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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1698-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

QADREE CHRISTIAN a/k/a QUSAIM
RICHARDSON, QUADREE RICHARDSON,

Defendant-Appellant.

Submitted March 15, 2017 – Decided January 22, 2018

Before Judges Fuentes and Gooden Brown.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 14-
03-0794.

Hunt, Hamlin & Ridley, attorneys for appellant
(Raymond L. Hamlin, of counsel and on the
brief).

Carolyn A. Murray, Acting Essex County
Prosecutor, attorney for respondent (Frank J.
Ducoat, Special Deputy Attorney General/
Acting Assistant Prosecutor, of counsel and
on the brief).

The opinion of the court was delivered by

FUENTES, P.J.A.D.

Defendant Qadree Christian was indicted by an Essex County grand jury and charged with second degree eluding, N.J.S.A. 2C:29-2(b), and fourth degree resisting arrest, N.J.S.A. 2C:29-2(a)(1), arising from an incident that occurred on December 12, 2013. On that same date, defendant was charged with a number of related motor vehicle violations under Title 39. On April 20, 2015, after the trial court denied defendant's motion to dismiss the indictment, defendant negotiated an agreement with the State through which he pled guilty to second degree eluding. Defendant expressly reserved his right to appeal the court's decision to dismiss the indictment.¹ On January 15, 2016, the court sentenced defendant to a term of three years, consistent with the plea agreement.

In this appeal, defendant raises the following arguments concerning the trial court's decision to deny his motion to dismiss the indictment.

POINT ONE

THE COURT COMMITTED [REVERSIBLE] ERROR IN ITS DETERMINATION OF WHEN THE ALLEGED ELUDING INITIALLY OCCURRED.

¹ The appellate record does not include the transcript of the plea hearing describing the terms of the plea agreement. However, the State does not challenge defendant's right to seek appellate review of this interlocutory decision.

POINT TWO

THE STATE FAILED TO ESTABLISH A RISK OF DEATH OR INJURY TO ANY PERSON AS REQUIRED FOR THE OFFENSE OF SECOND DEGREE ELUDING.

A. CONDUCT OCCURRING [SIC] PRIOR TO ELUDING OR ATTEMPT TO ELUDE CANNOT SUPPORT A SECOND DEGREE ELUDING CHARGE

B. DEFENDANT'S CONSTITUTIONAL RIGHT TO A GRAND JURY WAS VIOLATED.

We reject these arguments and affirm. The transcript of the grand jury proceedings shows the State presented the testimony of Newark Police Officer Orlando Rivera. He testified that on December 12, 2013, at approximately 11:00 p.m., while patrolling the streets in Newark in a marked police car, he observed "a black Chevy Impala with tinted windows driving erratically at 15th Avenue and South Street." Rivera activated the police car's emergency overhead lights and siren. According to Rivera, the driver of the Chevy failed to heed his command to pull over and drove away at a high rate of speed.

Rivera radioed the local precinct and requested backup police units to respond. Rivera testified that "the dispatcher" told him "to stay off the air." A Detective Sergeant then directed the dispatcher "to monitor the pursuit." In the meantime, the Chevy continued to drive away, heading into East Orange. Rivera identified defendant as the driver of the Chevy. The pursuit

eventually ended "at the ramp at [Route] 280 and Grove Street," when the occupants of the Chevy "bailed out." Defendant was apprehended after "a brief foot-pursuit."

In addition to the two criminal charges reflected in the indictment, the arresting officer charged defendant with having tinted windows, N.J.S.A. 39:3-74, failure to follow a police officer's direction, N.J.S.A. 39:4-57, failure to produce proof of insurance and proof of vehicle registration, N.J.S.A. 39:3-29, driving while suspended, N.J.S.A. 39:3-40, and failure to obey the instructions of any official traffic control device, N.J.S.A. 39:4-81.

Defendant moved to dismiss the indictment. At oral argument before the motion judge, defense counsel framed his legal position as follows:

The issue is not whether or not there was sufficient information to support a finding per se. The issue is whether or not the State presented enough information to support a second degree charge of eluding.

As he does in his brief filed in this appeal, defense counsel argued to the motion judge that the crime of second degree eluding requires the State to establish that defendant, while driving a car, "knowingly flees or attempts to elude any police or law enforcement" in a manner that "creates a risk of death or injury to any person." N.J.S.A. 2C:29-2(b). Counsel maintained that

Officer Rivera's testimony did not describe conduct that satisfied these statutory requirements.

The prosecutor appearing for the State before the motion judge decided not to offer any oral argument, opting instead "to rely on its written positions." Despite this proclamation, the prosecutor noted that, at this phase of the criminal prosecution process, the State was only required to establish probable cause.

The motion judge began his oral analysis by noting that to withstand a legal challenge to an indictment, the State must establish a prima facie case that a crime has been committed and that defendant committed it. State v. Hoqan, 144 N.J. 216, 227 (1996). The judge then reviewed the elements of the crime of second degree eluding under N.J.S.A. 2C:29-2(b), and noted that the grand jury may draw "a permissive inference that the flight or attempt to elude creates a risk of death or injury to any person if the person's conduct involves a violation of chapter 4 of Title 39[.]" (Emphasis added).

Against this legal backdrop, the motion judge made the following findings:

Here[,] Detective Rivera testified at [the] Grand Jury hearing that upon observing the defendant driving erratically that Detective Rivera activated his emergency lights and audible device and the defendant failed to heed his lights and sirens[.] Additionally, the detective testified that the defendant

sped off at a high rate of speed and did not stop after officers initiated a motor vehicle [stop.] Based on this[,] the State has presented some evidence as to each of the three elements of the offense to establish a prima facie case for second degree eluding.

Therefore, the defendant's motion is denied.

"An indictment is presumed valid and should only be dismissed if it is 'manifestly deficient or palpably defective.'" State v. Feliciano, 224 N.J. 351, 380 (2016) (quoting Hogan, 144 N.J. at 229.). We review the denial of a motion to dismiss an indictment under an abuse of discretion standard. State v. McCrary, 97 N.J. 132, 144 (1984). Furthermore, this discretionary authority should not be exercised "except for "the clearest and plainest ground[.]" State v. N.J. Trade Waste Ass'n, 96 N.J. 8, 18-19 (1984) (quoting State v. Davidson, 116 N.J.L. 325, 328 (Sup. Ct. 1936)). Based on the record we have described here, we discern no legally valid grounds to disturb the motion court's decision.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION