PREPARED BY THE COURT

STATE OF NEW JERSEY Plaintiff, v. PAUL CANEIRO Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CRIMINAL PART MONMOUTH Ind. No.: 19-02-283 Case No.: 18-4915 **ORDER**

THIS MATTER having been opened to the court on application of defendant Paul Caneiro (Monika Mastellone, appearing), and opposed by Raymond Santiago, Monmouth County Prosecutor (Christopher Decker and Nicole Wallace, Assistant Prosecutors, appearing), and the court having heard arguments of counsel and for good cause shown;

IT IS on this 10TH day of JULY, 2025;

ORDERED that Defendant's motion to dismiss the indictment is hereby **DENIED**, and the State's request to amend Count Fourteen to reflect second-degree grading is **GRANTED**.

HON. MARC C. LEMIEUX, A.J.S.C.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
COUNTY OF MONMOUTH

Ind. No.: 19-02-283
Case No.: 18-4915

Decided: July 10, 2025

STATE OF NEW JERSEY,

v.

PAUL CANEIRO

Defendant.

FINDINGS AND CONCLUSIONS OF THE COURT ON DEFENDANT'S MOTION TO DISMISS THE INDICTMENT

CHRISTOPHER DECKER, ESQ. and NICOLE WALLACE, ESQ., for the State of New Jersey Monmouth County Prosecutor's Office

MONIKA MASTELLONE, ESQ., for Defendant, PAUL CANEIRO

MARC C. LEMIEUX, A.J.S.C.

I. INTRODUCTION

a. Relevant Procedural and Factual History

On November 5, 2018, the Monmouth County Prosecutor's Office conducted a grand jury orientation. During this presentation, jurors were instructed on basic legal principles, including the structure of indictable offenses, conflict-of-interest

abstentions, and the grading of theft crimes. (1T:2-2 to 2-6; 1T:11-2 to 11-3; 1T:37-13 to 38-4).[1]

Jurors were told that theft of $75,000 or more constitutes a second-degree offense; theft between $500 and $75,000, a third-degree; and theft between $200 and $500, a fourth-degree offense. (1T:82-9 to 83-5). Theft of under $200 was described as a disorderly person's offense. (1T:83-5). The prosecutor also explained that value determines the degree of the offense, and that jurors could aggregate takings across a continuing course of conduct. (1T:82-6 to 83-20). The statutory definition of Theft by Unlawful Taking under N.J.S.A. 2C:20-3a was also read aloud. (1T:83-23 to 84-2).

On February 11, 2019, Assistant Prosecutor Nicole Wallace (hereinafter, "Presenting Prosecutor") presented the case of *State v. Paul Caneiro* to the same grand jury panel. At the outset, she acknowledged the case's high-profile nature and cautioned the jurors that what they may have read about the case or the social media accounts are not evidence and they could not consider it. The Presenting Prosecutor questioned and confirmed the grand jurors could follow that instruction and could be fair and impartial when listening to the evidence presented with one exception.

[1] 1T refers to Transcript of November 5, 2018 Grand Jury Proceedings.

(2T: 3-5 to 3-11).[2] One juror expressed a concern about secondhand knowledge[3] and was excused, out of an abundance of caution. (2T:4-8). No other jurors raised concern. (2T:4-21). The Presenting Prosecutor then asked whether any jurors were familiar with the individuals involved in the case, including:

> Paul Caneiro, Keith Caneiro, Jennifer Caneiro, [redacted] Susan Caneiro, Marissa Caneiro, Katelyn Caneiro, Corey Caneiro, Michael Abraham of the ATF, Anne Fitch, Dennis Corpora, Det. Christopher Clayton of the New Jersey State Police, Det. Patrick Petruzziello of the Monmouth County Prosecutor's Office, Det. Brian Weisbrot of the Monmouth County Prosecutor's Office, Det. Richard Zarrillo of Colts Neck Police Department, Chris Szymkowiak of the New Jersey State Police, John Hager (phonetic) from the FBI, Det. Debra Bassinder from the Monmouth County Prosecutor's Office, Tiffany Rivera, Matthew Kisner (phonetic), Ronald Artiges (phonetic), Steven Weinstein, and Kimberly Patton.
> [2T: 4-24 to 5-12.]

None of the jurors responded that they knew any of these individuals. (2T: 5-14).

The State then called Detective Patrick Petruzziello, who testified about the financial investigation into an irrevocable life insurance trust created in 1999, for which Keith Caneiro was the settler, and the Defendant was appointed trustee. (2T:88-20 to 89-11). Petruzziello testified that the Defendant transferred substantial

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[2] 2T refers to Transcript of the February 11, 2019 Grand Jury Proceedings.
[3] Specifically, the juror stated, "I just have to say something. I have a friend who's a counselor in that school and she's been telling me, you know, how upset the kids were and everything. I don't know if that's going to affect..." (2T:4-3 to 4-7).

funds from the trust to his personal and joint accounts during 2017 and 2018. (2T: 91-25 to 92:4). Specifically, the following transactions were identified:

- $31,900 to his personal account in 2017;
- $1,500 to a joint account with his wife;
- $280 to an account with his daughter;
- $44,500 to his personal account; and
- $1,000 to the joint account with his wife in 2018 [(2T:91-25 to 93-6)].

In total, the State presented evidence that these transfers occurred over a two-year span, 2017 and 2018. (2T: 93-15 to 93-19). The final transfer occurred on November 19, 2018, in the amount of $1,200. (2T:93-24). Petruzziello also testified that the Defendant failed to make full premium payments to Canada Life in both 2017 and 2018, despite his obligations as trustee. (2T:92-17 to 93-14; 2T:106-9).

The jury also heard that Keith Caneiro maintained multiple life insurance policies, but only the Canada Life policy was managed through the trust. (2T:103-6 to 103-17). Attorney Kimberly Patton, who helped establish the trust, told investigators that Keith had previously expressed concerns about untimely payments and had considered replacing the Defendant as trustee. (2T:118-8 to 120-4).

After testimony concluded, the Presenting Prosecutor summarized the proposed charges. Count Thirteen was described as Theft by Unlawful Taking under N.J.S.A. 2C:20-3a. Count Fourteen was explained as Misapplication of Entrusted Property under N.J.S.A. 2C:21-15, which applies to fiduciaries, including trustees, who dispose of property unlawfully and with substantial risk of loss. (2T:135-16 to

136-5). Jurors were asked if they had any questions about either charge, and no concerns were raised. (2T:136-5 to 136-7).

The grand jury returned an indictment charging the Defendant with:

- **Count 13:** Second-Degree Theft by Unlawful Taking, in violation of N.J.S.A. 2C:20-3a), and
- **Count 14:** Fourth-Degree Misapplication of Entrusted Property, in violation of N.J.S.A. 2C:21-15.

On December 9, 2024, the parties executed a Plea Cutoff Form, which reflected Count Thirteen as a second-degree offense and Count Fourteen as a fourth-degree offense.

On June 29, 2025, the State filed a trial memorandum indicating that Count Fourteen was erroneously graded and requesting that it be amended to a second-degree offense. Later that day, the Defendant moved to dismiss both counts of the indictment, arguing the State failed to present sufficient evidence of value and that the grand jury received inadequate legal instructions. The Defendant also challenged the State's failure to screen jurors more fully for potential bias.

The State filed a brief in opposition on July 6, 2025. The Defendant filed a reply that same day.

The Court held oral argument on July 7, 2025, and now issues this opinion after full consideration of the parties' written and oral submissions.

b. The Defendant's Position

The Defendant moves to dismiss Counts Thirteen and Fourteen of the indictment, raising three core arguments.

First, the Defendant asserts that the State failed to present sufficient evidence to the grand jury to establish the value element required for second-degree grading. With respect to Count Thirteen (theft), Defendant contends that while the State presented testimony referencing various transfers from a trust account, the prosecutor never explicitly stated that the total exceeded $75,000. Similarly, with respect to Count Fourteen (misapplication of entrusted property), the Defendant argues that the State did not present the "benefit derived" value with sufficient clarity to support second-degree grading. In both instances, the Defendant maintains that the failure to clearly connect value to each individual count renders the indictment legally deficient.

Second, the Defendant challenges the legal instructions provided to the grand jury. The Defendant argues that the grand jury was never instructed on the gradation of misapplication offenses, and that while theft gradation may have been addressed during the November 2018 orientation, the Presenting Prosecutor failed to re-deliver those instructions during the February 2019 presentment. The Defendant contends that the nearly three-month gap between orientation and presentment created an unacceptable risk that jurors failed to recall critical grading standards, particularly in a case involving complex fiduciary relationships and aggregated amounts. The

Defendant relies in part on State v. Triestman, 416 N.J. Super. 195 (App. Div. 2010), arguing that the failure to provide contemporaneous instructions, when combined with the high-profile nature of the case, undermined the reliability of the grand jury's charging decision.

Third, the Defendant opposes the State's request to amend Count Fourteen from a fourth-degree to a second-degree offense. The defense argues that this request, first raised in a June 29, 2025 trial memorandum, constitutes an impermissible substantive amendment. Citing State v. Dorn, 233 N.J. 81 (2018), the Defendant argues that value, and therefore the grading, is an essential element of the offense. Because the indictment lists Count Fourteen as a fourth-degree crime, the Defendant asserts that an upward amendment would improperly expand the indictment beyond what was presented and approved by the grand jury. The Defendant further argues that the lack of clear instruction on grading reinforces the conclusion that the grand jury never intended to indict for a second-degree misapplication charge.

Finally, the Defendant contends that the Presenting Prosecutor failed to adequately screen the grand jury for bias. Given the widely publicized nature of the charges and the case's notoriety within Monmouth County, the Defendant argues that the Presenting Prosecutor should have individually questioned jurors to determine whether they had prior knowledge of the case and whether such

knowledge could impair their impartiality. The Defendant notes the Presenting Prosecutor's general comments about the case being "newsworthy" and argues that merely asking jurors if they could be fair was insufficient under the circumstances.

c. The State's Position

The State opposes the motion to dismiss and argues that both counts of the indictment are legally sufficient and supported by the grand jury record.

First, the State maintains that it presented ample evidence to support the value element of second-degree theft and second-degree misapplication. Through the testimony of Detective Petruzziello, the grand jury was provided with specific dollar amounts for each financial transfer, totaling $78,180 across 2017 and 2018. The State contends that this evidence allowed the grand jury to reasonably infer that the $75,000 threshold was met, satisfying the prima facie standard. The State emphasizes that it is not required to aggregate the numbers or explicitly state the total value, so long as the grand jury receives evidence from which it can draw the necessary conclusions.

Second, the State argues that the grand jury was properly instructed on the legal standards governing grading and value. The State points to the November 5, 2018 grand jury orientation, during which jurors were instructed on the different gradations of theft and misapplication, including the specific threshold amounts and the doctrine of aggregation. The State argues that these instructions remained in

effect during the February 11, 2019 presentment and that no legal authority requires prosecutors to repeat orientation instructions at every presentment. The State also distinguishes Triestman, noting that unlike in that case, there was no misstatement of law, no incorrect citation to the statute, and no evidence that the grand jury was confused or misled.

Third, the State argues that its request to amend Count Fourteen from a fourth-degree to a second-degree charge is permissible under R. 3:7-4. The State asserts that the indictment's body includes all the factual allegations necessary to support second-degree grading and that the mislabeling of the charge as "fourth-degree" was a scrivener's error. Citing cases such as State v. D'Amato, 218 N.J. Super. 595 (App. Div. 1987), and State v. Catlow, 206 N.J. Super. 186 (App. Div. 1985), the State contends that an upward amendment is permissible where the indictment places the defendant on notice of the elements, and the amendment does not prejudice the defense. The State further argues that Dorn is distinguishable because, in this case, the indictment includes factual allegations establishing the $75,000 threshold and reflects that the grand jury heard and considered that evidence.

Lastly, the State disputes any suggestion of grand juror bias or procedural impropriety. The State notes that the prosecutor directly addressed the high-profile nature of the case, asked jurors if they could be fair, and the only juror who raised concerns was excused. No other juror indicated any difficulty remaining impartial.

The State maintains that the record reflects appropriate safeguards and that there is no basis to conclude that the grand jury was improperly influenced or biased.

II. GOVERNING LAW AND LEGAL ANALYSIS

The New Jersey Constitution provides that "[n]o person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury..." N.J. Const. art. I, ¶ 8. The purpose of the grand jury is to "determine whether the State has established a prima facie case that a crime has been committed and that the accused has committed it." State v. Hogan, 144 N.J. 216, 227 (1996). In this way, the grand jury acts as "a shield between an individual and his sovereign," State v. Francis, 191 N.J. 571, 585 (2007), and its "mission is to clear the innocent, no less than to bring to trial those who may be guilty." Hogan, 144 N.J. at 228.

Where an indictment does not comply with Court Rules, put forth to safeguard a defendant's right to a grand jury, the trial court has discretion to dismiss or amend the indictment, depending on the severity of the indictment's flaws. See generally R. 3:7-3; R. 3:7-3.

a. Amount Element of Second-Degree Theft (Count 13) and Misapplication of Entrusted Property (Count 14)

Because of the grand jury's role in our criminal justice system, a court will generally not intervene in the indictment process. See Francis, 191 N.J. 571 at 585. Indeed, "[a] trial court . . . should not disturb an indictment if there is some evidence establishing each element of the crime to make out a prima facie case." State v.

Morrison, 188 N.J. 2, 12 (2006). In deciding a motion to dismiss the indictment or charges therein, the trial court must determine "...whether, viewing the evidence and the rational inferences drawn from that evidence in the light most favorable to the State, a grand jury could reasonably believe that a crime occurred and that the defendant committed it." State v. Campione, 462 N.J. Super. 466, 492 (App. Div. 2020) (citing State v. Feliciano, 224 N.J. at 380-81). Thus, a trial court will only exercise its discretion to dismiss an indictment on "the clearest and plainest ground" when the indictment is "manifestly deficient or palpably defective." Feliciano, 224 N.J. at 380.

Here, the Defendant argues that the State failed to establish a prima facie case of Counts Thirteen and Count Fourteen, respectively, Second Degree Theft, in violation of N.J.S.A. 2C:20-3a and Fourth Degree Misapplication of Entrusted Property, in violation of N.J.S.A. 2C:21-15. Namely, the Defendant argues that the value thresholds, which elevate theft and misapplication of property from lower degrees to second-degree indictable offenses were never explained to the grand jury during the February 11, 2019 Presentment.

i. Count Thirteen – Theft by Unlawful Taking

To establish a prima facie case for Second-Degree Theft, the State must establish the following elements: (1) the defendant knowingly or unlawfully (2) exercised control over movable property, (3) of another, (4) with the purpose to

deprive the other person of that movable property. See Model Jury Charge (Criminal), *Theft by Unlawful Taking or Disposition (N.J.S.A. 2C:20-3a)* (rev. May 15, 2023). Further, to sustain a charge of Second-Degree Theft, under N.J.S.A. 2C:20-3a, the State must present *some* evidence that the value of the property unlawfully taken was $75,000 or more. See N.J.S.A. 2C:20-2b(1)(a); State v. D'Amato, 218 N.J. Super. 595, 606 (App. Div. 1987). Indeed, the value of the theft is an element of the offense that must be presented to the grand jury. See e.g., D'Amato, 218 N.J. Super. at 606; State v. Vasky, 218 N.J. Super. 487, 491 (App. Div. 1987).

Here, the State presented testimony from Detective Patrick Petruzziello, who detailed multiple electronic transfers made by the defendant from the trust account to his personal accounts over a period of two years. Specifically, the State elicited evidence of five transfers, aggregating a total of $79,180,[4] which plainly exceeds the $75,000 threshold required for a second-degree theft charge.

The Defendant contends that because the State did not explicitly articulate this total value was $78,180 or $79,180,[5] during its presentation, the grand jury could not

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[4] $31,900 to a personal account in 2017, $1,500 to a joint marital account, $280 to an account shared with his daughter, $44,500 to a personal account in 2018 and $1,000 in an additional transfer. See (1T:92-1 to 93-6).

[5] The Defendant suggests that the total amount of the relevant trust transfers was actually $79,180, not $78,180. This distinction is immaterial. The State's burden at the grand jury stage is not to establish an exact valuation, but to present sufficient

have understood the significance of the value element. That argument is unpersuasive. The State presented specific figures in the testimony, providing evidence from which the grand jury could reasonably infer that the statutory threshold was met. See Morrison, 188 N.J. at 12 (an indictment should be upheld if the State presents at least some evidence from which the grand jury could find each element of the offense). Whether or not the prosecutor added the figures aloud is not determinative; the sufficiency of a grand jury presentment turns on whether the evidence itself supported each element. See e.g., State v. Bennett, 194 N.J. Super. 231, 234 (App. Div. 1984); Hogan, 144 N.J. at 236 ("In seeking an indictment, the prosecutor's sole evidential obligation is to present a *prima facie* case that the accused has committed a crime.").

Viewed in the light most favorable to the State, the evidence before the Grand Jury supports a reasonable inference that the Defendant committed a theft involving more than $75,000. Whether the jury at trial will find the precise value or aggregation persuasive is a matter for trial, not for pretrial dismissal. See Morrison, 188 N.J. at 13.

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evidence from which the grand jury could reasonably infer that the amount exceeded the statutory threshold of $75,000. See Hogan, 144 N.J. at 227.

Accordingly, the Court finds that the State presented sufficient evidence to support the value element of Second-Degree Theft, and that Count Thirteen is not "manifestly deficient" to warrant dismissal.

ii. Count Fourteen – Misapplication of Entrusted Property

To establish a prima facie case for Misapplication of Entrusted Property, under N.J.S.A. 2C:21-15, the State must present some evidence that the defendant: 1) knowingly applied or disposed of property; (2) that the property was entrusted to him for the benefit of another; (3) that his application or disposition of the property was unlawful; (4) that it involved a substantial risk of loss or detriment to the owner or beneficiary; and (5) that the defendant knew both that his conduct was unlawful and that it involved a substantial risk of harm. See *Model Jury Charge (Criminal), Misapplication of Entrusted Property (N.J.S.A. 2C:21-15)* (rev. Feb. 13, 2023). Where the "benefit derived" from the misapplication is $75,000 or more, the offense is graded as a second-degree crime. See N.J.S.A. 2C:21-15

Here, the State presented testimony that the defendant, acting as trustee of the irrevocable life insurance trust, transferred trust funds into his personal and joint accounts on multiple occasions across 2017 and 2018. The evidence before the grand jury indicated that these transactions exceeded $75,000. This was the same set of transactions offered in support of the theft charge and likewise served to establish the "benefit derived" from defendant's alleged misuse of fiduciary property. As with

Count Thirteen, the grand jury heard specific dollar amounts for each transaction, from which it could reasonably infer that the statutory $75,000 threshold was satisfied. See State v. Morrison, 188 N.J. at 12.

Again, the sufficiency of a grand jury presentation is measured not by how the evidence is summarized, but by whether it was presented. The prosecutor's obligation is not to aggregate or argue, but to provide a prima facie basis for the charge. See Hogan, 144 N.J. at 236. Viewed in the light most favorable to the State, the record reflects sufficient evidence for the grand jury to find that defendant derived a benefit in excess of $75,000 through his handling of entrusted funds. See Morrison, 188 N.J. at 13.

The Defendant also argues that the State improperly aggregated separate transactions without instructing the grand jury on how to do so. But aggregation is not a separate element of the offense. It is simply a factual theory that allows related acts to be treated as part of a continuing course of conduct for grading purposes. See State v. Vasky, 218 N.J. Super. at 491; State v. Childs, 242 N.J. Super. 121, 131 (App. Div. 1990). In this way, the Defendant's reliance on State v. Childs is misplaced.

In Childs, the Appellate Division made clear that aggregation under N.J.S.A. 2C:20-2(b)(4) requires a threshold finding that multiple takings are part of a single scheme or course of conduct. See Childs, 242 N.J. Super. at 131. However, Childs

addressed the sufficiency of aggregation at trial, not in the context of grand jury proceedings. Its holding assumes that jurors were required to make findings beyond a reasonable doubt. See id. at 131-133. In contrast, a grand jury's task is only to determine whether there is probable cause to believe that an offense occurred. See Hogan, 144 N.J. at 227 (describing the grand jury's limited screening function and the low evidentiary threshold for indictment).

Here, the grand jury heard testimony that the relevant trust transfers occurred repeatedly throughout 2017 and 2018 and were part of an ongoing pattern of conduct. That testimony, coupled with prior orientation instructions explaining that takings committed as part of a continuing course of conduct may be aggregated for grading purposes, provided a sufficient basis for the grand jury to infer a unified scheme. See (1T:82-6 to 82-8). Childs does not hold that the failure to restate this legal framework at presentment mandates dismissal, particularly where the aggregation theory is evident from the facts and the grand jury had already been instructed on the applicable standard.

Accordingly, the Court finds that the State presented sufficient evidence to support the value element of Second-Degree Misapplication of Entrusted Property, and that Count Fourteen is not "manifestly deficient" to warrant dismissal.

b. Grand Jury Instructions on Gradation

The Defendant argues that, even if the State presented sufficient evidence to establish that the alleged theft and misapplication involved more than $75,000, the indictment must nevertheless be dismissed because the grand jury was not properly instructed on the value thresholds that determine the degree of the offenses. Specifically, the Defendant asserts that the Presenting Prosecutor failed to explain that theft and misapplication are graded based on the amount involved and failed to explicitly identify these charges as second-degree offenses during the February 11, 2019, presentation.

New Jersey jurisprudence does not require that grand jury instructions mirror those provided to a petit jury at trial. "[G]rand jury proceedings are non-adversarial in nature," and the standard for evaluating prosecutorial instructions in that context is correspondingly more flexible. State v. Laws, 262 N.J. Super. 551, 562 (App. Div. 1993), certif. denied, 134 N.J. 475 (1993). The prosecutor need not recite the full statutory language or provide a verbatim reading of legal elements. See State v. Hogan, 336 N.J. Super. 319, 340 (App. Div. 2001), certif. denied, 167 N.J. 635 (2001). Rather, the prosecutor's obligation is met where the instruction conveys to the grand jury the gist of the applicable law. Hogan, 336 N.J. Super. at 344.

Here, the same grand jury that returned the present indictment received orientation on November 5, 2018, during which the prosecutor provided detailed instructions on the grading structure of both theft and misapplication offenses. The

grand jurors were told that theft of $75,000 or more constitutes a second-degree offense and that they could aggregate multiple takings if committed as part of a continuing course of conduct. Similarly, they were instructed that misapplication of entrusted property is graded as second-degree when the "benefit derived" equals or exceeds $75,000. They were also informed that the monetary thresholds applicable to misapplication differ slightly from those governing theft offenses. (2T:82-8 to 91-5.)

The fact that these instructions were not repeated at the time of the February 11 presentation does not render the indictment defective. New Jersey courts have not imposed a strict temporal limit on the durability of orientation instructions, particularly where, as here, the panel remained the same, the legal instruction was substantively correct, and the record reveals no confusion or error in the charging process. See State v. Ball, 268 N.J. Super. 72, 118–20 (App. Div. 1993), aff'd, 141 N.J. 142 (1995), cert. denied, 516 U.S. 1075 (1996) (emphasizing that the adequacy of grand jury instructions is assessed based on their overall fairness and clarity, not formal completeness). Nor does the record show that the grand jury was confused or misled. To the contrary, the transcript reflects that the grand jury was asked whether it had any questions following the presentation of the relevant charges, and no juror expressed uncertainty. (1T:136-5 to 136-7.)

The Defendant's reliance on State v. Triestman, 416 N.J. Super. 195 (App. Div. 2010), is misplaced. There, the Appellate Division found that a prosecutor had misstated the applicable statutory subsection, failed to identify which offense applied, and compounded the problem by allowing two months to pass between the orientation and the presentment. See Triestman, 416 N.J. Super. at 206–07. There, the combination of legal imprecision and delay created a risk that the grand jury lacked the framework to make an informed decision. See id. at 207.

No such deficiencies exist here. While the orientation in this case occurred approximately three months before the presentment, a slightly longer interval than in Triestman, that case does not impose a rigid time limit. Rather, Triestman reinforces that grand jury instructions must be evaluated for their overall fairness and clarity. See id. at 205. Here, the instructions were substantively correct, the charges were legally and factually coherent and the grand jury was correctly instructed on the core gradation principles, including aggregation and threshold values.

Accordingly, the Court finds that the legal instructions provided to the grand jury regarding grading of theft and misapplication charges were legally sufficient, and do not warrant dismissal of the indictment.

c. Amendment of Count Fourteen to Reflect Proper Grading

While R. 3:7-4 expressly authorizes a court to amend an indictment "to correct an error in form or the description of the crime intended to be charged," courts have interpreted the rule to permit correction of degree designations, even where the amendment results in a more serious offense, so long as it does not introduce a new or different offense and does not prejudice the defendant in the preparation of his defense. See Dorn, 233 N.J. at 94–95; State v. Catlow, 206 N.J. Super. 186, 195 (App. Div. 1985); State v. D'Amato, 218 N.J. Super. at 605–07; State v. Federico, 198 N.J. Super. 120, 128 (App. Div. 1984).

As the New Jersey Supreme Court explained in Dorn, the key inquiry in assessing the propriety of an amendment under R. 3:7-4 is whether the indictment gave the defendant adequate notice of the charge and whether the proposed amendment would prejudice the defendant in the formulation of a defense. See Dorn, 233 N.J. 94-95. The Court made clear, however, that "the degree of a crime is an essential element," and an amendment may not be used to add an aggravating fact, such as drug quantity or value, that was never presented to the grand jury and never included in the indictment. Id. at 97–98.

In Dorn, the State sought to amend a third-degree drug distribution charge to a second-degree offense based on the amount of marijuana involved. See id. at 97. Although the grand jury had heard testimony about the drug weight, the indictment did not mention that fact in the relevant count, and the grand jury was never

instructed on the statutory thresholds for degree. See id. Because the aggravating fact was not tied to the count at issue, and there was "nothing in the record demonstrating that the grand jury intended to charge" a second-degree offense, the Supreme Court held that the amendment was improper. Id. at 97–98.

The present case is distinguishable. Here, Count Fourteen of the indictment charges the defendant with misapplication of entrusted property and alleges that the "benefit derived" from that misapplication was $78,180. This amount squarely places the offense in the second-degree range under N.J.S.A. 2C:21-15. The grand jury heard testimony from Detective Patrick Petruzziello identifying specific transactions totaling that figure. Further, the indictment's body expressly includes the $78,180 amount and describes the conduct using language that mirrors the second-degree offense as defined by statute. Thus, the only error lies in the caption, which lists Count Fourteen as a fourth-degree offense.

Unlike in Dorn, where the grand jury was never asked to make a finding on the drug weight, and the indictment failed to allege it, the elevating fact in this case (the amount of the benefit) is both alleged and supported in the indictment itself. The Defendant had clear notice of the grading basis and has not argued, much less shown, that he was prejudiced in the preparation of his defense. See Catlow, 206 N.J. Super. at 195; D'Amato, 218 N.J. Super. 605-607

Accordingly, the amendment sought by the State does not alter the essence of the charge or introduce a new element. It simply conforms the indictment's caption to the facts presented to the grand jury and the legal standard already articulated in the body of the indictment. Because the Defendant was on notice of the charge and has not demonstrated prejudice, the Court finds that the requested amendment to Count Fourteen is permissible under R. 3:7-4 and does not warrant dismissal of the indictment.

d. Alleged Grand Jury Bias Due to Pretrial Publicity

The Defendant argues that the indictment must be dismissed because the Presenting Prosecutor failed to question grand jurors about their knowledge of the case or screen them for possible bias stemming from pretrial publicity. According to the Defendant, the high-profile nature of the investigation required the Presenting Prosecutor to affirmatively investigate whether any grand juror had formed an opinion about the Defendant's guilt. This argument is unpersuasive.

Under State v. Murphy, 110 N.J. 20 (1988), and State v. Brown, 289 N.J. Super. 285 (App. Div. 1996), a prosecutor has a duty to refer a grand juror to the Assignment Judge only if a basis arises during the proceedings to question that juror's impartiality. See Murphy, 110 N.J. at 33. This obligation does not arise from vague suspicion or general concerns. Rather, Murphy holds that when a prosecutor becomes aware of specific facts suggesting a grand juror may be biased or partial,

such as a juror disclosing a financial or professional connection to a party in the investigation, they must bring the matter to the court's attention so that the judge, not the prosecutor, can determine whether disqualification is warranted. See Murphy, 110 N.J. at 33–34; Brown, 289 N.J. at 291 (characterizing this threshold determination as a factual inquiry resulting in "a reasonable inference of bias or interests")

In Murphy, a grand juror disclosed that she worked for one of the alleged victims, yet the prosecutor failed to notify the Assignment Judge. See id. at 33. Although the Supreme Court declined to dismiss the indictment in that case, it held that going forward, any prosecutorial awareness of facts suggesting bias must be disclosed to the Assignment Judge, who is then responsible for determining whether the juror should be excused. See id. at 33–36. Brown reaffirmed this standard and applied it to a case where the grand jury foreman disclosed extensive professional ties to the father of a key investigator. There, the Appellate Division upheld dismissal of the indictment because the prosecutor failed to refer the matter to the Assignment Judge despite a clear record establishing potential bias. See Brown, 289 N.J. Super. at 291–92.

No such showing is present here. The prosecutor did not receive any disclosure from a grand juror suggesting a disqualifying connection to the case, the parties, or the victim. No jurors stated that they had pre-formed opinions about the

Defendant's guilt, nor did anyone reveal personal knowledge that would compromise impartiality. The transcript merely reflects that the prosecutor acknowledged the case was "newsworthy," noted that media coverage might have reached some jurors, and cautioned that such reports are not always accurate. (2T:78-17 to 79-20.) That acknowledgment, without more, does not rise to the level required by Murphy or Brown to trigger referral to the Assignment Judge.

Indeed, neither Murphy nor Brown imposes an affirmative duty on the State to question grand jurors about their familiarity with a case merely because it has received press attention. Instead, those cases emphasize that the prosecutor's duty arises only after a juror discloses something that creates a reasonable inference of bias or interest. Here, no such disclosure occurred. See Murphy, 110 N.J. at 33–34; Brown, 289 N.J. Super. at 291–92. The Defendant's argument, that the State was obligated to proactively investigate grand jurors for possible bias, is not supported by either decision.[6]

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[6] The record reflects that one juror was excused after expressing concern about potential secondhand knowledge of the case. (2T:4-3 to 4-8). While State v. Murphy, holds that only the Assignment Judge may disqualify grand jurors for cause, the transcript here suggests that the excusal was based on a voluntary abstention rather than a formal disqualification. The Defendant has not challenged the propriety of this excusal and instead asserts that the prosecutor *failed* to do enough to probe potential bias of the other grand jurors.

Accordingly, the Court finds that the prosecutor did not err in her handling of the grand jury with respect to potential bias or publicity, and there is no basis to dismiss the indictment on these grounds.

III. CONCLUSION

For the foregoing reasons, the Court finds no basis to dismiss Counts Thirteen or Fourteen of the indictment. The State presented sufficient evidence to establish a prima facie case for both second-degree Theft by Unlawful Taking and Misapplication of Entrusted Property. The grand jury received adequate legal instructions regarding the gradation of offenses, including the principles of aggregation and value thresholds. The prosecutor's failure to repeat those instructions during the February 11, 2019 presentment does not render the indictment defective. Moreover, the Court finds that the proposed amendment to Count Fourteen is permissible under R. 3:7-4, as it corrects a clerical error without introducing a new offense or prejudicing the Defendant. Finally, the record does not support the Defendant's claim that the grand jury was biased or improperly influenced by pretrial publicity.

Accordingly, the Defendant's motion to dismiss the indictment is hereby **DENIED**, and the State's request to amend Count Fourteen to reflect second-degree grading is **GRANTED**.