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July 6, 2025

The Honorable Marc C. Lemieux, A.J.S.C.
Monmouth County Courthouse
71 Monument Park
Freehold, New Jersey 07728

Re: State of New Jersey v. Paul Caneiro
Indictment No. 19-02-0283; Case No. 18004915
Motion to Dismiss Indictment
Returnable: July 7, 2025

Dear Judge Lemieux:

Please accept this letter memorandum in lieu of a more formal brief in opposition to defendant's Motion to Dismiss Indictment. On February 11, 2019, the case of State of New Jersey v. Paul Caneiro was presented to a Monmouth County Grand Jury. Lieutenant Patrick Petruzziello of the Major Crimes Bureau of the Monmouth County Prosecutor's Office testified to the following facts, in pertinent part.

In 2017, defendant electronically transferred funds from the trust account, which was established for the benefit of Keith Caneiro's wife and children upon

his death, into defendant's own personal account. (T:91-19 to 91-25).[1] Defendant transferred $31,900 to his personal bank account, (t:92-1 to 92-4), $15,000 to the joint marital account, (t:92-5 to 92-7), and $280 to an account defendant shared with his daughter, (t:92-8 to 92-10). The total amount that defendant took from the trust account in 2017 was $33,680. (T:92-11 to 92-13). In 2018, defendant again electronically transferred funds from the trust account, into defendant's own personal accounts. (T:92-21 to 92-25). Defendant transferred $44,500 into his personal bank account. (T:93-1 to 93-3). During 2017 and 2018, defendant would routinely transfer funds from the trust account into his own account. (T:93-15 to 93-19).

The State instructed the Grand Jury on the substantive law regarding theft (Count 13) and misapplication of entrusted property (Count 14). (T:135-16 to 136-5). The State asked if the grand jurors had any questions with regard to the theft charge or the misapplication of entrusted property law. (T:136-5 to 136-7). None of the grand jurors indicated they had any questions. (T:136-7).

While the State did not instruct the Grand Jury on the gradation of the theft and misapplication charges during the February 11th presentation, the State did instruct the Grand Jury as to gradation during their orientation on November 5, 2018. To be clear, the Grand Jury, which had been sitting and hearing major crimes and financial crimes presentations since November 5, 2018, was instructed on the entire law of theft and misapplication of entrusted property, including the gradation, value and corresponding degrees of each, during their grand jury orientation on November 5, 2018. (T2[2]: 78-8 to 85-6; 89-20 to 91-5).

[1] T refers to Transcript of Proceedings, February 11, 2019.
[2] T2 refers to Transcript of Proceedings, November 5, 2018.

Specifically, with regard to theft, the State instructed that a second degree offense is $75,000 or more, a third degree offense is between $500 and $75,000, a fourth degree is between $200 and $500, and a disorderly persons offense is less than $200. (T2:82-23 to 83-5). "[T]he valuation determines the degree of the offense." (T2:83-19 to 83-20). The State also instructed the grand jurors that they have to ability to aggregate, "meaning add things together[,]" if thefts are committed under a continuous course of conduct. (T2:82-4 to 82-8).

With regard to misapplication of entrusted property, the State instructed that if the benefit derived from a violation of the misapplication statute is $75,000 or more, it is a second degree offense; if the benefit exceeds $1,000 but is less than $75,000, it is a third degree offense; and if the benefit derived is $1,000 or less, it is a fourth degree offense. (T2:90-12 to 90-18). The State explained that the "money value is a little bit different for misapplication of entrusted property versus an ordinary theft for a third degree." (T2:90-23 to 90-25). The State instructed, "[F]or a third degree, it would be $1,000 up to $75,000 for misapplication of entrusted property. For theft it would be $500 to $75,000 as a third degree. So there's a slight variance." (T2:91-1 to 91-4). The State also instructed the Grand Jury on their ability to no bill charges, (t2:3-25 to 5-4), as well as their ability to remand charges, (t2:11-2 to 12-16; 12-17 to 13-21; 83-15 to 83-18).

On February 11, 2019, the grand jury returned Indictment Number 19-02-00283, charging defendant, in pertinent part, with second degree Theft, contrary to N.J.S.A. 2C:20-3a (Count 13), and second degree Misapplication of Entrusted Property, contrary to N.J.S.A. 2C:21-15, (Count 14). Count 13 of the Indictment reads, in pertinent part:

> The Grand Jurors of the State of New Jersey, for the County of Monmouth, upon their oaths present that PAUL CANEIRO, on or about diverse dates between January 1, 2017 through November 19, 2018, in or about various municipalities in the County of Monmouth . . . did commit the crime of Theft, by unlawfully taking, or exercising unlawful control over, moveable property of another, to wit: money, valued at $75,000 or more, belonging to K.C. and/or J.C. and/or [redacted] and/or [redacted]., with the purpose to deprive the owner thereof, contrary to the provisions of N.J.S.A. 2C:20-3a[.]

Count 14 reads, in pertinent part:

> The Grand Jurors of the State of New Jersey, for the County of Monmouth, upon their oaths present that PAUL CANEIRO, on or about diverse dates between January 1, 2017 through November 19, 2018, in or about various municipalities in the County of Monmouth . . . did commit the crime of Misapplication of Entrusted Property, by purposely or knowingly applying or disposing of property that was entrusted to them as a fiduciary, to wit: money, valued at $78,180, belonging to K.C. and/or J.C. and/or [redacted] and/or [redacted] upon agreement, in a manner which they knew was unlawful or involved substantial risk of loss or detriment to the owner, contrary to the provisions of N.J.S.A. 2C:21-15[.]

Indictments are presumed valid. State v. Schenkolewski, 301 N.J. Super. 115, 137 (App. Div.), certif. denied, 151 N.J. 77 (1997). Because of the independence of the grand jury, courts should be reluctant to intervene in the indictment process. State v. Hogan, 144 N.J. 216, 228 (1996). While dismissal of an indictment is left to the discretion of the trial court, this discretion should be exercised only on "the clearest and plainest ground" and where the "insufficiency is palpable." Hogan, 144 N.J. at 228-29; State v. Graham, 284 N.J. Super. 413, 416 (App. Div. 1995), certif. denied, 144 N.J. 378 (1996); State

v. Morrison, 188 N.J. 2, 12 (2006). The burden to establish grounds sufficient to warrant dismissal rests with the defendant. State v. McCrary, 97 N.J. 132, 142 (1984).

The grand jury need not be presented with an amount of evidence necessary to sustain a conviction, but instead merely "prima facie evidence to establish that a crime has been committed" by the defendant. Graham, 284 N.J. Super. at 417; Hogan, 144 N.J. at 227; Morrison, 188 N.J. at 12-13; State v. Fleischman, 383 N.J. Super. 396, 399 (App. Div.), aff'd on o.g., 189 N.J. 539 (2007). The quantum of evidence this requires is not great; "some evidence" is sufficient. State v. Hill, 166 N.J. Super. 224, 229 (Law Div. 1978), rev'd on o.g., 170 N.J. Super. 485 (App. Div. 1979); State v. Bennett, 194 N.J. Super. 231, 234 (App. Div. 1984); Schenkolewski, 301 N.J. Super. at 137; Morrison, 188 N.J. at 12-13; Fleischman, 383 N.J. Super. at 399. Moreover, "every reasonable inference is to be given to the State." Graham, 284 N.J. Super. at 416-17; State v. New Jersey Trade Waste Ass'n, 96 N.J. 8, 27 (1984); Morrison, 188 N.J. at 13. Only when "the evidence is clearly lacking," should a court dismiss an indictment. Hill, 166 N.J. Super. at 229; State v. Ferrante, 111 N.J. Super. 229, 304 (App. Div. 1970).

Similarly, because grand jury proceedings are "non-adversarial," the instructions provided by the assistant prosecutor need not be as detailed or complete as those required for the petit jury. State v. Laws, 262 N.J. Super. 551, 562 (App. Div.), certif. denied, 134 N.J. 475 (1993); State v. Ball, 268 N.J. Super. 72, 120 (App. Div. 1993), aff'd, 141 N.J. 142 (1995), cert. denied, 516 U.S. 1075 (1996); State v. Hogan, 336 N.J. Super. 319, 344 (App. Div.), certif. denied, 167 N.J. 635 (2001). New Jersey law neither "demand[s]" "a verbatim

reading of applicable statues or recitation of all legal elements of each charge," nor does it require an instruction that goes "beyond the reading of relevant statutes," to "include refinements ... made by subsequent case law." Hogan, 336 N.J. Super. at 340; Ball, 268 N.J. Super. at 118-20; Laws, 262 N.J. Super. at 562. A "prosecutor's duty" to the grand jury "is met" by an "instruction conveys to the grand jury the gist" of the applicable law. Hogan, 336 N.J. Super. at 344. A court should exercise its discretion and dismiss an indictment only where the instructions are "blatantly wrong" and the incorrect statement of law "clearly invades the grand jury's decision-making function." Laws, 262 N.J. Super. at 562; State v. Triestman, 416 N.J. Super. 195, 205 (App. Div. 2010).

Defendant's submissions to this Court do not meet his burden of establishing any deficiency in the legal instruction provided to the Grand Jury or in the indictment itself. Defendant cites State v. Rodriguez, 234 N.J. Super. 298 (App. Div. 1989) and State v. D'Amato, 218 N.J. Super. 595 (App. Div. 1987) to support his position. Both cases concern allegations of an insufficient indictment such that the respective defendants did not have adequate notice of the charges against them.

In Rodriguez, supra, the conspiracy count of the indictment was silent as to the object of the conspiracy. 234 N.J. Super. at 307. "The conspiracy count of the indictment . . . does not expressly allege that the object of the conspiracy was to distribute at least one ounce of a substance containing at least 3.5 ounces of cocaine. It state's only that the persons named, including [ ] [the defendant]

conspired between May 7, 1986 and May 28, 1986 to distribute . . . cocaine." Ibid. As such, the court found that the conspiracy count of the indictment provided insufficient notice to the defendant because it did not "warn the defendant to dispute[] the quantity of cocaine whose distribution was its object." Id. at 309.

In D'Amato, supra, defendant was charged by way of indictment with murder and third degree theft. 218 N.J. Super. at 599. The theft count of the indictment alleged neither the value of the items stolen nor the degree of the offense. Id. at 605. The court concluded that "the amount of the theft constitutes an element of the offense to be proven . . . . and that, as an element of the offense, the amount must be alleged in the indictment." Id. at 607. The court explained that the "main purpose of the indictment is to provide adequate notice so that the defendant can prepare a defense, and the indictment must clearly identify and charge the criminal offense." Ibid. (internal quotations and citations omitted).

In the present matter, Counts 13 and 14 provide sufficient notice to the defendant of the charges against him. Defendant claims that "[t]he grand jurors were never told that a specific value threshold is a necessary element of both offenses" and that "the grand jurors could have been under the impression that *any* amount of misapplication was the same degree charge." Db7. However, the Grand Jury was

instructed on the gradation and corresponding values for both the theft charge and the misapplication of entrusted property charge during their orientation on November 5, 2018. They were also instructed on their ability to no bill and remand cases. Although the State did not specifically identify the degree of the theft alleged, the State elicited facts from the witness that constituted a second-degree amount; specifically, the total amounts stolen for the years 2017 and 2018 added up to $78,180. The Grand Jury returned an indictment which reflected same. Here, the theft count of the indictment (Count 13) identifies both the amount the State alleges defendant stole—"$75,000 or more"—and the proper degree of that offense—"second degree." The facts that were presented to the grand jury support that there was probable cause for a finding of same. Unlike in Rodriguez and D'Amato, defendant here had sufficient notice of the charges against him.

The same applies to the misapplication count of the indictment (Count 14). The State acknowledges that Count 14 erroneously lists the degree of the misapplication charge as a fourth degree crime. The State brought same to the Court's and defendant's attention in its pretrial memo when it requested to amend Count 14 to reflect a second degree gradation. The State would note that the body of Count 14 reflects facts and language that clearly and plainly establishe a second degree charge:

> The Grand Jurors of the State of New Jersey . . . on or about diverse dates between January 1, 2017 through November 19, 2018, in or about various municipalities in the County of Monmouth including but not limited to Township of Ocean and/or the Township of Colts Neck . . . did commit the crime of Misapplication of Entrusted Property, by purposely or knowingly applying or disposing of property that was entrusted to them as a fiduciary, to wit: money, **valued at $78,180,** belonging to K.C. and/or J.C. and or [redacted] and or [redacted] upon agreement, in a manner which they knew was unlawful or involved substantial risk of loss or detriment to the owner, contrary to the provisions of N.J.S.A. 2C:21-15, and against the peace of this State, the Government, and dignity of same.

Like with the theft charge, the facts presented to the Grand Jury support the language reflected in the body of Count 14; namely, that defendant derived a benefit of $78,180.

The State's request for amendment comports with R. 3:7-4, as said request would simply allow for correction of what is clearly a scriveners error in the heading of Count 14. R. 3:7-4 states, in pertinent part:

> The court may amend the indictment or accusation to correct an error in form or the description of the crime intended to be charged or to charge a lesser included offense provided that the amendment does not charge another or different offense from that alleged and the defendant will not be prejudiced thereby in his or her defense on the merits.

Such an amendment would not run afoul of State v. Dorn, 233 N.J. 81 (2018), State v. Catlow, 206 N.J. Super. 186 (App. Div. 1985), or their progeny, as it would not charge a different offense. Nor would it prejudice defendant since the language in Count 14 puts him on notice of the benefit the State alleges he derived from a violation of the statute. A review of the plain language of Count 14 can assure this Court, or any reviewing court, that the grand jury was satisfied that the "benefit derived from a violation of this section is $75,000, or more[.]" N.J.S.A. 2C:21-15. Here, more precisely, the grand jury found the benefit derived from the violation of 2C:21-15 to be $78,180; a second degree, not a fourth degree, offense. The body of Count 14 put defendant on notice as to that amount.

Based on the foregoing, the State respectfully submits defendant's motion for dismissal of the indictment should be denied.

Respectfully submitted,

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