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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-3165-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANGEL A. CORTES,

Defendant-Appellant.

Submitted April 12, 2018 – Decided April 26, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Indictment No.
14-07-1197.

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

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Luisa M. Florez,
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Angel A. Cortes appeals from the January 10, 2017
judgment of conviction entered after the trial court denied his

motion to dismiss the indictment and he then pled guilty to third-degree receiving stolen property, N.J.S.A. 2C:20-7(a). On appeal, defendant contends the presentation of misleading testimony about the sequence of events leading to the seizure of inculpatory evidence impaired the integrity of the grand jury proceedings. We disagree and affirm.

We derive the following facts from the testimony of Jersey City Police Detective Chris Heger before a grand jury. At 10:53 p.m. on January 4, 2014, the police received a report of a robbery of two employees, M.C. and R.B.,¹ at the Denison Parking office at the Newport Mall. A male walked into the front door of the office, pointed a gun at M.C., locked the front door, and directed M.C. and R.B. to the back room of the office. The actor instructed R.B. to find something to restrain M.C. R.B. found a white phone cable, which was used to tie up M.C. The actor told M.C. he was not alone, would shoot her if she moved, and showed her a loaded gun. The actor then directed R.B. at gunpoint to exit the building through the back door and walked R.B. to the pay station machines in the parking lot. The actor made R.B. open the machine and remove the boxes containing cash. R.B. put two cash boxes inside a backpack the actor was carrying and the actor carried a third

¹ We use initials to protect the victims' identity.

cash box. When they returned to the office, the actor made R.B. open all the cash boxes and remove the cash. The actor placed the cash inside the backpack, warned C.W. and R.B. not to move for fifteen minutes, and fled through the back door. After approximately ten minutes, C.W. and R.B. notified mall security of the robbery.

Both victims described the actor as being five foot, five inches to five foot, seven inches tall, Caucasian or Hispanic with a thin build, in his early twenties, wearing a black zip-up hoodie, blue jeans, black sneakers or boots, and a black ski mask that only revealed his hazel-colored eyes, and carrying a black backpack with white writing on the straps or sleeve. M.C. subsequently went to police headquarters and gave a statement mirroring the above testimony and adding more detail about the robbery.

Heger also testified he viewed several surveillance cameras from the scene that captured events leading up to the robbery and portions of the robbery. One video showed R.B. carrying a black-colored backpack while walking through the parking lot with the actor, who was approximately five foot, eight inches tall and wearing a dark hooded sweatshirt and dark gray/black jeans. Another video showed R.B. and the actor, who appeared to be Caucasian or Hispanic, approximately five foot, eight inches tall, and wearing the same described clothing, approach the pay machine. R.B. then

placed the backpack next to the pay machine, opened it, removed three pay machine boxes, and placed two in the backpack and one on the ground. Meanwhile, the actor was pacing back and forth and using a black-colored phone. The actor walked over to the pay machine, grabbed the box on the ground, and began walking with R.B., who grabbed the backpack, through the parking lot.

A third video also showed R.B. carrying the backpack and the actor carrying a pay machine box. A fourth video showed the actor wearing a dark-colored hooded sweatshirt and dark-colored jeans, carrying a black backpack, and standing next to the driver's side of R.B.'s car. The actor appeared to be engaged in a conversation with an individual seated inside R.B.'s car. R.B. also conversed with the individual. R.B. and the actor then began walking away from R.B.'s car. R.B. continued walking through the parking lot to the office while the actor walked toward a parked vehicle. Approximately thirty seconds later, the actor is seen walking in the direction of the office. After viewing a fifth surveillance video, which showed R.B.'s interaction with the actor, R.B. became a target of the investigation. R.B. subsequently gave a statement that defendant committed the robbery and identified defendant from a photograph.

Heger testified the police went to defendant's sister's home to interview defendant. When they entered the home, they saw

defendant grab a black backpack and attempt to flee through a second floor bedroom window. The officers apprehended defendant and obtained the sister's consent to search. The police recovered the black backpack, which contained \$793 believed to be proceeds from the robbery, and clothing that matched the clothing worn by the actor depicted in the surveillance videos.

The grand jury indicted defendant for first-degree conspiracy to commit armed robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-2; first-degree robbery, N.J.S.A. 2C:15-1; third-degree criminal restraint, N.J.S.A. 2C:13-2; second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b); second-degree hindering apprehension or prosecution, N.J.S.A. 2C:29-3(a)(5); third-degree terroristic threats, N.J.S.A. 2C:12-3(b); fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(4); fourth-degree possession of prohibited devices, N.J.S.A. 2C:39-3(f); and second-degree kidnapping, N.J.S.A. 2C:13-1(b).

The trial court subsequently granted defendant's motion to suppress the items found in his sister's home. The court found the warrantless search as illegal because it occurred before defendant's sister gave consent to search. Defendant then filed a motion to dismiss the indictment, arguing Heger's misleading

testimony about the seizure of the suppressed evidence impaired the integrity of the grand jury proceedings. The court denied the motion, finding the State presented was at least some evidence as to each element of the prima facie case, and there was no basis to dismiss the indictment. On appeal, defendant reiterates the argument made to the court on his motion to dismiss the indictment.

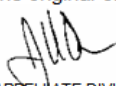
"[O]ur courts have long held that a dismissal of an indictment is a draconian remedy and should not be exercised except on the clearest and plainest ground." State v. Williams, 441 N.J. Super. 266, 271 (App. Div. 2015) (alteration in original) (quoting State v. Peterkin, 226 N.J. Super. 25, 38 (App. Div. 1988)). "Dismissal is the last resort because the public interest, the rights of victims and the integrity of the criminal justice system are at stake." State v. Ruffin, 371 N.J. Super. 371, 384 (App. Div. 2004). Even in a case in which we found an investigating officer's "brazen misconduct" to be "wholly reprehensible," we reversed the dismissal of seventeen indictments, stating, "we question whether the public must pay the price by forfeiting its day in court on otherwise properly found indictments." Peterkin, 226 N.J. Super. at 30-31. Therefore, although a motion to dismiss an indictment is directed to the sound discretion of the court, State v. Hogan, 144 N.J. 216, 229 (1996), "an indictment should stand 'unless it is palpably defective.'" State v. Lyons, 417 N.J. Super. 251, 258

(App. Div. 2010) (citation omitted). We will not disturb the court's exercise of discretion absent clear abuse. Hogan, 144 N.J. at 229.

We discern no abuse of discretion here. The indictment was not palpably defective. It was based on sufficient admissible evidence establishing probable cause that defendant committed the crimes charged, specifically, R.B.'s identification of defendant as the actor and the surveillance videos showing defendant's involvement in the robbery. Because the State presented at least some evidence as to each element of a prima facie case, the indictment must stand. State v. Vasky, 218 N.J. Super. 487, 491 (App. Div. 1987) (citation omitted).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION