

**NOT FOR PUBLICATION WITHOUT THE  
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-0054-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SANTEENO D. GRANT,

Defendant-Appellant.

---

Submitted January 8, 2018 – Decided February 5, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey,  
Law Division, Mercer County, Indictment No.  
15-03-0273.

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

Angelo J. Onofri, Mercer County Prosecutor,  
attorney for respondent (Amanda E. Nini,  
Assistant Prosecutor, on the brief).

PER CURIAM

In 2016, defendant Santeeno D. Grant was convicted by a  
jury of unlawful possession of a weapon (knife), N.J.S.A. 2C:39-

5(d), and sentenced to one year of probation. He appeals from his conviction, asserting the trial court erroneously admitted prior bad act evidence and failed to provide a jury instruction on self-defense. We affirm.

I

The pertinent evidence adduced at trial was as follows. Defendant was employed as a maintenance worker at a hospital. Defendant's co-worker testified that, on the day of the subject incident, he overheard defendant and his supervisor arguing over the quality of defendant's work. Thereafter, defendant entered a room the co-worker was cleaning. Defendant wanted to speak to the supervisor, and asked the co-worker to call the supervisor on the co-worker's cellular telephone. The co-worker obliged, and defendant and the supervisor spoke by phone.

After the telephone conversation ended, defendant began to pace the floor and appeared agitated. Defendant stated to the co-worker, "You know what, anybody can get it," which the co-worker interpreted as a threat. Defendant then reached into a duffle bag he had carried into the room, pulled out a shotgun, and instructed the co-worker to call the supervisor again on the telephone or he would hit the co-worker on the head. The co-worker dialed the supervisor's telephone number and, as he called, walked toward the door. When the supervisor did not

answer, the co-worker fled through the door and escaped into a stairwell.

While in the stairwell, defendant encountered and informed the supervisor defendant had a gun. The two then left the building. Although initially the coworker did not contact the police or security personnel at the hospital, after discussing the matter with the supervisor, the co-worker advised security personnel of defendant's conduct, and a security officer contacted the police. The co-worker testified he did not call the police at first because, although he did not know defendant, he feared if he did so, defendant or another might retaliate against him for being a "snitch."

Defense counsel objected to the co-worker's use of the word "snitch," explaining the co-worker's testimony suggested defendant was a danger to him. The court noted the co-worker was merely explaining why he delayed in calling the police, but the court ultimately ruled the co-worker could explain what the word "snitch" meant to him. The co-worker then testified a "snitch" is one who "tells on a certain individual after they committed a crime, and anything . . . can happen to that snitch." He further stated that, in his community, snitches are viewed as "a threat to society that needs to be removed."

A hospital security officer testified that, after security personnel were notified of defendant's conduct and the police were contacted, the security officer found defendant in the hospital. The security officer engaged defendant in conversation until the police arrived; defendant was unaware the police had been summoned.

One of the police officers who responded testified he approached and spoke to defendant, who was cooperative. The officer noticed a bulge in defendant's front pocket, out of which extended a black handle. After conducting a pat-down frisk of defendant, the officer removed a knife from that pocket. The shotgun was not in defendant's possession. Defendant later advised the police he carried the knife because he had been the victim of a violent crime in the past.

As previously noted, defendant was found guilty of fourth-degree possession of a weapon, specifically, a knife.

## II

On appeal, defendant asserts the following arguments for our consideration:

POINT I - THE TRIAL COURT ERRED IN FAILING TO CHARGE THE JURY ON SELF-DEFENSE AND THEREFORE DENIED GRANT A FAIR TRIAL. THE GUILTY VERDICT ON THE POSSESSION OF A KNIFE CHARGE MUST BE REVERSED AND GRANT GIVEN A NEW TRIAL. (NOT RAISED BELOW).

POINT II - THE PROSECUTION'S INTRODUCTION  
AND EXTENSIVE USE OF PRIOR BAD ACT EVIDENCE  
VIOLATED STATE v. COFIELD.

We first address defendant's contention the court erred by failing to charge the jury on self-defense, warranting the reversal of his conviction and a new trial.

N.J.S.A. 2C:39-5(d), the statute defendant was convicted of violating, states in relevant part: "Any person who knowingly has in his possession any . . . weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree." The applicable provision of the use of force statute, N.J.S.A. 2C:3-4(a), provides in pertinent part:

[T]he use of force upon or toward another person is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

[Emphasis added].

Here, the only reference to self-defense during the trial was that defendant possessed the knife because he had been the victim of a violent crime in the past. There was no evidence he possessed the knife to protect himself against any immediate threat; he was in possession of the knife to protect himself in the event the need to use the knife in self-defense arose.

Nonetheless, he claims this reason alone required the court to instruct the jury on self-defense.

Before the trial court, defendant neither requested a charge on the use of force nor objected to the court's proposed jury charge before it was read to the jury. Accordingly, we review this issue through the lens of the plain error rule. See R. 2:10-2. "Regarding a jury instruction, 'plain error requires demonstration of legal impropriety in the charge prejudicially affecting the substantial rights of the defendant and sufficiently grievous to justify notice by the reviewing court and to convince the court that of itself the error possessed a clear capacity to bring about an unjust result.'" State v. Montalvo, 229 N.J. 300, 321 (2017) (quoting State v. Chapland, 187 N.J. 275, 289 (2006)).

In general, if there is evidence raising the issue of self-defense, then the jury must be instructed on self-defense. State v. Munroe, 210 N.J. 429, 446 (2012) (quoting State v. Kelly, 97 N.J. 178, 200 (1984)). However, "[s]elf-defense does not excuse possession of a weapon in violation of [N.J.S.A. 2C:39-5(d)] except in 'those rare and momentary circumstances where an individual arms himself spontaneously to meet an immediate danger.'" State v. Kelly, 118 N.J. 370, 372 (1990) (emphasis added) (citing State v. Harmon, 104 N.J. 189, 208-09

(1986)). Only under those limited circumstances "should the justification afforded by N.J.S.A. 2C:3-4 be considered." State v. Harmon, 104 N.J. 189, 208-209 (1986).

In Kelly, the defendant was concerned she might encounter an old boyfriend on the street who had been physically violent toward her. Thus, she armed herself with a carpet-cutting knife. After she passed the boyfriend on a street corner, he repeatedly punched defendant; in turn, she defended herself by slashing him with the knife. She was charged with unlawful possession of the knife pursuant to N.J.S.A. 2C:39-5(d) and, at the close of evidence at trial, requested a charge on self-defense. The trial court denied her request.

The Supreme Court affirmed our decision to affirm the trial court. The Court noted that if the defendant had "seized the weapon spontaneously and used it to defend herself against a life-threatening attack, then, she would not have possessed the weapon for a manifestly inappropriate purpose." Kelly, 118 N.J. at 385. However,

precautionary arming during a non-emergency situation is the type of conduct that the Legislature sought to interdict under section 5d. Persons who feel threatened should communicate with the police and not take the law into their own hands. . . .

As a matter of public policy, by criminalizing possession of weapons in

anticipation of a future need for self-defense, the Legislature intended to keep instruments from being used as weapons. Hence, we hold that section 5d prohibits the possession of implements as weapons, even if possessed for precautionary purposes, except in situations of immediate and imminent danger.

[Id. at 386-87.]

Similarly, here, defendant armed himself merely as a precautionary measure. When found in possession of the knife in the hospital, there was no evidence defendant was in imminent danger. Indeed, there were no circumstances suggesting he needed the knife to protect himself. A charge on the use of force was not indicated and, thus, the court did not err by failing to provide such an instruction.

Defendant next contends the court violated N.J.R.E. 404(b) by admitting defendant's "bad character" into evidence, also requiring the reversal of his conviction. The specific evidence about which defendant complains is the co-worker's testimony he initially refrained from calling the police out of a fear defendant or another might retaliate against him for being a "snitch."

N.J.R.E. 404(b) provides in relevant part:

evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to show that such person acted in conformity therewith. Such evidence



may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident when such matters are relevant to a material issue in dispute.


First, the coworker did not testify about other crimes, wrongs, or acts committed by defendant. In fact, the co-worker stated he did not know defendant. The co-worker conveyed his general impression that, in his particular community, those who inform the police of another's criminal acts may be targeted for vengeance by such person, or by others in the community who take exception to those who "snitch."

Second, even if the admission of this testimony were inadmissible under N.J.R.E. 404(b), the error was harmless. There was ample evidence defendant violated N.J.S.A. 2C:39-5(d) when found in possession of the knife at the hospital. In fact, defendant does not dispute the evidence supports such conviction, he contends only that he possessed the knife in the event he might need it to defend himself.

Accordingly, we reject defendant's contention the admission of the subject co-worker's testimony warrants reversal of his conviction.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION