



SUPERIOR COURT OF NEW JERSEY
VICINAGE 1

Bernard E. DeLury, Jr.
Presiding Judge

Criminal Division
Criminal Court Complex
4997 Unami Boulevard
Mays Landing, N.J. 08330
609-402-0100 ext. 47360

Not for Publication Without Approval of the Committee on Opinions

May 15, 2025

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Re: **State v. La'Quetta Small: Motion to Dismiss the Indictment.**
Ind. No. 24-09-2951

Dear Counselors:

INTRODUCTION

On September 17, 2024, an Atlantic County Grand Jury returned Indictment Number 24-09-2951-T, charging the Marty and La'Quetta Small (collectively, "Defendants") with second-degree endangering by abuse/neglect of a child (Count 1). Mr. Small was additionally charged with third-degree terroristic threats (Count 2) and third-degree aggravated assault (Count 3).

Mrs. Small, through counsel, filed the instant Motion to Dismiss Count 1 (child endangerment, second-degree) of Indictment Number 24-09-2951. Counsel presented oral argument on the issue before the Court on April 15, 2025. Additionally, counsel filed a

supplemental brief dated May 7, 2025. The State has opposed the motion and filed a brief dated February 13, 2025. The Court has considered all matters presented.

For the reasons stated below, the Court has concluded that the Defendant has failed to show that Count 1, second degree endangering the welfare of a child, is warranted or required. As such, the Court has **DENIED** the Defendant's Motion.

STATEMENT OF FACTS

The parties present substantially different accounts of the facts surrounding the alleged incidents of abuse. The facts are derived from Sergeant Ryan Ripley's Affidavit of Probable Cause dated April 15, 2024, and Statement of Probable Cause under Complaint-Warrant S-2024-004036-0102 dated November 4, 2024.

During the week of January 22, 2024, mental health training for students was held at Atlantic City High School. At the end of each session, students were provided with "exit tickets." On the front of the "exit ticket" three faces were present: happy, neutral, and sad. Each student was asked to circle one face. The ticket allowed a student a discreet way to send a request about speaking with someone at the school.

J.S., the 16-year-old juvenile daughter of the Defendants, was provided an "exit ticket" on January 22, 2024. J.S. circled the neutral face and wrote on the back of the ticket "abuse" and would "like a counselor." Atlantic County Prosecutor's Office detectives obtained a copy of this ticket at a later date

An employee at the high school was given J.S.'s ticket by one of the mental health trainers the same day. The employee told detectives that at approximately 10:00 AM he approached J.S. and pulled her from her classroom to speak with her. He stated this was the first time he met with J.S. and spoke with her for approximately 2 to 3 minutes in the hallway. He stated that it seemed like J.S. wanted to talk and told him that she had been hit with a broom and passed out. He asked if this was ongoing, and J.S. told him, "No." J.S. had told him that her dad was a big guy and she wanted to continue on with her life. J.S. told him that she had already spoken with Principal Chapman about some choices.

The employee stated that later on that same day he and another school employee discussed the matter with Principal Chapman. He stated they spoke with Principal Chapman in-person, and he told her what J.S. had told him. He stated Principal Chapman told him J.S. never mentioned the abuse to her, but that she would report the abuse DCPD. One of the employees told Principal Chapman that she would make the notification to DCPD, but Principal Chapman insisted she would make the notification. Principal Chapman was provided a copy of the "exit ticket" from J.S. from one of the other employees.

On the same day, later in the evening, J.S., during a telehealth consultation, disclosed to a therapist that she was being physically and emotionally abused by both of her parents. The report indicated that the abuse began in the beginning of December 2023 when "a situation had happened on December 7, 2023, and it was a minor situation, it got it got escalated to where they put hands on me."

J.S. explained that sometime in the beginning of December 2023, Mr. Small, during an argument punched her in the legs and Mrs. Small had her knee on J.S.'s chest. J.S. also explained that during that same time frame, Mrs. Small during an argument "was punching me and hitting me and stuff." And in the middle of December 2023. Mrs. Small, during an argument, put all her weight on J.S. and smacked her multiple times in the face.

J.S. explained that on January 13, 2024, Mr. Small, during an argument, threw her into the shower, slammed her, and choked her. He was choking her and throwing her around everywhere. She stated that he was "trying to pick me up you know how people be picking up basketballs?" He hit her on the head with a broom. She stated she passed out when he hit her on the head with the broom and she collapsed on the floor. She stated that she had a scratch and bruises on her neck. J.S. stated that every time they hit me, I always had bruises on my body." Further, J.S. reported to the therapist that she had informed the school, and the school would be contacting the State to make a report regarding the above events. J.S. also reported to the therapist that "I was really stressed, I was crying a lot, I wasn't mentally stable, I wasn't comfortable around them, I just didn't feel safe."

Moreover, J.S. disclosed this abuse to the therapist outside the presence of both Defendants.

The therapist also spoke with Mrs. Small that night. Mrs. Small explained that J.S. was experiencing some personal issues with her parents due to a relationship with a young man they don't approve of, and it had caused some tensions in the home. She stated that J.S. was defiant at home and they told her not to talk to the young man, but she continued to sneak around and continued the relationship with him after they told her not to.

The director of the medical facility reported the above incidents of abuse to the New Jersey Department of Children and Families on January 24, 2024. During the recorded telephone conversation between the director and a representative of the New Jersey Department of Children and Families, the director told the representative that a member of the school should have already made the notification but that he was just following up. The representative stated that no one from the school had notified the department. The representative continued to do a search on their system for school disclosure while talking to the director. No disclosure from the school was located. The New Jersey Department of Children and Families notified the Atlantic County Prosecutor's Office the same day.

Later that night on January 24, 2024, a member of DCPD interviewed J.S. and her brother, M.S. These interviews took place at the Small residence. DCPD stated that when they arrived to speak with J.S. both Defendants were home and were present during the interviews. According to DCPD, Mrs. Small knew DCPD would be reporting to her residence to speak with J.S. because Mrs. Small's "good friend" had told her about DCPD involvement. During the interviews, both J.S. and M.S. denied the abuse allegations. DCPD stated J.S. told them that she made the allegations up because she was mad at her parents for taking her phone away and neither parent agreed with the relationship J.S. had with her boyfriend. J.S. denied disclosing physical abuse to anyone at the high school two days prior. J.S. stated that the first person she disclosed to was a therapist on January 23, 2024. Mrs. Small was unaware J.S. made a disclosure to the therapist on January 23, 2024.

On January 25, 2024, detectives from the Atlantic County Prosecutor's Office reported to the Atlantic City High School to interview J.S. During the interview, J.S. told them she knew why they were at the school to speak with her. She told detectives that she was mad at her parents for not allowing her to go to Crab Du Jour, via Uber, with her friend, a few weeks ago. She stated that she made the allegations up because of this and said no physical abuse occurred. J.S. was asked if she was ever hit by her parents and she stated no.

J.S. stated that first person she talked to about the physical abuse was her therapist. J.S. denied disclosing to anyone at school about these allegations. She stated when she disclosed the abuse, she was on Zoom meeting with her therapist in her bedroom. J.S. stated no one else was in her room when she disclosed this to her therapist.

J.S. was asked if she spoke with DCPD on January 24, 2024, and she stated yes. J.S. stated that when DCPD arrived at her home, she was out with her aunt. J.S. stated her aunt received a phone call, she didn't know who called her aunt, and later told her she needed to get home because DCPD was there to speak to her. J.S. told DCPD that she made the allegations up and she was not being physically assaulted.

Detectives told J.S. that they spoke with DCPD prior to speaking with her. They asked about her relationship with the juvenile male with the initials E.L. and if her parents took her phone away due to some concerning text messages found. J.S. denied her parents took away her phone and continued to say her parents are OK with the relationship with E.L. She stated that the last time she spoke with E.L. was yesterday through Instagram.

On Friday, January 26, 2024, detectives met and interviewed E.L. He stated he had been dating J.S. for approximately 9 months and had a good relationship with J.S.'s parents until early December 2023.

E.L. stated the last time he saw J.S. in person was early December 2023. He stated sometime in early December 2023, J.S.'s parents went through her cellular phone and found out details about the relationship, which led to her cell phone being taken away from her. E.L. advised that her parents were against this and did not approve of their relationship.

E.L. also stated that J.S. was able to continue her communications with him via another cellular device she owned without her parents' knowledge. E.L. stated that these communications which were mainly via video chat like FaceTime, Instagram, etc. He also stated J.S. was being verbally, mentally, and physically abused by her parents. E.L. stated during the week of December 10, 2023, he witnessed over the video chat on different occasions how her father screamed at her and was physically abusive specifically by choking her. He described J.S.'s clothing as being ripped, and her body bruised after the abuse incidents.

E.L. also stated that on January 13, 2024, there was a scheduled event in the early morning called a "Peace Walk," in which Mr. Small to attend. E.L. stated that J.S. did not want to attend, but her father became physically violent specifically by beating her with a broom. E.L. stated that J.S. showed him via video chat the long grayish colored broom handle used to beat her. He also stated the broom handle was bent.

E.L. further stated he has in his cellular devices and an iPad several recordings of many of those incidents mentioned above. Some of those recordings were video/audio and photographs showing J.S.'s injuries.

E.L. showed the detectives, utilizing his cellular device, several photographs of J.S.'s injuries. The photographs revealed different body parts with what appeared to be swellings, scratches, bruising, and hair loss.

E.L. told detectives that he told his mother sometime in December 2023 about J.S.'s parents being abusive towards her.

On January 26, 2024, detectives spoke with E.L.'s mother. She told them E.L. disclosed to her a few weeks ago that J.S.'s parents initially were verbally and physically abusive towards J.S. E.L. told detectives J.S.'s parents did not know that she was on the video call with E.L. when she was being abused.

On January 27, 2024, detectives extracted the contents of E.L.'s cellular phone and confirmed that those same images shown to detectives by E.L. during the interview on January 26, 2024, showing J.S.'s injuries were found in the extraction report of his cellular phone.

On January 28, 2024, detectives extracted the contents of E.L.'s iPad. Three images dated January 14, 2024, containing text messages between J.S. and E.L. were located capturing the following text message conversation:

J.S.: I didn't wan wake up so she kicked up and I fell on my face. Like my body is sore from head to toe.
 E.L.: off ya bed.
 J.S.: and I have bruises on my shoulders. Yes. From my dad. On each side.

Detectives located numerous video clips during the iPad extraction. These recordings appeared to be made from a screen video recording application or saved utilizing one of the devices from the video chat. The videos show a 50/50 split screen, each showing their live view of the video chat from their respective devices. Several of the video clips capture an incident around January 3, 2024, between Mr. Small and J.S. A portion of the incident is detailed below:

M.S.: She's the problem!
 J.S.: (whispering to E.L. over video) I'm scared
 M.S.: (J.S.'s name), don't make me hurt you.
 J.S.: Hurt me, that's all you do!
 M.S.: Don't make me hurt you.
 J.S.: That's all you do. That's all you do anyway . . .

Moments later the argument continued:

M.S.: Sit down. I said sit down!
 J.S.: Stop pushing me!

M.S.: I'm telling you, you're going to do harm to yourself if you get in my space again.
 J.S.: You always harm me anyway. Hurt me.
 M.S.: I'm gonna hurt you.
 J.S.: Hurt me. Hurt me.
 M.S.: I'm gonna hurt you. Okay.
 J.S.: Hurt me . . . 'Go to school, what happened?
 M.S.: OK, tell them. I don't care. What are they gonna do to me? What are they gonna do to me?
 J.S.: Can you please move so I can go to school? Stop pushing me! You keep pushing me. Stop!
 M.S.: Sit down. I'll smack that weave out ya head.
 J.S.: Please stop pushing me in my chest.
 M.S.: I don't care where I push you at . . . I'm going to earth slam her down the steps! Come past this line and I'm gonna grab you by the head and throw you on the ground! Nothing is going to happen to me!

