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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2669-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TYRELL L. HICKS, a/k/a JAMIR  
STYLES,

Defendant-Appellant.

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Submitted July 25, 2017 – Decided December 22, 2017

Before Judges Ostrer and Leone.

On appeal from Superior Court of New Jersey,  
Law Division, Hunterdon County, Indictment No.  
14-09-0278.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Stephen P. Hunter, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Anthony P. Kearns, III, Hunterdon County  
Prosecutor, attorney for respondent (Jeffrey  
L. Weinstein, Assistant Prosecutor, on the  
brief).

PER CURIAM

After the trial court denied his motion to dismiss a single-count indictment charging second-degree eluding of a law enforcement officer, N.J.S.A. 2C:29-2(b), defendant Tyrell L. Hicks entered a conditional guilty plea to an amended charge of third-degree eluding, and was sentenced to a flat three-year prison term. In his allocution, defendant admitted he ignored a police officer's signal to stop over the course of a couple of miles as he reached speeds of ninety-five miles an hour, and he ultimately came to rest on the median of a State highway.

Defendant now appeals, asserting:

THE TRIAL COURT ERRED IN FAILING TO DISMISS  
THE INDICTMENT. U.S. Const. Amend V, XIV;  
N.J. Const. Art. I, § 8.

We affirm.

Defendant contends the testifying officer usurped the grand jury's function to ascertain probable cause by opining about the danger defendant posed. He argues that the State should have presented the motor vehicle recording (MVR) of the police pursuit instead. The assistant prosecutor asked the officer whether defendant "created a risk of possible serious injury or death" to motorists, and "put in jeopardy" the lives of the pursuing officers. See N.J.S.A. 2C:29-2(b) (stating that a person is guilty of second-degree eluding a law enforcement officer if the attempt

to elude "creates a risk of death or injury to any person"). The officer answered affirmatively.

In addition, the officer recounted in detail his pursuit of defendant. He testified that defendant swerved between and straddled lanes, and tossed items out of the car, as he sped away. To follow defendant, the officer had to match his high speeds, and go in and out of lanes. One or two members of the motoring public were on the road at the time.

As an indictment is presumed valid, a trial court may dismiss an indictment only if it is "manifestly deficient or palpably defective," and only with the exercise of discretion upon the "clearest and plainest ground." State v. Nicholson, 451 N.J. Super. 534, 541 (App. Div. 2017) (quoting State v. Feliciano, 224 N.J. 351, 380 (2016)). We will not disturb a trial court's decision on a motion to dismiss absent a clear abuse of discretion. State v. Hogan, 144 N.J. 216, 229 (1996).

Applying that deferential standard of review, we affirm the trial court's order, substantially for the reasons set forth in Judge Angela F. Borkowski's cogent written opinion. We add that the officer's opinion about the safety threat defendant posed did not "clearly infringe[]" upon the grand jury's decision-making authority so as to require dismissal, see State v. Schamberg, 146 N.J. Super. 559, 564 (App. Div. 1977), as there was ample evidence,

based upon the officer's description of events, from which the grand jury could conclude there was probable cause to charge second-degree eluding. Also, the State was not obliged to present the MVR, as it had already presented sufficient evidence to support the indictment. See State v. N.J. Trade Waste Ass'n, 96 N.J. 8, 27 (1984) (stating that the State need present to the grand jury only evidence sufficient to support a prima facie case).

Defendant also contends the State failed to properly instruct the jury, because the prosecutor did not review with the grand jury the elements of the offense during its consideration of defendant's case. However, the prosecutor read the indictment, which recited the elements; she confirmed the grand jury did not require a reading of the statute; and, earlier in the grand jury's term, the grand jury received an instruction on eluding. Therefore, we discern no merit to this argument. See State v. Triestman, 416 N.J. Super. 195, 205 (App. Div. 2010).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION