SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2262-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTONIO PRATTS,

Defendant-Appellant.

Argued June 6, 2023 – Decided July 7, 2023

Before Judges Gilson, Gummer and Messano.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 22-02-0248.

David Cory Altman, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; David Cory Altman, of counsel and on the brief).

Eric Patrick Vivino, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Eric Patrick Vivino, on the brief).

PER CURIAM

We granted defendant Antonio L. Pratts leave to appeal from the Law Division's February 23, 2023 order denying his motion to dismiss count one of Hudson County Indictment No. 22-02-0248. That indictment charged defendant with: second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1) (count one); third-degree receiving stolen property, specifically, the handgun, N.J.S.A. 2C:20-7(a) (count two); fourth-degree contempt of an order entered pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:29-9(b)(1) (count three); and third-degree certain persons not to possess a firearm pursuant to a previously-entered PDVA order, N.J.S.A. 2C:39-7(b)(3) (count four).

Before the grand jury, Secaucus Police Officer Dennis Calacione testified that on November 26, 2020, he and other officers responded to the Red Roof Inn on the report of a handgun recovered by the hotel's cleaning staff. Police spoke with the staff member who said that while cleaning Room 224, she had recovered the gun in a Chipotle bag which she thought was trash. Police confirmed the room was registered to defendant. The gun was a fully-loaded .38 caliber revolver that had been reported stolen from Jersey City in November 2007.

Police reviewed the hotel's surveillance footage and saw defendant and an unknown woman enter Room 224 on the night of November 25; she was carrying a large Chipotle bag. Defendant and the woman can be seen leaving the room at approximately 12:34 p.m. the following day.

Room 154 was also registered to defendant. Police subsequently obtained search warrants for both rooms and found marijuana and drug paraphernalia in Room 154. When police apprehended defendant, the key to Room 224 was in his jacket. Defendant told police he had no knowledge of the gun.

The second day of presentation in the grand jury began with the assistant prosecutor reading the statutory language defining unlawful possession of a handgun and receiving stolen property. Prosecutor's Agent Kelly Sisk then testified that defendant was subject to a PDVA final restraining order (FRO) served on September 27, 2018, which prohibited defendant from possessing any firearms. The assistant prosecutor then charged the grand jurors regarding counts three and four, and, apparently, a true bill was returned.[1]

Defendant moved to dismiss count one but did not provide the judge with grand jury transcripts. However, the parties had stipulated to the facts, some of which were not before the grand jurors and some of which differed from the

[1] The deliberations and vote were not transcribed. See R. 3:6-6(c).

testimony before the grand jury. Defendant's argument in the Law Division was three-fold.

First, he argued that count one must be dismissed pursuant to N.J.S.A. 2C:39-6(e) (subsection (e)), which provides:

> Nothing in [N.J.S.A. 2C:39-5(b)] shall be construed to prevent a person keeping or carrying about the person's place of business, residence, premises or other land owned or possessed by the person, any firearm, or from carrying the same . . . from any place of purchase to the person's residence or place of business, between the person's dwelling and place of business, between one place of business or residence and another when moving, or between the person's dwelling or place of business and place where the firearms are repaired, for the purpose of repair.
>
> [(Emphasis added).]

Defendant argued the hotel room qualified as his residence.

Defendant also contended the prosecutor had failed to instruct the grand jury on the exception provided by subsection (e). And, lastly, defendant argued the State had failed to adduce any testimony that defendant lacked a permit to carry the revolver. See, e.g., State v. Carrion, 249 N.J. 253, 273 (2021) (holding the absence of a permit to carry the handgun pursuant to N.J.S.A. 2C:58-4 is an essential element of the crime of unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1)).

The State countered by arguing the hotel room was neither defendant's residence nor "premises" "possessed" by defendant. The prosecutor also argued that because evidence that the gun was stolen had been presented to the grand jurors, they "made the rational inference that [defendant] did not have a permit."

In a comprehensive written decision that immediately followed the argument and based on the stipulated facts without having reviewed the grand jury testimony, the judge found that defendant had booked the two rooms at the Red Roof Inn from November 25 through November 27, 2020, and he and the unidentified woman were seen entering and leaving Room 224 on November 25. He noted that the next afternoon, November 26, defendant and the woman were also seen leaving Room 224, entering Room 154, and shortly thereafter, leaving with a third individual. Defendant was arrested at the hotel on November 26. Contrary to the evidence before the grand jury, the judge found that police had obtained a search warrant only for Room 154, where no evidence was found, and they found drug paraphernalia when they searched Room 224.

