Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-1833-24T5

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

GEORGE E. NORCROSS, III, PHILIP A. NORCROSS, WILLIAM M. TAMBUSSI, DANA L. REDD, SIDNEY R. BROWN, and JOHN J. O'DONNELL,

Defendants-Respondents.

Criminal Action

On Appeal from a Final Order of the Superior Court of New Jersey, Law Division, Mercer County, Dismissing the Indictment Without Prejudice.

Sat Below:
Hon. Peter E. Warshaw, Jr., P.J.Cr.

AMENDED BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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June 10, 2025

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[1] All defendants but Sidney R. Brown were arraigned on July 9, 2024. (1T). Brown was arraigned on August 7, 2024. (2T).

PRELIMINARY STATEMENT

After a five-month presentation of evidence, totaling over 2,000 pages of testimony and including some 341 exhibits, a New Jersey grand jury found probable cause to charge six defendants with crimes. Most centrally, the Indictment alleges that defendants conspired to extort and coerce others using threats, including threats to inflict reputational harm and to cause officials to take or withhold action if victims did not relent. The grand jury alleged that they did so primarily to obtain property they could use to exploit lucrative state tax credits they helped shape. The trial court, over the State's objections, refused to review any of the evidence presented to the grand jury, and instead granted a facial dismissal, based on its weighing of only the evidence described in the Indictment. This Court should reverse.

Most importantly, the trial court erred in undertaking a type of review of an indictment that does not exist in criminal practice. There are two basic types of motions to dismiss in criminal practice: a facial motion and a "some evidence" motion. The first, a facial motion, asks whether defendants received adequate notice, or whether a conviction is legally impossible—either because the facts are agreed to through a stipulated record, or if guilt hinges entirely on a matter of statutory interpretation or a dispute over whether a statute is unconstitutional. In each of those cases, facial review is appropriate because there is no possibility

that further evidence—no matter how extensive—could yield a conviction under that indictment. The second kind of motion, a "some evidence" motion, asks if sufficient evidence was presented at this early stage for the criminal case to proceed. But because a criminal indictment is not like a civil complaint—the latter can be filed at will by any party, but the former requires the approval of the grand jury—a "some evidence" motion looks to what was presented to the grand jury before a court can dismiss the grand jury's Indictment.

The trial court granted a third kind of motion entirely—one that does not exist in our law or any other. The trial court did not identify legal defects that would make a conviction impossible with more evidence. Instead, the trial court simply asked whether there was sufficient evidence cited in the Indictment itself, without reviewing the reams of testimony and exhibits the grand jury saw. The court determined that it could engage in this sufficiency-of-the-evidence-on-the-face-of-the-Indictment review because the grand jury had issued a speaking indictment and thereby "open[ed] the door" to this sort of analysis, but the court cited no authority for that proposition, logic and overwhelming precedent refute it, and adopting this vague and inadministrable approach would work mischief in future cases. Defendants remain free to make a "some evidence" motion—and can do so on remand—but the trial court was not free to refuse to review the record before the grand jury entirely. (Point I.A.)

In any event, even accepting this unprecedented form of review, the trial court erred in finding the Indictment facially invalid. For one, the trial court repeatedly drew inferences against the State and failed to accept all facts as true. (Point I.B.) And that error further infected its analysis of the crimes charged. Defendants were properly charged with extortion and coercion conspiracies for having agreed to threaten not just economic but reputational and governmental harm to victims, which is squarely covered by New Jersey law. The trial court concluded otherwise only by mistakenly pegging its analysis entirely to a line of cases addressing ordinary economic jockeying, which themselves confirm that these kinds of threats—including threats to use governmental power to deny a victim "a level playing field"—are contrary to law. (Point II.) Finally, while this Court likewise need not reach them if it reverses on Point I, the court's various charge- and defendant-specific holdings were also erroneous, and thus similarly require reversal—particularly at this premature stage. (Point III.)

Although the facts of this corruption case are complex, the legal errors on which the decision below rests are straightforward. And though defendants are prominent individuals, the rules that dispose of their facial motion are properly applied in courts across our State and country every day, to defendants from all walks of life. For any or all of these reasons, the Indictment should be reinstated, and defendants may proceed with a some-evidence dismissal motion on remand.

STATEMENT OF FACTS ALLEGED IN THE INDICTMENT

As alleged by the grand jury, from 2012 until at least 2024, George Norcross led an enterprise whose members agreed to extort and coerce others through threats of reprisals from public officials, as well as economic and reputational harm, to obtain property on the Camden waterfront and associated tax credits. (Pa1-2). The Enterprise laid the groundwork for these schemes by rewriting tax-credit legislation to tailor it to their preferences, with George Norcross saying that the resulting Economic Opportunity Act (EOA) "is for our friends." (Pa15). To capitalize on that law, the Enterprise agreed to use George Norcross's "control of the Camden government," (Pa61), to extort and coerce Developer-1 to relinquish valuable property rights, and to extort and coerce Cooper's Ferry Partnership (CFP) and its CEO to partner with a developer of the Enterprise's choosing to purchase a building and ultimately sell CFP's rights to the building for far less than it would have otherwise received. (Pa2-6); see (Pa3-7). The victims relented and surrendered their property to Enterprise-controlled entities, which then used these properties to obtain tax credits that they then sold for over $50 million. (Pa2-7, 77-80).

The Indictment names George Norcross, Executive Chairman of the insurance firm Conner Strong & Buckelew (CSB) and Chair of the board of trustees of Cooper University Health Care (Cooper Health), as leader of the

Enterprise. (Pa7). The Indictment also names as members: Philip Norcross, Chair of the Board of the Cooper Foundation and George Norcross's proxy; William Tambussi, who served as George Norcross's personal attorney and whose law firm served as outside counsel to the Camden Redevelopment Agency (CRA); Dana Redd, the then-Mayor of Camden; and Sidney Brown and John O'Donnell, businessmen with interests in the entities at issue. (Pa7-9).

A. Triad1828 Centre & 11 Cooper Conspiracy.

As Defendants searched for sites that could support awards of EOA tax credits, George Norcross learned that Developer-1 held a view easement limiting the height of structures in front of Developer-1's Victor Lofts property. (Pa16, 40-41). That view easement conflicted with the Enterprise's plans to build and obtain tax credits for two buildings: the Triad1828 Centre (eventual headquarters of three entities controlled by Enterprise members), and 11 Cooper, an apartment building. (Pa39, 66-67). Developer-1 also owned the residential redevelopment rights for the planned site of 11 Cooper. (Pa37-38).

Defendants agreed to extort Developer-1 into relinquishing his rights. (Pa37-39, 84). As alleged, in 2015 the Liberty Property Trust (LPT), an entity represented by Philip Norcross, approached Developer-1 to discuss potential Camden redevelopment projects. (Pa45). LPT told Developer-1 that he would have to partner with The Michaels Organization (TMO), an entity led by

O'Donnell. (Ibid.) For months, Developer-1 negotiated with LPT, and with George Norcross directly, but negotiations broke down when Developer-1 grew uncomfortable with the level of control TMO sought. (Pa45-46).

When Developer-1 resisted releasing his easement and development rights on George Norcross's preferred terms, Norcross threatened him, telling Developer-1 in the summer of 2016 "if you f**k this up, I'll f**k you up like you've never been f**ked up before. I'll make sure you never do business in this town again." (Pa39, 47). "Developer-1 took this threat seriously," believing that if he did not acquiesce to Norcross's terms, his "ability to conduct business in Camden and his financial interests in general would be in jeopardy." (Pa47). In a subsequent call, George Norcross "again threatened Developer-1 that there would be consequences" if he did not agree to release his view easement and transfer his related redevelopment rights and tax credits. (Pa53). George Norcross later, on a recorded call, admitted he had told Developer-1 "'this is unacceptable. If you do this, it will have enormous consequences.' [Developer-1] said, 'Are you threatening me?' I said, 'Absolutely.'" (Pa53-54).

The Enterprise conspired not only to threaten direct harm, but also to threaten to cause city officials to take or withhold official actions against Developer-1 to coerce him to relinquish his property rights. (Pa39-40). Though the plot was ultimately abandoned, defendants agreed to cause the CRA to file

a lawsuit seeking a judgment declaring that the CRA had the right to condemn the view easement, (Pa50-53), intended to pressure Developer-1 into a "drastically different position" given the implicit threat of eminent domain, (Pa57-58). Enterprise members further pressured Developer-1 by causing Redd to stop communicating with Developer-1 when he sought assistance on unrelated matters, (Pa49-50), and they plotted for city officials to publicly accuse Developer-1 of being "not a reputable person," (Pa39). And they targeted Developer-1's unrelated Radio Lofts project. (Pa39, 74-75, 97-98). In a call explaining these efforts, George Norcross stated that "you can never trust [Developer-1] until you got a bat over his head"; explained he wanted Developer-1 to "cry uncle"; and identified Developer-1's unrelated Radio Lofts project as "another point of attack on this putz." (Pa57, 59, 72).

"As a result of these threats and actions," in October 2016, Developer-1 sold to LPT "tax credits and residential development rights and property he did not want to sell—forgoing his own opportunity to further develop the Camden waterfront—and extinguished his view easement, all for a price below where he valued this property." (Pa3-4, 39-40, 61-62). The Enterprise then built the Triad1828 Centre and 11 Cooper and applied for and received tax credits for these buildings—with CSB, NFI, and TMO receiving over $240 million in tax credits. (Pa63-68). These entities sold Triad1828 Centre tax credits beginning

in 2022, obtaining more than $26 million. (Pa64-65). George and Philip Norcross, Brown, and O'Donnell all financially profited from these efforts, receiving millions from their respective entities (Pa68-69, 77, 80).

B. Radio Lofts Conspiracy.

Between 2018 and 2023, Defendants worked together to use their control over Camden government to leverage Developer-1's interests in the Radio Lofts and Victor Lofts properties. (Pa72-74). Developer-1 intended to sell the Victor Lofts to a real-estate investment trust, but this required transferring a payment-in-lieu-of-taxes (PILOT) agreement with the City to the would-be buyer, which in turn required approval by the City Council. (Pa72-73). When Developer-1 sought that approval, Philip Norcross instructed local officials to slow down the approval and treat it as a "package deal" with Developer-1's option to redevelop Radio Lofts. (Pa49, 72-74). Philip Norcross stated that the purpose of linking the two interests was to cause Developer-1 to forfeit his Radio Lofts redevelopment option (Pa74), which George Norcross had earlier identified as "another point of attack on" Developer-1, (Pa59, 72).

The officials did as instructed: the City withheld approval for the PILOT transfer, and in April 2018, the CRA moved to terminate Developer-1's option agreement to redevelop Radio Lofts. (Pa4-5, 74-75). In response, Developer-1 filed a lawsuit against the City, CRA, and related officials, which culminated in

a 2023 settlement in which Developer-1 forfeited his Radio Lofts option, sold a parking lot to the City for $1, and agreed to pay $3.3 million to the City. (Pa4-5, 75-76). Developer-1 settled despite believing he was in the right. (Pa76).

C. The L3 Complex Conspiracy.

The Enterprise also conspired to extort property from CFP, a redevelopment nonprofit. (Pa16, 21-34). CFP had begun discussions to purchase a waterfront property known as the L3 Complex when Redd's mayoral chief of staff (CC-2) informed CFP's CEO that he should meet with Philip Norcross and herself to ensure that CFP had the approval of George and Philip Norcross for its future projects. (Pa22). Although neither George nor Philip had any formal role at CFP, CFP's CEO knew that the Camden government had cut funding to CFP after CFP's founder had previously a dispute with George Norcross years earlier, and he knew of an incident in which Norcross had pressured a councilman in Palmyra to fire a municipal employee. (Pa23). CFP's CEO thus began meeting regularly with Philip Norcross and CC-2. (Pa24).

CFP entered an agreement in January 2014 to buy the L3 Complex from the Economic Development Authority (EDA) at a discounted price, allowable due to CFP's nonprofit status, and planned to work with a partner of its choosing. (Pa24). Cooper Health CEO-1—who co-chaired CFP with Redd—told both CFP's CEO and CFP's President that George Norcross was angry that CFP was

purchasing the L3 Complex and that they had to meet with Philip Norcross about it. (Pa24-25). CFP's CEO and President met with Philip Norcross, who told them that CFP should not be involved in development and should turn over the deal to Investor-1, who had a financial relationship with George Norcross. (Pa25). CFP was not interested in working with Investor-1, but at Philip Norcross's urging signed a non-disclosure agreement to permit discussions about the deal with an entity controlled by Investor-1. (Pa26).

CFP nevertheless agreed in principle with a different partner, Keystone Property Group and Mack-Cali Realty Corporation (KPG/MC), to buy the L3 Complex as a joint venture. (Pa26-27). George and Philip Norcross quickly learned of this agreement. (Ibid.) Days later, Cooper Health CEO-1 told CFP's CEO and President that Philip Norcross was "torqued" about CFP "blowing off" Investor-1, adding, "Handle that gingerly." (Pa27). Two days later, Philip told CFP's CEO that CFP "was not allowed to use KPG/MC" and should use only Investor-1, which the CEO perceived as a threat. (Pa28). CFP thus partnered with the Enterprise's chosen investor and another associated investor, with its President describing the decision as a "false choice." (Pa29). It was also a much worse deal for CFP, which stood to earn millions and share in future profits under its prior agreement with KPG/MC. (Pa27). By contrast, under the Norcross-directed deal, CFP received a net $125,000 and no share in future

profits. (Pa32); see also (Pa29-30). Recognizing how disadvantageous this was to CFP, CFP's CEO had asked Redd and CC-2 for help during negotiations, but both told him that CFP "had to deal with" Philip Norcross and that the CFP CEO's job "was in jeopardy." (Pa30).

The deal was highly advantageous for the Enterprise's chosen developer, however, because it could obtain the L3 Complex at a "much lower" price available only because of CFP's nonprofit status—roughly $20 million less than the property's appraised value. (Pa28-29, 32-33). Meanwhile, Cooper Health came to own 49 percent of the entity that owned the L3 Complex and, from 2016 to 2022, received over $27 million in tax credits by leasing space in the building, which it sold for more than $25 million. (Pa31-33, 105). It also received 49 percent of profits from the entity that owned the L3 Complex. (Ibid.) During this time, George Norcross was chairman of Cooper Health's board and used the organization to enhance his influence within the Camden area. (Pa78-79, 105).

After wresting the L3 Complex from CFP, the Enterprise pressured CFP's CEO to resign through threats of adverse government actions and false reputational harm. (Pa6-7, 69-72). In mid-2017, CFP's CEO was told by Individual-2 (then-CEO of Cooper Health) and another individual that George Norcross "disapproved of [him] remaining as the CEO of CFP." (Pa69). In December, an unindicted co-conspirator (CC-1)—CEO of the Cooper

Foundation, which Philip Norcross chaired, and recently installed by the Enterprise as a co-chair of CFP—told CFP's CEO that he needed to resign because Redd "needed a place to go" when her mayoral term ended and would replace the then-CEO of the Rowan University-Rutgers Camden Board of Governors, who would take the CFP CEO's job. (Pa6, 69).

When CFP's CEO resisted, CC-1 threatened "harm to his reputation and termination for cause if he did not resign." (Pa6-7, 69-70). CC-1 noted that Tambussi had reviewed CFP's CEO's employment contract "and said they could 'drive a truck through it,'" and that if he did not resign, "they" would make something up to have him terminated for cause. (Pa69-70). When CFP's CEO asked CC-1 to restructure his severance package instead of terminating him, CC-1 responded, "It doesn't give me cover with [George Norcross] … You can't go there. You don't want that fight. Believe me when I tell you. If you don't think he can get to anybody he wants to, you're kidding yourself." (Pa71).

Due to these threats, CFP's CEO resigned at the end of 2017. (Pa72). The Enterprise replaced him with the then-CEO of the Rowan-Rutgers Board whose position was filled by Redd, just as CC-1 had indicated. (Pa72). This yielded a significant financial benefit to Redd, thanks in part to new legislation shepherded by George Norcross's close ally in the State Senate, which allowed Redd and only a few others to re-enter a prior, more favorable pension system.

(Pa70-71). Redd held that position until 2022. (Pa8).

PROCEDURAL HISTORY

On June 13, 2024, after a five-month presentation generating more than 2,000 pages of transcripts and involving over 300 exhibits, (4T15-9 to -10, 19-3 to -4; 5T42-11 to -14), a state grand jury returned Indictment No. 24-06-00111-S. The thirteen-count Indictment charges George Norcross, Philip Norcross, Tambussi, Redd, Brown, and O'Donnell directly or vicariously, see N.J.S.A. 2C:2-5, -6, with several crimes, (Pa81-110):

- Racketeering conspiracy, N.J.S.A. 2C:41-2(d) (Count 1) (all defendants);
- Extortion/coercion conspiracies, see N.J.S.A. 2C:20-5; N.J.S.A. 2C:13-5, as to the L3 Complex (Count 2) (George and Philip Norcross, Redd, Tambussi); Triad1828 Centre and 11 Cooper (Count 3) (all defendants); and Radio Lofts, (Count 4) (George and Philip Norcross, Tambussi);
- Financial facilitation of criminal activity, N.J.S.A. 2C:21-25(a), (c), for Triad1828 and 11 Cooper tax credits (Counts 5-6, 9-10) (all defendants) and L3 Complex tax credits (Counts 7-8) (George and Philip Norcross, Tambussi, Redd);
- Misconduct by a corporate official, N.J.S.A. 2C:21-9(c), for use of Cooper Health (Count 11) (George and Philip Norcross, Tambussi, Redd), and Triad1828 Centre and 11 Cooper companies (Count 12) (all defendants);
- Official misconduct, N.J.S.A. 2C:30-2(a) (Count 13) (all defendants).

