

SALEM COUNTY PROSECUTOR'S OFFICE



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Honorable Michael J. Silvanio, P.J.Cr.
Gloucester County Justice Complex
70 Hunter Street
Woodbury, New Jersey 08096

**RE: State v. Sean M. Higgins
Ind. No. 24-12-400-I**

Dear Judge Silvanio:

Please accept this letter brief, in lieu of a more formal brief, in response to defendant's Motion to Dismiss the Indictment.

Counter Statement of Facts / Procedural History

On August 29, 2024, at about 8:19 p.m., Troopers, from the New Jersey State Police, were dispatched to a motor vehicle crash around 63 Pennsville Auburn Road (MP 11.15). The 911 caller indicated that a SUV struck two bicyclists and continued to drive off. The caller indicated the victims, later identified as Matthew and John Gaudreau, sustained severe injuries and were unconscious but breathing. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On December 11, 2024, this matter was presented to the Salem County Grand Jury and a True Bill was returned.⁴ During the presentment, the relevant law and the Indictment were read to the jury with [REDACTED] and [REDACTED] testifying. During presentment the State submitted thirteen exhibits, twelve photos and two diagrams, to the jurors for their review.⁵ The Defendant was indicted on two counts Reckless Vehicular Homicide, second degree, a violation of N.J.S.A. 2C:11-5a; two counts of Aggravated Manslaughter, first

⁴ A copy of Salem County Indictment number 24-12-400-I is attached hereto as Exhibit A.
⁵ Copies of those exhibits are attached hereto as Exhibit B.

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degree, a violation of N.J.S.A. 2C:11-4a(1); one count of Tampering with Physical Evidence, fourth degree, a violation of N.J.S.A. 2C:28-6(1); and one count of Leaving the Scene of a Fatal Accident, second degree, a violation of N.J.S.A. 2C:11-5.1. On February 26, 2025, counsel for the defendant filed a Notice of Motion to Dismiss the Indictment and two discovery orders. A briefing schedule followed, with defense filing briefs in support of their filings on March 4, 2025. This brief will address the defense's Motion to Dismiss the Indictment. The State will address the defense's discovery requests, by way of separate filings, and will incorporate the facts submitted within this brief in those briefs.

Legal Argument

There are only limited circumstances where an indictment should be overturned. Those circumstances are when the indictment is "manifestly deficient or palpably defective." State v. Mason, 355 N.J. Super. 296, 298 (2002). When these circumstances are met, dismissal is only appropriate when the grounds are described as the clearest and plainest. State v. Perry, 124 N.J. 128, 168 (1991). Also, "where the 'indictment alleges all the essential facts of the crime, the charge is sufficiently stated, and the indictment should not be dismissed unless its insufficiency is 'palpable.'" Mason, 355 N.J. Super. at 299, quoting State v. LaFera, 35 N.J. 75, 81 (1961).

To uphold an indictment, the State must produce or present *prima facie* evidence to the Grand Jury. State v. Graham, 284 N.J. Super. 413 (App. Div. 1995). In reviewing the sufficiency of the evidence, every reasonable inference is given to the State. Id. at 416. The evidence presented does not need to be sufficient to sustain a conviction. Id. at 417. The grand jury process is not adversarial. State v. Hogan, 144 N.J. 216, 235 (1996). Evidence presented only needs to be sufficient to establish that a crime has been committed, not establish guilt or

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innocence. State v. Graham, 284 N.J. Super. 413, 417 (App. Div. 1995). State v. Hogan, 144 N.J. 216, 235 (1996). Any “challenge to an indictment must demonstrate that evidence is clearly lacking to support the charge.” Graham, 284 N.J. Super. at 417., quoting State v. McCray, 97 N.J. 132, 142 (1984).

Because of the non-adversarial nature of Grand Jury proceedings, incomplete or imprecise legal interpretations will not warrant dismissal of the indictment. State v. Laws, 262 N.J. Super. 551 (App. Div. 1993), cert. den. 134 N.J. 475. An indictment should not be dismissed if the Grand Jury heard at least some evidence as to each element of the offense charged in the indictments. State v. Vasky, 218 N.J. Super. 487 (App. Div. 1987). The New Jersey Constitution does not require a “verbatim reading of the applicable statutes or a recitation of all legal elements of each charge” to the Grand Jury during a presentment. Id., at 562.

A. Sufficient evidence was presented to the Grand Jury to establish probable cause that the defendant conduct rose to the level of exhibiting an extreme indifference to human life.

In their introductory critique of the State’s presentation to the Grand Jury, counsel provides false premises to dismiss counts three and four of the indictment. Those counts charge the defendant with Aggravated Manslaughter, first degree, for the untimely deaths of Matthew and John Gaudreau. That statute states:

Criminal homicide constitutes aggravated manslaughter when: (1)
The actor recklessly causes death under circumstances manifesting
extreme indifference to human life ...

N.J.S.A. 2C:11-4a(1).

Counsel argues the State did not present evidence that the defendant’s actions manifested an extreme indifference to human life. [REDACTED]

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[REDACTED]

[REDACTED] A reasonable inference then suggests the defendant either was not paying attention to where he was going or he saw the brothers and wanted to pass the Bronco regardless of who was in front of him.

[REDACTED]

[REDACTED]

⁶ Trooper Allonardo issued traffic Summons, E24-000834-1715, against the defendant for Driving While Intoxicated a violation of Title 39:4-50.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It is clear the grand jurors believed that this added up to the defendant recklessly caused the death of Matthew and John Gaudreau under circumstances manifesting extreme indifference to human life. At a very minimum, this is *prima face* evidence to support the Aggravated Manslaughter charges against the defendant.

B. The State provided prima face evidence to show the defendant violated N.J.S.A. 2C:11:5.1 on the day in question.

Counsel continues their critique of the presentment with the argument that the State failed to establish an element of Leaving the Scene of a Fatal Accident, second degree, count six of the Indictment. The relevant part of that statute states:

A motor vehicle operator who knows he is involved in an accident and knowingly leaves the scene of that accident under circumstances that violate the provisions of R.S.39:4-129 shall be guilty of a crime of the second degree if the accident results in the death of another person.

N.J.S.A. 2C:11-5.1. The Title 39 provision referenced in that statute states, in relevant part:

The driver of any vehicle, knowingly involved in an accident resulting in injury or death to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene...

N.J.S.A. 39:4:129.

There is no evidence that the Defendant came to an immediate stop or close thereto after he struck Matthew and John. [REDACTED]

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C. There is no basis to dismiss this indictment on the grounds of contributory negligence.

Finally, counsel presents a false premise that Matthew and John were violating the law when they were riding their bicycles on the day in question. There is no "cycling while intoxicated" statute in New Jersey. The New Jersey Drunk Driving Statue states in relevant part:

A person who operates a *motor vehicle* while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a *motor vehicle* with a blood alcohol concentration of 0.08 percent or more by weight of alcohol in the defendant's blood ... shall be subject ...

N.J.S.A. 39:4-50 (emphasis added). The code then defines motor vehicle as:

all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks, low-speed electric bicycles, low-speed electric scooters, and motorized bicycles.

N.J.S.A. 39:1-1.

John and Matthew, on the day in question, were riding two bicycles when they were struck by the defendant. They were neither operating a motor vehicle nor a moped as counsel would lead Your Honor to believe. [REDACTED]

[REDACTED] They were under no illusion that these were mopeds or had motors attached to them that assisted in being propelled.

Counsel leans heavily on the Law Division holding, in State v. Tehan, were the court determined that a pedal cyclist was subject to N.J.S.A. 39:4-50. 190 N.J. Super. 348 (Law Div. 1982). However, counsel failed to point out the two subsequent Law Division cases that pointed

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out the folly of the Tehan decision. In State v. Johnson, the court determined the plain language of N.J.S.A. 39:4-50 meant only to encompass motor vehicle. 203 N.J. Super. 436 (Law Div. 1985). It then reviewed ten pages of definitions within the motor vehicle law and held that bicycles are not included within the definition of motor vehicle. Id., at 439. It then struck down the argument that N.J.S.A. 39:4-14.1 incorporates bicycles into the driving while intoxicated statute. Id., at 442. This issue was revisited in State v. Machuzak 227 N.J. Super. 279 (Law Division). The court there noted the rift between Tehan and Johnson and sided with Johnson. It is clear by the statute itself and the decisions in Johnson and Machuzak that Matthew and John were not subject to the Driving While Intoxicated statute on the night in question.

Counsel then pivots, indicating that their contributory negligence argument does not exonerate the defendant with an affirmative defense and the Indictment should not be dismissed on these grounds. The State agrees. It is for all the above reasons, the State respectfully requests Your Honor deny the Defendant's Motion to Dismiss the Indictment.

Conclusion

When this matter was presented to the Grand Jury, they heard *prima face* evidence that the Defendant committed the crimes charged. Therefore, Your Honor should deny the defendant's Motion to Dismiss the Indictment.

Respectfully Submitted,



Michael Mestern
Assistant Prosecutor

Exhibit A

