SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0331-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAQUILLE R. SPRUIEL,

Defendant-Appellant.

Argued January 27, 2022 – Decided April 28, 2022

Before Judges Haas, Mawla and Alvarez.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 18-04-0242.

Stephen W. Kirsch, Designated Counsel, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Stephen W. Kirsch, on the brief).

Milton S. Leibowitz, Assistant Prosecutor, argued the cause for respondent (William A. Daniel, Union County Prosecutor, attorney; Milton S. Leibowitz, of counsel and on the brief).

PER CURIAM

Tried by a jury, defendant Shaquille R. Spruiel was convicted[1] of first-degree murder, N.J.S.A. 2C:11-3(a)(1), first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2(a)(1), second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1), and second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1). On August 9, 2019, the trial judge sentenced defendant to forty-eight years imprisonment subject to eighty-five percent parole ineligibility in accord with the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. Despite initially agreeing that merger of at least some charges was appropriate, the judge separately imposed concurrent terms of imprisonment on all offenses. Defendant appeals, and we affirm, except we remand for the trial judge to revisit the issue of merger.

The following is drawn from the trial record. On May 25, 2016, a pale Nissan four-door sedan variously described by witnesses as gray, champagne, or tan, stopped at an intersection in front of an apartment complex. Police eventually identified the car, captured on at least one security video, as belonging to Tazhane Orders, defendant's girlfriend at the time, who had lent the vehicle to defendant. The film depicts a man getting out of the car and

[1] Defendant was tried with his co-defendant Francis E. Lockley, who was similarly charged but acquitted of all counts.

shooting towards the left of the camera angle. A person standing in a group in front of the apartments was killed.

After the car was identified, and defendant's girlfriend interviewed, officers began to suspect defendant and Diniek Ahmir Forbes were involved. When the authorities interviewed Forbes in June 2016 and August 2017, he implicated himself and defendant. Pursuant to a negotiated plea, Forbes testified at trial. He was extensively cross-examined with regard to the two prior statements.

On the stand, Forbes described driving defendant in Orders's car on the morning of the murder and picking up Lockley on the way. When they arrived at the intersection, defendant got out and began to shoot towards a crowd. Lockley also shot through the back window, using a black semi-automatic weapon.

Forbes drove away once defendant got back in the car. He and defendant dropped off Lockley; Forbes asked his girlfriend Aminah Page to meet him. Once she arrived, he told her to drive the Nissan back to Orders using side streets. The following day, as Forbes and defendant were walking down a street, a car drove past them, made a U-turn, and someone fired at them from inside the vehicle.

Not long after the incident, defendant told Forbes and Orders that he was leaving town. He explained to his girlfriend that he had to go because he was suspected of shooting someone, and someone had shot at him. Weeks later, defendant was arrested as he was disembarking from a bus at a Greyhound terminal in Georgia. When approached by uniformed police, defendant dropped his belongings and ran.

Shortly after the murder, Lockley was found to be in possession of a CZ model semi-automatic firearm chambered in .40 Smith & Wesson caliber. The State's ballistics expert tied the gun to spent shell casings from the scene.

On the stand, Forbes repeated that defendant "was feeling upset and grief" about a friend who had been shot by someone suspected to live in the apartment complex where defendant shot into the crowd. During the weeks following that first murder, Forbes said he saw defendant carrying a chrome revolver with a brown handle.

During deliberations, the jury asked if they could be given the transcript of Forbes's recorded statements.[2] The judge responded that they could not be given copies because the statements were not moved into evidence. Defendant's counsel initially suggested that the court give a different response to the jury's

[2] The statements were not included in the appendix.

inquiry, but eventually said that the court's proposed response—"[t]he entirety of the statements are not in evidence and, thus, cannot be provided to [the jury]."—was "perfect" and "absolutely" "address[ed his] concern." The court gave the model jury charge regarding prior contradictory statements of witnesses. Model Jury Charges (Criminal), "Prior Contradictory Statements of Witnesses (Not Defendant)" (approved May 23, 1994).

Javon Alleyne, an acquaintance of defendant, also testified during the trial that defendant was close to a man whose death appears to have been the triggering event, and suspected the murderer came from the community in which defendant shot the victim. Alleyne said that defendant was very close to that first victim. On the stand, Alleyne completely repudiated his statement to police, and the recording was played to the jury after the judge conducted a State v. Gross hearing. See 121 N.J. 1 (1990). In it, Alleyne said he heard defendant state "he wanted to kill somebody and how they took his brother and this and that." Alleyne also said defendant specifically said he wanted to kill someone from the neighborhood in which the shooting here occurred.

Defendant did not object to the judge's instructions regarding accomplice liability. They tracked the model jury charge. Model Jury Charges (Criminal), "Liability for Another's Conduct (N.J.S.A. 2C:2-6)" (rev. June 7, 2021).

At sentencing, the judge found aggravating factors three, six, and nine in light of defendant's extensive juvenile history and three prior adult convictions. N.J.S.A. 2C:44-1(a)(3), (6), (9). He found no mitigating factors. The judge opined defendant's record did not include more adult indictable convictions only because at age twenty-three, defendant had already served a term of imprisonment. In calculating the NERA portion of the sentence, the judge said defendant would serve approximately thirty-nine years from the time he was arrested to the date of release.

Now on appeal, defendant contends as follows:

> POINT I
>
> WHEN THE JURY ASKED TO SEE COPIES OF THE TWO STATEMENTS THAT THE STATE'S PRINCIPAL WITNESS GAVE TO POLICE, AND WHICH CONTRADICTED THAT WITNESS'[S] TRIAL TESTIMONY, THE JUDGE'S RESPONSE -- TO SIMPLY TELL THE JURY THAT THOSE STATEMENTS WERE NOT IN EVIDENCE AND COULD NOT BE PROVIDED -- WAS HOPELESSLY INADEQUATE, AS BOTH DEFENSE COUNSEL POINTED OUT TO THE JUDGE OVER AND OVER AGAIN, BECAUSE IT FAILED TO MAKE CLEAR THAT THE INCONSISTENT ASPECTS OF THOSE STATEMENTS WERE NEVERTHELESS ADMISSIBLE BOTH SUBSTANTIVELY AND FOR IMPEACHMENT/CREDIBILITY PURPOSES EVEN THOUGH THE PHYSICAL COPIES OF THE STATEMENTS WERE NOT "IN" EVIDENCE.

POINT II

THE ACCOMPLICE-LIABILITY INSTRUCTION FAILED TO EXPLAIN HOW, UNDER STATE V. BRIDGES,[3] DEFENDANT COULD BE AN ACCOMPLICE TO A LESSER-INCLUDED HOMICIDE OFFENSE THAT REQUIRES ONLY A RECKLESS STATE OF MIND, NOT A PURPOSEFUL ONE -- INSTEAD TELLING THE JURY THE NON SEQUITUR THAT THE ACCOMPLICE MUST PURPOSEFULLY INTEND A RECKLESS DEATH -- THEREBY DEPRIVING THE JURY OF ANY REALISTIC OPPORTUNITY TO RETURN A VERDICT FOR A LESSER-INCLUDED HOMICIDE OFFENSE LIKE AGGRAVATED MANSLAUGHTER OR RECKLESS MANSLAUGHTER.

POINT III

THE SENTENCE IMPOSED IS MANIFESTLY EXCESSIVE AND CERTAIN MERGERS SHOULD BE ORDERED.

I.

We address defendant's claims of error regarding the judge's instructions and his response to the jury's request for copies of Forbes's statement. "An essential ingredient of a fair trial is that a jury receive adequate and understandable instructions." State v. McKinney, 223 N.J. 475, 495 (2015)

[3] 254 N.J. Super. 541 (App. Div. 1992), aff'd in part, rev'd in part, 133 N.J. 447 (1993).

(quoting State v. Afanador, 151 N.J. 41, 54 (1997)). "Appropriate and proper jury instructions are essential to a fair trial." Ibid. (quoting State v. Green, 86 N.J. 281, 287 (1981)). "Jury instructions have been described as 'a road map to guide the jury[;] without an appropriate charge, a jury can take a wrong turn in its deliberations." Ibid. (alteration in original) (quoting State v. Martin, 119 N.J. 2, 15 (1990)). "[O]ur care in reviewing jury instructions is deep-seated and meticulous: 'This judicial obligation, to assure the jury's impartial deliberations upon the guilt of a criminal defendant based solely upon the evidence in accordance with proper and adequate instructions, is at the core of the guarantee of a fair trial.'" State v. Lykes, 192 N.J. 519, 537 (2007) (quoting State v. Grunow, 102 N.J. 133, 149 (1986)).

In accordance with these principles, "[i]t is firmly established that '[w]hen a jury requests a clarification,' the trial court 'is obligated to clear the confusion.'" State v. Savage, 172 N.J. 374, 394 (2002) (second alteration in original) (quoting State v. Conway, 193 N.J. Super. 133, 157 (App. Div. 1984)). "Further, if the jury's question is ambiguous, the trial court must clarify the jury's inquiry by ascertaining the meaning of its request." Ibid.; State v. Whittaker, 326 N.J. Super 252, 262-63 (App. Div. 1999), "so that the actual concern of the jury may be appropriately addressed." Pressler & Verniero, Current N.J. Court

Rules, cmt. 7 on R. 1:8-7 (2022). Courts must answer jury questions "clearly and accurately and in a manner designed to clear [the jury's] confusion, which ordinarily requires explanation beyond rereading the original charge. [A] court's failure to do so may require reversal." Ibid.

Where, as here, a defendant claims a trial court's jury instruction was in error, but the defendant failed to "object[] at the time [the] jury instruction [was] given, 'there is a presumption that the charge was not error and was unlikely to prejudice the defendant's case.'" Willner v. Vertical Reality, Inc., 235 N.J. 65, 79 (2018) (quoting State v. Montalvo, 229 N.J. 300, 320 (2017)). "Therefore, 'the failure to object to a jury instruction requires review under the plain error standard.'" Ibid. (quoting State v. Wakefield, 190 N.J. 397, 473 (2007)). "Under that standard, '[a]ny error or omission shall be disregarded by [an] appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result.'" Ibid. (first alteration in original) (quoting R. 2:10-2).

In reviewing an alleged error in a jury charge or a court's response to a jury question, "[c]ourt[s] must not look at portions of the charge alleged to be erroneous in isolation; rather, 'the charge should be examined as a whole to determine its overall effect,' and 'whether the challenged language was misleading or ambiguous.'" McKinney, 223 N.J. at 494 (first quoting State v.

Jordan, 147 N.J. 409, 422 (1997) (second quoting State v. Nelson, 173 N.J. 417, 447 (2002))). "[I]n reviewing any claim of error relating to a jury charge, the 'charge must be read as a whole in determining whether there was any error.'" State v. Gonzalez, 444 N.J. Super. 62, 70-71 (App. Div. 2016) (quoting State v. Torres, 183 N.J. 554, 564 (2005)). Further, "the effect of any error must be considered 'in light of the overall strength of the State's case.'" Id. at 71 (quoting State v. Walker, 203 N.J. 73, 90 (2010)).

Under the doctrine of invited error,

> a defendant cannot beseech and request the trial court to take a certain course of action, and upon adoption by the court, take his [or her] chance on the outcome of the trial, and if unfavorable, then condemn the very procedure he [or she] sought and urged, claiming it to be error and prejudicial. Thus, when a defendant asks the court to take his [or her] proffered approach and the court does so, ... relief will not be forthcoming on a claim of error by that defendant.
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> [Lykes, 192 N.J. at 539 n.7.]

See also State v. Kemp, 195 N.J. 136, 155-56 (2008) (finding the doctrine of invited error barred the defendant from contesting on appeal testimony he agreed to at trial); Spedick v. Murphy, 266 N.J. Super. 573, 593 (App. Div. 1993) ("A party who consents to, acquiesces in, or encourages an error cannot use that error as the basis for an objection on appeal.").

As we have said, defendant's attorney commented to the court that the judge's proposed response to the jurors' request during deliberations was "perfect," and completely "address[ed his] concern." Thus, the doctrine of invited error bars defendant from raising this objection as a basis for reversal on appeal.

Even if invited error did not dispose of the claim, the judge gave the model jury charge concerning prior inconsistent witness statements, explaining to the jury that it could consider those statements both as affecting a witness's credibility and as proof of the truth of what was contained therein. Therefore, having heard Forbes's questioning, the jury had the tools necessary to assess the witnesses' testimony.

Furthermore, the discrepancies in Forbes's statements appear to have been inconsequential. Forbes's two prior statements and his testimony at trial were clear and unequivocal on one key point—that defendant asked him to drive to the location of the murder, left the car while armed, and began shooting towards a group of people. Hence the court's response was not plain error clearly capable of producing an unjust result. See Wilner, 235 N.J. at 79. It was not error at all.

Defendant next argues that the court erred in its accomplice liability charge because of a purported inherent conflict between the portion of the charge

that addresses a defendant's mental state, which for the crime of murder is intentional, and the nature of a reckless act. That the jury found defendant guilty of murder disposes of that claim. On the verdict sheet, the jury was first asked whether they found defendant guilty of murder. They were instructed to consider reckless and aggravated manslaughter only if they answered that first question in the negative. By finding defendant guilty of murder, they never reached alternative theories. The same is true of the conspiracy to commit murder; that also requires an intentional state of mind.

Defendant argues, with regard to conspiracy, that the charge was "nonsensical" because it instructed the jury that in order to find defendant guilty of one of the lesser conspiracies, the jury must conclude defendant intended to commit an unintentional crime, namely, one which requires a reckless state of mind. But accomplice liability can be imposed where the principal committed a reckless offense, and an accomplice purposely promoted or facilitated that offense in conscious disregard of the risk posed by the principal's conduct. See Bridges, 254 N.J. Super. at 566.

Construed as a whole, there can be no doubt the judge's charge adequately conveyed the law and was not likely to confuse or mislead the jury. As the judge told the jury, if it found defendant guilty of murder or conspiracy to commit

murder, no lesser charge needed to be considered. The judge explained in his instruction that two or more persons may participate in the commission of an offense, each participating with a different state of mind. The instruction adequately conveyed the law of accomplice liability and was unlikely to confuse or mislead the jury. See Mogull v. CB Com. Real Estate Grp., 162 N.J. 449, 464 (2000).

Defendant's argument on the issue is in essence a purely "semantical" one. Bridges, 254 N.J. Super. at 564. Once the jury found defendant guilty of the substantive offense of murder, any purported error with regard to lesser-included offenses was rendered moot. Juries do not reach lesser-included offenses until they have acquitted of the greater offense. State v. Cooper, 151 N.J. 326, 366 (1997). The jury instructions were adequate, understandable, and a fair road map for deliberations. The judge tracked the model jury charges, and no error occurred that was clearly capable of producing an unjust result.

II.

Defendant challenges the court's sentence of an aggregate forty-eight-year term of imprisonment on the basis that it was excessive, failed to take into account real world consequences, and did not include necessary mergers. We agree the question of merger should be addressed on the record, as ordinarily,

an unlawful possession of a weapon is a stand-alone crime and the judge entered specific sentences on each offense. We therefore remand for the judge to consider the question. Naturally, merged offenses do not require the imposition of separate sentences. It is clear that the judge was well aware of the NERA or "real world" impact of defendant's forty-eight-year sentence, as on the record he calculated defendant's age at the time of the completion of the eighty-five percent parole ineligibility requirement.

Ordinarily, we review sentencing decisions deferentially. State v. Fuentes, 217 N.J. 57, 70 (2014). We do not substitute our judgment for that of the sentencing court. Ibid.

Here, the sentencing guidelines were not violated. The aggravating factors were supported by the credible evidence regarding defendant's prior juvenile and adult criminal history. Nothing in the record supports any mitigating factors. The judge's sentence was clearly within the sentence range for murder, and it was not so unreasonable as to shock the judicial conscience. See ibid.

Affirmed, except the judge shall address merger, and vacate separately imposed sentences where appropriate at a remand sentence proceeding.

Affirmed in part and remanded in part. We do not retain jurisdiction.