First, he contends that the trial court should not have instructed the jury on the second prong of the culpability assessment. Second, defendant argues that the trial court erred in providing the jury with the limiting instruction that whether A.B. was wearing a seat belt was not relevant to and should not be considered regarding causation.

Initially, we note that defendant did not object to the causation charge and limiting instruction given at trial.

Therefore, we review the charge for plain error. See McKinney, 223 N.J. at 494 (reviewing jury instructions for plain error "clearly capable of producing an unjust result" where the parties did not object to the instruction at trial (quoting R. 2:10-2)).

Applying these standards, we find that even if the trial court erred in instructing the jury on the second prong of the culpability assessment, that error was harmless. Buckley holds that seat belt evidence is irrelevant with respect to "but for" causation and the first prong of the culpability assessment. 216 N.J. at 255. The trial court correctly found and instructed the jury that whether A.B. was wearing a seat belt could not be considered for "but for" causation or the first prong. Buckley does not hold, however, that seat belt evidence is irrelevant with respect to the second prong. The trial court should have either allowed defendant to introduce seat belt evidence for the second prong, or not have instructed the jury on the second prong. Limiting the jury's consideration of the seat belt evidence and still instructing on the second prong was improper. That error was harmless, however, because there was sufficient credible evidence for the jury to find defendant culpable under the first prong.

3. Defendant's Roadside Statements

The Fifth Amendment of the United States Constitution guarantees all persons 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; Griffin v. California, 380 U.S. 609, 615 (1965). 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, 384 U.S. 436.

The Miranda requirement is triggered by a "'custodial interrogation,' which is 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of . . . freedom of action in a significant way.'" State v. Smith, 374 N.J. Super. 425, 430 (App. Div. 2005) (quoting Miranda, 384 U.S. at 444). "[C]ustody exists if the action of the interrogating officers and the surrounding circumstances, fairly construed, would reasonably lead a detainee to believe he [or she] could not leave freely." State v. Coburn, 221 N.J. Super. 586, 596 (App. Div. 1987) (citing State v. Godfrey, 131 N.J. Super.

168, 176 n.1 (App. Div. 1974)). Under this objective test, courts consider the time, location, and duration of the detention, the nature of the questioning, and the conduct of the officers in evaluating the degree of restraint. See, e.g., Smith, 374 N.J. Super. at 431; State v. Pierson, 223 N.J. Super. 62, 67 (App. Div. 1988).

"Miranda is not implicated when the detention and questioning is part of an investigatory procedure rather than a custodial interrogation." Pierson, 223 N.J. Super. at 66. An investigatory procedure includes detention and questioning during a traffic stop or a field investigation. See Berkemer v. McCarty, 468 U.S. 420, 437-38 (1984) (holding that a traffic stop is "presumptively temporary and brief" and "public, at least to some degree" and, thus, does not automatically trigger the Miranda requirement); Terry v. Ohio, 392 U.S. 1 (1968) (holding that officers may briefly detain a person to investigate circumstances that provoke reasonable suspicion). While a person in either context is clearly detained, Miranda warnings are only required if, under the totality of the circumstances, the detention becomes "the functional equivalent of an arrest." Smith, 374 N.J. Super. at 431 (quoting Berkemer, 468 U.S. at 442); see also State v. Nemesh, 228 N.J. Super. 597, 606-07 (App. Div. 1988) (holding that under Berkemer, "[i]t is obvious that an inquiry by an officer upon his [or her]

arrival at the scene of an accident as to who was operating the involved vehicles is not custodial interrogation."). Thus, in the context of a field investigation or traffic stop, "[t]he question is whether a reasonable person, considering the objective circumstances, would understand the situation as a de facto arrest or would recognize that after brief questioning he or she would be free to leave." Smith, 374 N.J. Super. at 432.

When reviewing a motion to suppress statements, we generally defer to the factual findings of the trial court if they are supported by sufficient credible evidence in the record. See State v. Hathaway, 222 N.J. 453, 467 (2015) (citing State v. Elders, 192 N.J. 224, 243-44 (2007)). Moreover, deference to a trial court's factual findings is appropriate because the trial court has the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy[.]" State v. S.S., 229 N.J. 360, 374 (2017) (quoting Elders, 192 N.J. at 244). We review de novo the trial court's legal conclusions that flow from established facts. See State v. Hamlett, 449 N.J. Super. 159, 169 (App. Div. 2017).

Based on testimony and evidence presented at pretrial evidentiary hearings, the motion judge found that the roadside questioning of defendant was not custodial in nature and, thus, Miranda warnings were not required. That finding was premised on

additional findings of fact, which included that defendant was not under arrest, was not placed in handcuffs, and was not subject to coercive questioning. Instead, defendant simply was asked to explain what happened.

The motion judge also recognized that defendant was not free to leave the scene because the police were investigating a motor vehicle accident. The judge found, however, that under the totality of the circumstances, defendant's detention did not become the functional equivalent of an arrest. All of the motion judge's findings of fact are supported by credible evidence. Moreover, the judge's application of those facts to the law was correct. Accordingly, we find no error in the decision to deny the motion to suppress defendant's roadside statements. Moreover, the statements used at trial were properly admitted.

4. The Testimony of the State's Accident Reconstruction Expert

A determination on the admissibility of expert testimony is committed to the sound discretion of the trial court. Townsend v. Pierre, 221 N.J. 36, 52 (2015) (citing State v. Berry, 140 N.J. 280, 293 (1995)). Appellate review of the trial court's grant or denial of a motion to preclude expert testimony is limited to abuse of discretion. Id. at 53.

Two rules of evidence frame the analysis for determining the admissibility of expert testimony. See N.J.R.E. 702; N.J.R.E. 703. N.J.R.E. 702 identifies when expert testimony is permissible and requires the experts to be qualified in their respective fields. "An expert witness's qualifications are assessed based on 'knowledge, skill, experience, training, or education.'" Nicholas v. Mynster, 213 N.J. 463, 478-79 (2013) (quoting N.J.R.E. 702).

N.J.R.E. 703 addresses the foundation for expert testimony. Expert opinions must be grounded in "facts or data derived from (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts." Townsend, 221 N.J. at 53 (quoting Polzo v. Cty. of Essex, 196 N.J. 569, 583 (2008)). The net opinion rule is a "corollary of [N.J.R.E. 703] . . . which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." Id. at 53-54 (quoting Polzo, 196 N.J. at 583).

Therefore, an expert is required to "'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion.'" Id. at 54 (quoting Borough of Saddle River v. 66 E. Allendale, LLC, 216 N.J. 115, 144 (2013)). The net opinion

rule directs that experts "be able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are reliable." Id. at 55 (quoting Landrigan v. Celotex Corp., 127 N.J. 404, 417 (1992)). "Given the weight that a jury may accord to expert testimony, a trial court must ensure than an expert is not permitted to express speculative opinions or personal views that are unfounded in the record." Ibid. In short, the net opinion rule is a "prohibition against speculative testimony." Ehrlich v. Sorokin, 451 N.J. Super. 119, 134 (App. Div. 2017) (quoting Harte v. Hand, 433 N.J. Super. 457, 465 (App. Div. 2013)).

Initially, we note that for the first time on appeal, defendant argues that the testimony of the State's accident reconstruction expert should have been barred as an impermissible net opinion. Therefore, we review the testimony for plain error. R. 2:10-2.

DiStaso reconstructed the crash sequence between defendant's and Emili's vehicles, and testified that defendant's braking while exiting the Garden State Parkway caused Emili to swerve and lose control of his vehicle, which resulted in A.B. being ejected from the car. Defendant argues that DiStaso's expert testimony lacked a factual basis because there was no evidence that defendant braked when exiting the parkway and that the tire marks from Emili's

vehicle were from Emili swerving. We already have determined that there was sufficient evidence that defendant applied his brakes when exiting the parkway. Further, DiStaso's opinion regarding the tire marks, and the crash sequence in its entirety, was based on his investigation and observations of the scene, witness statements, mathematical calculations, and his training and experience as an accident reconstructionist. The trial court admitted DiStaso's proffered testimony after conducting a Rule 104 hearing. N.J.R.E. 104. We discern no abuse of discretion in that ruling, and certainly no plain error, in the admission of the expert's testimony.

5. Juror Thirteen

During deliberations by the jury, juror thirteen expressed concerns about the length of the trial and having to return to work. In response to that concern, the trial judge offered to write a letter to juror thirteen's boss explaining how important it was that the juror remained on the jury until deliberations concluded. Counsel for defendant and the State agreed that a letter to the juror's employer was the appropriate response. The juror accepted the letter. No one requested that juror thirteen be voir dired. Juror thirteen returned the next day for deliberations and expressed no further concerns regarding any employment obligations.

On appeal, defendant argues, for the first time, that the trial court erred in failing to voir dire juror thirteen during deliberations. We review this alleged omission for plain error. R. 2:10-2.

The Sixth Amendment of the United States Constitution and Article I, paragraph 10 of the New Jersey Constitution guarantee criminal defendants the right to trial by an impartial jury. U.S. Const. amend. VI; N.J. Const. art. I, para. 10. "That constitutional privilege includes the right to have the jury decide the case based solely on the evidence presented at trial, free from the taint of outside influences and extraneous matters." State v. R.D., 169 N.J. 551, 557 (2001).

There is no evidence that juror thirteen was unable to deliberate fairly or free from outside influence. The juror was not exposed to extrajudicial information that might have tainted the juror's impartiality. Instead, the juror raised a concern about work, the trial judge addressed that concern, and the juror accepted the judge's suggested resolution; that was, a letter to the juror's employer. Thus, we discern no error, or plain error, in the trial judge not questioning juror thirteen further after the juror returned and expressed no further concern.

Affirmed.