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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-0937-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DANIEL F. STERLING,

Defendant-Appellant.

Submitted March 13, 2018 – Decided April 5, 2018

Before Judges Summers and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment No.
15-04-0614.

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

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Monica do
Outeiro, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Daniel F. Sterling appeals from a September 6, 2016
judgment of conviction – entered following a jury trial – for

fourth-degree failure to register with the New Jersey Division of Consumer Affairs in accordance with the Contractor's Registration Act¹ (the Act). The State concedes defendant's Point I argument that

BECAUSE THE CRIME OF FAILURE TO REGISTER AS A HOME[-]IMPROVEMENT CONTRACTOR REQUIRES PROOF THAT THE CONDUCT WAS ENGAGED IN KNOWINGLY, IT WAS ERROR FOR THE TRIAL JUDGE TO GIVE THE JURY NO INSTRUCTIONS WHATSOEVER ABOUT THE NECESSARY MENTAL STATE.

"Appropriate and proper charges to a jury are essential for a fair trial." State v. Green, 86 N.J. 281, 287 (1981). "[E]rroneous instructions on matters or issues material to the jury's deliberations are presumed to be reversible error." State v. Collier, 90 N.J. 117, 122-23 (1982). Even absent a request by defendant, the failure to charge the jury on an element of a crime is presumed to be prejudicial error. State v. Federico, 103 N.J. 169, 176 (1986).

The Act prohibits any person from offering "to perform, or engage, or attempt to engage in the business of making or selling home improvements unless registered with the Division of Consumer Affairs in accordance with the provisions of this act." N.J.S.A. 56:8-138(a). The penalty section of the Act provides:

¹ N.J.S.A. 56:8-136 to -152.

a. It is an unlawful practice and a violation of P.L. 1960, c. 39 (C.56:8-1 et seq.) to violate any provision of this act.

b. In addition to any other penalty provided by law, a person who knowingly violates any of the provisions of this act is guilty of a crime of the fourth degree.

[N.J.S.A. 56:8-146.]

We previously listed the elements of the crime: "(1) engaging in the home-improvements business; and (2) not being registered with the Division of Consumer Affairs. N.J.S.A. 56:8-146 makes that conduct a fourth degree crime when it is done knowingly; it does not require proof that the defendant knew the law." State v. Rowland, 396 N.J. Super. 126, 130 (2007).

Inasmuch as the trial judge did not instruct the jury on the knowing mental state, we vacate defendant's judgment of conviction. Our action renders moot the restitution order included in that vacated judgment, and we will not consider defendant's Point II argument:

THE COMPLAINING PARTY WAS NOT HARMED AS A
RESULT OF STERLING'S FAILURE TO REGISTER AS A
HOME[-]IMPROVEMENT CONTRACTOR, MAKING THE
RESTITUTION AWARD IMPROPER.

The State's contention that "a similar award of restitution following a retrial would be sought" presupposes the return of a guilty verdict. We decline to make that supposition.

Reversed and remanded. We do not retain jurisdiction.

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

A handwritten signature in black ink, appearing to be 'JWA', is written over the text 'file in my office'.

CLERK OF THE APPELLATE DIVISION