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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-1811-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY C. RIDGEWAY,
a/k/a ANTHONY RIDGEWAY,

Defendant-Appellant.

Submitted March 14, 2017 – Remanded December 5, 2017
Resubmitted February 12, 2018 - Decided February 28, 2018

Before Judges Fisher, Leone, and Vernoia.

On appeal from Superior Court of New Jersey,
Law Division, Cumberland County, Indictment
No. 11-08-0713.

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

Jennifer Webb-McRae, Cumberland County
Prosecutor, attorney for respondent (Stephen
C. Sayer, Assistant Prosecutor, of counsel and
on the brief).

PER CURIAM

Defendant Anthony C. Ridgeway appealed his judgment of conviction. Our initial opinion remanded for a hearing regarding juror #11. State v. Ridgeway, No. A-1811-14 (App. Div. Dec. 5, 2017) (slip op. at 36). The trial court has conducted a hearing and issued findings. Based on those findings and the prior record, we affirm the judgment of conviction and remand for resentencing.

I.

The facts of the crimes and the procedural history are set forth in our prior opinion. In brief, defendant was charged with murder, burglary, robbery, and other charges. At trial in March 2014, the jury acquitted defendant of murder, but found him guilty of aggravated manslaughter, burglary, robbery, and other charges.

Defendant appealed, claiming the trial court erred in failing to question juror #11. We detailed the facts regarding that issue in our prior opinion, and summarize them here.

About two weeks before defendant's trial, prior to jury selection, Detective Dominic Patitucci of the Cumberland County Prosecutor's Office saw an elderly man having difficulty walking in the courthouse. Patitucci approached and asked if he was okay. The issue of parking came up. Patitucci told him "our office is pretty vacant next door" and offered him a place to park.

Around two weeks later, after the elderly man was selected as juror #11, trial began and Patitucci appeared in the courtroom

as the case agent. According to Patitucci, during the lunch break the juror "made eye contact like, hey, thanks. And I was like, yeah, everything good?" The juror thanked Patitucci, but said he was not using the parking lot Patitucci had offered. Instead, he said he was parking at the regular parking garage and another juror was picking him up there and driving him to the courthouse door.

Defense counsel raised the issue with the trial court. The court asked defense counsel what he wanted the court to ask the juror. Defense counsel replied: "I don't even know if there's anything to ask him, Judge. Actually, I would just move to have him struck." When the court later said it did not "see any questions that would be asked," defense counsel reiterated: "I don't know necessarily that there's anything to question him about."

After hearing Patitucci's testimony, the trial court determined that the juror had not parked in the prosecutor's lot and that the contact during the break was just to let Patitucci know that. The court concluded it was "[m]uch ado about nothing," and did not "see any reason to disturb the matter further." Later that day, the court and juror #11 had a conversation about parking. The juror told the court he had made his own parking arrangements

and that one of the jurors was driving him over from the parking garage.

On appeal, defendant argued that "the trial court was remiss in failing to voir dire the juror." We ruled that, "[a]t the very least, defendant must show it was plain error to forego a voir dire he never requested." Ridgeway, slip op. at 10-11. We found defendant failed to "show a basis for a new trial" on the then-existing record. Id. at 11.

Nonetheless, in "the interests of justice," we remanded for a "hearing at which Juror #11 is questioned," and for findings by the trial court based on juror #11's testimony "concerning the communications between Patitucci and juror #11, the effect of those communications on juror #11, and what if anything juror #11 conveyed to the other jurors concerning those communications." Id. at 17 (citation omitted). We instructed that, "[i]f juror #11 cannot be found or is otherwise unable to testify about the communications, the court shall make findings on the timing and nature of the juror's unavailability, and on whether defense counsel's statements that he could not think of anything to question the juror about caused the court to forego questioning the juror prior to his unavailability." Id. at 17 n.3. We retained jurisdiction to consider the effect of those findings on the convictions and issue a supplemental opinion.

II.

The same judge who presided over the trial presided over the December 12, 2017 remand hearing. The trial court determined it was not possible to question juror #11 because he died on March 1, 2016.

The trial court gave both parties the opportunity to present information to the court at the remand hearing. Defendant did not offer additional information. Defendant's original trial counsel appeared, and he recalled only that juror #11 "was an older gentleman; and, so, it doesn't surprise me to find . . . he has passed away."

The trial court added from its recollection of February-March 2014 certain "relevant circumstances that were occurring at the courthouse that w[ere] known to this court and the attorneys at the time but may not have been fully reflected in the record." The court noted that the prosecutor's office had been firebombed and appeared vacant, as was the parking lot. Moreover, the front of the office was covered with construction-grade plastic. Those facts corroborate the court's prior observation that the parking lot was "unidentified," as well as our conclusion that "there was no evidence the elderly man knew this unknown detective was offering parking in the prosecutor's lot." Id. at 15.

The trial court recalled that Detective Patitucci offered the elderly man parking closer to the courthouse "[n]ot because he was a juror but because he was visibly handicapped." That was what the record indicated, as their conversation occurred about two weeks before trial when the elderly "man was not a juror" and was in the courthouse on another matter. Id. at 13.

The trial court also noted that, during the court's conversation with juror #11 about parking, the juror did not mention the "conversation with the detective [two] weeks prior." That is confirmed by the record.¹

Based on those findings and our prior record, we must now determine whether defendant has shown plain error. "Under that standard, defendant has the burden of proving that the error was clear and obvious and that it affected his substantial rights." State v. Morton, 155 N.J. 383, 421 (1998); accord United States v. Olano, 507 U.S. 725, 734. Defendant has the burden to show the omission was "clearly capable of producing an unjust result." R. 2:10-2.

We previously concluded defendant had failed to show the trial court had to order a new trial. Ridgeway, slip op. at 11-

¹ Defendant objects to other recollections offered by the trial court about the interactions of juror #11 and the detective. We need not resolve that objection because we do not consider those recollections.

16. We ruled "[t]he conversation two weeks before trial was an innocuous discussion about parking" among two people neither of whom "had any discernable reason to believe the other person would participate in defendant's future trial." Id. at 15. We determined their "brief encounter" on the first day of trial did not violate the court's instructions. Id. at 15-16. We ruled Patitucci's offer of parking assistance did not have the appearance of currying favor for the prosecutor as it was unclear he or the lot was part of the prosecutor's office. Id. at 17.

The trial court's findings reinforce that the initial conversation was innocent, that the lot would not have appeared to be part of the prosecutor's office, and that two weeks later the unaccepted offer was not even mentioned by the juror. In any event, it is undisputed that the offer was not accepted, that the juror made other parking appropriate arrangements on his own, and that defendant's initial objection was based on a misconception. Nor is there any indication the juror was in any way influenced by Patitucci's unaccepted offer two weeks earlier. Considering the trial court's findings and the prior record, defendant has failed to show not questioning the juror was "clearly capable of producing an unjust result." R. 2:10-2; see State v. Winder, 200 N.J. 231, 252 (2009); State v. R.D., 169 N.J. 551, 554, 563 (2001).

Additionally, the trial court confirmed on remand what the original record indicated about the effect of defense counsel's statements. The court recalled that defense counsel took the position "there was nothing to be gained by questioning the juror," and that the court "found it significant that the defense did not want the juror questioned." The court remembered it "was inclined to question" juror #11 and "was prepared to question the juror but the defense position that the juror should not be questioned caused this court to avoid those direct questions to a sitting juror."²

As a result, it is particularly appropriate to require defendant to shoulder the burden to show prejudice that juror #11 was not questioned. That questioning was possible on March 11, 2014, when defendant did not want questioning. It was impossible by the time defendant first raised the claim in his appellate brief on June 30, 2016, almost four months after juror #11's death. Because defendant has not carried that burden, we do not find plain error, and we affirm defendant's convictions.³

² The trial court's recollections of its own thought processes persuasively confirm that it relied on defendant's position. Cf. State v. Jenkins, 178 N.J. 347, 359-60 (2004).

³ We need not reach whether defense counsel's statements that he had no questions to ask juror #11 invited the trial court's error in not questioning the juror. See State v. A.R., 213 N.J. 542, 561 (2013) ("Under that settled principle of law, trial errors that 'were induced, encouraged or acquiesced in or consented to

III.

The trial court sentenced defendant to twenty-eight years in prison for aggravated manslaughter. The court also sentenced defendant to eighteen years in prison for armed robbery, and nine years in prison for burglary, to run concurrently with each other but consecutively to the manslaughter sentence. The court imposed concurrent sentences on other convictions.

In our prior opinion, we vacated the consecutive nature of the sentences on the burglary and robbery counts, and remanded for the trial court to consider the factors governing whether sentences should be consecutive or concurrent without its misapprehension about the relevance of the jury's acquittal on the felony murder charges. To avoid delay and premature proceedings, we ruled any resentencing based on our vacating of the consecutive nature of the sentences for robbery and burglary must await issuance of our supplemental opinion. Therefore, we now remand for the trial court to examine whether defendant's various sentences should be imposed consecutively or concurrently.

Defendant's convictions are affirmed. We remand for resentencing as described in our prior opinion. We do not retain jurisdiction.

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


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by defense counsel ordinarily are not a basis for reversal on appeal[.]" (citation omitted)).