SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0684-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TYRONE K. RAYMOND,
a/k/a TYRELL WILSON,

Defendant-Appellant.

Submitted March 22, 2023 – Decided August 1, 2023

Before Judges Accurso, Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Indictment No. 21-01-0019.

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

Matthew J. Platkin, Attorney General, attorney for respondent (Valeria Dominguez, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

A jury convicted defendant of two counts of third-degree burglary and theft by unlawful taking, along with fourth-degree theft by unlawful taking, second-degree eluding, and fourth-degree resisting arrest. At sentencing, the court imposed an aggregate ten-year custodial term and dismissed severed counts of the indictment, along with outstanding motor vehicles summonses.

Before us, defendant challenges only his convictions, and does so on two limited bases. He first contends the court erred in admitting evidence of other crimes contrary to N.J.R.E. 404(b), and State v. Cofield, 127 N.J. 328, 337 (1992). Second, he argues the prosecution of the eluding charge violated the double jeopardy provisions of the Federal and State Constitutions. Following our consideration of the parties' contentions in light of the record and applicable law, we disagree with all of defendant's arguments and affirm.

I.

In the early morning hours of October 10, 2019, a resident of Hamilton Township, woke up to get ready for work when she heard a car door slam. She looked out her window and saw someone drive off in her mother's Toyota Yaris bearing license plate number U97-FEK. The woman was unable to describe the individual she saw in the car as it was too dark outside but she immediately

noticed her home was "messed up" and things were "out of place" or "missing," including her purse, the car keys to both her car and her mother's Toyota, and her children's Xbox. She called the police who discovered a bike in her side yard that did not belong to her.

Less than a week later, on October 16, 2019, Hamilton Township Police Department's Major Crimes Unit Detective Thomas Clugsten was investigating a burglary in the township, after the owner of the property reported his air compressor was missing from his shed. After reviewing video from a surveillance camera, Detective Clugsten observed the same Toyota Yaris pulling into the man's driveway. Detective Clugsten ran the license plate and discovered the car was stolen. He was also able to observe on the tape a "thin [b]lack male" with facial hair, wearing a green shirt, loading an air compressor into the back of the Toyota.

A day later, at around 4:30 p.m., Detective Aaron Camacho, a detective with the Trenton Police Department, was on patrol in a marked police car when he spotted the stolen Toyota. Detective Camacho turned on his emergency lights and after the car stopped, both he and his partner, Officer Julio Estrada, got out of their car. Detective Camacho asked the driver, later determined to be

defendant, to show the officers his hands. Instead of complying, defendant drove off.

Not surprisingly, the officers immediately engaged in a pursuit, which Detective Camacho described at trial as occurring on a "very busy [two-way] road" with "a lot of pedestrian[s] and . . . vehicle traffic." He also stated defendant entered the opposite lane of traffic, swerved in and out of traffic, and forced the other drivers, including another officer coming to the scene to assist, to pull over or stop their vehicles.

After approaching traffic, defendant got out of the car and fled on foot in the opposite direction. Before doing so, he failed to place the car in park causing it to roll into a police vehicle, only stopping after a police officer managed to enter the car and steer it safely through a "busy intersection" and put it in park.

Detective Camacho pursued defendant in his car while Officer Estrada ran after him. After an intense chase, Officer Estrada was ultimately able to apprehend and arrest defendant, who was wearing a green shirt, the same color of the man's shirt seen in the surveillance video.

Detective Daniel Inman of the Hamilton Township Police Department interviewed defendant later that day at the police station after he waived his

Miranda[1] rights. That interview was recorded on Detective Inman's body-worn camera and played at trial during the detective's testimony. In the interview, defendant freely admitted to entering the first residence through an unlocked back door and taking the Xbox, car keys, and the Toyota. In addition, defendant acknowledged he left his bicycle in her yard, and stated the stolen items were "gone" and the police would "never be able to get [them] back."

When describing the robberies, defendant admitted, "[e]verything's on camera." He explained he "look[s] at the camera, smile[s] at the camera, puts [his] tongue out at the camera" and believed he was "on camera [for] ninety percent of the burglaries out there." Defendant acknowledged what he was doing was wrong but justified his conduct claiming he "was not harming anybody" but simply "trying to support" himself. He described burglarizing homes and cars as his job, explaining, "you guys punch[] the clock, basically, I'm punching the clock, too." On this point, defendant detailed the "hours" he worked as "from . . . [2:00 a.m.] . . . until 5:30 a.m.[,] when the sun starts coming up." During his interview, defendant also admitted most of the items seized from the Toyota belonged to him, including a knife.

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

With respect to his burglaries generally, Detective Inman asked defendant, "[o]kay, and so you've said you're on video a lot. Is there anything else that you're going to pop up on video that we should know about, that we could take care of right now?" Defendant responded, "I promise you I do so much shit, burglaries at night, preferably."

When arrested, defendant was issued numerous motor vehicle summonses including for careless driving, N.J.S.A. 39:4-97, and reckless driving, N.J.S.A. 39:4-96. He was also issued summonses for: failure to report an accident, N.J.S.A. 39:4-130; failure to stop, N.J.S.A. 39:4-144; failure to wear a seatbelt, N.J.S.A. 39:3-76.2(f); driving while his license was suspended, N.J.S.A. 39:3-40; failure to maintain lanes, N.J.S.A. 39:4-88(b); and leaving the scene of an accident, N.J.S.A. 39:4-129(b).

Months later, on January 16, 2020, a grand jury returned an indictment charging defendant with four counts of burglary in the third-degree, N.J.S.A. 2C:18-2(a)(1); three counts of theft by unlawful taking in the third-degree, N.J.S.A. 2C:20-3(a); and one count of theft by unlawful taking in the fourth-degree, N.J.S.A. 2C:20-3(a). The indictment did not charge defendant with eluding.

On September 29, 2020,[2] the municipal court conducted a proceeding related to the aforementioned motor vehicle summonses, during which defendant pled guilty to several charges, while others were dismissed or left unresolved.[3] Specifically, defendant pled guilty to an amended charge of obstructing passing under N.J.S.A. 39:4-67, in lieu of a careless driving summons, as well as an amended charge of driving as an unlicensed driver under N.J.S.A. 39:3-10, instead of driving while suspended. Defendant also pled guilty to failure to report an accident. His summonses for reckless driving, failure to maintain lanes, and leaving the scene of an accident were all dismissed. Following defendant's plea and the dismissal of the charges, the municipal court judge instructed defendant he was "free to go" and "[d]ismissed from the Trenton Municipal Court."[4]

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[2] Defendant cites to an audio recording of the municipal court proceeding due to a delay in receiving the transcript of that proceeding. We have since received the outstanding transcript and have confirmed it accurately transcribes the audio recording defendant relies upon.

[3] Neither party has included the summonses in the record, contrary to Rule 2:6-1(a)(1)(A) and (I).

[4] Despite this statement, it appears several of the summonses remained unresolved at the conclusion of the proceeding, including the summonses for improper passing, failure to stop, and failure to wear a seatbelt.

On December 2, 2020, a grand jury returned a second indictment which charged defendant with one count of eluding in the second degree, N.J.S.A. 2C:29-2(b); one count of resisting arrest in the fourth degree, N.J.S.A. 2C:29-2(a)(2); and one count of receiving stolen property in the third degree, N.J.S.A. 2C:20-7a. Approximately a month later, the State dismissed that indictment, and, on January 19, 2021, a grand jury returned a superseding indictment charging defendant with five counts of third-degree burglary; three counts of third-degree theft by unlawful taking; fourth-degree theft by unlawful taking; second-degree eluding; and fourth-degree resisting arrest.[5]

After unsuccessfully seeking to suppress his entire statement, a ruling defendant does not challenge, defendant filed an application to preclude the State from introducing only that portion of his statement where he admitted to having committed other burglaries, as well as the exchange where he acknowledged owning the knife seized from the Toyota. He specifically requested the court redact Detective Inman's question, "[o]kay, and so you've said you're on video a lot. Is there anything else that you're going to pop up on

[5] The court later severed the two counts of burglary in the third-degree and the unlawful theft in the third-degree charges from the superseding indictment at the State's request.

video that we should know about, that we could take care of right now?" and his response, "I promise you I do so much shit, burglaries at night, preferably." Defendant also requested the court preclude the jury from hearing the detective's question "[a]nd how about the knife?" and his response "[t]he knife is mine."

Defendant argued the aforementioned exchange should be redacted because it was more prejudicial than probative based on its potential to mislead the jury and would likely cause the jury to engage in improper speculation he committed other burglaries not at issue in his trial. He similarly maintained any mention of the knife was more prejudicial than probative because it would cause the jury to speculate that if defendant possessed the knife at the time he committed the burglaries and eluding offense.

The State opposed defendant's motion, and argued the detective was merely repeating defendant's earlier comments and maintained defendant's answer provided context regarding his admission he committed burglaries. As to defendant's statement regarding ownership of the knife, the State contended it was relevant to the issue of defendant's possession of the stolen car, as it was seized from the Toyota.

Defendant also filed an application to dismiss the eluding charge because the municipal court dismissed his summonses for reckless and careless driving

and the elements of those offenses addressed the "same behavior" as the eluding charge. Defendant also contended permitting the State to prosecute him for eluding, after the municipal court dismissed the majority of the motor vehicle summonses, created "an undue benefit to the State," violated his due process rights, and was contrary to notions of fundamental fairness.

The State opposed defendant's motion and argued double jeopardy principles did not apply because the court dismissed his reckless driving charges and one careless driving charge and amended the remaining careless driving charge to obstruction of passage, to which defendant ultimately pled guilty. It also argued the prosecution of the eluding charge did not violate double jeopardy principles under Blockburger v. United States, 284 U.S. 299, 304 (1932), and State v. Miles, 229 N.J. 83, 100 (2017), because of the "unique elements" comprising the eluding charge which were not present in the careless or reckless driving offenses.

The court denied defendant's request to redact the limited colloquy related to other burglaries. In its oral decision, the court explained Detective Inman's question and defendant's response provided relevant context, defendant offered the statement without prompting, and his statement detailed his "basic pattern" when committing robberies. The court agreed, however, to redact all references

to the seized knife at it was concerned the jury would "speculate that . . . defendant had the knife . . . during the robberies . . . which could change the way they look at the case in a very substantial way."

The court also denied defendant's application to dismiss the eluding charge and explained the eluding "statute, . . . jury charge, [and] the case law interpreting that statute" did not implicate double jeopardy principles. The court explained "there [were] clearly different elements" between the eluding statute and the motor vehicle summonses, such as law enforcement involvement, knowledge of flight, as well as knowledge of the status of officers involved in the pursuit.

While the court acknowledged a degree of "irregularity" to the actions of the municipal court, it relied on State v. Colon, 374 N.J. Super. 199 (App. Div. 2005), and found there was no evidence of "bad faith" on behalf of the State when prosecuting the motor vehicle summonses. The court also explained, however, it would be "fundamentally unfair" for the State to inform the jury defendant was initially charged with reckless or careless driving as defendant did not plead guilty to those charges. Accordingly, the court ordered neither party would be permitted to reference any of the motor vehicle summonses, or their dispositions, and any testimony regarding the pursuit of defendant would

be limited to "what . . . defendant did, and nothing more." The court precluded the State from characterizing defendant's actions as "reckless" or "careless" as such characterizations, in light of the disposition of certain of the summonses, could have the potential to mislead the jury. It also informed the parties it would issue a modified jury instruction on the eluding charge, as appropriate, prior to deliberations.

At the two-day trial, the State called the victims of defendant's crimes, as well as several of the officers involved in the investigation and defendant's apprehension. The State also introduced defendant's statement and photographic and video evidence. At his request, defendant did not attend the trial, and offered no affirmative evidence.

As indicated, the court issued a modified jury instruction which omitted certain language from the model jury instruction for eluding. It specifically deleted that portion of the charge that typically instructs the jury it may infer "risk of death or injury to any person if . . . defendant's conduct in fleeing or in attempting to elude the officer involved a violation of the motor vehicle laws." The court also omitted a statement from the model charge permitting the jury to consider defendant's violation of motor vehicle laws "in deciding whether [defendant] created risk of death or injury." See Model Jury Charge (Criminal),

"Eluding an Officer (N.J.S.A. 2C:29-2(b))" (rev. Nov. 15, 2004). All parties consented to the modified charge.

During her summation, the prosecutor relied on defendant's inculpatory comments from his recorded statement. She specifically implored the jury to "look at his statement, . . . defendant's own words. He says that burglarizing is his full-time job [and that he] gets up, . . . goes out, . . . [and] burglarizes houses and cars." The jury convicted defendant on all charges with the exception of one of the burglary counts. This appeal followed, in which defendant raises the following issues for our consideration:

> POINT I
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> [DEFENDANT'S] RIGHT TO A FAIR TRIAL WAS VIOLATED BY THE USE OF HIS STATEMENTS ABOUT UNCHARGED BURGLARIES AND THE STATE'S ARGUMENT IN SUMMATION THAT HE HAD A PROPENSITY TO COMMIT CRIMES.
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> POINT II
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> PROSECUTION OF THE ELUDING CHARGE[] VIOLATED THE DOUBLE JEOPARDY PROVISIONS OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I OF THE NEW JERSEY CONSTITUTION AS WELL AS FUNDAMENTAL FAIRNESS BECAUSE [DEFENDANT] HAD ALREADY BEEN PROSECUTED FOR THE LESSER-INCLUDED OFFENSES OF CARELESS DRIVING AND RECKLESS DRIVING.

> a) The State failed to meet the requirements of the same elements test outlined in [Blockburger, 284 U.S. at 304] and [Miles, 229 N.J. at 83].
>
> b) Prosecution of [defendant] for second-degree eluding violates notions of fundamental fairness.

II.

In his first point, defendant argues the court improperly admitted into evidence that portion of his recorded statement in which he discusses his commission of burglaries for which he was not charged. He explains his admission impermissibly "tainted the proceedings" requiring a new trial.

Defendant further contends, by permitting the State to rely on the statement, the court violated N.J.R.E. 404(b)(2) and further failed to analyze all the relevant factors under Cofield, 127 N.J. at 337. Defendant argues under Cofield, the court should have precluded his statement regarding participating in other uncharged burglaries as "a pattern of behavior was not at issue in this case and no such pattern was presented to the jury," there were no identifiable similarities between the burglaries, and no additional evidence of the burglaries other than defendant's statement was presented. Defendant further argues the court's error in admitting the statement was "further compounded by the absence of a limiting instruction," which allowed the prosecutor to "actively encourage[]

the jury to draw the prohibited inference" of defendant's propensity to burglarize.

We defer to a trial court's evidentiary rulings absent an abuse of discretion. State v. Garcia, 245 N.J. 412, 430 (2021). We review such evidentiary rulings "under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Under that differential standard, we "review a trial court's evidentiary ruling only for a 'clear error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)). But that standard is circumscribed where, as here, the "trial court did not apply [N.J.R.E.] 404(b) properly to the evidence at trial; in those circumstances, to assess whether admission of the evidence was appropriate, an appellate court may engage in its own 'plenary review' to determine its admissibility."[6] State v. Rose, 206 N.J. 141, 158 (2011) (quoting State v. Barden, 195 N.J. 375, 391 (2008)).

[6] We note defendant did not cite to either Cofield, 127 N.J. at 337, or N.J.R.E. 404(b) before the trial court when seeking to exclude his recanted statement, which likely contributed to the court's failure to conduct a Cofield analysis.

Even where we decide an evidentiary determination constituted an abuse of discretion, "we must then determine whether any error found is harmless or requires reversal." Prall, 231 N.J. at 581. An error during a jury trial will be found "harmless" unless there is a reasonable doubt that the error contributed to the verdict. That is whether the "error [was] 'sufficient to raise a reasonable doubt as to whether [it] led the jury to a result it otherwise might not have reached.'" State v. Jackson, 243 N.J. 52, 73 (2020) (alteration in original) (quoting Prall, 231 N.J. at 581).

After applying a plenary review, we reject defendant's arguments, because even were we to accept his contention the court erred in admitting his statement "I promise you I do so much shit, burglaries at night, preferably," we are satisfied any error was harmless as it is clear, beyond any doubt, the admission of the statement without a limiting instruction did not lead to an unjust result in light of the overwhelming evidence of defendant's guilt. See State v. Pepshi, 162 N.J. 490, 493 (1999). That evidence included other portions of defendant's inculpatory statement where he explicitly confessed to burglarizing the first residence, stealing the Toyota, and leaving his bicycle in her yard. He also admitted burglarizing homes and cars was his job, going so far as to tell the

police the hours when he engaged in criminal activity. He also stated the stolen items were "gone" and the police would never be able to recover them.

Further, the jury was presented with video evidence inculpating defendant in commission of the offenses to which he was convicted, including the theft of the air compressor from the shed while using the stolen Toyota. In sum, we are more than satisfied any mistake in the admission of a single passing reference to defendant's involvement in extraneous burglaries was harmless against the balance of the State's evidence. State v. J.R., 227 N.J. 393, 417 (2017).

III.

In his second point defendant argues "principles of double jeopardy and fundamental fairness . . . preclude[d] the prosecution of . . . the second-degree eluding charge" because defendant's careless driving and reckless driving charges were "addressed and resolved" prior to the eluding charges and the trial. Specifically, defendant argues second-degree eluding is the "same offense as careless driving or reckless driving because the two motor vehicle offenses do not have exclusive elements not found in the eluding charge," and pursuant to Blockburger, 284 U.S. at 304, "each statute must contain an element not included in the other."

"Because the issue presented is purely a question of law, we review this [issue] de novo." Miles, 229 N.J. at 90. We do not owe any special deference to the trial court's analysis of a legal issue. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). "When a question of law is at stake, the appellate court must apply the law as it understands it." State v. Mann, 203 N.J. 328, 337 (2010).

The double jeopardy clauses of the United States and New Jersey Constitutions provide that no person shall be tried twice for the same criminal offense. U.S. Const. amend. V; N.J. Const. art. I, ¶ 11. The New Jersey Supreme Court "has consistently interpreted the State Constitution's double jeopardy protection as coextensive with the guarantee of the federal Constitution." Miles, 229 N.J. at 92 (citing State v. Schubert, 212 N.J. 295, 304 (2012)).

"The Double Jeopardy Clause contains three protections for defendants. It protects against (1) 'a second prosecution for the same offense after acquittal,' (2) 'a second prosecution for the same offense after conviction,' and (3) 'multiple punishments for the same offense.'" Ibid. (quoting North Carolina v. Pearce, 395 U.S. 711, 717 (1969)). In examining the first two protections, the focus is on "whether the second prosecution is for the same offense involved in the first." Id. at 93 (quoting State v. Yoskowitz, 116 N.J. 679, 689 (1989)).

Further, when determining whether multiple punishments violate double jeopardy, the court must engage in a two-step process. State v. Maldonado, 137 N.J. 536, 580 (1994). First, it must "consider whether the legislature intended to impose multiple punishments." Ibid. If the legislative intent is unclear, however, the court must conduct a Blockburger analysis "to determine whether the defendant is constitutionally faced with multiple punishment[s] for the 'same' offense." Ibid.

Before 2017, New Jersey used two tests to determine whether offenses were the same for double jeopardy purposes: the same-elements test and the same-evidence test. Miles, 229 N.J. at 93-96. The same-elements test involves a review of whether the statutes at issue require proof of identical elements. Id. at 93 (citing Blockburger, 284 U.S. at 304). Under the same-evidence test, a court reviews whether the second prosecution would rely on the same evidence used to prove an earlier charge. Ibid. (citing Illinois v. Vitale, 447 U.S. 410, 421 (1980)).

In 2017, the New Jersey Supreme Court in Miles adopted the same-elements test as "the sole double jeopardy analysis." Id. at 96. As the Court's decision established a new rule of law, it applied the same-elements standard prospectively to offenses committed after May 2017. Because defendant

committed his offenses after 2017, we evaluate his double jeopardy contentions, as did the trial court, under the same-elements test.

As a preliminary matter, we note, defendant was neither convicted nor acquitted of careless or reckless driving. Instead, it appears one of his careless driving summonses was amended to an obstruction of passage charge, and the municipal court dismissed the remaining reckless and careless driving charges. Defendant does not contend obstruction of passing and second-degree eluding contain the same elements under a Blockburger/Miles analysis. Rather, he argues double jeopardy precludes the State from prosecuting the eluding charge because it contains the same elements as the dismissed reckless and careless driving charges. We disagree, as "each statute at issue require[d] proof of an element that the other does not," and therefore they did not "constitute the same offense." Miles, 229 N.J. at 93.

In Miles, after conducting a same-elements analysis, our Supreme Court held that loitering to possess marijuana and possession of CDS with intent to distribute were not considered the "same offense" under the principles of double jeopardy. Id. at 100. The Court reasoned that the school zone offense required proof of two elements not required in the loitering offense. Ibid.

Under N.J.S.A. 39:4-97, an individual is guilty of careless driving when that person "drives a vehicle carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property." In addition, an individual is guilty of reckless driving when they "drive[] a vehicle heedlessly, in willful or wanton disregard of the rights or safety of others, in a manner so as to endanger, or be likely to endanger, a person or property." N.J.S.A. 39:4-96. Contrariwise, a person is guilty of second-degree eluding when "while operating a motor vehicle on any street or highway . . . , [they] knowingly flee[] or attempt[] to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle . . . to a full stop," and "if the flight or attempt to elude creates a risk of death or injury to any person." See N.J.S.A. 2C:29-2(b)

We are satisfied with the court's determination that reckless and careless driving and second-degree eluding are not the same offense, as an application of the same-elements test leads to a similar result as in Miles, 229 N.J. at 100. Here, a plain reading of the statutes clearly illustrates that second-degree eluding requires elements absent from the other two charges. For example, careless and reckless driving do not require proof of flight after a police signal, as well as knowledge of the stop and the status of the law enforcement officers. See

N.J.S.A. 2C:29-2(b). Similarly, careless and reckless driving do not require creating a risk of injury or death, like second-degree eluding. See N.J.S.A. 39:4-96; N.J.S.A. 39:4-97

Defendant further contends we consider merger principles in our analysis to determine the "sameness" of these offenses, and argues because careless and reckless driving "have been found to merge with second-degree eluding," we should reach a similar conclusion under a double jeopardy analysis. We reject defendant's reliance on merger principles and conclude his arguments are of insufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(2). As discussed, our de novo application of Blockburger/Miles leads us to the conclusion the State's prosecution of defendant for second-degree eluding did not run afoul of double jeopardy principles.

Finally, defendant contends permitting the State to prosecute him for eluding was fundamentally unfair because he reasonably believed the municipal court proceeding resolved all of his outstanding traffic violations emanating from the October 17, 2019 incident and the effect of prosecuting him for eluding "rip[s] away any confidence in the finality of court decisions." Again, we disagree.

The doctrine of fundamental fairness in the context of double jeopardy is derived from the policy interests underlying that doctrine. Yoskowitz, 116 N.J. at 705. "The primary considerations should be fairness and fulfillment of reasonable expectations in the light of the constitutional and common law goals." Id. at 706 (quoting State v. Currie, 41 N.J. 531, 539 (1964)). Further, the doctrine "is an integral part of due process, and is often extrapolated from or implied in other constitutional guarantees." State v. Miller, 216 N.J. 40, 71 (2013) (quoting Oberhand v. Dir., Div. of Taxation, 193 N.J. 558, 578 (2008)). It also "effectuates imperatives that government minimize arbitrary action, and is often employed when narrowed constitutional standards fall short of protecting individual defendants against unjustified harassment, anxiety, or expense." Ibid. (quoting Doe v. Poritz, 142 N.J. 1, 109 (1995)). The doctrine, however, is to be applied "sparingly[,]" and only "in those rare cases where not to do so will subject the defendant to oppression, harassment, or egregious deprivation." Id. 71-72 (quoting Doe, 142 N.J. at 108).

We are satisfied this is not the "rare" case for which this doctrine is intended. As noted, we discern no violation of double jeopardy principles as the State's prosecution of both reckless and careless driving and second-degree eluding pass constitutional muster under a Blockburger/Miles analysis.

Although we acknowledge, as did the trial court, a degree of "irregularity" to the State's prosecution of the summonses after defendant was indicted, the record simply does not support defendant's claim that prosecuting him for eluding constituted "oppression, harassment or egregious deprivation." Miller, 216 N.J. at 71. Nor do we conclude the State's charge of second-degree eluding months after the municipal court proceeding rises to the level of "unjustified harassment, anxiety, or expense." Id. 71-72. We also note, the court addressed defendant's fundamental fairness concerns by limiting both parties from mentioning defendant's traffic violations and by prohibiting the State from characterizing defendant's actions as "reckless" or "careless" because defendant ultimately did not plead guilty to those offenses.

To the extent we have not addressed any of defendant's arguments it is because we have concluded they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.