A. Defendants' Motions To Dismiss.

At defendants' July 2024 arraignment, their attorneys stated that they would move jointly to dismiss. (Pa124; 1T33-24 to 35-25). Defendants stated that their forthcoming motions would ask the trial court to limit its legal analysis to the face of the Indictment—i.e., to determine the legal sufficiency of the

Indictment without regard to the 2,000+ pages of grand-jury transcripts and 300+ exhibits the grand jurors saw. (Pa124; 3T6-3 to -5, 8-14 to -24; 4T6-1 to -24, 17-20 to 18-18). They stated that if these motions were denied, they would then file a second round of motions to dismiss, which would challenge the sufficiency of the evidence the grand jury reviewed and considered. (4T11-8 to -19). As proposed, George Norcross filed an omnibus motion to dismiss, joined by all co-defendants, each of whom also filed supplemental briefs. (Pa124).

The State objected to the approach taken by the omnibus motion. (Pa212). As the State later noted, defendants' briefs did not argue that the terms of the Indictment precluded guilt. Instead, the briefs invited the judge to draw defense-favorable factual inferences and to second-guess the grand jury's assessment of the subset of evidence included in the Indictment. (Pa212-13). So while only Tambussi cited the grand-jury materials, the remaining briefs still implicated the evidence put before the grand jury, the weight to be given to that evidence, and the inferences to be drawn. (Pa212). The State thus observed that it could not "appropriately oppose [the] motions without directing the Court to the entirety of the grand jury presentment." (Pa213). Defendants maintained that the judge must decide the motion without the transcripts and exhibits. (Pa214-218).

Soon after, at a conference, the State reiterated its objection. (4T8-12 to 9-6, 13-14 to 14-3). The defense urged the judge not to look past the Indictment

to the evidence presented. (4T18-11 to 19-10, 30-5 to -12). The court rejected the State's request that it consider the grand-jury evidence, (4T14-13 to 16-9), likening its review of the indictment to review of "a search warrant and a search warrant affidavit," (4T33-15 to 33-22, 34-19 to 35-8), and thus never received or reviewed the testimony or exhibits before the grand jury, (Pa124-25).[2]

At argument, the State maintained that defendants' motion to dismiss was improper and premature. (5T37-12 to 16, 47-12 to 19, 50-5 to 18, 97-16 to 98-2, 97-16 to 98-2). The State contended, inter alia, that the defense incorrectly urged the judge to treat the Indictment as comprising all the evidence on which the grand jury relied and overlooked inconvenient allegations, urged defense-favorable inferences, and injected new facts. (5T37-12 to 38-6, 39-25 to 42-10, 309-14 to 310-17). The State argued as well that a grand jury's decision to return a speaking indictment does not permit the type of facial-sufficiency review defendants sought. (5T43-8 to 23, 111-22 to 112-19).

B. The Trial Court's Decision.

On February 26, 2025, the trial court granted defendants' facial motion to dismiss the indictment as to all defendants on all counts. (Pa112-13).

1. The court began by addressing the parties' dispute over the facial

[2] The trial judge thus did not consider the portions of Tambussi's brief that cited the grand-jury transcripts and evidence, and the State did not respond to them. (4T20-9 to 21-19, 22-8 to 23-12, 31-22 to 36-3; Pa125).

standard, acknowledging that "courts reluctantly and sparingly review the grand jury's actions to protect its independence," and will intervene "only on the clearest and plainest grounds, and only when the indictment is manifestly deficient or palpably defective." (Pa150). The court acknowledged that the general standard of what must be included in an indictment under Rule 3:7-3(a) is quite lenient: only a "written statement of essential facts constituting the crimes charged," sufficient to provide notice, rather than a comprehensive recitation of all evidence before the grand jury. (Pa150-51). And the trial court agreed that defendants did "not dispute notice." (Pa151).

But the trial court concluded that the rules changed for this speaking Indictment. While noting that "[a]n exception exists when the government has made what can be described as a full proffer of the evidence it intends to present at trial," (Pa151), the court recognized that "this speaking indictment is not a full proffer of the State's case," (Pa152). Still, it concluded, "the speaking indictment does open the door to the facial challenge," and there was thus no need "to review the entire grand jury proceeding" and the other evidence presented to evaluate defendants' motion attacking the entire case. (Pa152).

2. As to the substance of defendants' motion, the trial court first held that the Indictment's allegations did "not constitute extortion or criminal coercion as a matter of law" and that this was a basis to dismiss every count. (Pa153-56).

The court focused on George Norcross's statement to Developer-1, "if you f**k this up, I'll f**k you up like you've never been f**ked up before. I'll make sure you never do business in this town again." (Pa161-63). The court opined, based on its reading of the Indictment, that "[c]learly, this is a steel cage brawl between two heavyweights," and argued that "Developer-1 handles himself ably and gives as good as he gets." (Pa161-62); see also (Pa162) ("This sabre-rattling sounds much like 'this town ain't big enough for the two of us.'"). Ultimately, the court found that this statement was "the sort of economic coercion" that is exempt from criminal liability. (Pa163). The court also found that the other "threats" concerning Developer-1 alleged by the Indictment were "not a threat of any kind." (Pa163-64). It found "no illegal exploitation of Developer-1's fear of potential economic harm," but rather "negotiations and hard bargaining, which cannot be considered wrongful under the facts alleged." (Pa172).

Turning to the L3 Complex scheme, the court found that the "only" relevant threat alleged in the Indictment was Philip Norcross's instruction to CFP's CEO "that CFP was not allowed to use KPG/MC and it should only use" the Enterprise-chosen investor. (Pa168). The court found that this threat "must be construed as one which is purely economic in nature, just hard bargaining," reasoning that it "was not an express threat" and that Philip Norcross did not specify "what [he] would actually do about non-compliance." (Pa170-71).

Finding that every charge rested on establishing "unlawful threats," the court held that the entire Indictment was subject to dismissal on this basis. (Pa174).

The court also held the racketeering enterprise alleged "does not and cannot legally exist." (Pa178). Not addressing George Norcross himself, the court concluded that Brown and O'Donnell "did nothing criminal" and that there "is no evidence that they were part of any 'enterprise.'" (Pa185). The court also held the Indictment did not validly allege that Tambussi or Philip Norcross were part of an enterprise, finding that they engaged only in routine lawyering and petitioning. (Pa185-92). It held Redd was "not a member of any enterprise," finding that "the Mayor's chief of staff, not the Mayor, told CFP CEO-1 that he should meet regularly with Philip Norcross," (Pa195), and finding it "unclear" whether the latter had in fact "brief[ed] the Mayor" on the eminent-domain plan.

The court also found that Redd "did not commit official misconduct" under N.J.S.A. 2C:30-2(a) because the actions charged were not independently "unauthorized" and she did not act with intent to benefit herself or anyone else, as she may have received the new job only "because she was qualified" and not "because of fealty and devotion to the machine or the 'Enterprise[.]'" (Pa199).

3. Finally, the court held the charges facially time-barred. (Pa200). The court first concluded that, while the Indictment alleged that the RICO conspiracy continued through the date of the Indictment and the Enterprise had objectives

that extended into the limitations period, these were not factual allegations to be accepted as true at this stage, but rather "allegations, assertions, and, ultimately, conclusions." (Pa202). The court then found that any extortion occurred outside the limitations period and defendants did not pursue any of the conspiratorial objectives during the limitations period. (Pa200-209). The court also rejected the allegations that the official-misconduct charge continued into the limitations period, reasoning that while the State maintained Redd's new job and "improved pension" were "a reward for faithful service and fidelity to the Enterprise," the Indictment did "not consider whether Redd was competent and capable," and its "theory that the job was a quid pro quo and a financial reward for corrupt participation" was a "conclusory supposition" rather than "a fact which the court must accept as true." (Pa209-210). The State timely appealed.

LEGAL ARGUMENT

Reviewing de novo, State v. Twiggs, 233 N.J. 513, 532 (2018), this Court should reverse the trial court's extraordinary facial dismissal for multiple independent reasons. To start, the court's ruling was procedurally untenable, mistaking "a fight about what happened" for a pure "question of law." (Pa210-11). The court effectively created a new sufficiency-of-the-evidence-on-the-face-of-the-indictment test for speaking indictments—contravening blackletter law and inviting mischief in future cases. Moreover, the court erred when

engaging in that sufficiency review, failing to construe the Indictment's allegations in the light most favorable to the State. And even accepting the trial court's premature and fact-laden approach, the Indictment validly charges the offenses alleged within the applicable limitations periods, and the trial court's conclusions to the contrary misunderstand or overlook core issues of both fact and law—including the plain text of New Jersey extortion and coercion statutes under which defendants are charged, which the trial court failed to address in substance. This Court should reverse on any, or all, of these grounds.

POINT I

THE TRIAL COURT'S FACIAL APPROACH WAS UNPRECEDENTED AND ERRONEOUS. (Pa149-211).

Despite acknowledging that the Indictment did not discuss all (or even nearly all) the evidence the grand jury saw and heard, the trial court inappropriately judged the Indictment's validity based solely on the sufficiency of the facts detailed therein. The trial court's sole justification for proceeding that way was that the grand jury returned a "speaking indictment" and therefore "open[ed] the door" to this sufficiency-of-the-evidence-in-the-indictment analysis. (Pa152). But no one has ever identified a case that supports that rationale, and none exists. The trial court instead conflated the rule that a defendant can obtain facial review on the theory that an indictment's allegations

have rendered a conviction legally impossible with an unprecedented test that a criminal defendant can challenge the sufficiency of "every factual allegation in the Indictment" standing alone in a speaking-indictment case—regardless of the actual trove of evidence that went before the grand jury. (Ibid.) On this basis, this Court should reverse the facial dismissal and remand for the trial court to analyze a renewed motion to dismiss given the thousands of pages of grand-jury transcripts and exhibits that the trial court refused to review.

A. The Trial Court Announced A New And Improper Form Of Facial Review For Speaking Indictments. (Pa149-53, 173).

1. Dismissal of an indictment returned by a duly constituted grand jury is a "draconian remedy," State v. Williams, 441 N.J. Super. 266, 271 (App. Div. 2015), to be granted "'only on the clearest and plainest ground,' and only when the indictment is manifestly deficient or palpably defective,'" Twiggs, 233 N.J. at 531-32. For good reason: it is the grand jury that serves the "crucial function in our criminal justice system" of ensuring "adequate basis for bringing a criminal charge," State v. Saavedra, 222 N.J. 39, 56 (2015) (citation omitted), and "the whole history of the grand jury institution demonstrates that a challenge to the reliability or competence of the evidence supporting a grand jury's finding of probable cause will not be heard," Kaley v. United States, 571 U.S. 320, 328 (2014). That is, "[t]he grand jury gets to say—without any review, oversight, or second-guessing—whether probable cause exists to think that a person

committed a crime." Ibid. Accordingly, in our State, a motion to dismiss is proper only when it is "capable of determination without trial of the general issue," R. 3:10-1—that is, without "evidence relevant to the question of guilt or innocence," United States v. Pope, 613 F.3d 1255, 1259 (10th Cir. 2010) (analyzing corresponding Federal Rule) (citation omitted).

Given those principles, our law has recognized only narrow and carefully delineated pathways for a defendant to seek pretrial review of an indictment, and none applies here. Most notably, defendants can obtain dismissal where an indictment fails to provide adequate notice of the charges they face—the core purpose of the criminal indictment. State v. Ball, 268 N.J. Super. 72, 126 (App. Div. 1993), aff'd, 141 N.J. 142 (1995). Courts have therefore held indictments defective when they lack sufficient detail to ensure the accused can (1) prepare a defense, (2) avoid double jeopardy upon conviction or acquittal, and (3) protect against a substitution of a different offense in the State's presentation to the petit jury. Ibid. So a defendant can raise a facial motion if an indictment does not provide enough specificity, see State v. Dorn, 233 N.J. 81, 94 (2018), or fails to recite the proper elements, see State v. Algor, 26 N.J. Super. 527, 531 (App. Div. 1953). But all agree this Indictment provides notice. E.g., Pa151.

The other circumscribed bases for seeking facial dismissal are similarly inapposite. Certain forms of prosecutorial misconduct may support such

motions, as those motions do not turn on the strength of the evidence in an indictment, but on the prosecutor's decision to withhold exculpatory evidence from the grand jury, State v. Hogan, 144 N.J. 216, 237 (1996); to obtain an indictment strictly because an accused has exercised a legal right, see State v. Zembreski, 445 N.J. Super. 412, 425 (App. Div. 2016); or to engage in discriminatory or selective enforcement, see State v. Perry, 124 N.J. 128, 167-69 (1991). Others "simply do not implicate the general issue at all" because they focus on facts "entirely segregable from the evidence to be presented at trial," Pope, 613 F.3d at 1260 (quoting United States v. Barletta, 644 F.2d 50, 58 (1st Cir. 1981)), as with "some speedy trial violations," ibid. No one suggests any of these exceptions applies here either.

As for challenges to the substance of the charges themselves, the law recognizes just two kinds of motions under Rule 3:10-1. First, a defendant can argue the "indictment on its face appears incapable of supporting a judgment of conviction." State v. Shipley, 10 N.J. Super. 245, 250 (App. Div. 1950) (citing State v. Riggs, 91 N.J.L. 456, 458 (1918)). Call this a "facial impossibility" motion. Second, a defendant can dispute that the grand jury was presented with "some evidence" to "make out a prima facie case." Saavedra, 222 N.J. at 56-57. Call this a "some evidence motion."

Start with the first. For a facial-impossibility motion, a defendant argues

not that an indictment lacks enough evidence to support a crime, but that the facts alleged or agreed upon themselves disprove the possibility of a crime—regardless of what other evidence exists. This is crucial: "an indictment is subject to dismissal where it alleges conduct 'inconsistent with' the charged crime (i.e., conduct that shows that the crime did not occur)," but an indictment is not to be dismissed merely where the facts offered in the indictment "are insufficient, in and of themselves, to unequivocally show that a crime did occur." United States v. Sittenfeld, 522 F. Supp. 3d 353, 367 (S.D. Ohio 2021). Far from a civil motion to dismiss, which judges a civil complaint based upon the sufficiency of the allegations, this motion must claim impossibility.

A proper facial-impossibility motion can arise in a few contexts. It could involve an undisputed universe of facts, as with a stipulated record or "full proffer" of the evidence. E.g., United States v. Sampson, 898 F.3d 270, 283 (2d Cir. 2018); see also United States v. Phillips, 690 F. Supp. 3d 268, 278 (S.D.N.Y. 2023) (discussing the "benefits to the Government of providing a full proffer of the evidence before trial").[3] That is permissible, as then-Judge Gorsuch explained, as it does not "require a trial of the general issue": it hinges entirely on the "legal adequacy" of an undisputed record, such that it is "clear from the parties' agreed representations … that a trial of the general issue would serve no

[3] No one claims that the State made such a proffer here. (Pa151).

purpose." Pope, 613 F.3d at 1260-61. Or it could involve a matter that hinges entirely on statutory interpretation. E.g., State v. Mason, 355 N.J. Super. 296, 305 (App. Div. 2002) (whether government contractors can be "public servants" under official-misconduct statute). Or it could involve a claim that the underlying statute itself is unconstitutional. E.g., State v. Higginbotham, 257 N.J. 260, 270 (2024). In each of those scenarios, the common thread is the same: a defendant asks a court to rule, on a stipulated and closed universe of facts, "that the charged crime necessarily did not occur." Sittenfeld, 522 F. Supp. 3d at 367 (emphasis added). No such challenge was presented below.

Absent a stipulated record, however, a facial motion to dismiss cannot serve as an occasion "to weigh the evidence that the Government has presented." Phillips, 690 F. Supp. 3d at 284; see also, e.g., State v. W.S.B., 453 N.J. Super. 206, 237 (App. Div. 2018); State v. Nicholson, 451 N.J. Super. 534, 542 & n.3 (App. Div. 2017). Indeed, "courts routinely rebuff efforts to use a motion to dismiss as a way to test the sufficiency of the evidence behind an indictment's allegations." United States v. Guerrier, 669 F.3d 1, 4 (1st Cir. 2011) (collecting cases and observing defendant "cites no cases supporting his position, and, unsurprisingly, we know of none either"); see also, e.g., United States v. DeLaurentis, 230 F.3d 659, 660 (3d Cir. 2000); Sampson, 898 F.3d at 282-83; Yakou, 428 F.3d at 247; State v. Taylor, 810 A.2d 964, 980 (Md. 2002); State

v. Colville, 687 S.W.3d 637, 639 (Mo. 2024); State v. Bisbee, 69 A.3d 95, 99 (N.H. 2013); 2 Orfield's Criminal Procedure Under the Federal Rules § 12:84 (2024). The State is not aware of any precedent countenancing such an approach in a circumstance remotely like this one—whether in New Jersey or elsewhere.

Instead, when a defendant wants to challenge whether a duly returned indictment lacks a sufficient basis in evidence, he must bring a "some evidence" motion. Given the crucial differences between a civil complaint (which any party can file at will) and an indictment (which requires a presentation to, and approval by, the grand jury), such a challenge requires the trial court to view the evidence and all rational inferences "in the light most favorable to the State," and to ask only whether the grand jury was presented with "some evidence" to "make out a prima facie case." Saavedra, 222 N.J. at 56-57 (citation omitted). The State has never disputed that defendants could bring this type of motion here, and indeed objected that it is what the court should have required once it became clear what their "facial" motion was. Such a motion would allow the State to rely upon, and the trial court to review (as it has not yet done), the trove of evidence—some 2,000+ pages of transcripts, including 300+ exhibits—presented to the grand jury over five months in 2024, and on which the grand jury relied in charging defendants with the crimes alleged. But no such motion has yet been brought; instead, defendants have stated their intent to still bring

such a motion if this facial motion is denied.

2. The decision below is irreconcilable with these established limits on criminal motions to dismiss. The grand jury charged defendants, centrally, with engaging in a complex criminal conspiracy, both by entering into a racketeering conspiracy (Count 1) and by engaging in conspiracies to unlawfully extort and coerce victims into giving up property (Counts 2-4). See (Pa81-98). The trial court, looking only at the Indictment, concluded that the factual allegations did not alone suffice to establish the charged crimes. See, e.g., (Pa173) (stating that Indictment's "factual allegations do not constitute extortion or criminal coercion as a matter of law"). And the court's conclusions about the sufficiency of the facts included in the Indictment were part and parcel of its entire opinion. For instance, whether a defendant has agreed to commit extortion turns primarily on factual questions about what exactly defendants agreed to and communicated, what they intended to communicate, and why—as even the trial court seemed to agree. See infra Point II. "It goes without saying that [such] matters of intent are for the jury to consider," McCormick v. United States, 500 U.S. 257, 270 (1991), and that a judge hearing pretrial motions "therefore cannot resolve [them] on the jury's behalf," Sampson, 898 F.3d at 278.[4] But the trial court

[4] See also, e.g., State v. Cain, 224 N.J. 410, 420 (2016) ("Whether defendant had the requisite state of mind to commit the offense—the intent to distribute—

made determinations throughout its opinion on what it viewed as defendants' likely intent based on its review of only the Indictment, effectively rejecting the grand jury's more-informed view. See, e.g., (Pa161-62) ("Clearly, this is a steel cage brawl between two heavyweights … Developer-1 handles himself ably and gives as good as he gets."); (Pa170) ("CFP CEO-1 believed he was being threatened. Was he? Was the effort by Philip Norcross, allegedly doing the bidding of George Norcross, something which constitutes the required purposeful state of mind for Theft by Extortion or Criminal Coercion? … The court finds that the answer to these questions is no."); (Pa171) (finding Philip Norcross's conduct in the Indictment "does not constitute extortion or criminal coercion"); (Pa184-85) ("[F]or Brown and O'Donnell, this was about getting the buildings built and making money and that is all they did.").

Nor can the decision below be squared with any established exception. This case involves no stipulated record or "full proffer of the State's case": as the court acknowledged, (Pa151), the State vigorously disputed that all evidence

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was an ultimate issue of fact to be decided by the jury."); Policano v. Herbert, 825 N.Y.S.2d 678, 686 (N.Y. 2006) ("the question of intent can never be ruled as a question of law, but must always be submitted to the jury"); United States v. Wright, 665 F.3d 560, 569 (3d Cir. 2012) ("Inferring mental state from circumstantial evidence is among the chief tasks of factfinders."); United States v. Clemens, 738 F.3d 1, 13 (1st Cir. 2013) ("Whether a statement constitutes a threat is an issue of fact for the trial jury, involving assessments of both credibility and of context.") (cleaned up).

before the grand jury was contained in the Indictment it issued. The case is not one of pure statutory interpretation with "pellucid, one-dimensional facts," United States v. Xiong, No. 06-cr-72, 2006 WL 3025651, at *2 (W.D. Wis. July 7, 2006),[5] as the trial court's 96-page opinion—heavily laden with its own factual parsing—underscores. And defendants did not claim the underlying statutes to be unconstitutional. Nothing about the Indictment introduces a "fatal flaw" that more evidence—specifically, the evidence that went before the grand jury—"necessarily" could not cure. Sittenfeld, 522 F. Supp. 3d at 367.

Instead, the trial court engaged in the sort of sufficiency-of-the-evidence-included-in-the-indictment test that courts have "routinely rebuff[ed]" in criminal cases, Guerrier, 669 F.3d at 4, throwing out the grand jury's months-long work without reviewing the voluminous evidence it saw and heard. As explained, supra at 27-28, courts recognize that such determinations not only "invade the province of the ultimate finder of fact," Sampson, 898 F.3d at 281 (citation omitted), but can also prematurely and unreliably short-circuit the fact-finding process itself, Pope, 613 F.3d at 1259. In short, not a single case supports the trial court's facial approach, and reams of published cases contradict it. A reversal and remand is appropriate on this basis alone, at which

[5] This unpublished opinion is attached at (Pa225). As with other unpublished cases attached, the State is aware of no contrary opinions. See R. 1:36-3.

point defendants will continue to have every right to press a traditional sufficiency motion based on the evidence before the grand jury, and in response to which the State will be permitted to rely on that evidence.

Nor is this merely an abstract procedural problem: the trial court's choice to assess the sufficiency of only the evidence included in the Indictment, without looking at the evidence before the grand jury, kept from its review substantive materials that both colored and provided context for the facts the Indictment alleges. In addition to the testimony each witness gave, the evidence repeatedly showed the immense amount of control over Camden government that George Norcross exercised, and that the City was replete with people who feared him and his associates because they understood them to use the very sorts of methods alleged here—including weaponizing government tools (like permitting and approvals) that are supposed to be available on "a level playing field," and exacting harm to people's reputations and livelihoods if they crossed him. See infra at 52-58. Particularly given the contextual, fact-sensitive inquiry that goes into assessing whether a particular statement or act qualifies as a threat under binding precedent, the court could not justify setting all this testimony before the grand jury off to the side. See supra at 29-30 & n.4; infra at 47-52.

3. The trial court's basis for its unprecedented form of review is unavailing. Although the court seemed to recognize the extraordinary nature of

reviewing a criminal motion to dismiss based on the sufficiency of the evidence included in the Indictment alone, it justified its decision entirely by reasoning that the grand jury "open[ed] the door" by issuing a "speaking indictment." (Pa152). But a "speaking indictment" is just a form of indictment that gives more detail than necessary to satisfy the bare-bones requirements for facial validity, see supra at 25-26; it is not a "full proffer" of the State's evidentiary case, and it need not be, Phillips, 690 F. Supp. 3d at 278. Using a speaking indictment gives a defendant more notice than required and can serve to head off a motion for a bill of particulars, which defendants sometimes improperly use "as a general investigative tool," United States v. Feola, 651 F. Supp. 1068, 1123 (S.D.N.Y. 1987). Indeed, the trial judge acknowledged that the Indictment in this case was "not a full proffer of the State's case and that it was, at least in part, intended to serve as a bill of particulars." (Pa152).

No prior case, however, concludes that issuing a speaking indictment "open[s] the door" to the type of review defendants sought and the trial court gave. Rather, courts confronted with such arguments uniformly hold that a grand jury "is permitted to give a defendant more detail regarding the evidence against him without assuming the risk that a court will treat such detail as a proffer of all of the evidence," Phillips, 690 F. Supp. 3d at 278, and that courts therefore should not subject a speaking indictment to "a more exacting standard"

than a "'barebones' indictment," Sittenfeld, 522 F. Supp. 3d at 365; see also, e.g., id. at 366 ("The Court is unaware of any authority that explicitly recognizes this asserted distinction between a 'speaking indictment' and a 'non-speaking indictment.'"); United States v. Ji, No. 21-265, 2022 WL 595259, at *6 (E.D.N.Y. Feb. 28, 2022) (Pa233) (calling "plainly incorrect" argument that because indictment contained "substantially more alleged facts than are typically required, the Court must treat the supplemental allegations as the entirety of" the prosecution's case); United States v. Arshad, F. Supp. 3d 695, 699 n.23 (E.D. La. 2018) (rejecting claim that speaking indictment should be subject to a "heightened" standard and observing defendants "did not offer any case law to support this assertion, and the Court … has uncovered none"); United States v. Murgio, 209 F. Supp. 3d 698, 711 (S.D.N.Y. 2016) (similar).

Instead, courts can find that speaking (and non-speaking) indictments are facially invalid where the facts alleged necessarily entail the conclusion "that, as a matter of law, the charged crime did not occur"—the impossibility test detailed above. Sittenfeld, 522 F. Supp. 3d at 366. After all, only where the prosecution effectively "pled itself out of court" by alleging or stipulating to a set of "facts showing that the charged crime necessarily did not occur" does it make "sense to nip a case in the bud." Id. at 367. On the other hand, "where the concern is that there are not yet enough facts in a speaking indictment, the

same result does not follow," because even a lack of sufficient supporting evidence "does not foreclose the possibility that the record, by the time the matter goes to a [petit] jury, will contain enough evidence to support a conviction." Ibid. That makes sense in our adversarial criminal justice system, which vests the fact-finding power in jurors, not judges, and thus draws a line between holding that the facts alleged foreclose the charge as a matter of law (appropriate) and holding that the facts do not yet sufficiently prove it (inappropriate). The use of a speaking indictment does not alter that dichotomy.

Logic also forecloses the trial court's differential treatment of speaking indictments. To start, the State has its own trial rights, and is not capped by the quantum of inculpatory (or exculpatory) evidence discovered at the time of indictment—it too has a right to investigate its case, to engage in discovery practice, and to call witnesses to the stand to develop its evidence at trial. So, without a stipulated record or full proffer, there is no reason for a court to short-circuit a prosecution simply because it concludes the indictment has not itself articulated enough evidence to establish guilt. Further, in the kinds of complex cases in which speaking indictments are more common, no speaking indictment will exhaust the evidence on which the grand jurors relied in voting to indict, and it makes little sense to have the case's progression turn on what evidence was included in the indictment. Moreover, prosecutors often have good reasons

for leaving information out of speaking indictments—for instance, protecting the identity of certain witnesses. And finally, the trial court's line—where the legal tests vary based on whether an indictment was a "speaking" indictment or not—is inadministrable: the trial court did not offer a standard for deciding how much information opens the door to such a motion, and the State has no way of knowing in the future (nor did it have notice that a court could engage in this mode of analysis here). Indeed, allowing such a test will only encourage endless pretrial litigation over what degree of detail "opens the door."[6]

This case illustrates these problems well: the grand jurors heard evidence over five months, resulting in over 2,000 pages of testimony, (4T15-9 to 10, 19-3 to 4; 5T42-11 to 14), and the State turned over in discovery more than 4.3 million files, more than 6,000 wiretap recordings and at least 700 hours of audio recordings, including the interviews of about 100 people, (Pa219). Yet if the approach below were permissible, two otherwise-identical defendants would be treated differently based on nothing more than the happenstance of how much detail went into the indictment the grand jury issued. And even more perversely, the defendant to receive a windfall—by getting to bring a such a facial challenge while blocking the State from relying on any evidence that did not make it into

[6] This problem will likely be particularly acute in threats and conspiracy cases—both implicated here—because of how context-dependent and fact-intensive such cases are. See infra at 50-52 & n.14 (discussing binding precedent).

the indictment—would be the one who had received greater notice.[7] Not only does that make little sense, but it would produce untenable incentives: prosecutors seeking to avoid such a premature and asymmetrical battle would have every reason to provide less notice, or else to pursue 1,000-page speaking indictments, so as not to be forced to oppose such a challenge without the benefit of the lion's share of the evidence—and with it, face the risk of prematurely revealing witness identities or other sensitive information. And they would have to make these decisions against the backdrop of an undefined test, never knowing how much information is sufficient to give adequate notice but not to trigger this unprecedented type of facial-sufficiency review. That serves no one.

The three New Jersey cases cited by the trial court do not justify its approach either. (Pa152-53, 173). Those cases are State v. Brady, 452 N.J. Super. 143 (App. Div. 2017); State v. Perry, 439 N.J. Super. 514 (App. Div. 2015); and State v. Riley, 412 N.J. Super. 162 (Law Div. 2009). Importantly, none of them holds or even suggests that a speaking indictment opens the door to a different form of motion to dismiss. (Pa152). Moreover, considering those cases in turn makes clear that none supports the approach below. Instead, each

[7] The trial court's logic would even suggest that upon facing such a facial motion in response to a speaking indictment—or even if such a motion had already been granted—the State could simply pursue a barebones superseding indictment and thereby ensure a more favorable result. That cannot be the law.

involved matters of pure statutory interpretation applied to a fixed universe of uncontested facts—and indeed, two actually reviewed the grand-jury transcripts.

In Brady, a grand jury charged a judge with Official Misconduct under N.J.S.A. 2C:30-2(b) for not enforcing an arrest warrant. 452 N.J. Super. at 154-55. N.J.S.A. 2C:30-2(b) applies if a defendant has "knowingly refrain[ed] from performing a duty which is … clearly inherent in the nature of his office," and the court's analysis therefore hinged on whether enforcing an arrest warrant was a duty "clearly inherent" in the defendant's position as a judge—a purely legal question. 452 N.J. Super. at 163-64. And further, this Court in Brady considered the evidence presented to the grand jury, assessing whether the "absence of any evidence to support the charges" rendered the indictment defective, id. at 158—and not whether "the allegations" in the indictment alone failed to establish the crime, cf. (Pa152). Brady provides no support for the approach below.

So too Riley, a case that asked whether an unauthorized-computer-access law, N.J.S.A. 2C:20-25(a), covers employees who have been granted access to computerized information and then viewed or used such information contrary to their employer's policies. 412 N.J. Super. at 165-68. The case thus similarly hinged on a matter of pure statutory interpretation, to which further evidence would have been irrelevant; whether the defendant's conduct was covered by the statute turned on the meaning of the phrase "without authorization or in

excess of authorization," and not on any contested facts regarding his conduct. Id. at 166, 171, 190-91. But whether defendants here are covered by the statutes charged in the Indictment does not turn solely on the meaning of those statutes—it turns in significant part on what exactly they said, meant, and intended. See, e.g., (Pa163) ("This can be perceived as a 'threat', but to do what?"); (Pa170) ("This was not an express threat so what is to be implied by it?"); supra at 29-30 & n.4; infra Point I.B. In any event, Riley reviewed both the indictment and the grand-jury transcripts, unlike the decision below. See id. at 167, 169.

Finally, in Perry, defendants were charged with driving under a drunk-driving-related suspension. 439 N.J. Super. at 519, 522-23. The wrinkle was that, even as alleged, each defendant's period of court-imposed suspension had ended before the conduct occurred; liability turned entirely on whether the law criminalized driving under an ongoing period of administrative suspension, before defendants had their licenses reinstated. Id. at 519, 525-26. Again engaging only in pure statutory interpretation based on those simple and undisputed facts, the court ruled that the statute did not cover driving under administrative suspensions, see id. at 526-27, 530, 532—meaning that, no matter how much more evidence came to light, the indictment was "incapable of supporting a judgment of conviction," see Shipley, 10 N.J. Super. at 250. Here, no such impossibility exists—and if the trial court doubted whether sufficient

evidence supported the Indictment, the proper course was to direct defendants to file a some-evidence motion and to allow the State to rely in turn on the full panoply of grand-jury evidence in response.[8] The court's failure to do so alone requires reversal of the decision below.

B. Even Accepting The Trial Court's Unprecedented Form Of Review, Its Analysis Was Legally Flawed. (Pa153-211).

Even if our law could permit a novel facial-sufficiency analysis like that conducted below, the decision below would still require reversal. For a some-evidence motion that takes the full range of grand-jury evidence into account, a judge must both accept all factual allegations as true and view that "evidence in the light most favorable to the State," Saavedra, 222 N.J. at 56-57, and deny the motion unless the indictment is "manifestly deficient or palpably defective,'" Twiggs, 233 N.J. at 531-32. While the court below noted these blackletter rules, including its duty to give the grand jury "the benefit of every positive inference," (Pa184); see (Pa125, 150, 152), its analysis failed to apply them.

