SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0766-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ARTHUR S. HASKOOR,

Defendant-Appellant.

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Argued March 1, 2023 – Decided June 27, 2023

Before Judges Accurso, Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 16-05-1027.

David A. Gies, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; David A. Gies, on the briefs).

Shiraz I. Deen, Assistant Prosecutor, argued the cause for respondent (Bradley D. Billhimer, Ocean County Prosecutor, attorney; Samuel Marzarella, Chief Appellate Attorney, of counsel; Shiraz I. Deen, on the brief).

PER CURIAM

A jury convicted defendant Arthur S. Haskoor of first-degree murder, third-degree possession of a weapon for an unlawful purpose, and fourth-degree unlawful possession of a weapon. The court sentenced him to life in prison subject to the requirements of the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. On appeal, defendant challenges the court's denial of his motion to suppress a statement he provided to the police, contending the court erred by finding he knowingly and intelligently waived his Miranda[1] rights. Defendant also claims the court erred in making certain evidentiary rulings and in imposing sentence. Unpersuaded by his arguments, we affirm defendant's conviction and sentence.

I.

The criminal charges against defendant arise from an August 25, 2015 incident at the home he shared with his wife, Susanne, and their two sons, Thomas and Jake. On May 25, 2016, a grand jury returned an indictment charging defendant with first-degree murder of Susanne, third-degree possession of a weapon for an unlawful purpose, and fourth-degree unlawful possession of a weapon.

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

At trial, the State presented evidence defendant and Susanne were engaged in a contentious divorce that in part involved a disagreement over alimony. Susanne "made $450,000" in 2014 and defendant believed the couple "had $1.4 million" in investments, not including their houses. Defendant operated a tree-cutting business with one client and performed some landscaping work. About a week prior to the homicide, after the family dropped Thomas off at college, defendant asked Jake which of his parents he wanted to live with. Jake said he wanted to live with his mother because "she [could] provide for [him] better."

On August 24, 2015, Susanne and defendant argued over money. Susanne believed defendant "want[ed] every dollar he [could] get," even at the expense of their sons' college funds. Following the argument, she texted a friend and announced a plan to hire a private investigator and undercut defendant's pursuit of alimony.

The following day, Jake returned from tennis practice and found Susanne lying on the walkway leading to the front door of the family's home. He called out to her, but she did not respond. He approached her and found her bloody, not breathing, and lying next to a knife. Jake ran to the front door, where he saw a note in defendant's handwriting stating, "Do not come in. I will kill you.

I have guns." Jake went to the school across the street from the home and sought help.

Dr. Ian Hood, a forensic pathologist, testified Susanne had been stabbed fourteen times through her abdomen, tongue, eyes, nose, skull, and heart. She also suffered slash wounds to her jaw and "right index finger"; blunt force trauma wounds to her head; a bite wound on her arm, and crescent-shaped bruises to her neck, indicating she had been choked with two hands.

The administrators at the school across the street from defendant's home spoke with Jake and called 911. Police officers arrived at the home and a Special Weapons and Tactics (SWAT) team followed. After attempting unsuccessfully to contact defendant, the SWAT team deployed a robot hoping either to reach defendant inside the house or to "clear a portion of the structure" for entry. The robot located defendant "unresponsive" in the garage.

The SWAT team entered the garage and rendered medical aid to defendant. Detective John Murphy, a homicide detective with the Ocean County Prosecutor's Office, testified the SWAT team transported defendant via helicopter to a hospital. Murphy and his partner, Detective Brant Uricks, later visited defendant in the hospital "in an attempt to speak with him and advise him of the charges filed against him."

A search of the home revealed numerous weapons and blood stains. Pertinent to this appeal, the search revealed a blood-stained hammer and bottles of prescription medicine. A photograph of the garage, which is not part of the record on appeal, revealed the blood-stained hammer was found next to where defendant had been found lying unconscious in the garage. Evidence at the scene, including DNA taken from Susanne's fingernails and bite mark, tested positive for both her and defendant's DNA.

When defendant arrived at the hospital, physicians placed him on a ventilator and sedated him. They determined defendant had overdosed on benzodiazepines, which depressed his breathing and caused him to fall into a comatose state. Defendant was comatose from August 26 to 28, began to awaken on August 29, improved on August 30, "and then [on] the 31st he was discharged" from the hospital into police custody, where he provided a videorecorded statement to Detectives Murphy, Uricks, and A.J. Mantz.

During the recorded statement, defendant appeared in his hospital gown and was partially disrobed, revealing bandages on his right pectoral and wrists. Defendant appeared groggy. He frequently coughed, stuttered, paused, and slurred his words. Throughout the statement, he claimed to have short term memory problems, eating issues, and a history of "brain problems" which had

ended his boxing career. He claimed not to recognize Murphy and Uricks but remembered he had previously been an Air Force mechanic, a computer programmer, a landscaper, and a stay-at-home father. Uricks read defendant his Miranda rights from a card, and defendant agreed to waive those rights.

In his statement, defendant claimed not to remember his argument with Susanne, but later recalled they fought over alimony. He discussed at length his frustration over the fight and the arguments he made to Susanne in support of his increasing requests for financial support. He explained his "medications" and "coping mechanisms" contributed to his frustration. He also claimed Susanne initiated the confrontation on August 25 by hitting him, and he responded by dragging her into the family's dining room and ultimately to the walkway outside the home.

During the statement, defendant equivocated on his ability to remember other details of the homicide. As the detectives pressed him for answers, he ultimately confessed he choked his wife while straddling her, stabbed her in the face with a "buck knife," took medication intending to commit suicide, and posted a handwritten warning note on his front door to delay anyone from gaining access to him to give the medication time to take effect. Defendant described the knife's hooked shape. He discussed retrieving his guns, taking

money from a safe, and going into his garage. He claimed to have "no recollection" of falling into a coma.

As the statement concluded, defendant discussed his sons in detail, and asked the detectives if they "kn[e]w what happened" to their mother. He explained he had not been angry at Susanne, but merely anxious.

Defendant told a more detailed story at trial. According to his testimony, Susanne woke him up by hitting his "forehead" five times with a hammer. Defendant testified he rose from bed and implored her "to talk," but when "she raised the hammer again," he punched her until she dropped the hammer and unsheathed a knife. Defendant testified the pair took their confrontation outside, where he wrestled Susanne to the ground, and she punched him until he began to choke her. Defendant testified Susanne continued to resist him until he "grabbed the knife" and stabbed her "until she stopped hitting."

Defendant testified that, appalled at what he had done, he resolved to commit suicide. He wrote a note saying, "I have guns, don't come in the house, I will kill you." He then locked himself in the house, "took as many pills as [he] could," "went to the garage" to grab his guns, took his guns to his bedroom, searched for more pills to ingest, returned to the garage to remove money from a safe, and then "woke up in the hospital."

As noted, the jury convicted defendant on all the charges and the court sentenced defendant to life in prison subject to NERA. This appeal followed. Defendant presents the following arguments for our consideration:

> POINT I
>
> THE TRIAL JUDGE ERRED IN DETERMINING THAT DEFENDANT'S WAIVER WAS KNOWING AND INTELLIGENT WHERE HE ONLY CONSIDERED THE VIDEOTAPE OF THE CUSTODIAL INTERROGATION.
>
> POINT II
>
> THE TRIAL JUDGE'S CURATIVE INSTRUCTION REGARDING THE ASSISTANT PROSECUTOR'S REMARKS ABOUT MATTERS EXTRANEOUS TO THE EVIDENCE DID NOT FOCUS THE JURY'S ATTENTION ON THE FACTS IN EVIDENCE TO DECIDE PROPERLY DEFENDANT'S FATE.
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> POINT III
>
> THE TRIAL JUDGE'S DECISION TO ADMIT DEFENDANT'S SUICIDE ATTEMPT AS EVIDENCE OF A CONSCIOUSNESS OF GUILT WAS A CLEAR ABUSE OF DISCRETION WHERE THE ACCUSED'S PSYCHOLOGICAL, SOCIAL AND FINANCIAL SITUATION UNDERLIED THE EFFORT.
>
> POINT IV
>
> THE TRIAL JUDGE ERRED WHERE HE DID NOT CONSIDER DEFENDANT'S INITIAL REQUEST TO ACT AS HIS OWN ATTORNEY WHEN

QUESTIONING THE EXPERT WITNESSES AT THE MIRANDA HEARING.

POINT V

THE TRIAL JUDGE ERRED WHERE HE REJECTED MITIGATING FACTOR EIGHT BASED ON A FACTUAL FINDING NOT SUPPORTED BY COMPETENT CREDIBLE EVIDENCE THAT DEFENDANT'S MENTAL HEALTH ISSUES WERE SELF-INFLICTED.

II.

Generally, our review of a trial court's findings at an evidentiary hearing or trial is deferential. See State v. Tillery, 238 N.J. 293, 314 (2019); State v. Hubbard, 222 N.J. 249, 262-65 (2015). "[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Carrion, 249 N.J. 253, 279 (2021) (alteration in original) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). However, "the interpretation of law 'and the consequences that flow from established facts' are not entitled to deference and are reviewed de novo." Ibid. (quoting Hubbard, 222 N.J. at 263).

A.

Defendant concedes his videotaped statement to Detectives Murphy, Uricks, and Mantz was made voluntarily. He argues, however, that the court

erred by denying his motion to suppress his statement by concluding he knowingly and intelligently waived his Miranda rights. Defendant argues the evidence established he could not have knowingly and intelligently waived his Miranda rights because the waiver occurred "two hours after [he] was discharged from" "his six and one-half day admission to [the hospital], three [days] of which he was kept alive on a ventilator after his overdose on a psychoactive drug." As part of this argument, defendant asserts the court erred by disregarding the opinion of his expert, Dr. Peter P. Oropeza, and accepting the opinion of the State's expert, Dr. Pogos H. Voskanian.

The State maintains the court's determination defendant knowingly and intelligently waived his Miranda rights is supported by substantial credible evidence in the record. Specifically, the State contends the court rendered detailed findings supporting its determinations Dr. Oropeza was not credible, and Dr. Voskanian was credible, and by relying on Dr. Voskanian's testimony defendant was capable of knowingly and intelligently waiving his Miranda rights following his release from the hospital.

Defendant's expert, Dr. Oropeza, evaluated defendant on the same day he provided the videotaped statement to the detectives. Dr. Oropeza also evaluated defendant in three two-hour sessions at the Ocean County jail on December 19,

2016; December 27, 2016; and January 30, 2017. Based on his review of the videotaped statement, defendant's "history of head injuries," the discharge summary written by defendant's physician at that the hospital, and defendant's prior psychological diagnoses, Dr. Oropeza opined that defendant "did not intelligently and knowingly waive [his] Miranda rights."

Dr. Oropeza testified defendant had, over time, received "a host of diagnoses" for mental illnesses including bipolar disorder, depression, anxiety, "intermittent explosive disorder," and "some cognitive memory issues" which his doctors treated with "medications," "counseling," and electroconvulsive therapy (ECT). Dr. Oropeza testified ECT involves "electrocuting of the brain," which may cause "memory problems and . . . slow cognitive functioning." Although he testified defendant continued to manifest symptoms despite his varied history of treatments, Dr. Oropeza did not testify ECT caused memory problems or slow cognitive functioning in defendant.

According to Dr. Oropeza, defendant's treating physician described him as "nonresponsive," unmoving, and unspeaking upon admission to the hospital. The physician also noted "an injury on his forehead" and "possible internal head bleeding." As already noted, defendant was comatose from August 26 to 28, started to awaken on August 29, improved on August 30, and was discharged

the following day. Dr. Oropeza testified that given the observation defendant was "cognitive behavioral nonresponsive" for "three or four days," he would have "followed up with additional neurological screenings and testing" and waited up to "a week of full stability" before asking defendant to complete any mentally taxing tasks.

Dr. Oropeza also testified the hospital's discharge summary stated defendant "warranted further follow-up," and, based on that summary, Dr. Oropeza concluded "the doctor [at the hospital] specifically spoke to law enforcement officers and told them that there needed to be follow-up with regard to [defendant's] cognitive abilities." Dr. Oropeza further believed "the existence of a coma [can] result in long term cognitive difficulties," and "it could certainly appear that [defendant] has some physical" and memory-based issues which may have extended from his coma.

As part of his evaluations, Dr. Oropeza administered three standard psychological tests on defendant: a Personality Assessment Inventory (PAI), the Minnesota Multiphasic Personality Inventory (MMPI), and the Wechsler Adult Intelligence Scale (WAIS). He testified the PAI delivered "questionably valid" results; the MMPI delivered "invalid" results, potentially indicating defendant was "faking it" or "need[ed] to seek attention"; and the WAIS

delivered results indicating defendant was cognitively impaired in "perceptional reasoning." However, Dr. Oropeza corrected himself, explaining defendant scored high in perceptional reasoning and instead had difficulties with "processing speed," that is, "the ability to be given something new that he [has not] seen before and remember it."

On cross-examination, Dr. Oropeza testified the hospital discharge summary indicated defendant "was cleared prior to discharge" and "[did] not need to follow up with neurosurgeons"; an evaluation "less than a year prior to" the homicide concluded defendant had "no neurocognitive disorder"; and defendant's physician at the hospital wrote a "progress note[]" on August 31, 2016, stating defendant demonstrated normal "cognitive communication."

The State called Dr. Voskanian as its expert witness. On August 16, 2017, Dr. Voskanian performed a six-hour evaluation of defendant's "competency to waive his Miranda rights," "his mental state at the time of the offense," and his "competency to stand trial." Based upon those evaluations and his review of defendant's videotaped statement to the detectives, Dr. Voskanian opined "defendant intelligently, knowingly, and voluntarily waived his Miranda rights on August 31st" because he made "appropriate rational answers to [the detectives'] questions."

Dr. Voskanian based his opinion in part on his observations that during his six-hour evaluation, defendant appeared "coherent, rational, goal-directed," and articulate; demonstrated no issues with focus or concentration; was properly "oriented to time, place, person, and circumstances"; was taking no "psychiatric medication" beyond a "low dosage of antidepressant"; and said nothing that did not "correspond[] to reality or to history." Though defendant claimed to have forgotten the homicide and his videotaped statement, Dr. Voskanian gave no credence to those claims because there had been no recent "impairing event," such as a head injury or intoxicated state, which would cause such memory loss. Dr. Voskanian also opined memory loss is easy to feign because "[y]ou just say I don't remember."

Dr. Voskanian testified he reviewed Dr. Oropeza's report and disagreed with its conclusions. He opined "neuropsychological testing" was inappropriate to evaluate defendant's cognitive ability during the videotaped statement because the relevant consideration was defendant's "actual behavior and actual presentation" during the statement itself. To that end, Dr. Voskanian testified the recording revealed defendant answered the police officers' questions "appropriately and to the point"; "explain[ed] the reasons for his frustration [with Susanne] very clearly"; "describe[d] the offense very clearly, consistent

with . . . all the collateral information," including the autopsy; and therefore evidenced defendant was "competent" to waive his rights. The hospital's discharge notes did not change Dr. Voskanian's opinion because they "described [defendant] as . . . clear" and noted the hospital had successfully removed the drugs in defendant's stomach. Defendant's "personality disorder" diagnosis also did not change Dr. Voskanian's opinion because the diagnosis did not "impact upon [defendant's] degree of suggestibility or his ability to have his will overborne by the investigating officers."

The State also called Detective Murphy as a witness. Based on his "training and experience . . . detecting whether or not individuals are under the influence of alcohol or narcotics," Detective Murphy testified defendant did not appear to be under the influence of alcohol or narcotics at the time of the videotaped statement.

In its opinion following the presentation of evidence, the court found Dr. Oropeza's testimony not credible based upon his "fail[ure] to explain" his opinions and to "take . . . facts or medical records and tie them to a diagnosis"; his "questionable" explanations of the psychological exams he administered; his use of uncontextualized facts to "bolster his opinion"; and his use of facts not appearing in his written reports. By contrast, the court found Dr. Voskanian's

testimony credible based upon: the court's review of the videotaped statement, which the court found was consistent with Dr. Voskanian's opinion; Dr. Voskanian's focus on "the totality of the circumstances" rather than "selective[] . . . statements or portions of an interview"; Dr. Voskanian's use of case facts, which the court found superior to Dr. Oropeza's; Dr. Voskanian's training as "a medical doctor"; and the lengthy "six-hour" period Dr. Voskanian spent evaluating defendant. The court discounted any inconsistencies in Dr. Voskanian's testimony as minor "errors" for which the underlying reports prepared by the police or hospital were at fault.