The judge concluded, "The State did not fail to instruct the grand jury of an[y] exculpatory evidence because the residency exception . . . does not apply." Noting that defendant had provided other locations in Jersey City as his residence, and questioning whether defendant had stayed in Room 224 the night

of November 25, the judge concluded defendant was not living at the Red Roof Inn but rather "was using this room for his transgressions." He also determined that whatever "possessory interest" defendant had in the room "as a hotel guest" did "not rise to the level necessary for the applicability of" subsection (e).

The judge also concluded N.J.S.A. 2C:39-2(b) provided "a presumption that [defendant did] not possess a permit" for the revolver. The judge determined that the State had presented evidence that the gun was stolen, which was "some evidence that allow[ed the] grand jury to rationally infer that [d]efendant did not obtain a permit for the handgun." The judge denied defendant's motion to dismiss count one of the indictment.

I.

Before us, defendant argues:

> POINT I
>
> THE TRIAL COURT ERRED IN FINDING THAT A HOTEL ROOM CANNOT BE A REGISTERED GUEST'S "RESIDENCE" FOR THE PURPOSES OF N.J.S.A. 2C:39-6(e) AND THAT [DEFENDANT] LACKED SUFFICIENT POSSESSORY INTEREST IN ROOM 224 FOR IT TO BE HIS "PREMISES." THEREFORE, COUNT ONE MUST BE DISMISSSED

POINT II

THE TRIAL COURT ERRED IN FINDING THAT THE STATE PRESENTED "SOME EVIDENCE" THAT [DEFENDANT] LACKED A PERMIT TO POSSESS A HANDGUN BY RELYING ON THE INFERENCE IN N.J.S.A 2C:39-2(b) EVEN THOUGH THAT INFERENCE WAS NEVER READ TO THE GRAND JURY. THEREFORE, COUNT ONE MUST BE DISMISSED

POINT III

THE TRIAL COURT ERRED IN FINDING THAT THE STATE PRESENTED "SOME EVIDENCE" THAT [DEFENDANT] LACKED A PERMIT TO POSSESS A HANDGUN BY PRESENTING TESTIMONY THAT THE HANDGUN IN THIS CASE WAS REPORTED STOLEN. THEREFORE, COUNT ONE MUST BE DISMISSED [2]

Defendant's supplemental brief adds to the argument in Point I:

POINT I

BECAUSE A HOTEL ROOM IS A "RESIDENCE" AND/OR . . . "PREMISES" "POSSESSED" UNDER N.J.S.A. 2C:39-6(e), THE STATE'S FAILURE TO INSTRUCT THE GRAND JURY ON THAT EXCEPTION TO LIABILITY FOR UNLAWFUL POSSESSION OF A FIREARM WITHOUT A

[2] We omit Point IV, which urged us to grant interlocutory review of the Law Division's order.

PERMIT REQUIRES DISMISSAL OF COUNT ONE
[3]

We have considered these arguments and affirm, albeit for different reasons than those expressed by the motion judge. See, e.g., State v. Scott, 229 N.J. 469, 479 (2017) ("It is a long-standing principle underlying appellate review that 'appeals are taken from orders and judgments and not from opinions . . . or reasons given for the ultimate conclusion.'" (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001))).

II.

"[A] court should dismiss an indictment '"only on the clearest and plainest ground," and only when the indictment is manifestly deficient or palpably defective.'" State v. Twiggs, 233 N.J. 513, 531–32 (2018) (quoting State v. Hogan, 144 N.J. 216, 228–29 (1996)). "The trial court's decision denying defendant's motion to dismiss h[is] indictment is reviewed for abuse of discretion." State v. Saavedra, 222 N.J. 39, 55 (2015) (citing Hogan, 144 N.J. at 229). "When the decision to dismiss relies on a purely legal question, however, we review that determination de novo." Twiggs, 233 N.J. at 532.

[3] We omit the subpoints in defendant's supplemental brief and omit Point II entirely because it restates Point III in defendant's original motion brief.

"'[B]ecause grand jury proceedings are entitled to a presumption of validity,' [a] defendant bears the burden of demonstrating the prosecutor's conduct requires dismissal of the indictment." State v. Majewski, 450 N.J. Super. 353, 365 (App. Div. 2017) (first alteration in original) (quoting State v. Francis, 191 N.J. 571, 587 (2007)). When the challenge is to the sufficiency of the evidence adduced before the grand jury, "[a] trial court . . . determines 'whether, viewing the evidence and the rational inferences drawn from that evidence in the light most favorable to the State, a grand jury could reasonably believe that a crime occurred and that the defendant committed it.'" Saavedra, 222 N.J. at 56–57 (quoting State v. Morrison, 188 N.J. 2, 13 (2006)). "A court 'should not disturb an indictment if there is some evidence establishing each element of the crime to make out a prima facie case.'" Id. at 57 (quoting Morrison, 188 N.J. at 12).

Additionally, "[a] prosecutor must charge the grand jury 'as to the elements of specific offenses.'" State v. Eldakroury, 439 N.J. Super. 304, 309 (App. Div. 2015) (quoting State v. Triestman, 416 N.J. Super. 195, 205 (App. Div. 2010)). "However . . . nothing in the New Jersey Constitution demands 'a verbatim reading of applicable statutes or a recitation of all legal elements of

each charge.'" State v. John Hogan, 336 N.J. Super. 319, 340 (App. Div. 2001) (quoting State v. Laws, 262 N.J. Super. 551, 562 (App. Div. 1993)).

For the first time in Hogan, the Court imposed a limited duty upon prosecutors to present evidence to the grand jury that "satisfies two requirements: it must directly negate guilt and must also be clearly exculpatory." 144 N.J. at 237. Additionally, "a prosecutor's obligation to instruct the grand jury on possible defenses is a corollary to his responsibility to present exculpatory evidence." John Hogan, 336 N.J. Super. at 341. "A defense need not be charged to a grand jury unless it is an 'exculpatory defense,' defined as 'one that would, if believed, result in a finding of no criminal liability, i.e., a complete exoneration.'" State in the Interest of A.D., 212 N.J. 200, 220 (2012) (quoting John Hogan, 336 N.J. Super. at 341).

But, "[b]y its very nature, the grand jury does not consider a full and complete adversarial presentation, 'and the instructions are not made after consideration [and with the benefit] of the views of the defense.'" John Hogan, 336 N.J. Super. at 343 (second alteration in original) (quoting State v. Schmidt, 213 N.J. Super. 576, 584 (App. Div. 1986), rev'd on other grounds, 110 N.J. 258 (1988)). "Consequently, 'it is only when the facts known to the prosecutor clearly indicate or clearly establish the appropriateness of an instruction that the

duty of the prosecution arises.'" Saavedra, 222 N.J. at 66 (quoting John Hogan, 336 N.J. Super. at 343–44). Furthermore, "an indictment should not be dismissed unless the prosecutor's error was clearly capable of producing an unjust result. This standard can be satisfied by showing that the grand jury would have reached a different result but for the prosecutor's error." John Hogan, 336 N.J. Super. at 344.

With these principles in mind, we consider defendant's arguments.

III.

A.

Defendant acknowledges that the prosecutor did not run afoul of Hogan by withholding from the grand jury evidence that was clearly exculpatory and negated his guilt. Instead, as he did before the motion judge, defendant initially posits the issue as broadly as possible, specifically urging us to hold that subsection (e)'s exception to N.J.S.A. 2C:39-5(b) applies to the hotel room defendant occupied because it was either his "residence" or "premises" he "possessed." The judge accepted the invitation and concluded it was neither. We conduct our review on narrower grounds.

Subsection (e) may not be an "affirmative defense[]" as defined by our Criminal Code, see N.J.S.A. 2C:1-13(c), but a defendant clearly bears the

burden of proving its applicability, see N.J.S.A. 2C:1-13(d)(1) ("When the application of the code depends upon the finding of a fact which is not an element of an offense . . . : (1) The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made."). Simply put, the prosecutor was not required to provide instructions to the grand jurors on the subsection (e) exemption because disproving the exemption is not an element of N.J.S.A. 2C:39-5(b)(1). More importantly, although subsection (e) provided defendant with an "exculpatory defense," which "if believed" would result in "complete exoneration," A.D., 212 N.J. at 220, "it is only when the facts known to the prosecutor clearly indicate or clearly establish the appropriateness of an instruction that the duty of the prosecution arises." Saavedra, 222 N.J. at 66 (emphasis added).

In this case, based on the evidence adduced before the grand jury and the other facts known to the prosecutor as stipulated by the parties, defendant rented two different rooms in a Secaucus hotel for two nights, with no indication he intended to stay in either any longer. The prosecutor was aware that defendant had listed two Jersey City addresses as his residence. Defendant was seen intermittently entering and leaving one room, and entering and leaving the other,

before he was arrested. Under these circumstances, we conclude the State was under no obligation to provide the grand jurors with instructions regarding subsection (e) because the facts did not clearly indicate or establish that Room 224 was either defendant's residence or premises that he possessed.

We understand that by reaching this conclusion, we avoid the more difficult question of when and under what circumstances a hotel room may qualify as a "residence" or "premises possessed" by a person for purposes of subsection (e). But we are convinced it is inappropriate to address that issue in the context of a motion to dismiss an indictment.

As an exemption to our State's gun control laws, subsection (e), like other exemptions contained in N.J.S.A. 2C:39-6, should be read narrowly. Cannel, N.J. Criminal Code Annotated, cmt. 5 on N.J.S.A. 2C:39-6 (2023) (citing State v. Rovito, 99 N.J. 581, 587 (1985)). Nevertheless, the Court has recognized "[t]here is little case law interpreting or applying the statutory exemption in N.J.S.A. 2C:39-6(e)." Morillo v. Torres, 222 N.J. 104, 121 (2015). And "[t]here is an element of ambiguity inherent in that portion of the exemption's sentence structure" regarding premises that are owned or possessed by the actor. Ibid.[4]

[4] There is no approved model jury charge for subsection (e)'s exemption.

In Morillo, it was unnecessary for the Court to decide definitively whether the exemption applied to the plaintiff in a civil suit who was arrested with a gun in his waistband while sitting in a running car in the driveway of his mother's home where he had been "staying/living." Ibid. In State v. Gomez, we implicitly accepted that the exemption applied to the defendant's possession of a firearm in a room he had rented in a rooming house, but not when he "carried the firearm from his apartment after the shooting." 246 N.J. Super. 209, 216 n.1 (App. Div. 1991); see also Morillo, 222 N.J. at 123 ("[T]he Gomez panel implied . . . carrying a firearm outside one's dwelling removed the gun owner from the protections of section 6(e), despite that the defendant . . . was merely renting and did not, therefore, 'own' or 'possess' any 'premises' or 'land' on which he stepped after exiting his residence.").

We might envision circumstances where an extended stay in a hotel room takes on the characteristics of a room in a boarding house, and the physical hotel space in those circumstances may qualify as a defendant's temporary residence or premises he possesses, even though the room was being routinely accessed by hotel staff and subject to potential entry by them at any time. But, it is not the role of the grand jury to "consider a full and complete adversarial presentation," John Hogan, 336 N.J. Super. at 343, and the prosecutor's

instructions to the jurors "are not made after consideration [and with the benefit] of the views of the defense," ibid. (alteration in original) (quoting Schmidt, 213 N.J. Super. at 584).

We conclude only that based on the facts known to the prosecutor at the time this case was presented to the grand jury, she was not required to provide instructions regarding subsection (e)'s exemption, and defendant's motion to dismiss count one of the indictment on these grounds was properly denied. Defendant is free to reassert the argument that the exemption applies if and when the case is tried.

B.

Defendant also contends the State failed to introduce any evidence before the grand jury regarding an essential element of the crime charged in count one, specifically, that defendant lacked a permit to carry the handgun. He argues the judge erred by citing the presumption in N.J.S.A. 2C:39-2(b), which provides: "When the legality of a person's conduct under this chapter depends on his possession of a license or permit . . . , it shall be presumed that he does not possess such a license or permit . . . until he establishes the contrary." Defendant correctly notes the prosecutor never mentioned this provision during the presentation to the grand jury.

The judge, however, did not rely on the statutory presumption in concluding the State had met its burden in this regard. Instead, he reasoned that because the grand jurors had received testimony that the gun was reported stolen years earlier, they could infer defendant lacked the requisite permit to carry the weapon. Before us, defendant counters by suggesting "[c]arry permits are not specific to individual handguns, like purchase permits; they are specific to the individual," and "[a] defendant with a permit to possess a handgun can just as readily as a defendant without a permit receive and possess a stolen handgun."

N.J.S.A. 2C:39-5(b)(1) criminalizes the knowing possession of a handgun "without first having obtained a permit to carry the same as provided by N.J.S.A. 2C:58-4." It is true that "[o]ne permit shall be sufficient for all handguns owned by the holder thereof." N.J.S.A. 2C:58-4(a). However, in the process of obtaining a carry permit, the local police chief or Superintendent of the State Police or their delegated persons, "shall also determine and record a complete description of each handgun the applicant intends to carry." N.J.S.A. 2C:58-4(c). In addition, as the State argues, the actual application process requires a person to provide proof of ownership of the particular handgun. In short, we agree with the judge that the introduction of evidence before the grand jury that

the handgun was reported stolen years earlier permitted a logical inference that defendant lacked the requisite carry permit.

Finally, the prosecutor introduced evidence before the grand jury that defendant was subject to a September 2018 FRO under the PDVA, and he had been served with the order more than two years prior to his arrest on these charges. The FRO specifically required defendant to surrender any permits he may have had to carry a firearm and prohibited defendant from possessing a firearm. We reject, therefore, defendant's argument that the State failed to introduce any evidence regarding this element of the offense proscribed by N.J.S.A. 2C:39-5(b)(1).

Affirmed.