Copious examples illustrate this global defect in the court's analysis. As

[8] The court also cited State v. Schneiderman, 20 N.J. 422, 426 (1956), to note that "whether the indictment charges a crime is for the court's determination." (Pa153). Yet Schneiderman, an appeal challenging jury instructions, simply notes that "where no disputed question of fact [is] material … 'whether an act is illegal is a question of law to be settled by the court.'" Id. at 426. That sheds no light on when courts can assess fact questions that do exist based on the evidence included in the Indictment alone.

explained above, a central fact dispute between the parties—that would no doubt be a hotly disputed issue at trial, with competing fact witnesses—concerns whether George Norcross unlawfully threatened Developer-1. See supra at 5-11; infra Point II. In considering that question in light of (only) the evidence in the Indictment, the court asked, "How is this to be interpreted?" (Pa161); see also (Pa162) ("what does it mean to be told he would be 'f**k[ed] up like [he] [has] never been f**ked up before' and that he will 'never do business in this town again?' Does it mean anything at all?"). In answering its own question, it interpreted both the facts and the law, concluding that Developer-1 and George Norcross were "two heavyweights" and that Developer-1 "gives as good as he gets," (Pa161-62)—hardly a favorable inference to the grand jury's allegations that these men were not on equal footing, and that George Norcross in reality controlled the Camden government and thus held power over permitting and eminent-domain decisions that are not part of normal hard-bargaining, (Pa50, 53). Similarly, the trial court equated George Norcross's threats to mere "sabre-rattling," and questioned whether they "mean[t] anything at all," (Pa162)—but again, that is the court's factual interpretation of the language a defendant used.

So too for the trial court's response to its own question of what to make of "the amorphous threat to make sure you never do business in this town again?" (Pa163). "This can be perceived as a 'threat'," the court wrote, "but to

do what?" (Pa163). The State-favorable inference is that it can be perceived as a threat by George Norcross at a minimum to leverage his "control of the Camden government" to unlawfully deny the developer fair access to government permits, contracts, or services. (Pa61). The court, by contrast, "f[ound] that this statement" was simply "economic coercion … incident to free bargaining." (Pa163). Leaving aside the problems with the court making any "find[ings]" at all about motives at this stage, see supra at 29-30 & n.4, that conclusion does not view the evidence in the light most favorable to the State.

The same problem recurred during the trial court's assessment of the Indictment's reference to George Norcross's statement that Developer-1 was "gonna come under some very serious accusations from the City of Camden." (Pa163). The court reasoned that the "representatives of the City"—the municipality the grand jury alleged George Norcross exercised de facto control over—were "entitled to speak up." (Pa164). That is true enough, but plainly a defense-favorable gloss. Moreover, the court surmised that while there was "no explanation as to what those serious accusations even were, … they were not coming from George Norcross." (Pa163-64). But had the court reviewed the evidence the grand jury saw, it would have seen the prima facie case that those threats were coming from George Norcross. See also (Pa57) (George Norcross saying, following the "very serious accusations" comment, that "you can never

trust [Developer-1] until you got a bat over his head"). The court's interpretation flipped the grand jury's entitlement to all reasonable inferences on its head. See also, e.g., (Pa200) ("The inferences the State asks the court to draw, while theoretically feasible, are not supported by the evidence.").

The court's impermissible evidence-weighing did not end there. The court questioned whether, "[w]hen Developer-1 asks George Norcross if he is threatening him," he was "really … seek[ing] to confirm that he is, indeed, in physical or other danger," rather than "goading and needling his adversary?" (Pa162). The State-favorable inference is the former—danger of harm from government action, reputational damage, and economic harm—and there is no basis in the Indictment itself to conclude that this was mere goading. See (Pa61) (alleging the threats "led Developer-1 to conclude that remaining in the project … would lead [George Norcross] to use his control of the Camden government" to inflict financial and reputational harm).[9] The court similarly rejected the grand jury's allegation that CFP CEO-1 was a victim, concluding entirely on its own that CFP CEO-1 simply made "his choice … and let the dominoes fall." (Pa170). But the grand jury concluded otherwise, alleging that defendants agreed to deprive CFP CEO-1 of a free choice. (Pa34).

[9] Again, of course, the evidence presented to the grand jury would further confirm the validity of this allegation and likely resolve the trial court's uncertainty—but the trial court declined to review it.

The list goes on. The court dismissed the possibility Philip Norcross's pressure could have been more than "preemptory and imperious," emphasizing that there was "never even a line drawn between the alleged threat and what [he] would actually do about non-compliance." (Pa170-71); see also (Pa170) ("This was not an express threat so what is to be implied by it?"). But the grand jury—the relevant factfinder—reasonably found that George and Philip Norcross did not need to draw such a line, given the "control of the Camden government" the Indictment alleges was at their disposal, e.g., (Pa61), and the "muscle and brass knuckle vindictiveness" the court itself acknowledged, (Pa170). Faced with a question about which inference to draw, binding precedent required the court to draw the State-friendly conclusion. E.g., Saavedra, 222 N.J. at 57-58.

In considering the eminent-domain scheme, the court also doubted whether the CRA "was a hostage," chided the grand jury for failing to draw any "conclusion as to how much direct client contact was necessary to prepare the legal documents," (Pa187), and concluded the use of the word "hoped" in one sentence "indicate[d], by simple definition, George Norcross's understanding that whether the city went to court was not up to him," (Pa183). But the grand jury could reasonably conclude that defendants schemed to use the CRA for their own purposes, that "hoped" was a euphemism, and that the CRA was not truly driving the process, given the evidence before them and even in the Indictment.

E.g., (Pa52) (referencing plan "to brief the Mayor"); (Pa59) (Philip Norcross saying "the best shot at the head shot is exactly what Bill [Tambussi] mentioned … Kill [Developer-1's] view easement"); (Pa60) (Brown agreeing the group should "go ahead and let [Tambussi] get this thing done").

The court engaged in similar defense-favorable inferences as to the other defendants. Of Brown and O'Donnell, the court found it was "clear that Brown and O'Donnell [were] simply listening to experienced counsel discuss a legal strategy which could ultimately make them money" and that this was "their sole apparent purpose for being involved in any of this." (Pa184); see also (Pa184-85) ("Two sophisticated businessmen backed the right horse when it came to selecting an investment partner. … [F]or Brown and O'Donnell, this was about getting the buildings built and making money and that is all they did."). But setting aside how the court determined their "sole apparent purpose" without hearing any of the evidence, that is not what the grand jury found, and nothing renders its conclusion untenable—least of all without seeing what else the grand jury heard.[10]

[10] As one example, the court stated—of the conversation in which George Norcross threatened Developer-1 that he would "f**k you up like you have never been f**ked up before"—that "[t]here is no indication Brown or O'Donnell participated in this conversation or even knew of it." (Pa181). That is an accurate description of the Indictment, (Pa47), but not true of the evidence the grand jury heard. To be clear, the State is not urging this Court to consider

Similarly, the Court made sweeping conclusions about what motivated Redd and Tambussi, again based only on the Indictment.[11] Here too, had the court reviewed the grand-jury materials pursuant to a some-evidence motion, it could have assessed—and might well have been persuaded by—the State's explanation of why these inferences were substantively (as well as procedurally) inappropriate, especially given the many witnesses providing context on how both Camden government and members of the Enterprise operated. But it never gave the State that chance—instead concluding that "[t]he inferences the State asks the court to draw, while theoretically feasible, are not supported by the evidence," (Pa200), all without having reviewed that very evidence.

The trial court also erred in failing to identify the Indictment's factual allegations as such. The court reasoned that "[t]he alleged time frame and the alleged purposes of the enterprise are not facts," but mere "allegations, assertions and, ultimately, conclusions." (Pa202). But a defendant's subjective

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information outside the Indictment at this premature stage, but rather reinforcing that this stage is premature, and that there are good reasons no precedent supports the facial-sufficiency approach the trial court undertook.

[11] See (Pa187-88) (concluding an "effort to keep a jury from hearing the Norcross name was simply a reasoned legal decision"); (Pa197-98) (discussing allegations that Philip Norcross was to brief Redd on the eminent-domain scheme but emphasizing "[i]t is unclear whether this conversation … ever occurred"); (Pa198) ("A mayor has the right to hedge her bets in an effort to keep the City's redevelopment moving forward. A mayor has the right to join forces with coalitions which she believes have the best chance of prevailing.").

intent and the scope of a conspiratorial agreement are quintessential factual questions, e.g., supra at 29-30 & n.4, as is the "time frame" during which a defendant possesses that intent or is party to such an agreement. So too with the grand jury's ostensibly "conclusory supposition" that the Enterprise rewarded Redd for her loyalty with a remunerative position on the Rowan-Rutgers Joint Board. (Pa209-10). That the court doubted the grand jury's factual allegation, see also (Pa199) (suggesting Redd received her position "because she was qualified"), does not render the allegation any less factual. See also (Pa205) (discounting grand jury's charge that defendants unlawfully conspired for purpose of obtaining tax credits on the basis that "[o]ne must think that the State would have the ability to deny payments if it, for any reason, concluded there was a crime actively being committed").[12] In short, even accepting (contrary to precedent and logic) that a trial court could put aside the evidence presented to the grand jury and engage in a kind of facial-sufficiency review just because a grand jury issues a speaking indictment, the trial court's analysis failed on its own terms by failing to accept all facts as true and to give the State all reasonable inferences. This improperly fact-laden approach likewise requires reversal.

[12] As with myriad fraud cases, that an agency has paid out funds in no way undermines subsequent allegations of wrongdoing. What governments usually do when an investigation suggests that has occurred is what the State did here: present the evidence to a grand jury. See also (Pa111) (forfeiture allegation).

POINT II

THE INDICTMENT VALIDLY ALLEGES EXTORTION AND COERCION CONSPIRACIES. (Pa153-74).

Even accepting the trial court's unprecedented form of facial review, its substantive analysis of extortion and coercion—the only holding that could justify its global dismissal of all counts and all defendants, (Pa155-56, 173-74)—merits reversal. The grand jury charged defendants with conspiring to commit both state-law extortion, see N.J.S.A. 2C:20-5, and state-law criminal coercion, see N.J.S.A. 2C:13-5 (Counts 2-4).[13] In deeming the threats exclusively "hard bargaining," or finding that they were not threats at all, the trial court both misconstrued the law and made improper factual findings and inferences. Each of these errors likewise requires reversal.

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[13] Those offenses also serve as predicates for racketeering conspiracy under N.J.S.A. 2C:41-2(d) (Count 1), alongside other predicates, including Hobbs Act extortion under 18 U.S.C. § 1951. See (Pa85-86, 120); infra Point III.A. Though the Hobbs Act, unlike state law, does not enumerate specific types of behavior that qualify as extortionate threats, compare 18 U.S.C. § 1951(b)(2), with N.J.S.A. 2C:20-5, the same basic arguments support the Hobbs Act predicate to Count 1 on this facial posture. E.g., infra at 65-66 (discussing Hobbs Act cases confirming fear of adverse government action or lack of a "level playing field" qualifies); accord (Pa172) (trial court addressing Hobbs Act and state-law extortion in tandem). In the interests of avoiding repetition, the State therefore incorporates and preserves the same arguments as to the Hobbs Act for purposes of this appeal. Defendants of course would have the right to challenge both predicates separately via a some-evidence motion on remand.

A. The Law Of Extortion And Coercion.

For purposes of this appeal, state-law extortion and coercion can be considered together. A person commits theft by extortion if he "purposely and unlawfully obtains property of another" by "purposely threaten[ing] to" undertake one of several types of actions. N.J.S.A. 2C:20-5. The types of actions that these defendants are charged with threatening to undertake fall within subsections (c), (d), and (g). Those subsections cover threats to:

> c. Expose or publicize any secret or any asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;
>
> d. Take or withhold action as an official, or cause an official to take or withhold action; … or
>
> g. Inflict any other harm which would not substantially benefit the actor but which is calculated to materially harm another person.

[Ibid.] That is, defendants were charged with agreeing to purposely obtain their victims' property by threatening to: inflict reputational harm (subsection (c)); cause a government official to take or not take official action (subsection (d)); and inflict "any other harm" that would not benefit them but would hurt others (subsection (g)). Any one of these three types of threats would suffice.

The criminal coercion statute is "very closely related." (Pa158). A person commits criminal coercion "if, with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct, he threatens"—

as with extortion—to undertake one of several types of actions. N.J.S.A. 2C:13-5. The types of actions these defendants are charged with threatening to undertake fall within subdivisions (a)(3), (a)(4), and (a)(7). Much like the extortion statute, those subdivisions cover threats to:

> (3) Expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;
>
> (4) Take or withhold action as an official, or cause an official to take or withhold action; … or
>
> (7) Perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

[Ibid.] Here too, defendants were charged with agreeing to purposely restrict their victims' freedom of action by threatening to: inflict reputational harm (subdivision (a)(3)); cause a government official to take or not take official action (subdivision (a)(4)); and "[p]erform any other act" that would not substantially benefit them but would be likely to substantially hurt others (subdivision (a)(7)). Again, any of these three can support the relevant charge.

"The only real difference" between extortion and coercion lies in whether the defendant sought to obtain the victim's property (extortion), or to restrict the victim's freedom of action (coercion). Cannel, N.J. Crim. Code Annotated, cmt. 2 on N.J.S.A. 2C:13-5 (2024) (Cannel); see also State v. Monti, 260 N.J. Super.

179, 185 (App. Div. 1992); (Pa158-59). And because no one disputes the grand jury validly alleged that defendants sought both property and to restrict others' freedom of action, the analysis here hinges on what the statutes have in common: the existence of purposeful threats to undertake the relevant behavior (reputational damage, causing official action/inaction, or other acts that do not benefit the threatener but harm others).

Both laws also reference defendants acting "unlawfully." To be clear, that does not mean a defendant's threatened act, in the abstract, must be unlawful, "since many of the threats criminalized by the statute 'would be perfectly appropriate if made without a demand for property.'" State v. Roth, 289 N.J. Super. 152, 158 n.4 (App. Div. 1996) (quoting Cannel, cmt. 3 on N.J.S.A. 2C:20-5); see II Final Report of the New Jersey Criminal Law Revision Comm'n, Commentary 228 (1971) (1971 Commentary) (giving example of a policeman who threatens to arrest "unless the arrestee pays him money," even though the arrest is lawful); accord (Pa42). Instead, the term most likely serves simply "to avoid prosecution of individuals who make legitimate demands" related to the object they seek, S. Judiciary Comm. Statement to S. 3203, at 8, consistent with the statutes' affirmative defenses for honest claims of right to restitution or similar corrective action, see N.J.S.A. 2C:20-5; N.J.S.A. 2C:13-5. Thus, threatening to stop shopping at a business unless it issues a fair refund for a

damaged product is not unlawful, even if it involves threatening economic harm to obtain property. But threatening to "report violations which might lead to large non-criminal penalties" unless the business hands over property is unlawful, even if the threatener is a private citizen who is not "himself an official." 1971 Commentary at 229 (discussing N.J.S.A. 2C:20-5(d)).

Finally, whether someone made a threat is a highly contextual, fact-intensive inquiry, with both objective and subjective components.[14] "A threat need not be express," 1971 Commentary at 227, and may be "implied from the surrounding circumstances," Model Jury Charges (Criminal), "Theft by Extortion (N.J.S.A. 2C:20-5)" (rev. June 5, 2006). "For example, '[u]ttered in one context, an apparently innocent statement such as, 'I'd be careful crossing the street if I were you' can be merely helpful advice to a senior citizen[,]" but "[u]ttered in another context it may well be correctly perceived by reasonable persons to be intended as a threat." State v. Crescenzi, 224 N.J. Super. 142, 147-48 (App. Div. 1988). "This is another way of saying that context matters," and "entails consideration of prior interactions between the parties" and other

[14] So too with the law of conspiracy. See, e.g., State v. Samuels, 189 N.J. 236, 245-46 (2007) (explaining that conspiracies "may be proven circumstantially" and "inferred from the facts and circumstances" based on "logic and common sense," even where actions "when separated from the main circumstances and the rest of the case, may appear innocent"). "[T]he quantum of evidence required as to each element [in a conspiracy charge] is not great." State v. Bennett, 194 N.J. Super. 231, 234 (App. Div. 1984).

circumstances, State v. Fair, 256 N.J. 213, 238, cert. denied, 144 S. Ct. 2572 (2024), such that "the possibility of … serious adverse consequences may be inferred from the circumstance of the threat or the reputation of the person making it," United States v. Boggi, 74 F.3d 470, 477 (3d Cir. 1996).

By the same token, "a defendant who threatens a victim in esoteric, veiled, or elliptical language need not offer a simultaneous translation or define his terms, as long as he thinks or should think the victim understands what has been said." United States v. Hairston, 46 F.3d 361, 365 (4th Cir. 1995) (citation omitted); see also, e.g., United States v. Coppola, 671 F.3d 220, 241 (2d Cir. 2012); United States v. DiSalvo, 34 F.3d 1204, 1212-13 (3d Cir. 1994). Such inquiries will often hinge on determinations of what a speaker intended and, though the surrounding circumstances, intimated—factual questions that cannot be resolved without weighing evidence (let alone on the face of an indictment). See, e.g., Hogan, 144 N.J. at 236.[15]

Just last year, the U.S. Supreme Court emphasized the "fact-intensive" considerations that federal courts apply to deciding whether a communication is "permissible persuasion" or a "coercive threat." Nat'l Rifle Ass'n of Am. v.

[15] As to the Hobbs Act (a predicate for Count 1), a defendant need not have even issued an implicit threat, so long as he "exploited existing fear with the specific purpose of inducing another to part with property." Coppola, 671 F.3d at 241. That further supports Count 1, but is unnecessary as to Counts 2-4, because defendants are alleged to have agreed to issue threats that were at least implicit.

Vullo, 602 U.S. 175, 189-90 (2024). As the Court explained, this analysis requires accounting for a multitude of factors, such as (1) word choice and tone, (2) whether the speech was perceived as a threat, (3) whether the speech refers to adverse consequences, (4) the actor's authority, (5) the content and purpose of the actor's communications, and more. Id. at 189-90 & n.4 (collecting federal cases). The fact-driven nature of this assessment is why courts recognize that whether a statement amounts to a threat is a question of fact that cannot be resolved by looking only at the face of an indictment. E.g., Crescenzi, 224 N.J. Super. at 147; Brewington v. State, 7 N.E.3d 946, 965 (Ind. 2014) (noting "inherent fact-sensitivity of implied threats"); supra at 29-30 & n.4.

B. The Indictment Charges Extortion And Coercion Conspiracies.

Under these principles, the trial court erred in ruling that the Indictment does not facially allege conspiracies to extort and criminally coerce. Most simply, the Indictment charged these conspiracies under not just the "catch-all" provisions in N.J.S.A. 2C:20-5(g) and N.J.S.A. 2C:13-5(a)(7), but also the specific provisions involving threats to inflict reputational harm under subsection (c) and subdivision (a)(3), and to "cause an official to take or withhold action" under subsection (d) and subdivision (a)(4). So while the Indictment would be facially valid even if it relied in relevant part only on subsection (g) and subdivision (a)(7), see infra at 54-56, 62-65, this Court need

not even reach those provisions to reverse, because the grand jury charged defendants with agreeing to threaten to expose victims to reputational and governmental harm, which makes the Indictment independently valid under subsections (c)-(d) and subdivisions (a)(3)-(4) respectively.[16]

The text and commentaries to N.J.S.A. 2C:20-5(d) and related provisions are particularly striking in showing the lack of facial invalidity. Under that subsection, a "person extorts if he purposely threatens to … cause an official to take or withhold action." Ibid. The 1971 Commentary confirms that this provision extends to threats by private citizens with causal influence over government action, observing that "[a] threat to bring about adverse official action may, of course, be made by one who is not himself an official." 1971 Commentary at 229. And the Commentary to Model Penal Code Provision § 223.4—from which N.J.S.A. 2C:20-5(d) stems—is in accord, explaining that "[a] threat to bring about adverse official action may also be made by one who

[16] Whether defendants indeed agreed to use their control over local government to cause officials to take (as with eminent domain) or withhold (as with holding up approvals or access to other government benefits) official action to those victims' detriment, with the requisite intent, is of course a context-sensitive and factual question, appropriate for a grand or petit jury but unsuited to this facial motion. See Crescenzi, 224 N.J. Super. at 147-48; supra at 29-30 & n.4, 51-52. But all this Court needs confirm to resolve this appeal is the lack of facial invalidity, which is especially pronounced given the fact-intensive nature of the crimes charged (unlike whether a statute covers administrative license suspensions, see supra at 38-39).

is not himself an official, as where a political leader threatens to use his power over officeholders to the disadvantage of a person who refuses to pay him." Am. Law Ins., Model Penal Code Commentaries, Part II, § 223.4, p. 217 (1980) (MPC Commentaries). And here, "a political leader [who] threatens to use his power over officeholders to the disadvantage of a person who refuses to pay him" is an apt description of what the grand jury charged.

Nor is New Jersey out of step in prohibiting such threats. As with a political spouse or associate who demands a payoff for government access, e.g., United States v. Collins, 78 F.3d 1021, 1030 (6th Cir. 1996) (eligibility to bid for state contracts); United States v. Rashad, 687 F.3d 637, 642-43 (5th Cir. 2012) (ability to engage in municipal housing development); United States v. Edwards, 303 F.3d 606, 635-37 (5th Cir. 2002) (eligibility to compete for casino licenses), or a union boss who demands the same for the ability to run a shipping business on the waterfront, e.g., United States v. Clemente, 640 F.2d 1069, 1071 (2d Cir. 1981), criminalizing this kind of conduct does not target ordinary economic bargaining or being an "influence peddler," but instead covers those who "exact tribute from their victims in exchange for agreements either to exercise or refrain from exercising the corrupt influence they have acquired." Id. at 1078. In those instances, a victim is not subject to mere economic jousting, but to a threat to be deprived of "the opportunity to compete … on a level playing

field, an opportunity to which they were legally entitled." See Collins, 78 F.3d at 1030; accord United States v. Albertson, 971 F. Supp. 837, 825 (D. Del. 1997), summarily aff'd, 156 F.3d 1225 (3d Cir. 1998).[17]

Even accepting the trial court's unprecedented approach, the facts alleged in the Indictment are wholly in accord, and confirm that the extortion (and coercion) charges are proper under subsections (c) and (d) (and subdivisions (a)(3) and (a)(4)), as well as under subsection (g) (and subdivision (a)(7)). The Indictment alleges explicit and implicit threats conveyed by or on behalf of George Norcross, as well as the instillation and exploitation of fear that any similarly situated victim, familiar with the surrounding context, would have felt (context that can be assessed at this stage only by reviewing the evidence presented to the grand jury). As to the Triad1828 and 11 Cooper conspiracy, George Norcross threatened Developer-1 with economic and reputational harm at the hands of local government when he did not get his way. (Pa3). With Philip Norcross on the line, George Norcross said, "If you f**k this up, I'll f**k you like you've never been f**ked up before." (Pa47). He added that the developer "would never do business in this town again" and he would suffer "enormous consequences" for not complying with Norcross's wishes. (Pa47,

[17] Indeed, for that reason, even if subsection (d) and subdivision (a)(4) did not exist, these charges would be proper under subsection (g) and subdivision (a)(7).

53-54). On a recorded call, he admitted: "I said … 'this is unacceptable. If you do this, it will have enormous consequences.' [Developer-1] said, 'Are you threatening me?' I said, 'Absolutely.'" (Pa53-54). And he said that Developer-1 would "come under some very serious accusations from the City," and that by using the City, the Enterprise could make Developer-1 "cry uncle." (Pa57).

Other allegations confirm the Indictment validly charges conspiracies to extort and coerce through threats of government and reputational harm. After all, the grand jury charged the Enterprise not simply with agreeing to threaten Developer-1's reputation, but also with plotting to delay approval of the Victor PILOT transfer and using the fact that Developer-1 had money "stranded" in the unrelated Radio Lofts site and needed the City's help to advance that project as "another point of attack." (Pa59). Such attempts to use "power over officeholders to the disadvantage of a person who refuses to pay," MPC Commentaries at 217, go well beyond rough-and-tumble business disputes, and fit subsections (c) and (d)—and subdivisions (a)(3) and (a)(4)—perfectly.

The conspiracy to flaunt eminent-domain power to gain leverage over Developer-1 is illustrative. (Pa50-53). The power to take private property for public good is a core government power, Boom Co. v. Patterson, 98 U.S. 403, 406 (1878), meant to be exercised solely for public purposes, State v. Mayor, 58 N.J.L. 255, 257 (1895)—not a part of ordinary economic jockeying. Yet the

grand jury alleged defendants plotted to use their control over that governmental power not for government interests, but to gain leverage over Developer-1 for entirely private gain: to put Developer-1 "in a drastically different position in terms of negotiating" and reinforce their threats, (Pa57-58). That is not ordinary hard bargaining, but rather conspiring to deprive a rival of "a level playing field, an opportunity to which they were legally entitled." Collins, 78 F.3d at 1030.[18]

So too with the L3 Complex scheme. Through a long series of calculated actions, defendants unlawfully exploited CFP's CEO's fear that if CFP pursued the best deal for itself with a partner of its choosing, they would inflict both reputational and governmental harm. Again, the conclusion follows easily from the grand jury's Indictment, which alleged:

- George Norcross effectively controlled Camden's government, (Pa61);
- He had a reputation for punishing adversaries, including by causing them to lose government contracts (which CFP relied on) and by seeking to have them fired, (Pa23);
- He had already punished CFP by having Camden officials cut the nonprofit's funding after an earlier dispute, (ibid.);
- Redd's own mayoral chief of staff had ordered the CFP CEO to meet often

[18] Nor does it make a difference that defendants ended up abandoning the scheme, after a separate entity "declined to cooperate," (Pa60), or that Developer-1 did not then learn of it. Contra (Pa184). Defendants are charged with extortion and coercion conspiracies—that is, with agreeing to obtain Developer-1's property via these unlawful means. That crime can be committed even if its object never occurs—"[i]t is the agreement that is pivotal." E.g., In re State ex rel. A.D., 212 N.J. 200, 222 (2012).

with Philip Norcross (who had no official role in city government) to make sure that the CEO had George and Philip Norcross's approval for CFP's projects, (Pa22);

- George Norcross was angry that CFP intended to buy the L3 Complex and wanted the CFP CEO or President fired, so the CEO of Cooper Health (and co-chair of CFP) told the CFP CEO and President that they had to go meet with Philip Norcross about the deal, (Pa24-25);

- At the meeting, Philip Norcross told CFP's CEO and President they should turn the deal over to an Enterprise-selected investor (with whom George Norcross had a financial relationship), itself an implicit threat, (Pa25-26);

- When the CFP CEO nevertheless sought to work with KPG/MC, he learned that Philip Norcross was angry about it and was told by Philip Norcross that he was "not allowed" to do so, "in a manner that CFP CEO-1 took as a threat," (Pa27-28).

- When George Norcross later "wanted to move people around in Camden" to obtain a spot for Redd on the Rutgers-Rowan Board and thus sought to have CFP's CEO resign to open up his job, CC-1 told CFP's CEO that if he did not resign, "they" would make something up about him to have him terminated for cause, (Pa6-7, 69-70).

In short, the grand jury validly charged defendants not only with agreeing to violate provisions of subsection (g) and subdivision (a)(7), but also with agreeing to achieve the relevant objects through threats to inflict reputational and governmental harms under subsections (c)-(d) and subdivisions (a)(3)-(4).

C. <u>In Holding To The Contrary, The Trial Court Both Misconstrued And Misapplied Extortion And Coercion Law</u>.

1. The court collapsed its analysis of what constitutes a threat into a single inquiry tethered to business disputes and this Court's interpretation of N.J.S.A. 2C:20-5(g), despite acknowledging that the Indictment charged threats under

other subsections of N.J.S.A. 2C:20-5 (and N.J.S.A. 2C:13-5) as well. See (Pa157-60). That use of economic "hard bargaining" case law was mistaken.

Roth, on which the trial court relied, involved a defendant who threatened to move to set aside a sheriff's sale for a property to which he had no other connection, unless the bidder paid him off. 289 N.J. Super. at 155. A grand jury charged that conduct as extortionate under N.J.S.A. 2C:20-5(g)—the law's "catch-all provision"—and a petit jury convicted. 289 N.J. Super. at 155, 159. On appeal, this Court rejected Roth's argument that his threat was not extortionate, even though the 1971 Commentary specifically identified a threat "to sue" as a type of "menace which ought not to be included" in the statute's sweep. 1971 Commentary at 227; see Roth, 289 N.J. Super. at 161. In doing so, it reasoned that the 1971 Commentary could not have meant to "merely require[] a threat to assume the guise of a lawsuit to bypass the statute's mandate," and concluded that the drafters instead "intended an economic or commercial nexus to exist between the actor who utters these 'protected' threats and the underlying transaction." Ibid. But that does not help defendants for three primary reasons: they are not charged solely under subsection (g); they are not charged with threatening to do something the 1971 Commentary expressly "protect[s]"; and no fair economic or commercial nexus exists here. Just as the charges against the defendant in Roth were valid, so too are these.

First, subsection (g) is a "catch-all" provision that comes at the end of the statute's enumerated list. See Roth, 289 N.J. Super. at 159. It sweeps in any other threat to "[i]nflict any other harm" that would not substantially benefit the threatener but would so harm a victim, N.J.S.A. 2C:20-5(g); accord N.J.S.A. 2C:13-5(a)(7). Such a provision reflects that "[a]ny particularization of criminal threats is bound to be incomplete," 1971 Commentary at 229, yet at the same time triggers the concern that the law might "be read too expansively to cover" conduct that is "tolerated in commercial and personal life," Roth 289 N.J. Super. at 158 n.4 (citation omitted)—explaining the need for a court to devise a test to separate the wheat from the chaff. But no such need arises when the Legislature itself has already enumerated the types of threats not to be "tolerated in commercial and personal life," ibid.—as it did in subsections (c) and (d). Put simply, Roth was solving a problem unique to subsection (g) cases and the risks they pose to "accepted economic bargaining," id. at 161, whereas defendants are also charged under subsections (c) and (d)—provisions not at issue in Roth, and in which the Legislature has already spelled out what is off-limits.

Second, Roth was also solving that problem in the face of charged conduct that the 1971 Commentary had expressly approved. As noted, the 1971 Commentary itself listed certain "menaces which ought not to be" deemed extortionate threats. Id. at 227. These non-criminal "menaces" centered on

various commercial or property-based disputes, such as threatening "to breach a contract," "to infringe a patent or trademark," "to change a will"—or, importantly, to do what Roth did: threatening "to sue." Ibid. Roth thus confronted a need to harmonize the 1971 Commentary's recognition that such behaviors must typically be tolerated "as an incident to free bargaining," id. at 227-28, with the fact that Roth's conduct seemed far-afield from the purpose behind these exceptions. Its solution was its "economic or commercial nexus" test. Roth, 289 N.J. Super. at 162. But just as that test cannot support facial dismissal where, as here, subsections (c) and (d) are also at stake, the reason for creating that test is also not implicated, because no conflict exists between the conduct charged—threatening to inflict reputational, governmental, and economic harm through actions that are not (unlike threatening to sue) described by the Commentary as "[f]or the most part" permissibly "incident to free bargaining." See id. at 161 (quoting 1971 Commentary at 227-28).

Third, and regardless, the trial court erred in applying Roth's test. There is no valid economic nexus between the kinds of harms the grand jury alleged—which expressly extended beyond one property to using governmental leverage to pursue multiple "point[s] of attack on [Developer-1]," e.g., (Pa59, 72-76), as well as CFP CEO's job and reputation. The trial court was similarly wrong to find an economic nexus simply because defendants had the "wherewithal" to

develop the property they sought and were generally involved in Camden development, (Pa163); extortion is about abuse of impermissible leverage, see supra at 47-52, not a lack of resources or a general connection to a city or its commerce. And the court's having inferred alternative narratives—for example, that this was "a steel cage brawl between two heavyweights," and that "Developer-1 handle[d] himself ably and gives as good as he gets," (Pa160-61)—again reinforces the flaws of this dismissal. In sum, the charges under N.J.S.A. 2C:20-5(g) and N.J.S.A. 2C:13-5(a)(7) were proper, in addition to the more specific charges under subsections (c)-(d) and subdivisions (a)(3)-(4).

2. Nor is related "hard bargaining" case law, (Pa171-72, 190-91), to the contrary. There is indeed an exception for "hard bargaining" set out in Viacom International v. Icahn, 747 F. Supp. 205, 213 (S.D.N.Y. 1990), aff'd on other grounds, 946 F.2d 998 (2d Cir. 1991), but none of these cases applying these principles has ever done so to allegations like those in the Indictment—least of all where control over the government is being leveraged as a threat. Here, the trial court instead made two core errors. First, "hard bargaining" applies only to purely economic pressure, but defendants are not alleged to have used purely economic leverage. Second, as to the L3 Complex conspiracies, they involved no negotiations between defendants and the victims at all.

Start with the cornerstone of "hard bargaining" case law, Viacom.

Viacom centered on a practice known as "greenmail," in which a prominent shareholder amasses stock and then threatens a corporate takeover unless the company buys him out at a premium. 747 F. Supp. at 211. In assessing whether such conduct, which was not "inherently unlawful," ibid., could be extortion, the federal court contrasted a "hard-bargaining scenario"—in which "the alleged victim has no pre-existing right to pursue his business interests free of the fear he is quelling" by giving up his property—from "an extortion scenario," in which he is entitled to go about his business free of such fear. Id. at 213. And because public corporations are not entitled to list and sell their stock to investors on the open market free of the fear that a shareholder will amass a large quantity of stock and threaten a takeover—indeed, they "are subject to such threats on a regular basis"—the greenmail scheme was not extortionate. Id. at 214. Had this powerful shareholder instead threatened that, without a hefty buyout, he would have used his control over City Hall to freeze Viacom out of the New York City media market, the case doubtless would have come out the other way. See ibid.; see also United States v. Tobin, 155 F.3d 636, 640 (3d Cir. 1998) ("The caselaw focuses on whether the victim of the extortionate activity had a preexisting right to be free from the threats invoked[.]").

Viacom, in other words, offers "a rule only for a very narrow subset of the potential universe of extortion cases: one involving the accusation of the

wrongful use of economic fear where two private parties have engaged in a mutually beneficial exchange of property." Brokerage Concepts v. United Healthcare, 140 F.3d 494, 503 (3d Cir. 1998). In other words, "hard bargaining" presumes that the party exerting pressure is using lawful leverage—pushing for favorable terms using market power, competition, or business strategy. The facts alleged here, by contrast, extend far beyond that narrow remit. The Indictment alleges that defendants did more than simply threaten to exert a type of economic pressure to which all businesspeople are subject—it alleges that they threatened to impose reputational harm (a non-economic harm that has never been included in the "hard bargaining" framework), see (Pa4, 6-7, 39, 57, 61-62, 70), and to use their control over government to deprive their victims of "a level playing field" and cause them to "forfeit any potential business opportunity" in the entire city of Camden in the first place, see Collins, 78 F.3d at 1030; supra at 53-58. And while that threatened harm may have been useful because of its economic effect, that does not imply that it was "inherently legitimate." United States v. Sturm, 870 F.2d 769, 773 (1st Cir. 1989). Instead, "the coercive element [was] provided by the office itself"—an impermissible type of leverage. See Evans v. United States, 504 U.S. 255, 266 (1992).

Accordingly, courts have never applied the hard-bargaining exception in "level playing field" cases like in Collins, where a threat to cause harm through

government action or inaction was at issue. 78 F.3d at 1030 (rejecting challenge where governor's husband conditioned consideration for state contracts on private payments); see also Edwards, 303 F.3d at 635-37 (rejecting challenge where governor's associate conditioned "right to compete" for casino license on payments); Rashad, 687 F.3d at 642-43 (rejecting challenge where developer's refusal to pay would cause loss of any "right to compete at all" for projects). Rather, greenmail cases like Viacom and public-corruption cases like Collins are (in the federal Hobbs Act context, charged here as a racketeering predicate) simply opposite sides of the same coin, "striking at the same principle": where the two sides are engaged in economic grappling on a "level playing field," there is no extortion; where one is threatening to deprive the other of a level playing field through its control of the government in the first place, there is. See Albertson, 971 F. Supp. at 845, summarily aff'd, 156 F.3d 1225. And here, the grand jury, after hearing voluminous evidence from sources familiar with the underlying context, charged defendants with agreeing to threaten to deny victims like Developer-1 a level playing field in order to obtain his property.[19]

The trial court thus erred in treating the Indictment as if its extortion and coercion conspiracy charges could be resolved simply by reference to case law

[19] Whether that is what defendants actually agreed and intended, of course, is a question of fact. See supra at 29-30 & n.4. At this stage, the question is at most whether doing so is a prima facie crime. The answer is simple: it is.

concerning N.J.S.A. 2C:20-5(g) and "hard bargaining" cases. While the charges under N.J.S.A. 2C:20-5(g) would alone be sufficient, see supra at 54-56, 62-65, the charges under subsections (c) and (d)—and for the same reasons N.J.S.A. 2C:13-5(a)(3)-(4)—are entirely mismatched with that analysis. Yet despite acknowledging these alternate statutory bases in passing, (Pa157), the opinion does not analyze them. (Pa85, 88, 93, 97-98, 171-72, 190). And the oversight was consequential, given how closely those particular provisions fit the grand jury's allegations. In short, while defendants may incorrectly believe that wielding the threat of reputational and governmental harm to extract property or submission from others permissibly "occurs every day in politics and business," see (Pa191), New Jersey law, like the Hobbs Act, makes clear it is unlawful.[20]

3. Even leaving aside the Developer-1-related charges, the court erred in dismissing the L3 Complex charges for a more foundational reason: there was no "negotiation" between the Enterprise and CFP on the L3 deal in the first place, let alone any "hard bargaining." See (Pa56-57). The Indictment alleges

[20] At one point, the trial court seemed to dismiss the relevance of N.J.S.A. 2C:20-5(d) and N.J.S.A. 2C:13-5(a)(4), opining that it is "not wrongful to allow your adversaries to fear your reputation for using political power." (Pa171-72). That may be true of the state-law crimes—though not the Hobbs Act, see supra at 51 n.15—if what the court pictured was purely passive acquiescence. But the grand jury charged defendants with agreeing to engage in the active instillation of fear, which numerous authorities—including the text of N.J.S.A. 2C:20-5(d) and N.J.S.A. 2C:13-5(a)(4)—make clear is wrongful. So to the extent the trial court meant that even that is lawful, it simply misunderstood New Jersey law.

that George and Philip Norcross wanted CFP to partner with an entity the nonprofit did not want to partner with, and that the relevant defendants frightened CFP's leadership into giving up its right to do so, at much greater benefit to the nonprofit, through reasonable fear of governmental and reputational harm. (Pa26-30); supra at 9-13. Whatever the trial court may have (improperly) concluded about the facts involving Developer-1 (without the benefit of the grand-jury materials), it certainly never inferred that CFP and its CEO were "heavyweights" in a "steel cage brawl," able to "give[] as good as [they] get." (Pa161-62). Nor was there any "natural economic or commercial nexus" between the means employed and whatever interest Enterprise members may have had in this specific deal. See Roth, 289 N.J. Super. at 161.[21] And that CFP's CEO "ultimately made his choice," (Pa170), is something that can be said of any extortion victim, including the small business owner who pays protection money to be left alone, e.g., Clemente, 640 F.2d at 1072-75. In short, even accepting the trial court's misimpressions about the law of hard bargaining, those impressions would have nothing to say about the L3 Complex charges.

4. Finally, the trial court erred in concluding that the Indictment failed to

[21] Rather, those means included threats that CFP's CEO would have reasonably understood, in context, to include threats to use City government to target the organization's funding and the CEO's own job and reputation. And that reasonable understanding was corroborated by the steps the Enterprise indeed took when it wanted to "move people around in Camden." See supra at 58.

validly charge financial facilitation of criminal activity (Counts 5-10) and misconduct by a corporate official (Counts 11-12), based solely on its rejection of Counts 2-4. (Pa155-56, 173-74). If this Court reaches the issue and does not simply reverse and remand for a some-evidence motion, see supra Point I.A, it should reverse the court's holding as to Counts 5-12 for the reasons just given.

POINT III

THE TRIAL COURT'S COUNT- AND DEFENDANT-SPECIFIC HOLDINGS WERE ALSO IN ERROR. (Pa174-211).

While Point I suffices to dispose of this appeal, and while the erroneous threats holding discussed in Point II is relevant to the validity of all charges, see (Pa155-56, 173-74), the trial court made other holdings that would justify dismissing only some counts or defendants. Because those holdings were also in error, the Indictment should be reinstated in full.

A. The Indictment Validly Alleges A Conspiracy To Engage In A Racketeering Enterprise. (Pa174-200).

Count 1 properly charges that Defendants violated N.J.S.A. 2C:41-2(d) by conspiring to violate N.J.S.A. 2C:41-2(c)—that is, essentially, by agreeing that at least one of them "would engage in conduct which would constitute the crime of racketeering" and at least one of them "would aid in the planning, solicitation and commission of the crime," (Pa81). The trial court's holding that the grand jury failed to allege an "enterprise"—an element of the substantive offense—

misapplied governing precedent and should also be reversed.

"[M]odeled upon its federal counterpart," subsection (d) of New Jersey's RICO statute, N.J.S.A. 2C:41-2, makes it a crime to conspire (as defined in New Jersey's general conspiracy statute, N.J.S.A. 2C:5-2), to violate any provision of the NJ RICO statute. State v. Cagno, 211 N.J. 488, 508 (2012); see N.J.S.A. 2C:41-2(d). One of those provisions, subsection (c), prohibits conducting or participating in, directly or indirectly, the affairs of any commercial "enterprise … through a pattern of racketeering activity." One element of this substantive RICO offense is "the existence of an enterprise." State v. Ball, 141 N.J. 142, 176 (1995). And for the crime of RICO conspiracy to be committed, of course, the State need not "prove that the alleged enterprise actually existed," but rather that the conspirators agreed that one would be created. United States v. Harris, 695 F.3d 1125, 1133 (10th Cir. 2012); see Salinas v. United States, 522 U.S. 52, 65 (1997) ("It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil[.]").

The term "enterprise" is capacious, including "any individual, … association, or other legal entity, any union or group of individuals associated in fact although not a legal entity," whether "licit" or "illicit." N.J.S.A. 2C:41-1(c). That reflects the Legislature's intent to "encompass more than traditional organized-crime families" such as the Mafia and to "cover any situation in which

a few persons exerted significant control over the social and political fabric of a community through illicit profits." Ball, 141 N.J. at 161 & n.2 (citing legislative history). The term is thus "to be construed broadly." Id. at 160-61. Federal law has similarly recognized myriad RICO enterprises distinct from traditional, Mafia-type organized crime—including enterprises involving local officials. See, e.g., Boyle v. United States, 556 U.S. 938, 944 (2009); United States v. Cianci, 378 F.3d 71, 78, 79 (1st Cir. 2004) (finding enterprise composed of a mayor, city officials, and a member of a private towing organization); United States v. Ganim, 225 F. Supp. 2d 145, 160-61 (D. Conn. 2002) (finding association-in-fact composed of Office of the Mayor and several individuals).

Further, the "enterprise" element "may be satisfied if there exists a group of people, no matter how loosely associated, whose existence or association provides or implements the common purpose of committing two or more predicate acts." Ball, 141 N.J. at 160. An enterprise thus "need not feature an ascertainable structure," but must have some "organization." Id. at 162. And "a defendant only needs to possess 'some minimal knowledge' of 'the general nature of the racketeering enterprise[.]'" Fairfax Fin. Holdings Ltd. v. S.A.C. Capital Mgmt., L.L.C., 450 N.J. Super. 1, 39 (App. Div. 2017) (quoting Ball, 141 N.J. at 176)). A defendant "need not know the identities of all the conspirators, nor need a defendant know all the details of the enterprise." Ball,

141 N.J. at 176. Thus, in Ball, this Court found—in the context of a sufficiency-of-the-evidence appeal—that an enterprise existed because defendants shared a common purpose, even though they were "a somewhat disorganized group of individuals," with "no real 'leader,'" who "did not even seem to like each other, and were often engaged in double-dealing and back-stabbing." 268 N.J. Super. at 107-08. Our Supreme Court affirmed that finding. Ball, 141 N.J. at 183-84; see also Cianci, 378 F.3d at 79, 85 (similarly rejecting sufficiency-of-the-evidence appeal and holding city officials and a businessman formed an association-in-fact RICO enterprise given delineation of roles and the ways in which they used municipal "entities that they controlled" to further their goals).

Here, Defendants were alleged to have agreed to operate together within a structure much more organized than in Ball, and to share common purposes as Ball requires. The Indictment alleges a conspiracy to form—and, indeed, the formation of—an association-in-fact rife with interpersonal relationships and common interests. George Norcross was indisputably the Enterprise's leader, dictating its priorities and agenda. (Pa83). Philip Norcross acted as George's proxy, delivering George's orders both inside and outside the Enterprise. See, e.g., (Pa4-5, 15-16, 20, 22, 25, 28). Redd was Mayor of Camden—the most powerful official in the City—allowing the Enterprise to exercise direct "control of the Camden government," (Pa61), and use it to their advantage. See (Pa49-

50, 52-53). Tambussi was, inter alia, a legal expert, able to wield his expertise to the Enterprise's advantage, beyond the scope of lawful practice. See (Pa55-59, 62-63). O'Donnell and Brown were businessmen who, among other things, participated in plotting to use a municipal entity to file a condemnation action to gain leverage against or punish Developer-1, see (Pa58-60), supplied financial capital, and used their corporate entities to collect (and sell) the millions in tax credits at the heart of the conspiracy, (Pa50-64). In short, as in Ball, defendants agreed to work together in an "ongoing organization" that functioned "as a continuing unit for the common purpose of achieving the objectives of the enterprise[,]" including those in the Indictment. (Pa82-85).

The Indictment likewise demonstrates that defendants were associated in fact and worked toward unlawful (as well as lawful) common purposes. See, e.g., United States v. Starrett, 5 F.3d 1525, 1552 (11th Cir. 1995) (noting a "legitimate entity, with a purpose unrelated to criminal endeavors," can still be a RICO enterprise). As alleged, they identified waterfront property they wanted. (Pa16-17, 42-43). They coordinated with each other to formulate and convey threats to obtain the property in order to receive tax credits. (Pa30, 46-60). They concealed those activities in many ways. (Pa36-37, 62-63). These allegations reflect the division of tasks needed to achieve their shared purposes.

Finally, binding precedent makes clear that whether an enterprise exists

hinges on these considerations, and not whether a given defendant's acts were themselves criminal. Contra (Pa184, 188-91, 192-93, 198-200). As with general conspiracy, the RICO conspiracy statute "criminalizes an agreement that others will commit the substantive crime that is the objective of the conspiracy." Ball, 141 N.J. at 180; see also ibid. ("a defendant need not agree to commit personally at least two predicate acts"). A defendant may thus be convicted of RICO conspiracy if he "know[s] of, and agree[s] to, the general criminal objective of a jointly undertaken scheme," even if he did not agree to commit the acts himself. Cagno, 211 N.J. at 510; see also, e.g., Salinas, 522 U.S. at 65; Mayo, Lynch & Associates, Inc. v. Pollack, 351 N.J. Super. 486, 503-05 (App. Div. 2002). Thus, even if a given defendant's contributions were themselves non-criminal, those acts could still support the existence of an enterprise.

B. The Indictment Validly Alleges Official Misconduct. (Pa192-200).

Much that is true with respect to Count 13 has already been said with respect to other counts. To start, the trial court's dismissal of this count was partly based on its conclusion that the relevant conspiracy counts were invalid, so that conclusion should be reversed for any of the independent reasons given in Points I and II. Further, and relatedly, much of the trial court's analysis of Count 13 rested on an erroneous search for missing "evidence" that both applied an improper sufficiency-of-the-evidence test to the Indictment, see supra Point

I.A. and then, even in applying that analysis, flipped its duty to draw inferences in the State's favor on its head, see supra Point I.B.[22]

In any event, the trial court's analysis contained several other errors that would also require reversal of its holding on Count 13. Under N.J.S.A. 2C:30-2(a), a public servant is properly charged with official misconduct when the charges allege (1) she committed "an act relating to [her] office;" (2) the act was unauthorized and she knew it was unauthorized; and (3) she did so with "purpose to obtain a benefit for [herself] or another." The grand jury properly charged each of those elements. It charged Redd with affirmative, unauthorized acts relating to her office, including committing the conspiracy offenses charged in Counts 1-3, (Pa81-86), and, as part of these conspiracies:

- Through her chief of staff, instructing the CFP CEO to meet regularly with members of the Enterprise to ensure that CFP's projects were pre-approved by George and Philip Norcross, and redirected CFP's CEO to Philip Norcross when he came to her for help, (Pa22, 30), thus demonstrating the Enterprise's governmental power to a victim;

- Cutting off communication with Developer-1 and ignoring his requests for help with the Radio Lofts, at the Enterprise's direction (Pa49-50), thus demonstrating the Enterprise's "control of the Camden government" to another victim, (Pa61);

[22] Compare, e.g., (Pa199) ("There is no evidence of even a vague promise that Redd would be taken care of when her term ended."), with (Pa6-7) ("The Norcross Enterprise did this, in part, to financially benefit [Redd]"); (Pa69) (alleging that "CC-1 told CFP CEO-1 in a phone conversation that [Redd] needed a place to go as her term as mayor was ending" and "was going to take the job" on the Rowan-Rutgers Board). See also (Pa195-200).

- Agreeing to use the Enterprise's reputation for controlling local government to help intimidate and threaten those who held property interests that the Enterprise wanted to acquire, and to use the Enterprise's control over government agencies to reward members and punish opponents (Pa83, 85); and

- Telling CFP's CEO that his "job was in jeopardy" for resisting the Enterprise's demands, (Pa30).

The grand jury alleged that Redd committed these acts "with the purpose to obtain a benefit for herself and another" (Pa109)—which she did indeed obtain for herself, when, as alleged, George Norcross arranged for her to take a lucrative position on the Rowan-Rutgers Board after her mayoral term ended, and for others when they obtained (and sold) the tax credits, (Pa77-80).

The trial court's contrary rationales do not hold up. Initially, the court's conclusion that Redd committed no unauthorized act cannot be squared with the point that using one's public office to commit crimes is not authorized. See, e.g., State v. Hinds, 143 N.J. 540, 549 (1996) (officer committed official misconduct by "conspiring with a thief"); State v. Burnett, 245 N.J. Super. 99, 106 (App. Div. 1990) (officer committed official misconduct by stealing and possessing controlled substances). That alone should dispose of that element.

The court also erred in linking whether the acts were "discretionary" to whether they were "unauthorized." (Pa198). After all, almost every decision by a defendant in an unauthorized-act official misconduct case under subsection (a) of N.J.S.A. 2C:30-2 is "discretionary": a mayor who chooses to submit a

letter supporting the zoning application of a business that paid a bribe makes a "discretionary decision" to do so, but that does not make the act "authorized." While the trial court may have conflated failure-to-act official misconduct cases under subsection (b) (not charged)—for which an official must have refrained from a nondiscretionary "duty," Brady, 452 N.J. Super. at 163-64—the trial court cited no authority for incorporating a "non-discretionary duty" requirement into N.J.S.A. 2C:30-2(a), and the State is aware of none. Rather, when an official "commit[s] an act of malfeasance … because of the opportunity afforded by [her] office," that conduct "support[s] a conviction under N.J.S.A. 2C:30-2(a)." State v. Bullock, 136 N.J. 149, 157 (1994). Thus, whether Redd's conduct involved "no non-discretionary duty," (Pa198), is beside the point.[23]

The court also erred in concluding that there were insufficient allegations that Redd acted with a purpose to benefit herself or another. First, though parts of its opinion stated the law correctly (Pa197-98, 200), the court at times improperly searched for facts establishing that Redd actually "received a benefit," (Pa194-95, 200). This was a non sequitur for two reasons. First,

[23] If a duty is required, the court overlooked that Redd owed a duty to serve the public with good faith and integrity. See, e.g., Driscoll v. Burlington-Bristol Bridge Co., 8 N.J. 433, 474-76 (1952); State v. Lore, 197 N.J. Super. 277, 282 (App. Div. 1984). But it is enough, if this Court reaches the issue, simply to confirm that the discretionary nature of Redd's alleged conduct does not bear on the charge's validity. See N.J.S.A. 2C:30-2(a).

receipt of a benefit is not an element; acting with purpose to obtain one suffices, and the Indictment alleges that. (Pa109-110). Second, the court appeared to assume that the grand jury needed to charge that Redd was seeking a benefit for herself, e.g., (Pa194-95, 199), but the statute is equally violated when an official seeks a benefit "for another," N.J.S.A. 2C:30-2(a), and the Indictment alleges that as well, (Pa109-10), given the millions in tax credits at stake, (Pa77-80).

Finally, and again leaving aside the inherent flaws in weighing sufficiency and intent at this stage, the Indictment alleges sufficient facts about Redd's intent. As to herself, as charged, the Enterprise "remove[d] the CEO of the nonprofit from his job through threats" and did so "in part, to financially benefit [Redd]." (Pa6-7). The grand jury likewise alleged that CC-1 told CFP's CEO that he was being removed because Redd "needed a place to go." (Pa69, 71-72). A more than fair inference from the allegations that Redd benefited from her participation is that she acted with purpose to do so.[24] And as to the other members, the allegations are straightforward: they secured millions in tax credits. (Pa77-80). Defendants may disagree that these were Redd's subjective

[24] To the extent the court posited that Count 13 was suspect because others of the "handful" of people who benefited from the arcane legislative change that boosted Redd's pension were perhaps not indicted, see (Pa199), that is of course irrelevant to the validity of the charge. In any event, the reason others were not charged is plainly that the State is not aware of any such person who participated in the kind of unlawful conduct alleged here.

purposes, but again, that is a question of fact that cannot be resolved at this stage. See supra at 29-30 & n.4. In short, Count 13 was validly charged.

C. The Charges Against Tambussi And Philip Norcross Do Not Trench On The Practice Of Law Or Protected Petitioning. (Pa185-92).

The trial court also erred in ruling that Tambussi and Philip Norcross could not have engaged in a RICO conspiracy because their contributions, in the court's view, came in the form of lawyering and lobbying. Because the court's analysis of these two issues as to these defendants was largely overlapping, e.g., (Pa191), this section addresses them together.

Begin with the law. Both lawyering and petitioning are valuable activities in a democratic society, and they rightly receive meaningful protection. But neither operates as an immunity. Rather, "an individual's status as an attorney engaged in litigation-related conduct does not provide protection from prosecution for criminal conduct." United States v. Cueto, 151 F.3d 620, 631 (7th Cir. 1998) (upholding lawyer's conviction for obstruction stemming from "litigated-related conduct" that "exceeded the scope of lawful lawyering"); see also, e.g., United States v. Aguilar, 515 U.S. 593, 599 (1995); Matter of Goldberg, 105 N.J. 278, 282 (1987) (finding criminal misconduct "even more egregious" when the attorney's "criminal deeds directly involve his law practice."); In re Selser, 15 N.J. 393, 407 (1954) (discussing crime-fraud exception to attorney-client privilege). That is equally true when it comes to

entering a criminal enterprise. In United States v. Bergrin, 650 F.3d 257 (3d Cir. 2011), for example, the Third Circuit reinstated an indictment charging a lawyer with racketeering, in part because most of the predicate acts alleged were linked to his law practice. Id. at 270; see id. at 272 (criticizing trial court's failure to account for "allegation that all the members of the enterprise benefited from Bergrin's status as a licensed attorney because 'the special privileges granted to licensed attorneys' allowed them 'to engage in and assist Client Criminals to engage in criminal activities'"). And even assuming litigation statements may be immune from civil liability, see (Pa207), that has no bearing on this criminal indictment. See also Lobiondo v. Schwartz, 199 N.J. 62 (2009) (establishing protections in "unique context" of malicious-use-of-process tort cases but creating no protection from criminal grand jury indictment)

So too with petitioning the government. The trial court cited Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), (Pa190, 192), but that case stands for the proposition that people and entities can work to influence policy to serve their own anticompetitive economic interests without violating antitrust laws. See id. at 136; see also Cal. Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 510-11 (1972). This Court has meanwhile applied the doctrine to immunize individuals who legitimately "petition the government for redress" in other contexts from

"certain civil actions." Structure Bldg. Corp. v. Abella, 377 N.J. Super. 467, 471 (App. Div. 2005). But the doctrine does not "immunize activities said to violate the criminal laws." United States v. Goldberg, 906 F. Supp. 58, 63-64 (D. Mass. 1995); see also, e.g., Columbia v. Omni Outdoor Advert., Inc., 499 U.S. 365, 378-79 (1991) (explaining that antitrust liability is not necessary in these contexts because criminal statutes exist and citing the Hobbs Act); Allied Tube & Conduit Co. v. Indian Head, Inc., 486 U.S. 492, 504 (1988) ("[O]ne could imagine situations where the most effective means of influencing government officials is bribery, and we have never suggested that that kind of attempt to influence the government merits protection."); Monarch Entm't Bureau, Inc. v. N.J. Highway Auth., 715 F. Supp. 1290, 1303 (D.N.J. 1989) (similar). Advocates have no more right to commit crimes than anyone else.

Here, the grand jury alleged that Tambussi and Philip Norcross committed crimes—including by conspiring to use the tools of government to achieve illicit ends. Take the eminent-domain scheme. The Indictment did not charge Tambussi with crimes for simply for doing legal research and discussing a strategy to condemn Developer-1's view easement. Contra (Pa186). Rather, it charged him (and Philip Norcross) with having "agreed to cause the CRA" to take steps to condemn Developer-1's view easement as part of the Enterprise's broader extortion and coercion efforts. (Pa50). That agreement to help wield a

public entity to advance the Enterprise's private, illicit purposes is what crossed the line. Our Legislature made that clear when it enacted N.J.S.A. 2C:20-5(d) and N.J.S.A. 2C:13-5(a)(4) (barring threats to cause a public official to take or withhold action), see supra at 49-51, which naturally would include a lawyer causing an official to begin the process of exercising the sovereign power of eminent domain in order to "deliver a body blow to an adversary," (Pa76).

Likewise, while the CRA was a client of Tambussi's firm, (Pa50-51), that hardly immunizes the alleged conduct. (Pa191-92). To start, it in no way establishes that Tambussi himself was on the relevant conference call among defendants as the CRA's lawyer, let alone for a benign purpose—if he himself, rather than a law partner, even represented the CRA at that time in the first place. Cf. (Pa138) (calling the CRA "Tambussi's client," despite absence of support in the Indictment). And in any event, that Tambussi may have had access to the CRA through his firm does not mean he could not use that power illegally—just as a police officer permitted to make arrests is not immune from extortion liability if he threatens to arrest "unless the arrestee pays him money." 1971 Commentary at 228; see N.J.S.A. 2C:20-5(d).[25]

[25] As for the pretrial motion Tambussi filed seeking to bar any reference to George or Philip Norcross in litigation over the Radio Lofts site, see (Pa62-63), the trial court misinterpreted the role of these allegations in the Indictment, see (Pa187-89). The Indictment does not allege these acts were themselves

The trial court likewise misperceived the relevance of Phillip Norcross's lobbying activities and representation of Cooper Hospital. (Pa191-92). As an initial matter, the Indictment has little to say about Philip Norcross engaging in actual lawyering at all—so concerns about safeguarding the practice of law would at most justify affirming dismissal as to Tambussi. Moreover, as to petitioning activity, no one disputes that Philip Norcross had a "right to craft proposed EOA legislation and to communicate with the Senate President," (Pa190)—these acts simply illustrate the breadth of the Enterprise's power and reinforce the allegation that the tax credits were a longstanding objective, (Pa82-85). Rather, the grand jury charged Philip Norcross with, inter alia, demanding that CFP partner with the Enterprise's preferred developer through an extortionate threat, (Pa25-26); directing Redd to ignore Developer-1's phone calls as a way to pressure Developer-1, (Pa49-50); and causing Camden officials to slow down approval of Developer-1's PILOT-transfer agreement, (Pa73-74). And importantly, Philip Norcross is not charged with having asked the government to take actions—he is charged, like the other defendants, with having controlled the government, and having agreed to wield that power to "cause an official to take or withhold action" to extortionate and coercive ends.

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criminal, but rather that they showed continued coordination among the Enterprise, which in turn goes to timeliness. See infra at 92-94.

See N.J.S.A. 2C:20-5(d); N.J.S.A. 2C:13-5(a)(4). There is nothing constitutionally protected about doing so, see supra at 53-55 (discussing Collins and other "level playing field" cases), and precedent protecting the right to make genuine requests is simply inapposite.

D. Each Charge Is Facially Timely. (Pa200-211).

Finally, the Indictment properly alleges that each crime charged occurred within or pursued objectives extending into the applicable limitations period. To the extent the trial court doubted that these were in fact the Enterprise's objectives or that they in fact extended into the limitations period, these were likewise issues that could only await a some-evidence motion.

Under New Jersey's criminal statute of limitations, "[a] prosecution for a crime" generally "must be commenced within five years after [the crime] is committed." N.J.S.A. 2C:1-6(b)(1). For official misconduct, the limit is seven years. N.J.S.A. 2C:1-6(b)(3). The grand jury returned this Indictment on June 13, 2024, so the relevant cutoffs are June 13, 2019, and June 13, 2017, respectively. N.J.S.A. 2C:1-6(d). The trial court erred in finding that the Indictment, on its face, did not timely charge that they were met.

1. The RICO Conspiracy Charge Is Timely.

Begin with RICO conspiracy (Count 1). (Pa81-86). The Indictment states that this conspiracy, far from ending before June 2019, continued "[f]rom at

least approximately 2012 to the present." (Pa1, 37, 81). Again, the simple (and correct) legal answer is that this defect alone disposes of this facial motion—if the grand jury's factual allegation that defendants entered into a racketeering conspiracy that has continued into the present day is accepted as true, that renders it timely. Whether the evidence presented supports that prima facie case is a question for a some-evidence motion. See supra Point I.A.

Binding precedent confirms that conclusion. A "factual dispute concerning the proper computation of the statute of limitations 'is for the jury to decide[.]'" W.S.B., 453 N.J. Super. at 236 (citation omitted); see also, e.g., Pressler & Verniero, Current N.J. Court Rules, cmt. 3.7 on R. 3:10-2 (2024) ("If there is a dispute as to whether the statute has run the issue must be decided by the jury following proofs adduced during trial." (citing N.J.S.A. 2C:1-14(h)(d)); United States v. Kozeny, 493 F. Supp. 2d 693, 715 (S.D.N.Y. 2007) (observing that whether a "conspiratorial agreement was in fact as broad as the Indictment alleges, whether each defendant in fact subscribed to that agreement, and if and when the conspiracy ended are issues for the jury"), aff'd, 541 F.3d 166 (2d Cir. 2008); United States v. Carnesi, 461 F. Supp. 2d 97, 98-99 (E.D.N.Y. 2006) (denying facial limitations challenge to money-laundering-conspiracy charge because indictment alleged conspiracy continued during limitations period). The trial court cited no authority to the contrary, and the State is aware of none.

Instead, the trial court incorrectly concluded that "the alleged time frame of the enterprise is not a fact" but an "allegation, assertion, and ultimately, a conclusion" and that this allowed a facial dismissal. See (Pa202) (cleaned up). But as the precedent just cited confirms, the "alleged time frame" of a racketeering conspiracy (or any crime) is indeed a factual "allegation"—which therefore can be challenged via a pretrial some-evidence motion, or at trial before the fact-finder, or post-judgment through a sufficiency challenge. At this facial stage, by contrast, the court was indeed required to accept this allegation as true. This core error infected the court's timeliness rulings as to each of Counts 5-12, (Pa209), confirming the need for reversal on each. And the same flaw also requires reversal of the court's ruling as to Count 13, though the court's reasoning differed somewhat. See infra Point III.D.4 (addressing this Count).

Even under the trial court's flawed approach, its analysis was misguided. The court listed various alleged wrongful acts and reasoned that because each occurred outside the limitations period, the Indictment was facially invalid. (Pa202-03). But RICO conspiracy is a continuing offense, and even at trial the State is "not obligated to present direct evidence of an overt act" within the limitations period. Cagno, 211 N.J. at 511; see N.J.S.A. 2C:41-2(d). Instead, "[b]ased upon the continuing nature of a RICO enterprise, 'the statute of limitations for RICO conspiracy should not begin to run until the

accomplishment or abandonment of the objectives of the conspiracy.'" Cagno, 211 N.J. at 509-10 (citation omitted); see also, e.g., United States v. Jimenez, 96 F.4th 317, 322 (2d Cir. 2024). So even continuing to pursue the conspiracy's objectives through lawful means suffices to extend it into the limitations period.

Further, the grand jury alleged in considerable detail how defendants continued to pursue their shared objectives into the limitations period. The RICO conspiracy (like the general extortion and coercion conspiracies discussed below, see infra Point III.D.2) embraced at least three objectives that continued into the limitations period: (1) enriching defendants and obtaining effectively free property through a limited series of tax credits; (2) concealing the illegal activities of the Enterprise; and (3) promoting compliance with the Enterprise's demands by intimidating and retaliating against those who defied them. (Pa84-85). And the Indictment supports each with specific allegations of continued conduct past June 2019, as discussed below. So even accepting the faulty premise that the grand jury's factual finding that the conspiracy continued into the limitations period was not enough, Count 1 is facially timely.

a. Tax Credits Objective.

A central objective of the charged RICO conspiracy was "[o]btaining Grow NJ and ERG tax credits," and then "[u]sing the tax credits … so that costs expended in planning, constructing, or occupying [criminally obtained] property

would be offset by the … tax credits." (Pa15, 84). After all, a person cannot exploit tax credits for redeveloping a city waterfront if one does not have waterfront property to develop. Firms controlled by defendants received and sold these tax credits throughout 2022 and 2023. See (Pa4, 5-6, 33, 64-69). These sales themselves were crimes alleged by the grand jury—confirming the validity of the charge of a continuing conspiracy, and independently justifying the timeliness of those charges (Counts 5-12), see infra at 95-97. Because defendants are alleged to have continued to execute this scheme after June 2019, the conspiracy charge is timely. See Cagno, 211 N.J. at 509-10.[26]

The court rejected this conclusion by relying on an exception outlined in two federal cases, United States v. Grimm, 738 F.3d 498, 503 (2d Cir. 2013), and United States v. Doherty, 867 F.2d 47, 61 (1st Cir. 1989), but its reliance on this exception was misplaced. To start, the Grimm/Doherty exception is just that—an exception—and courts instead overwhelmingly apply the "ordinary rule" that a conspiracy for economic gain continues until the accomplishment or abandonment of that objective. E.g., United States v. Rutigliano, 790 F.3d 389,

[26] There is no "legal significance," as the trial court essentially acknowledged, to the fact that credits were received and sold by uncharged businesses controlled by defendants, rather than directly by defendants themselves. (Pa206). The Indictment alleges that defendants controlled these entities for criminal ends, (Pa105-108), and details how these efforts yielded substantial benefits, including millions of dollars, to defendants personally, (Pa77-80).

400 (2d Cir. 2015); United States v. McNair, 605 F.3d 1152, 1214 (11th Cir. 2010); United States v. Fitzpatrick, 892 F.2d 162, 167-68 (1st Cir. 1989). For instance, a conspiracy to rig a bidding process continues until receipt of the final payment for the contract, United States v. Girard, 744 F.2d 1170, 1172-73 (5th Cir. 1984); a conspiracy to commit insurance fraud continues until a conspirator receives his promised payout, United States v. Mennuti, 679 F.2d 1032, 1034-35 (2d Cir. 1982); and a conspiracy to commit securities fraud continues until the conspirators achieve their objective of selling the securities at an artificially inflated market price, United States v. Salmonese, 352 F.3d 608, 615-17 (2d Cir. 2003). The rule "makes a good deal of sense," because "the receipt of such [economic] benefits is the sole reason the conspirators become involved in the scheme." Id. at 615 (citation omitted). And here, the grand jury validly alleged that securing such benefits was the conspiracy's central objective, enabling them to obtain (and sell) the tax credits over the 10-year period they themselves chose when shaping that very legislation. (Pa15-16, 82-84). In short, both Cagno, which does not recognize any exception to the rule for continuing conspiracies, and the weight of persuasive precedent on conspiracies aimed at economic objectives—not to mention the limited nature of proper facial review at this stage—all independently confirm that the Indictment is facially timely.

The trial court went further astray, meanwhile, by reasoning that the

State's argument would mean that "no conspiracy would end until every conspirator no longer retained economic benefit no matter how residual." (Pa205) (quoting United States v. Kang, 715 F. Supp. 2d 657, 679-80 (D.S.C. 2010)). Not so, and many decisions applying the ordinary rule—including Girard, Mennuti, and Salmonese—have distinguished a conspiracy in which conspirators unlawfully obtain property to enable a later payoff that is their true objective from that kind of boundless liability. Though Cagno, a RICO conspiracy case, acknowledges no exceptions at all to the rule for continuing offenses—and the State maintains that a RICO conspiracy charge is timely so long as the conspiracy still exists—this Court need only conclude that collecting a delimited series of tax credits over a period of years the conspirators themselves shaped falls under the ordinary rule in order to reverse.

The trial court also overread and misapplied the Grimm/Doherty exception on its own terms. The exception holds that a conspiracy for economic gain does not continue until the accomplishment of those objectives if those objectives are achieved through the receipt of "serial payments" that are "lengthy, indefinite, ordinary, … noncriminal and unilateral." Grimm, 738 F.3d at 503; see Doherty, 867 F.2d at 61. Thus, in Doherty, the First Circuit rejected the idea that a conspiracy to unlawfully obtain a promotion continued for as long as the conspirator received the higher salary from the promotion. 867 F.2d at

62. And in Grimm, a divided panel of the Second Circuit held that a conspiracy to rig bids for interest rates on loans did not continue for as long as unindicted co-conspirators paid interest on those loans. 738 F.3d at 502-04. But Doherty and Grimm came to those conclusions in interpreting the statute of limitations for the general federal conspiracy statute, see 18 U.S.C. §§ 371, 3282—not RICO conspiracy, as applied in Cagno and charged in Count 1. See Doherty, 867 F.2d at 60-61; Grimm, 738 F.3d at 501. That makes a difference, because a federal general conspiracy requires an "overt act" within the limitations period, Doherty, 867 F.2d at 62; Grimm, 738 F.3d at 504, whereas RICO conspiracy does not, see N.J.S.A. 2C:41-2; N.J.S.A. 2C:5-2(d); Cagno, 211 N.J. at 509-11. So the Doherty/Grimm exception is statutorily inapt as applied to Count 1.[27]

In any event, the exception is also inapt as applied to these allegations. First, the wrongful receipt and sale of the tax credits alleged is not "indefinite," Grimm, 738 F.3d at 503; defendants' eligibility for the tax credits ends in six years. (Pa66). Second, achieving this economic objective requires more than a passive "unilateral" act. Grimm, 738 F.3d at 503. Unlike the salary payments in Doherty, 867 F.2d at 62, or the interest payments in Grimm, 738 F.3d at 502-

[27] To be clear, it is also inapt as to the first- and second-degree crimes defendants are charged with conspiring to commit in the other Counts, since New Jersey's general conspiracy law expressly does not require an "overt act" for first- and second-degree crimes. See N.J.S.A. 2C:5-2(d); infra at 94-95 & n.28.

04, defendants, through the entities they are alleged to control and use for these purposes, must apply annually for the tax credits, (Pa14), and make specific showings, (Pa14-15). Third, the length of this program is not random—it is a structure that defendants themselves allegedly shaped. (Pa17-19); see United States v. Derman, 23 F. Supp. 2d 95, 102 (D. Mass. 1998) (district court, bound by Doherty, distinguishing it where economic benefits were "part and parcel of the conspiracy"). And fourth, to avoid the risk that the State will try to claw back the credits, they are also alleged to have worked together to conceal that the credits stemmed from criminal activity. (Pa84-85); see infra Point III.D.1.b. Thus, unlike the period in which salary payments were passively received in Doherty, or in which interest payments were passively made after the bid-rigging was over in Grimm, here there are "further [conspiratorial] objectives or cooperative activity." Contrast Doherty, 867 F.2d at 62; contrast also Grimm, 738 F.3d at 502-04. In short, even if the Doherty/Grimm exception applied to this NJ RICO conspiracy charge despite Cagno, and even if it were proper to make factual findings at this stage, Count 1 is still timely given that the receipt and sale of the tax credits were neither "indefinite" nor "unilateral," see Grimm, 738 F.3d at 503; other objectives and conspiratorial activity also continued; and this limited series of tax credits was shaped by defendants themselves.

Finally, to the extent the judge concluded that the RICO conspiracy does

not extend into the limitations period because defendants' corporations did not act unlawfully in obtaining or selling the tax credits, (Pa204-05), that was also error. "The legal as well as the illegal aspects of an agreement are all part of a conspiracy to commit an illegal act for statute of limitations purposes." United States v. Helmich, 704 F.2d 547, 549 (11th Cir. 1983). And in any event, the receipt and sale of those tax credits is unlawful, because the credits, as charged, "derived from" defendants' conspiratorial and extortionate activity, N.J.S.A. 2C:21-25—they were "directly or indirectly from, maintained by or realized through" that activity. N.J.S.A. 2C:21-24; see (Pa99-104) (Counts 5-10); see also N.J.S.A. 2C:41-1(o) (financial facilitation is a RICO predicate offense); see supra Point II. The Enterprise, in short, was charged with continuing to commit RICO predicate crimes into the limitations period, much as if a ring of art thieves stole ten Rembrandts and sold off one per year through an LLC they created.

b. Concealment Objective.

The charged objectives of the RICO conspiracy also included "[c]oncealing, misrepresenting, and hiding the illegal operation of the Enterprise." (Pa84-85). Defendants engaged in alleged acts of concealment during and after October 2019. See (Pa36-37) (misleading statements to media regarding L3 Complex in October 2019 and May 2022); (Pa62-63) (2023 motion to bar reference to George and Philip Norcross in the Radio Lofts litigation and

misleading court statements). The trial court was mistaken in deeming these acts no more than "mere overt acts of concealment" that do not extend the conspiracy. (Pa207-08) (citing State v. Twiggs, 233 N.J. 513, 543 (2018)). To be sure, prosecutors cannot "'extend the life of a conspiracy indefinitely' by inferring a conspiracy to conceal 'from mere overt acts of concealment,'" as Twiggs points out. Id. at 543 (quoting Grunewald v. United States, 353 U.S. 391, 402 (1957)). But Twiggs and Grunewald stressed the "vital distinction" between simply covering one's tracks after a conspiracy's central objectives are attained and "acts of concealment done in furtherance of the main criminal objectives of the conspiracy," which extend the conspiracy for limitations purposes. See Twiggs, 233 N.J. at 544 (finding express original agreement to conceal that brought conspiracy into limitations period because conspirators met after crime and agreed to keep crime secret and lie about what happened); see also Grunewald, 353 U.S. at 405; United States v. Upton, 559 F.3d 3 (1st Cir. 2009) (failing to file tax return and filing false return extended limitations period); United States v. Rogers, 9 F.3d 1025 (2d Cir. 1993) (sending false communications to bank likewise extended limitations period). The acts of concealment here, as facially alleged, fall within this latter category—just like the facts in Twiggs—because concealment was a core objective that facilitated the conspiracy's central aim: capturing the value of the tax credits. (Pa82-85).

c. Intimidation And Retaliation Objective.

In addition, the charged RICO conspiracy had as an objective "[p]romoting compliance with the Enterprise's demands by retaliating against those in the way of and opposed to the Enterprise" and "[u]sing the Enterprise's reputation for controlling governmental entities to intimidate and threaten those who held property interests that the Enterprise wanted to acquire." (Pa85). As alleged, this objective was neither completed nor abandoned by June 2019. For example, the Enterprise engaged in a protracted retaliation campaign against Developer-1 that involved directing Camden officials to delay in providing an approval Developer-1 needed to complete an unrelated deal. (Pa72, 74). Their retaliation continued into 2023, when Developer-1 yielded and forfeited an unrelated property interest (his right to redevelop Radio Lofts) as a result of the Enterprise's efforts. (Pa76); see also (Pa59) (George Norcross, in a recorded call, referring to Radio Lofts as "another point of attack on this putz").

2. The Other Conspiracy Charges Are Likewise Timely.

For many or all the same reasons the RICO conspiracy charge is timely, the other conspiracy charges (Counts 2-4)—alleged to have continued at least into mid-2022 if not later, see (Pa4-5, 33-34, 37-38, 76)—are also timely.[28]

[28] As noted, Grimm and Doherty arose in the federal general-conspiracy context, where an "overt act" is required by the relevant statute. E.g., Salmonese, 352

Each of the objectives of the RICO conspiracy charge that extended into the limitations period—tax credits, concealment, and retaliation—were also core objectives of the extortion and coercion conspiracies alleged in Counts 2-3, and related to the conspiracy charged in Count 4 (which focused primarily on retaliation). Each of these Counts alleges the relevant defendants agreed to use criminal means to cause rivals to surrender property rights on the Camden waterfront. (Pa87, 92, 97). Among their objectives were obtaining tax credits. (Pa15, 37, 87-94). And an express part of the conspiracy as to Counts 2-3 was that defendants, up through "the date of this Indictment," (Pa87, 92), agreed to receive and sell tax credits—including in 2022 and 2023. See (Pa33, 64-69, 87-89, 92-94). Defendants also retaliated against Developer-1 for his resistance to their demands (Count 4), resulting in Developer-1's capitulation within the limitations period. See (Pa3-4, 59, 72, 74, 76). And they committed acts of concealment, having originally agreed to do so as a core objective, (Pa84-85), of at least Counts 2 and 3, (Pa36-37, 62-63). Defendants may of course dispute whether the grand jury was presented with sufficient evidence that these were

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F.3d at 614; United States v. Bermudez, 526 F.2d 89, 94 n.1 (2d Cir. 1975). But New Jersey's conspiracy statute does not require an "overt act" for first- and second-degree crimes, which Counts 2-13 allege, see N.J.S.A. 2C:5-2(d); State v. LeFurge, 101 N.J. 404, 412-13 (1986); State v. Clark, 151 N.J. Super. 529, 532 (App. Div. 1977); (Pa87-110); see also supra at 91 & n.27. So while Grimm and Doherty are inapposite here too, the Indictment in any event alleges overt acts, for the reasons just detailed.

their objectives, or whether these objectives were accomplished or abandoned outside the limitations period. But here too, the charges are facially timely.

3. The Financial Facilitation And Corporate Misconduct Charges Are Timely.

The Indictment properly alleges that defendants engaged in Financial Facilitation of Criminal Activity, N.J.S.A. 2C:21-25, which continued beyond June 2019. Counts 5-10 allege that Defendants possessed and directed transactions in funds from the sale of tax credits related to the L3 Complex, the Triad1828 Centre, and 11 Cooper, and that defendants knew or reasonably should have known that those tax credits stemmed from the crimes alleged in Counts 2-3. The Indictment alleges defendants possessed and directed transactions in these funds up through June 2024, and specifically alleges the receipt and sale of credits in 2022 and 2023. Thus, these charges are timely.

For the same reason, Counts 11-12 (Misconduct by a Corporate Official), see N.J.S.A. 2C:21-9(c); (Pa105, 107), are also timely. Put simply, these charges allege that the relevant defendants directly or vicariously used corporations under their control to promote criminal objectives—among them the receipt and sale of the criminally derived tax credits (the conduct underlying the financial facilitation charges). See (Pa99, 100-108).

Finally, Counts 5-12 are facially timely regardless of whether Counts 1-4 (or Count 13) are facially timely. While the trial court deemed these counts

facially time-barred "[f]or the same reasons" that it deemed Count 1 (RICO conspiracy) time-barred, (Pa209), that was mistaken. While the substantive validity of Counts 5-12 hinges on the existence of underlying extortion or coercion conspiracies, see supra at 67-68, the timeliness of Counts 5-12 does not, because those counts charge different criminal acts. Specifically, they charge the knowing transaction in criminal proceeds, and the knowing use of corporations to do so, which—subject only to the dispute about whether the credits are in fact the proceeds of substantive crimes, see supra Point II—undeniably have occurred within the limitations period. To put the point simply, an art thief who conspires to steal a painting and hides it for 20 years may or may not evade the limitations period for theft, but he still commits a new crime when he sells it to a fence, and a second new crime if he uses a corporation to do so. See, e.g., United States v. Silver, 948 F.3d 538, 575-77 (2d Cir. 2020). In the same way, the limitations period for Counts 5-12 necessarily runs from when the actual conduct charged occurred, not from when the predicate crime that originally tainted the property occurred.

4. The Official Misconduct Charge Is Timely.

Finally, the indictment validly alleges that all defendants—Redd directly, the others vicariously—committed Official Misconduct (Count 13) within the limitations period, i.e., beyond June 2017. See N.J.S.A. 2C:1-6(b)(3); N.J.S.A.

2C:2-6(a), (b)(3)-(4)); N.J.S.A. 2C:30-2; (Pa90-91, 95-96, 109-110). As already emphasized, the simplest reason is that this is a facial challenge, and the Indictment alleges that all defendants committed this crime between "January 1, 2014 and December 31, 2017" (Redd's second term as mayor), which overlaps with the seven-year limitations period for this offense. (Pa109-110); see supra at 73-78; W.S.B., 453 N.J. Super. at 236.

Regardless, even accepting the trial court's improper facial approach, this count is valid. Most relevantly, the grand jury charged Redd with committing "an act relating to her office" that she knew to be "an unauthorized exercise of her official functions" by committing the crimes alleged in Counts 1-3 (RICO conspiracy; L3 Complex conspiracy; and Triad1828 Centre and 11 Cooper conspiracy) and Counts 5-12 (financial facilitation and corporate misconduct charges related to the same). (Pa109-110). Because those Counts charge Redd with crimes through December 2017, when her term ended, Count 13 is timely.

Moreover, the grand jury alleged affirmative acts by Redd within the limitations period. Take Redd's involvement in the RICO conspiracy (Count 1), the objectives of which included promoting the power and wealth of George Norcross through control of local government, (Pa83, 85). Redd's contributions qualify as official misconduct for at least two reasons. First, agreeing to lend one's mayoral office to a conspiracy that involves the leveraging of government

power, see (Pa81-82, 109-110), is itself official misconduct. And the grand jury alleged Redd lent her power through the end of her term. (Pa1, 8).

Second, the Indictment charges that the Enterprise operated continuously between June and December 2017 (when Redd left office), as the conspirators reaped the benefits of the charged crimes, and indeed into 2024, (Pa2). And Redd, as noted, allegedly acted with purpose to obtain benefits both for herself—exemplified by the Rowan-Rutgers Board position, which the Enterprise achieved by threatening CFP CEO-1, whom Redd herself allegedly helped intimidate—and for others (the properties and resulting tax credits). See (Pa30-31, 69-72, 77-80); supra at 11-12. So Redd's official misconduct (and participation) was ongoing during the last six months of her term, since it was during this time that she was still "obtain[ing] a benefit for [herself] or another," N.J.S.A. 2C:30-2. See State v. Weleck, 10 N.J. 355, 368, 374-75 (1952) (finding official-misconduct charge timely because official demanded to be paid for having corruptly influenced ordinance within limitations period); Mennuti, 679 F.2d at 1035-36 (explaining that conspiracies generally continue "until conspirators receive their payoffs," and finding conspiracy charge timely on this basis); see also supra Point III.D.1.a.[29] That renders Count 13 facially timely.

[29] Indeed, were the rule otherwise, a corrupt official could evade the limitations period by instructing a bribe-payer to deliver funds seven years and a day after she leaves office—at which point it would be too late. That cannot be right.

The trial court also erred in finding that Redd's receipt of a benefit for her participation cannot qualify for limitations purposes. (Pa209-210). First, the court (again) inappropriately drew inferences against the State, (Pa6-7, 69-72), questioning why the grand jury's Indictment did not consider whether she received the job solely because she was "was competent and capable," (Pa210). And relatedly, it waved away the Indictment's allegations as a "conclusory supposition" rather than a "fact." (Pa210). But as noted, assessing what someone did, and when and why they did it, are classic questions of fact and thus improper at this stage. E.g., supra at 29-30 & n.4. The grand jury charged Redd with committing unauthorized acts for the purpose of obtaining a benefit for herself or another during the final six months of her mayoral term. (Pa109-110). That the trial court found that conclusion insufficiently supported by the evidence included in the Indictment did not render it facially untimely.

CONCLUSION

This Court should reverse the facial dismissal order in full.

Respectfully submitted,

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