The court also found the testimony of Detective Murphy credible based his thirteen-years of experience as a detective "trained in the observation and identification of persons under the influence of alcohol and substances," and the court's own review of the videotaped statement.

"When faced with a [challenge to a] trial court's admission of police-obtained statements," this court must "engage in a 'searching and critical' review of the record to ensure protection of a defendant's constitutional rights." State v. Hreha, 217 N.J. 368, 381-82 (2014) (quoting State v. Pickles, 46 N.J. 542, 577 (1966)). Our "review, however, does not generally involve 'an independent assessment of the evidence as if [we] were the court of first instance.'" Id. at

382 (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). We "typically defer to the trial court's credibility and factual findings, recognizing that the trial court's findings are often 'substantially influenced by [its] ability to hear and see the witnesses and to have the "feel" of the case.'" Ibid. (alteration in original) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Our deference extends not only to a court's determinations based on live testimony, but also those based on its review of video or documentary evidence. State v. S.S., 229 N.J. 360, 379-80 (2017).

We may not properly reject a trial court's factual findings merely because we "disagree[] with the inferences drawn and the evidence accepted by the trial court or because [we] would have reached a different conclusion." Id. at 374. We will reject a court's findings of fact only if they are "so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Gamble, 218 N.J. 412, 425 (2014) (quoting Elders, 192 N.J. at 244). When the trial court's factual findings are "not supported by sufficient credible evidence in the record," our deference ends. S.S., 229 N.J. at 381.

As detailed in its thorough opinion following the hearing on defendant's motion to suppress his statement to the detectives, the court carefully considered Dr. Oropeza's testimony but found his opinions not credible. The court's

determination is supported by substantial evidence in the record developed during the State's probing cross-examination of Dr. Oropeza that demonstrated numerous and varied contradictions in his testimony.[2] See Carrion, 249 N.J. at 279.

In contrast, substantial credible evidence supports the court's conclusion Dr. Voskanian testified credibly and, contrary to defendant's claim, the court did not err by reviewing the videotaped statement as part of its determination. A

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[2] For example, on direct examination Dr. Oropeza testified defendant's discharge summary stated defendant "warranted further follow-up," but on cross-examination, he acknowledged the discharge summary stated defendant "does not need to follow up with neurosurgeons." On direct examination, Dr. Oropeza testified defendant had a long history of "diagnoses" for mental illnesses, including "some cognitive memory issues," but on cross-examination he agreed an evaluation conducted "less than a year prior to" the homicide concluded defendant had "no neurocognitive disorder." On direct examination, Dr. Oropeza testified defendant's statement "he couldn't see" the Miranda waiver form indicated defendant was "clearly impaired," but on cross-examination he admitted defendant made the statement because he did not have his glasses on, and not due to a cognitive problem. On cross-examination, Dr. Oropeza also acknowledged the hospital discharge notes indicated defendant demonstrated normal "cognitive communication."

Additionally, Dr. Oropeza testified two of his three psychological assessments returned "invalid" or "questionably valid" results. He also provided contradictory testimony as to the results of the third assessement. Finally, as the court correctly noted, Dr. Oropeza's testimony contained gaps — for instance, he did not testify ECT caused memory problems or slow cognitive functioning in defendant.

videotaped interrogation gives the "trial court . . . the opportunity to observe what transpired, including the detectives' demeanor and defendant's deportment." State v. Dorff, 468 N.J. Super. 633, 645 (App. Div. 2021) (citing State v. A.M., 237 N.J. 384, 401 (2019)). In fact, this court "extend[s] [a] deferential standard of appellate review to 'factual findings based on a video recording or documentary evidence' to ensure that New Jersey's trial courts remain 'the finder of the facts.'" A.M., 237 N.J. at 396 (quoting S.S., 229 N.J. at 381).

We discern no basis to conclude the motion court's acceptance of Dr. Voskanian's testimony concerning defendant's ability to understand his Miranda warnings was "so clearly mistaken 'that the interests of justice demand intervention and correction.'" Gamble, 218 N.J. at 425 (quoting Elders, 192 N.J. at 244). To the contrary, the court's findings of fact, and its acceptance of Dr. Voskanian's testimony as credible, are supported by substantial evidence, including the recording, the court found credible. See A.M., 237 N.J. at 396. We therefore defer to those findings. Hreha, 217 N.J. at 382. Further, the court's findings of fact support the motion court's legal conclusion the State satisfied its burden of proving beyond a reasonable doubt defendant knowingly, intelligently, and voluntary waived his Miranda rights, see Tillery, 238 N.J. at

315-16, and, as a result, the court correctly denied defendant's motion to suppress his statement.

We reject defendant's claim the court did not properly consider the "totality of the circumstances" in making its determination defendant knowingly and voluntarily waived his Miranda rights. See id. at 316 (quoting A.M., 237 N.J. at 398) (explaining determining whether an individual has properly waived Miranda rights requires a review of "the totality of the circumstances surrounding the custodial interrogation"). Defendant claims the court ignored the totality of the circumstances — including his past mental health issues and his six-and-one-half-day hospital admission, part of which he spent on a ventilator, just prior to the interrogation — in its determination he knowingly and voluntarily waived his Miranda rights. Defendant argues the court instead myopically focused solely on the video recording of the statement and the experts' testimony in its determination of the waiver issue presented by the suppression motion.

We are not persuaded by defendant's arguments. The record included information about defendant's hospital admission and prior mental health issues, but the court properly focused on the "totality of the circumstances surrounding the custodial interrogation" as required by the Supreme Court in Tillery. Ibid.

That is, the court determined that when defendant waived his Miranda rights, he did so knowingly and intelligently based on the totality of the circumstances extant at that time. And, as we have explained, there is substantial credible evidence — including the video recording and the expert opinions the court accepted as credible — supporting the court's finding defendant knowingly and intelligently waived his Miranda rights at that time. In making that finding, and in rejecting Dr. Oropeza's opinions defendant's prior mental health issues and hospitalization affected his ability to knowingly and intelligently waive his Miranda rights, the court implicitly determined the circumstances defendant now suggests the court ignored, did not as a matter of fact affect his ability to knowingly and intelligently waive his Miranda rights when they were administered. Thus, contrary to defendant's claim, the court did not ignore the totality of the circumstances in making its determination; rather, it rejected certain circumstances relied on by Dr. Oropeza as not adversely affecting defendant's ability to waive his Miranda rights knowingly and intelligently.

Moreover, we reject defendant's claim he did not knowingly and intelligently waive his Miranda rights because Detective Murphy attempted to redirect defendant when defendant referred to his "brain problems" during the interrogation. Detective Murphy had no obligation to explore defendant's claim

during the interrogation and, for the reasons noted, the credible evidence presented at the hearing on the suppression motion established that at the time defendant waived his Miranda rights, he did not suffer from any issues interfering with his ability to knowingly and intelligently do so. Additionally, there is substantial credible evidence otherwise supporting the court's determination he knowingly and intelligently waived his Miranda rights. We therefore affirm the court's order denying defendant's motion to suppress his statement to the detectives.

B.

Defendant also argues the assistant prosecutor made three improper remarks during her summation: first, that defendant "butchered" Susanne; second, that Susanne was "pleading for her life" before she died; and third, that defendant self-inflicted his head wound. The State argues the remarks were not capable of prejudicing the trial because they were fair or harmless, particularly in light of the court's curative instructions.

Prosecutors "are expected to make vigorous and forceful closing arguments to juries" and, to that end, the law affords them considerable leeway in closing arguments so long as their comments are "reasonably related to the scope of the evidence presented." State v. Frost, 158 N.J. 76, 82 (1999) (citing

State v. Harris, 141 N.J. 525, 559 (1995)). "Even so, in the prosecutor's effort to see that justice is done, the prosecutor 'should not make inaccurate legal or factual assertions during a trial.'" State v. Bradshaw, 195 N.J. 493, 510 (2008) (quoting Frost, 158 N.J. at 85). Rather, "a prosecutor should 'confine [their] comments to evidence revealed during the trial and reasonable inferences to be drawn from that evidence.'" Ibid. (quoting State v. Smith, 167 N.J. 158, 178 (2001)). "So long as the prosecutor's comments are based on the evidence in the case and the reasonable inferences from that evidence, the prosecutor's comments 'will afford no ground for reversal.'" Ibid. (quoting State v. Johnson, 31 N.J. 489, 510 (1960)). Conversely, a prosecutor's improper comments are grounds "for reversal where the prosecutor's misconduct was so egregious that it deprived the defendant of a fair trial." Frost, 158 N.J. at 83.

When reviewing a prosecutor's summation, this court examines questionable comments "in the context of the entire trial." State v. Morton, 155 N.J. 383, 419 (1998). To justify a reversal, the prosecutor's summation must have been "clearly and unmistakably improper," and must have "substantially prejudiced [the] defendant's fundamental right to have a jury fairly evaluate the merits of his defense." State v. Wakefield, 190 N.J. 397, 438 (2007) (quoting State v. Papasavvas, 163 N.J. 565, 625 (2000)). To determine whether a

prosecutor's conduct rises to this level, courts look to: "(1) whether defense counsel made timely and proper objections to the improper remarks; (2) whether the remarks were withdrawn promptly; and (3) whether the court ordered the remarks stricken form the record and instructed the jury to disregard them." Smith, 167 N.J. at 182 (citing State v. Timmendequas, 161 N.J. 515, 575 (1999)).

The Prosecutor's Assertion Defendant "Butchered" Susanne

In summation, the prosecutor stated defendant "left [Susanne] on the sidewalk . . . butchered" after attacking her. The prosecutor later restated defendant "butchered her while she was fleeing for her life in her bra and her skirt." Defense counsel objected to the prosecutor's use of the term "butchered" as "inflammatory," and the court sustained the objection. The court then instructed the jury to "disregard" the term "butchering" because "the word . . . is inflammatory."

A prosecutor's "tone" in summation "could well be viewed as an appeal to the jury's passions rather than an argument focusing on the facts to be proved." State v. Roman, 382 N.J. Super. 44, 57 (App. Div. 2005). Yet, "inartful" language alone does not rise to the level of reversible error. Id. at 57-58; see also Morton, 155 N.J. at 419. In Roman, the prosecutor's repeated references to

defendant's conduct as "unthinkable" and "unspeakable" was not reversible error where "the prosecutor detailed for the jury the evidence that . . . establish[ed] defendant's guilt." 382 N.J. Super. at 57-58. Here, as in Roman, the term "butchered," even if deemed rhetorically excessive, finds support in the evidence. Forensic expert testimony established Susanne died from over a dozen "stab" and "slash wounds" "made with a sharp knife" to her abdomen, jaw, fingers, and "through and into the tongue." The same expert testified Susanne also "had a circular bruise with irregular margins that looked an awful lot like a human bite mark." Considering the forensic evidence supporting the assistant prosecutor's characterization of defendant's actions, defendant's concession on appeal the homicide was obviously "disturbing," and the court's curative instruction directing the jury to disregard the assistant prosecutor's use of the term "butchered," see Smith, 167 N.J. at 182, we are satisfied the prosecutor's use of the during summation did not constitute reversible error, see Roman, 382 N.J. Super. at 57-58.

The Prosecutor's Reference to Susanne "Pleading" for Her Life

As defendant acknowledges, the trial transcript does not reflect that during closing arguments the assistant prosecutor described Susanne as pleading for her life while defendant attacked her. Defendant notes the transcript shows the

prosecutor said Susanne "was fleeing for her life in her bra and her skirt," but argues the term "fleeing" is a transcription error. When defense counsel objected to this alleged remark, the prosecutor told the court she did not "recall" describing Susanne as pleading for her life. The court agreed with defendant she had. The court then instructed the jury:

> [The prosecutor] indicated that the victim was pleading for her life. There's no testimony in the case that that occurred. We don't know what the victim said because the only person you have testifying to that is what [defendant] testified to. So since that's not from the mouth of a witness or otherwise contained in the exhibit, I also instruct you to disregard that. In your deliberations, you can remember it, but if you remember it, you're not to consider it.

Assuming the prosecutor did in fact make the comment defendant alleges, it was tethered to forensic evidence in the record tending to show Susanne suffered "defensive wounds" while "flailing" "her arms and hands" as she fought back against defendant. We find it to be a "reasonable inference[]," Bradshaw, 195 N.J. at 510, that Susanne pleaded with her husband for her life as she fought back against him. However, even if she did not, the prosecutor's remark, if made, received a timely objection and an appropriate curative instruction to disregard it. We find no basis to conclude the purported fleeting reference constitutes reversible error. See ibid.; Smith, 167 N.J. at 182.

The Prosecutor's Suggestion Defendant Self-Inflicted His Head Wound

In summation, the prosecutor noted defendant claimed his head wound "was . . . inflicted by" Susanne. The prosecutor then highlighted that the record included a photograph showing "a hammer[] right where [defendant] was found unconscious." The prosecutor "submit[ted] to" the jury that "it makes more sense that [defendant] hit himself" with the hammer than that Susanne "wielded the hammer at him." Defense counsel objected to the remark. The court proposed a curative instruction, which defense counsel found "adequate." The court then instructed the jury there was "no witness testimony" "defendant . . . hit himself with a hammer," but they were free to accept or reject the inference based upon their own review of the photograph of defendant in the garage.

"A prosecutor may respond to an issue or argument raised by defense counsel." State v. Johnson, 287 N.J. Super. 247, 266 (App. Div. 1996). Stated differently, "[a] prosecutor's otherwise prejudicial arguments may be deemed harmless if made in response to defense arguments." State v. McGuire, 419 N.J. Super. 88, 145 (App. Div. 2011). Here, in summation, defense counsel asserted Susanne initiated the confrontation with defendant on August 25 by assaulting him with a hammer. The prosecutor's summation reminded the jury they had

seen a photograph showing "a hammer . . . right where [defendant] was found unconscious," and offered that defendant "hit himself" with the hammer instead. We are satisfied the prosecutor merely "respond[ed] to an issue or argument raised by defense counsel," Johnson, 287 N.J. Super. at 266, by arguing the evidence showing the hammer was found next to defendant in the garage following his acknowledged suicide attempt supported an inference his head wound was self-inflicted. The remark, which also received a timely objection and curative instruction, does not constitute reversible error. See ibid.; Smith, 167 N.J. at 182.

C.

Defendant next argues the court erred by admitting evidence concerning his suicide attempt for the purpose of demonstrating consciousness of guilt. Defendant offers a myriad of alternate explanations for the suicide attempt, including: his "lengthy psychiatric history which includes at least one [unrelated] prior suicide attempt"; his fear that a divorce would imperil his financial security; his lack of "any other social relationships outside his immediate family which consisted of Susanne and their two sons, neither of whom talk to him"; and his "belie[f] that once the divorce became final, he would be required to vacate the house in which he . . . resided."

In general, "[e]vidence of conduct of an accused subsequent to the offense charged is admissible only if probative of guilt." State v. Mann, 132 N.J. 410, 418 (1993). "Like evidence of flight, evidence of a defendant's suicide attempt that follows the alleged commission of an offense" may be admitted if it shows, among other things, a "consciousness of guilt." Id. at 421. That said, our jurisprudence recognizes other factors "may motivate or contribute to an accused's decision to attempt suicide." Id. at 422. Given "[t]he possible ambiguity of an accused's suicide attempt," the Supreme Court in Mann held admission of evidence of a suicide attempt "requires a careful consideration of [the attempt's] probative value"; of any other "psychological, social[,] or financial situation" that might alternatively explain the attempt; and of the possibility for prejudice inherent where there are other explanations for the attempt, such as a prior history of suicidal acts. Id. at 423-24. As a safeguard against erroneous admission, Mann requires a hearing "[t]o ensure a proper balancing of the" probative and prejudicial value of the evidence. Id. at 423. Mann further instructs that courts shall only admit evidence of a suicide attempt to the extent it has probative value under the circumstances. Id. at 423-24.

We review the trial court's decision to admit or exclude evidence under an abuse of discretion standard. State v. Lykes, 192 N.J. 519, 534 (2007). A

reviewing court must sustain the trial court's ruling "unless it can be shown that the trial court palpably abused its discretion, that is, that its finding was so wide [of] the mark that a manifest denial of justice resulted." Ibid. (alteration in original) (quoting Verdicchio v. Ricca, 179 N.J. 1, 34 (2004)).

Defendant does not dispute he attempted suicide on August 25, 2015. At trial, the court held an N.J.R.E. 104(a) hearing to determine the admissibility of defendant's suicide attempt on the day he killed Susanne. After reciting the principles announced in Mann, the court found "defendant attempted suicide immediately after the alleged homicide," "left a note . . . advising . . . he had guns or he would kill" whomever entered, and later explained he intended the note to give his "medication [time] to take effect." The court also noted the mere "two-hour gap between the alleged homicide and the attempted suicide," and found the events' close temporal proximity weighed in favor of a finding the suicide attempt was probative of a consciousness of guilt.

The court was unpersuaded by defendant's alternative explanations for the attempt. It found no evidence to support them and further noted defendant's "financial situation was very good at the time"; defendant exhibited no "emotional distress or sadness or depression as a result of the divorce" he initiated; and defendant had made "plans to go pick up" his son from college.

The court concluded there was no compelling alternate explanation for defendant's suicide attempt, and "the State ha[d] established sufficient probative evidence which far outweighs any undue prejudice to the defendant." At trial, the court instructed the jury that "if [it] found the suicide attempt was a result of" an explanation other than a consciousness of guilt, then it should "disregard the suicide attempt and not consider it as consciousness of guilt."

The court's procedure hewed closely to the principles announced in Mann, and we otherwise find no basis to conclude the court abused its discretion by admitting defendant's suicide attempt as probative of a consciousness of guilt. See Mann, 132 N.J. at 421; Lykes, 192 N.J. at 534. The court also properly instructed the jury concerning its consideration of the evidence. In sum, the court's admission of the evidence concerning defendant's suicide attempt immediately following Susanne's murder was proper and does not permit or require a reversal of defendant's conviction.

D.

Defendant further argues the court abused its discretion by considering his request for hybrid representation at the suppression hearing as though it were "a more general request" to proceed pro se, thereby denying him the opportunity to question Dr. Oropeza and Dr. Voskanian himself.

Before trial, defendant expressed concern his public defender had "skipped" certain parts of the record and therefore needed help questioning witnesses at the Miranda hearing. He wrote the trial judge a letter "request[ing] a hybrid representation hearing . . . ," and later submitted an inmate request form stating: "I would like to go hybrid representation. I would like the ability to question any witnesses."

The trial court held a hearing on defendant's request. During colloquy with defendant, the court acknowledged the "term ['hybrid representation'] by itself is somewhat . . . ambiguous" and inquired, "What exactly do you envision yourself doing both in the trial and in the continued Miranda hearing?" Defendant answered he had "a whole list of questions" for Dr. Voskanian and asserted he understood Dr. Voskanian's report better than his assigned counsel.

The court clarified:

> But my question is if I grant you the right to hybrid representation, what is it you actually anticipate doing to act as your own attorney in part as opposed to being the defendant represented by an attorney? . . . I need to find out what it is you're asking for. . . .
>
> Hybrid means that you want to have an attorney do certain things and you want to do certain things. I need to know what the division of that responsibility is. What are you going to handle, what is [your counsel going] to handle.

Defendant answered: "I think both of us are going to handle the whole thing, I'm just going to go in depth more." He repeated his concern that his assigned counsel could not devote enough time to his case, but he did not offer any basis for that concern.

Nor did defendant offer a cogent plan to divide responsibilities between himself and his counsel. Defendant apparently intended to present his counsel with a list of questions for Dr. Voskanian, allow his counsel to ask as many questions from that list as counsel desired, and then if counsel felt the remaining questions "shouldn't be brought up[,] then . . . they shouldn't be brought up." Defendant also asserted he would defer to his counsel's judgment regarding any questions counsel felt were "improper" or needless. He had no plan to question Dr. Oropeza, whose report he read only "two or three times," and he "[had not] thought about" whether he wanted to give any portion of the opening or closing statement.

Defendant also conceded he had not researched the elements of the charges against him, the rules of evidence that would govern his proposed questioning of witnesses, or the list of witnesses he might question. The court asked defendant questions which revealed further gaps in his knowledge, including that he did not understand: the elements of murder; statutory defenses;

the charged lesser-included offenses such as aggravated manslaughter or manslaughter; the plea deal process; the difference between direct and cross-examination; the defense's requirement to give an opening statement at trial; or that self-representation would waive his ability to bring an ineffective assistance of counsel application in a petition for post-conviction relief.

The court warned defendant at length that, should he proceed with hybrid representation, his lack of trial experience and legal knowledge might prove a hindrance to his defense. The court "strongly urge[d] [defendant] not to try to defend [him]self in whole or part without the services of a lawyer." Nevertheless, defendant stated he still desired to engage in hybrid representation.

The court, recognizing "[t]his is a request for partial or hybrid representation," found defendant had no "plan other than to thoroughly review discovery" and reserve the right to question witnesses after his counsel had finished, which would "cause all of the things that [N.J.R.E. 611] tells [the] trial judge [they are] supposed to prevent": that is, "needless consumption of time," the "harassment" of witnesses, and other circumstances which would obstruct the "effective . . . ascertainment of the truth[.]" To that end, the court noted it generally would not "allow two . . . attorneys to 'tag team' a witness." The court

also noted there was nothing to corroborate defendant's "genuine" "concerns" over the "experience[] or skill[]" of his counsel. The court further found defendant "has no training in the law," "his experience in seeing trials are on TV," he struggled to "delineate . . . what he expected to do" at trial, and "he [does not] have an understanding of" the legal principles in his case, including the rules of evidence which would govern his proposed questioning of witnesses. In sum, the court was "convinced that [defendant] [has not] thought these things out" and that granting hybrid representation would jeopardize defendant's right to a fair trial. The court denied defendant's request.

There is "no constitutional right to partial or hybrid representation." State v. Figueroa, 186 N.J. 589, 594 (2006). It is "to be avoided wherever possible." State v. Roth, 289 N.J. Super. 152, 165-66 (App. Div. 1996). Therefore, where a defendant requests permission for hybrid representation:

> the trial court in the exercise of its discretion must consider, among other things, the scope of the hybrid representation sought by the defendant; the practicality of splitting defendant's representation between defendant and defendant's counsel; and defendant's explicit recognition that engaging in hybrid representation, akin to self-representation, constitutes a waiver of any future ineffective assistance of counsel claims . . . in respect of those matters in which the defendant represents himself.
>
> [Figueroa, 186 N.J. at 595.]

The court must also "make appropriate credibility determinations bottomed on specific facts, observations, and conclusions" by asking "questions that will require [the] defendant to describe in his own words his understanding of the challenges that he will face when he represents himself at trial." State v. Reddish, 181 N.J. 553, 594-95 (2004).

"[W]hether to grant a defendant the opportunity to represent himself in part and be represented by counsel in part rests in the sound discretion of the trial court." Figueroa, 186 N.J. at 595. "[A]n abuse of discretion arises when a decision is made without a rational explanation, inexplicably departed from established polices, or rested on an impermissible basis." In re B.B., 472 N.J. Super. 612, 619-20 (App. Div. 2022) (alteration in original) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)); Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002).

Defendant appears to misread his colloquy with the court, in which the trial judge clearly communicated he understood defendant's request to question witnesses in tandem with his assigned counsel. This is precisely the nature of "hybrid[] representation, that is, [where] the defendant wishes to represent himself only in respect of a part of the trial and not the trial as a whole." Figueroa, 186 N.J. at 594. To the extent the court briefly referred to defendant's

original written request as "a generalized request for hybrid representation," it is clear the court was referring to defendant's vague inmate request form, which stated: "I would like to go hybrid representation. I would like the ability to question any witnesses."

Indeed, defendant demonstrated he had little plan for or understanding of the hybrid representation he proposed. In considering his request, the court discovered defendant himself did not consider "the practicality" or "scope of the hybrid representation [he] sought," or "that engaging in hybrid representation . . . constitutes a waiver of any future ineffective assistance of counsel claims." Id. at 595. Based on its questions, the court determined defendant's concern over his counsel's unpreparedness was genuine, but he did not understand "the challenges" that would lie ahead of him. Reddish, 181 N.J. at 595. Defendant also did not appear to understand how his proposed hybrid representation would work — he incongruously sought the right to overbear his counsel's decisions not to ask certain questions, but also asserted he would defer to those decisions. See State v. Buhl, 269 N.J. Super. 344, 364 (App. Div. 1994) (affirming the denial of hybrid representation where defendant had "frequent changes of mind regarding whether he wished to be represented by a lawyer and, if so, what his role was to be."). We are satisfied the trial judge logically

concluded defendant's proposed scheme, whatever it was, threatened to hamper his power to manage the courtroom. See Roth, 289 N.J. Super. at 164-165 (collecting cases) ("The right of an accused to represent himself, with or without the assistance of counsel, is not so absolute that it must be recognized when to do so would disrupt the business of the court . . . .").

Because the court followed the Supreme Court's directive by asking comprehensive open-ended questions regarding defendant's plan and his understanding of his case, Figueroa, 186 N.J. at 595; Reddish, 181 N.J. at 594-95, and denied the request based upon his concern granting defendant's request would hinder the function of his courtroom, see Roth, 289 N.J. Super. at 164-65, as well as defendant's changing and unclear vision of the hybrid representation he proposed, see Buhl, 269 N.J. Super. at 364, the court's decision was not "without a rational explanation," did not "inexplicably depart[] from established polices," and did not "rest[] on an impermissible basis," B.B., 472 N.J. Super. at 619-20.

E.

In the final point of his merits brief, defendant argues the court at sentencing erred by rejecting his request for a finding of mitigating factor eight, that his "conduct was the result of circumstances unlikely to recur," N.J.S.A.

2C:44-1(b)(8). More particularly, defendant argues the court rejected his request for a finding of mitigating factor eight based on an erroneous determination his mental health issues were "self-inflicted." We find the argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add only the following brief comments.

During its discussion of the information and testimony presented at sentencing, the court observed defendant's "mental health is really not relevant if he suffers from a self-inflicted depression and intermittent explosive disorder" because his son's testimony established defendant had a history of road rage incidents "with people on the side of the road," and giving "people the finger on the way to church," but otherwise leading a law-abiding life because those incidents did not result in "more serious consequences." The court never made a factual finding defendant suffered from self-inflicted depression and, more saliently, never relied on such a finding to support its rejection of mitigating factor eight.

Contrary to defendant's claim, the court's rejection of mitigating factor eight was based solely, and properly, on its determination that defendant's hair-trigger temper and "explosive disorder" as diagnosed by Dr. Voskanian, and the note he left on the front door of the home threatening to kill those who entered,

which included his son Jake who lived at the home at the time, did not permit a finding his conduct was the result of circumstances unlikely to recur. N.J.S.A. 2C:44-1(b)(8). Stated differently, the court's fleeting comment as to the relevancy of defendant's mental health "if he suffers from a self-inflicted depression" played no part in the court's refusal to find mitigating factor eight or in its sentencing calculus. Defendant's claims to the contrary are not supported by the record.

Appellate review of a trial court's sentencing decision is limited to the "abuse of discretion" standard. R.Y., 242 N.J. at 73. "[A]n abuse of discretion arises when a decision is made without a rational explanation, inexplicably departed from established polices, or rested on an impermissible basis." B.B., 472 N.J. Super. at 619-20 (quoting R.Y., 242 N.J. at 65); Flagg, 171 N.J. at 571. We find no abuse of discretion here.

To the extent we have not expressly addressed any of defendant's remaining arguments, we find they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.