

**NOT FOR PUBLICATION WITHOUT THE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-1724-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JASON L. STEWART, a/k/a JASON
L. STWEART, and JASON WAFFLES,

Defendant-Appellant.

Submitted December 19, 2017 - Decided January 19, 2018

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Monmouth County, Indictment Nos.
11-05-0945, 12-05-0822 and 13-01-0159.

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

Christopher J. Gramiccioni, Monmouth County
Prosecutor, attorney for respondent (Mary R.
Juliano, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Jason L. Stewart appeals from a June 25, 2014 Law
Division order denying his motion to dismiss an indictment charging

him with burglary. Defendant contends the State failed to present any evidence that he possessed the requisite intent for burglary. We disagree and affirm.

In May 2011, defendant's former girlfriend (the victim) obtained a domestic violence restraining order against defendant. The restraining order was still in effect on January 23, 2012. On that date, at approximately 2:00 a.m., the victim was in bed in her apartment when she heard her landline and cell phone ring repeatedly. The caller's phone number was blocked. Eventually, the victim answered the phone and the caller said "1-4-3"¹ before ending the call. The victim recognized the caller's voice as defendant. When defendant called again, the victim instructed him to stop calling her and then hung up.

Approximately fifteen minutes after hanging up on defendant's call, the victim heard a loud noise. Defendant then appeared in the victim's bedroom and got on top of the bed. The victim tried to grab her cell phone to call the police, but defendant attacked her. During her grand jury testimony, the victim said that defendant got onto the bed, grabbed the phone and was trying to break it. She also testified that defendant placed her in a choke hold and she thought defendant was going to kill her. The victim

¹ The victim knew that "1-4-3" was defendant's expression for "I love you."

was able to get away from defendant, run into another room, and call the police. When the victim called the police, defendant fled.

Defendant was indicted for second-degree burglary, N.J.S.A. 2C:18-2. Defendant moved to dismiss the burglary charge, arguing that the grand jury had not been presented with any evidence that he intended to commit a crime when he entered the victim's apartment.

The motion judge denied defendant's motion finding the State presented sufficient evidence to the grand jury that a crime had been committed and that defendant committed the crime. See In re State ex rel. A.D., 212 N.J. 200, 224 (2012). The judge noted that the State is not required to prove that defendant entered the structure with the purpose to commit a specific offense therein. See State v. Robinson, 289 N.J. Super. 447, 455-58 (App. Div. 1996) ("[W]here the circumstances surrounding the unlawful entry do not give rise to any ambiguity or uncertainty as to a defendant's purpose in entering a structure without privilege to do so, so long as those circumstances lead inevitably and reasonably to the conclusion that some unlawful act is intended to be committed inside the structure, then specific instructions delineating the precise unlawful acts intended are unnecessary."). The judge found that the State presented some evidence that

defendant entered the victim's "apartment with a purpose to . . . engage in some type of unlawful conduct other than, or in addition to, the offense of contempt [for violation of a restraining order]."

Giving the State every reasonable inference based upon the evidence presented to the grand jury, the judge held that the indictment was sufficient because a grand jury could reasonably believe that a crime occurred and defendant committed it. See State v. Feliciano, 224 N.J. 351, 380-81 (2016). In this case, the State argued that defendant committed burglary. "A person is guilty of burglary if, with purpose to commit an offense therein or thereon he . . . [e]nters a . . . structure" and defendant is not privileged to enter that structure. N.J.S.A. 2C:18-2(a)(1).

The judge found there was some evidence presented by the State that defendant entered the victim's apartment, despite the active restraining order, with a purpose that was inconsistent with lawful conduct and that defendant inflicted, attempted to inflict, or threatened bodily injury to the victim given the victim's testimony that she suffered scratches and neck pain after the incident. The judge concluded that defendant's criminal purpose was inferable from the circumstances regarding his entry into the victim's apartment and, therefore, denied defendant's motion to dismiss the indictment.

Defendant raises the following issue on appeal:

THE COURT ERRED IN DENYING DEFENDANT'S MOTION TO DISMISS THE INDICTMENT BECAUSE THE STATE FAILED TO PRESENT ANY EVIDENCE THAT DEFENDANT POSSESSED THE REQUISITE INTENT FOR BURGLARY.

The decision whether to dismiss an indictment lies within the discretion of the trial court and is reviewed only for clear abuse. State v. Zembreski, 445 N.J. Super. 412, 424 (App. Div. 2016). We have held that a trial court should dismiss a grand jury indictment only on the "clearest and plainest ground" and that an indictment should stand unless "manifestly deficient or palpably defective." Id. at 425.

On appeal, for the first time, defendant argues that the prosecutor misled the grand jury by failing to instruct them that defendant's violation of the restraining order could not satisfy the element of the burglary charge requiring that defendant intended to commit a crime in the victim's apartment. In this case, the prosecutor read the burglary statute to the grand jury. The instructions recited to the grand jury were a correct statement of the law and were accurate as read. We find there was nothing misleading in the prosecutor's statement of the statute defining burglary.

Having reviewed the record before the motion judge, we find the judge did not abuse his discretion in denying defendant's motion to dismiss the indictment.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION