SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3602-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

M.F.,

Defendant-Appellant.

Submitted September 25, 2017 – Decided January 9, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FO-16-0108-16.

Alissa D. Hascup, attorney for appellant (Jeff Thakker, of counsel and on the briefs; Alissa D. Hascup, on the briefs).

Camelia M. Valdes, Passaic County Prosecutor, attorney for respondent (Robert J. Wisse, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant M.F. appeals from his conviction and sentencing following a bench trial for fourth-degree contempt by violating a final domestic violence restraining order. Having reviewed the

record in light of the applicable legal principles, we vacate and remand for entry of an amended judgment of conviction and resentencing on the disorderly persons offense of contempt.

I.

Defendant and A.T. were in a dating relationship from 2010 until they broke up in May 2015. On June 1, 2015, A.T. obtained a temporary domestic violence restraining order against defendant pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. On June 10, 2015, the Family Part issued a final domestic violence restraining order (FRO) against defendant that in pertinent part prohibited defendant from having "any oral, written, personal, electronic, or other form of contact or communication with" A.T.

In August 2015, A.T. reported to the Paterson police department that defendant violated the FRO. On August 25, 2015, the Paterson Municipal Court issued a complaint-warrant charging defendant with fourth-degree contempt of an FRO, N.J.S.A. 2C:29-9(b), and the disorderly persons offense of harassment, N.J.S.A. 2C:33-4(a), by making contact with A.T. "via text messages" "on or about August 18, 2015."

At the trial before the Family Part,[1] the evidence showed that on various dates between August 5 and 17, 2015, A.T. received messages through an application, WatsApp, on her cellphone. A.T. testified her cellphone displayed the phone number of the person sending the messages and their location.

A.T. explained that on August 5, 6, and 14, 2015, she received messages on her cellphone from a phone number with a 203 area code that she recognized as defendant's. The messages consisted of question marks followed by exclamation marks, emojis of lips and broken hearts, and text including "Aww," "Sexy," and "Wow." She also explained that she clicked on a pin that appeared on the screen with the August 5, 2015 message and the screen then showed a map she understood to be the location of the phone sending the message. The map showed the location as the Miami International Airport. Print-outs of the screenshots of the messages and the map were admitted in evidence without objection.

[1] The complaint charged a fourth-degree crime but there is no showing the charge was presented to a grand jury or that defendant was indicted for any criminal offenses. It therefore appears the original fourth-degree contempt charge was downgraded to a disorderly persons offense over which the Family Part had jurisdiction. See N.J.S.A. 2C:25-30 (providing the Family Part has jurisdiction over contempt charges under N.J.S.A. 2C:29-9 involving FRO's "other than those constituting indictable offenses").

A.T. also identified messages she received from a phone number with a 201 area code on August 7, 11, 12, 13, 14, and 17. The messages included statements such as "Thanks for all the [years.] I love no other and will never love no other than you[]. I know you['re] going to use this against me but u will always be the love of my life," and "please forgive me and I do want you back in my life!!! It's all up to you." The messages also included the statement, "Mek yuh a Gwan so!!!!!!" which A.T. testified was a statement in a Jamaican slang, Patois, and means "I want you so." On August 14, 2015, A.T. received messages including "Urgent call?!!!" and "Awwww yuh a seh sweet lips." The final message A.T. received stated "Llamame," which A.T. explained means "Call me" in Spanish.

A.T. testified that she knew the messages from the phone number with the 201 area code were from the defendant because they were about their relationship. For example, she understood the message "I know you['re] going to use this against me" as defendant's acknowledgement he could not contact her because of the FRO. She further testified she understood the the "mek yuh gwan so" and "aww yuh a seh sweet lips" messages came from defendant because they were written in Patois, the Jamaican slang defendant often used when speaking to her.

Defendant admitted at trial he was at the Miami International Airport on August 5, 2015, and sent at least one message to A.T. from his phone with the 203 area code. He testified the message was sent in response to a phone call he received from A.T. According to defendant, after sending the message he turned off his phone, boarded a plane to Jamaica for a long-planned vacation, and did not turn on or use his phone until he returned on August 14, 2015. He denied sending any other messages to A.T.

Defendant acknowledged the 201 number was assigned to his personal phone carrier account and he controlled the use of the number. While he dated A.T., the number was assigned to a phone she used. At some point following their break up in May 2015, he assigned the number to his mother, who resided with him. He denied sending any of the messages to A.T. from that number.

In an oral decision, the court found the case turned on credibility, and that A.T.'s testimony was credible and defendant's was not. The court found defendant knew the FRO barred him from contacting A.T. and nevertheless sent messages from the two phone numbers during the period of August 5 through 17, 2015, and therefore committed fourth-degree contempt in violation of N.J.S.A. 2C:29-9(b). The court did not make any factual findings concerning the harassment offense, and dismissed the charge. The court did not make specific findings of aggravating and mitigating

factors pursuant to N.J.S.A. 2C:44-1(a) and (b), but found the factors were "in equipoise." The court imposed a two-year probationary sentence.

Defendant presents the following arguments on appeal:

> I
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> THE STATE NEVER PRODUCED A SCINTILLA OF EVIDENCE THAT [DEFENDANT] VIOLATED THE FRO ON AUGUST 18, 2015; HE IS ENTITLED TO ACQUITTAL BASED ON THE STATE'S FAILURE TO PROVE WHAT WAS ALLEGED IN THE COMPLAINT (POINT NOT RAISED BELOW).
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> II
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> THE COMPLAINT CHARGED [DEFENDANT] WITH FRO VIOLATIONS OCCURRING ON AUGUST 18, 2015; IF THE STATE HAD SOUGHT TO AMEND THE COMPLAINT TO ALLEGE OTHER FRO VIOLATIONS ON OTHER DATES, DUE PROCESS REQUIRED THE TRIAL COURT TO GIVE [DEFENDANT] AN OPPORTUNITY TO DEFEND HIMSELF (POINT NOT RAISED BELOW).
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> III
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> UNTIL "WHATSAPP" AND "iPHONE" ARE COMMONLY UNDERSTOOD BY LAYPERSONS, THE (ALLEGED) 'SCREEN-SHOTS' AND OTHER TANGIBLE REPRODUCTIONS OF THE INFORMATION SHOULD NOT BE ADMITTED AS EVIDENCE IN A CRIMINAL TRIAL WITHOUT PROPER FOUNDATION; WITHOUT EXPERT TESTIMONY OR (AT MINIMUM) A DRIVER-TYPE HEARING, THE TRIAL COURT WAS IN NO POSITION TO DETERMINE THE ADMISSIBILITY OR ASSESS THE CREDIBILITY OF THE 'SCREEN-SHOTS.'
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> IV
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> SINCE THE ALLEGED MESSAGES WERE WITHOUT ANY FOUNDATION, [DEFENDANT'S] MOTION FOR ACQUITTAL SHOULD HAVE BEEN GRANTED; AT

MINIMUM, THIS COURT SHOULD REVERSE AND REMAND FOR A RETRIAL.

V

THE PROSECUTOR WAS REQUIRED TO MAKE AN OPENING STATEMENT, AND THE TRIAL COURT'S FAILURE TO HEAR AN OPENING STATEMENT CONTRIBUTED TO PLAIN ERROR (POINT NOT RAISED BELOW).

VI

THE TRIAL COURT IMPROPERLY SHIFTED THE BURDEN OF PROOF FROM THE STATE TO THE DFENSE; SINCE THERE WAS REASONABLE DOUBT WHETHER [DEFENDANT] KNOWINGLY SENT THE VAST MAJORITY OF THE MESSAGES, THE COURT SHOULD HAVE ACQUITTED [DEFENDANT] EVEN IT THE COMPLAINT WAS AMENDED.

VII

SINCE THE TRIAL COURT FOUND THE ONE ACKNOWLEDGED OFFENSE TO BE NOT KNOWING (OR AT WORST 'DE MINIMIS,' PER THE TRIAL COURT), THAT CHARGE SHOULD HAVE BEEN DISMISSED.

VIII

THE TRIAL COURT'S DISPOSITION OF THE HARRASSMENT CHARGE INFECTED THE FINDINGS AND CONCLUSIONS VIS-À-VIS THE [N.J.S.A.] 2C:29-9[(]b[)] CONVICTION.

IX

THE SENTENCE, IF NOT A NULLITY, WAS AN ABUSE OF DISCRETION.

X

THE COMPLAINT/WARRANT WAS SO DEFECTIVE AS TO DEPRIVE THE COURT OF JURISDICTION (POINT NOT RAISED BELOW.

II.

Defendant raises many arguments for the first time on appeal. Our review of purported errors raised for the first time on appeal is guided by the "well-settled principle that [we] will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless [they] go to the jurisdiction of the trial court or concern matters of great public interest." State v. Robinson, 200 N.J. 1, 20 (2000) (citations omitted). However, we "retain the inherent authority to 'notice plain error not brought to the attention of the trial court.'" Id. at 20; see also R. 2:10-2. Plain error is not simply any error, but one that must be "sufficient to raise a reasonable doubt as to whether the error led . . . to a result [the fact-finder] otherwise might not have reached." State v. Macon, 57 N.J. 325, 336 (1971).

In Points I, II, III and IV defendant contends there was insufficient evidence supporting his conviction because the complaint alleged he committed the offense on August 18, 2015, and there was no evidence he sent any messages to A.T. on that date. He also argues there was insufficient competent evidence supporting his conviction because the court relied on evidence that was not properly authenticated. We are not persuaded.

The New Jersey Constitution requires that a criminal complaint "inform a defendant of the charges he must defend against." State v. Salzman, 228 N.J. Super. 109, 114 (App. Div. 1987); see also N.J. Const. art. 1, par. 10 (requiring that criminal defendants "be informed of the nature and cause of the accusation"). A complaint must "contain enough information to enable the accused to defend himself and to avoid the risk of successive prosecutions for the same transgressions." Salzman, 228 N.J. Super at 114.

Defendant was not provided "a blank warrant" that was "filled in only at the time of trial as the evidence unfold[ed] in the court room." Ibid. Although the complaint alleged defendant committed the offenses on August 18, 2015, it also broadly alleged the offenses were committed "on or about August 18, 2015."

Defendant did not object to the testimony and evidence showing the commission of the offenses between August 5 and 17, 2015, and there is nothing in the record showing defendant did not understand the complaint alleged offenses occurring between August 5 and 17, 2015. To the contrary, defendant received discovery materials showing the messages sent during that time period, did not object to the introduction of the evidence at trial on the basis it was outside of the allegations in the complaint, and never claimed surprise, prejudice or a denial of due process. Moreover,

defendant was fully prepared to address the allegation he committed the offenses over the twelve-day period; he appeared at trial with records purportedly showing his phone's messaging activity during that time and testified concerning his phone usage during the entire period.

We are satisfied the complaint adequately advised defendant of the charges against him. Ibid. He makes no showing to the contrary. We also reject defendant's contention the court erred by failing to sua sponte grant an adjournment to permit him to address the evidence showing he committed the offenses on days other than August 18, 2015. We interpret defendant's failure to request an adjournment as further confirmation he fully understood he was charged with violating the FRO on the various days between August 5 to 17, 2015.

In Point III defendant contends the court erred by admitting into evidence print-outs of the screenshots from A.T.'s phone. Defendant claims the print-outs were inadmissible because they were not properly authenticated and the court should have conducted a "Driver-like hearing"[2] to determine their authenticity.

[2] State v. Driver, 38 N.J. 255 (1962). We do not address defendant's argument concerning the court's failure to conduct a Driver hearing because he did not request the hearing before the trial court, and the issue neither goes to the court's jurisdiction

Prior to addressing the merits of defendant's argument, we observe the record does not support his contention that he objected to the introduction of the screenshots. He claims he raised an issue concerning the authenticity of the screenshot print-outs because there was no expert testimony concerning the operation of the application and A.T.'s phone. Our review of the record, however, reveals that was not the case. A.T. was asked about the operation of her phone and the WatsApp application, and defendant objected, arguing the manner in which the phone and application worked required expert testimony.

Defense counsel agreed A.T. could be asked "whether she downloaded the app[lication] and if she used the app[plication]. But as soon as [the State] gets into any issues with regards to how the app[lication] works [the State] needs an expert." The judge reserved decision on the objection, but allowed, with defendant's consent, A.T. to testify concerning the "app[lication] she used" and "how she downloaded it." The judge then said he was overruling the objection without prejudice to defendant's right to raise it again.[3]

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nor pertains to a matter of public interest. See Robinson, 200 N.J. at 20.

[3] Defendant's brief mischaracterizes the record. Defendant asserts the judge overruled the objection and stated "I don't

Defendant never renewed his objection in response to A.T.'s testimony concerning what she saw on her phone or the manner in which she made the screenshots and printed them. Although defendant objected to A.T. testifying about the manner in which her phone and the application operated, he never argued at trial that the screenshot print-outs were inadmissible because there was no expert testimony about the phone and application's operation.[4] To the contrary, each of the print-outs was admitted in evidence without objection from defendant.[5]

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think that's beyond the ken of the average user of one of these phones." The court did not make that statement when it ruled on defendant's objection to the State's inquiry to A.T. about the workings of her phone or application. The court made the statement much later in the proceeding, when defense counsel objected to the State's cross-examination question to defendant, asking if he placed his phone in "airplane mode" while he was on vacation in Jamaica.

[4] Defendant claims for the first time on appeal there was insufficient evidence presented at trial demonstrating the technological reliability of A.T.'s phone and application. Defendant, however, never requested a hearing on the reliability of the technology, see, e.g., Frye v. United States, 293 F. 1013 (D.C. Cir. 1923), and never objected to the introduction of the screenshots on that basis. We decline to address the issue because it does not go to our jurisdiction and does not involve a matter of public concern. See Robinson, 200 N.J. at 19. We also do not express any opinion as to whether such a hearing was necessary or required under the circumstances presented here.

[5] Defendant claims his motion for acquittal was based, at least in part, on the assertion the screenshot print-outs were not properly authenticated. This claim is untethered to any support in the record and is based on an inaccurate representation of defense counsel's argument before the trial court.

Thus, for the first time on appeal defendant claims the screenshots should not have been admitted because they were not properly authenticated. Because defendant raised no objection to this evidence during trial, we review the claimed error for plain error and determine whether admission of screenshots evidence was "clearly capable of producing an unjust result." R. 2:10-2.

Reviewed under this standard, we conclude the court did not commit any error by admitting the screenshot print-outs, let alone plain error. Defense counsel's failure to object to the admission of the print-outs demonstrates a lack of any prejudice attributable to any purported failure to properly authenticate them. Macon, 57 N.J. at 341 (noting that a "failure to object may suggest the error was of no moment in the actual setting of the trial"). In addition, the failure to object "'also deprive[d] the court of the opportunity to take curative action.'" State v. Papasavvas, 163 N.J. 565, 625 (2000) (quoting State v. Timmendequas, 161 N.J. 515, 575-76 (1999)).

Moreover, the evidence presented to the court was sufficient to authenticate the print-outs. A writing must be authenticated before it can be admitted into evidence. State v. Marroccelli, 448 N.J. Super. 349, 364 (App. Div. 2017). "The requirement of authentication . . . as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the

matter is what its proponent claims." N.J.R.E. 901. Authentication "'does not require absolute certainty or conclusive proof' — only 'a prima facie showing of authenticity' is required." State v. Hannah, 448 N.J. Super. 78, 89 (2016) (quoting State v. Tormasi, 443 N.J. 146, 155 (App. Div. 2015)). A prima facie showing of authenticity "may be made circumstantially," by proof "demonstrating that the statement 'divulged intimate knowledge of information which one would expect only the person alleged to have been the writer or participant to have.'" Id. at 90 (quoting Konop v. Rosen, 425 N.J. Super. 391, 411 (App. Div. 2012)).

These principles also apply to written messages that are transmitted electronically. Id. at 89. In Hannah, we rejected the defendant's argument that a new authenticity standard for electronic messages was required because such messages could be "easily forged." Ibid. Noting that any written document could be easily forged as well, we determined we should "apply our traditional rules of authentication under [N.J.R.E.] 901." Ibid. Here, we rely upon traditional authentication principles as applied in Hannah to the electronic messages A.T. testified appeared on her phone.

The messages sent on August 5, 6, and 14, were from the 203 area code number plaintiff testified was defendant's phone number. The initial messages included emojis showing broken hearts, which

were consistent with defendant and A.T.'s recently ended long-term romantic relationship. There was also a message consisting of a question mark and three exclamation marks, "?!!!"

A.T. received the second group of messages from the 201 area code number that she did not identify. However, she explained the messages revealed information she expected only from defendant. For example, there were two separate messages written in Patois, which is a form of Jamaican slang that defendant spoke to her during their five-year relationship. The messages also included an acknowledgement that plaintiff might use the fact that messages were being sent against the messenger. A.T. explained that the message showed defendant was its author because he was the only person against whom she had an FRO prohibiting all contact, and the message was accompanied by a plea for forgiveness and a request for A.T. to be back in the sender's life.

The content of messages from the two phone numbers also supported a reasonable inference they were sent from the same person. There are messages from both phones using the identical broken heart emoji. In addition, there were separate messages sent from both phone numbers on different days that consist only of a question mark followed by exclamation marks.

The general rule is that a court is afforded "considerable latitude . . . in determining whether to admit evidence, and that

determination will be reversed only if it constitutes an abuse of discretion." State v. Kuropchak, 221 N.J. 368, 3856 (2015) (quoting State v. Feaster, 156 N.J. 1, 82 (1998)). "Under that standard, an appellate court should not substitute its own judgment for that of the trial court, unless the 'trial court's ruling was so wide of the mark that a manifest denial of justice resulted.'" Ibid. (quoting State v. Massero, 148 N.J. 469, 484 (1997)).

In our view, and considering the evidence in its totality, the messages on both phones and A.T.'s testimony was sufficient to make a prima facie showing defendant sent the messages. There was evidence showing sufficient context and content such that one would expect the messages were sent by defendant only. Under such circumstances, there was sufficient evidence supporting the authenticity of the screenshot print-outs and their admission in evidence.[6] See Hannah, 448 N.J. at 89-90. As a result, we find no abuse of discretion in the court's admission of the print-outs in evidence.

[6] Because the print-outs were admitted without objection, the court was not required to make a determination as to authenticity under N.J.R.E. 901. Our determination is based solely on the testimony and evidence presented during the State's case. We note that during the defendant's case, he admitted sending one of the messages on August 5, 2015, from the 203 area code number, which he acknowledged was his phone number. He also admitted the 201 area code number was a number associated with his personal phone carrier account and the number was assigned to his mother's phone.

We also reject defendant's contention there was insufficient evidence supporting his conviction. Our review of a judge's findings of fact in a non-jury case is limited to a determination of whether "the findings made could reasonably have been reached on sufficient credible evidence present in the record." State v. Wright, 444 N.J. Super. 347, 356 (App. Div. 2016) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)), certif. denied, 228 N.J. 240 (2016). The judge found that defendant knowingly violated the FRO by communicating with A.T. by sending the various messages. The court's findings are supported by the record and by its determination that A.T. was credible and defendant was not. We defer to a judge's findings where, as here, they are "substantially influenced by [the judge's] opportunity to hear and see the witnesses . . . ." State v. Elders, 192 N.J. 224, 244 (2007). Because the court's findings are supported by sufficient credible evidence in the record, we discern no basis to reverse defendant's conviction.

Defendant next argues in Point V that the court committed plain error by permitting the parties to waive opening arguments. At the commencement of the trial, the assistant prosecutor and defense counsel advised the court that they agreed to waive opening statements. Pursuant to that representation and agreement, the State did not present an opening argument. Defendant claims the

State's failure to present an opening statement requires reversal of his conviction.

We reject defendant's argument because we discern no error, let alone plain error, by the absence of an opening statement by the State. "In a criminal prosecution, the State is required to open," State v. Tilghman, 385 N.J. Super. 45, 56 n.1 (App. Div), rev'd in part on other grounds, 188 N.J. 269 (2006), but Rule 1:7-1(a) permits an exception where the "pretrial order" provides otherwise. Here, the parties agreed to waive opening statements and the court made a pretrial determination to accept the waiver and proceed without opening statements.

Moreover, defendant was not prejudiced by the State's failure to make an opening statement. "[W]e have noted 'that the prosecutor's opening should be part of orderly trial procedure provided for the benefit of the jury, not the defendant.'" Tilghman, 385 N.J. Super. 56 n.1 (quoting State v. Portock, 205 N.J. Super. 499, 505 (App. Div. 1985)), rev'd in part on other grounds, 188 N.J. 269 (2006). Where, as here, defendant was tried before a judge, there was no possibility the intended benefits of the State's opening statement were compromised. Defendant makes no showing the agreed upon waiver of the State's opening statement caused any prejudice or constituted plain error that was clearly capable of producing an unjust result. R. 2:10-2.

Last, even assuming it was error to permit the agreed upon waiver of the State's opening statement, the error does not provide the basis for a reversal because it was invited. "[A] defendant cannot beseech and request the trial court to take a certain course of action, and upon adoption by the court, take his chance on the outcome of the trial, and if unfavorable, then condemn the very procedure he sought . . . claiming it to be error and prejudicial." N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 340 (2010). "The doctrine of invited error does not permit a defendant to pursue a strategy . . . and then when the strategy does not work out as planned, cry foul and win a new trial." State v. Williams, 219 N.J. 89, 101 (2014). "Under that settled principle of law, [alleged] trial errors that were 'induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal . . . .'" State v. A.R., 213 N.J. 542, 561 (2013) (second alteration in original) (quoting State v. Corsaro, 107 N.J. 339, 345 (1987)). Defendant agreed to the waive the State's opening statement, and therefore the alleged error about which he complains provides no refuge from his conviction.

We again note the judgment of conviction shows the court found defendant guilty of fourth-degree contempt, N.J.S.A. 2C:29-9(b). However, defendant was never indicted by a grand jury on

that charge and the Family Part did not have jurisdiction over that charge. See N.J.S.A. 2C:25-30. In addition, the court did not find an essential element of the fourth-degree offense — that defendant's conduct "constitute[d] a crime or a disorderly persons offense," N.J.S.A. 2C:29-9(b)(1). We therefore remand for entry of an amended judgment of conviction reflecting defendant's conviction of a disorderly persons offense under N.J.S.A. 2C:29-9(b)(2).

We next consider defendant's contention, made in Point IX, that the court abused its discretion in imposing a sentence that failed to make findings of the aggravating and mitigating factors under N.J.S.A. 2C:44-1 and that certain findings made by the court in its sentencing determination are not supported by the record.

"Appellate review of sentencing is deferential, and appellate courts are cautioned not to substitute their judgment for those of our sentencing courts." State v. Case, 220 N.J. 49, 65 (2014) (citing State v. Lawless, 214 N.J. 594, 606 (2013)). A trial court's sentence must be affirmed "unless: (1) the sentencing guidelines were violated; (2) the findings of aggravating and mitigating factors were not 'based on competent credible evidence in the record;' or (3) 'the application of the guidelines to the facts' of the case 'shock[s] the judicial conscience.'" State v.

Bolvito, 217 N.J. 221, 228 (2014) (quoting State v. Roth, 95 N.J. 334, 364-65 (1984)).

As long as the court properly identified and balanced aggravating and mitigating factors that are supported by competent credible evidence, appellate courts must affirm the sentence. State v. Fuentes, 217 N.J. 57, 73 (2014). In addition, a trial judge must explicitly state on the record which aggravating and mitigating factors were found and how they were weighed. Id. at 72-73.

The record shows that although the court determined the aggravating and mitigating factors were "in equipoise," it did not identify the aggravating and mitigating factors it found, did not explain its rejection of mitigating factors that were suggested, and did not describe its weighing of the factors. "[A] trial court should explain its analysis of [N.J.S.A.] 2C:44-1's aggravating and mitigating factors with care and precision." Id. at 81. The court's failure to do so requires that we remand for resentencing. See id. at 76-81.

We have carefully considered the arguments in Points VI, VII, VIII and X, none of which was raised before the trial court, and determine they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed in part, vacated in part, and remanded for entry of an amended judgment of conviction and resentencing.