Several of the video clips capture an incident around January 7, 2024, between Mrs. Small, J.S.'s grandmother ("S.F."), and J.S. A portion of that incident is detailed below:

L.S.: You're still talking!
 J.S.: Get off of me! Get off of my neck!
 L.S.: You still talking little girl!
 J.S.: Get off of me, you hit me.
 S.F.: A little punch in the eye ain't going to stop her.
 J.S.: You punched me in my mouth . . . Get off of me!
 L.S.: who you telling to get off of you girl! You don't run me. You don't run me. And I'm gonna touch you whenever I want to touch you.

Several text messages between J.S. and E.L. were also recovered from E.L.'s iPad extraction. On January 14, 2024, at approximately 4:00 AM, the early morning after the alleged broom incident the day before, J.S. texted E.L. photographs of injuries to her forehead and cheek. She also texted E.L. a photograph of a gray broom head.

On January 24, 2024, at approximately 3:00 PM, the same day that DCPD went to interview J.S. at her home, J.S. texted E.L. that she also disclosed the abuse to "the lady in the teen center . . . Dr. Davis . . . and she's also reporting it."

Prior to the DCPD interview, at approximately 9:00 PM, J.S. texted E.L. that her parents were mad at her because of "diffvices or whatever." DCPD was formerly known as DYFS.

J.S. continued to send a series of text messages stating that she is going to be sent "outta state in a foster home . . . with no contact with nobody" and that "Davinee took me to her house cs (because) I was arguing w (with) my dad." And that "my dad keep blaming me, said everything is my fault." She texted; "I'm scared what about what if I to get sent away. I just wanted all to blow over and go away." E.L. then sent J.S. a series of ten photographs depicting injuries sustained by J.S. E.L. then texted, "and show when she pulled ya hair out."

On January 30, 2024, detective received the medical records for J.S. when she was admitted to the hospital on Tuesday, January 16, 2024, for a head injury. Video surveillance from the hospital was also obtained. The video showed J.S. and Mr. Small arriving in what appeared to be a black SUV and then both entering the hospital at approximately 10:00 AM. The video surveillance also revealed that Mrs. Small later joined Mr. Small and J.S. at the hospital.

The medical report stated that J.S. went to the hospital for a head injury she suffered three days prior, that is, January 13, 2024, the same day J.S. told her therapist that she was knocked unconscious by her father after he hit her with her broom. J.S. had told the treating nurse at the hospital that she hit her head on a window and passed out when she was playing with her younger brother. Mr. Small was present and confirmed this version of events to the nurse. Her diagnosis from the hospital with a head injury and syncope (loss of consciousness).

On January 31, 2024, detectives reinterviewed J.S. after reviewing the text messages, photos, and videos between her and E.L. During this video recorded interview, J.S. disclosed being physically abused by her father and mother on multiple occasions during the months of December 2023 to January 2024, while inside the residence.

J.S. stated that during one of the incidents, her father hit her approximately three times on her face using a broom and as a result of this, she passed out. J.S. advised that due to losing consciousness and sustaining injuries to her face, not long after the incident her parents took her to the ARMC-City Division Hospital in Atlantic City, New Jersey to be treated.

J.S. stated on another occasion, in December 2023, her mother punched her on the chest multiple times leaving marks by her breast area as well as being struck by her mother's hands. J.S. provided detectives photos of these injuries.

J.S. stated that her boyfriend, E.L., had food delivered to her residence and her mother found out. J.S. stated her mother then threw the food outside her residence and the situation escalated. J.S. stated her mother dragged her out of her bedroom into the grandmother's bedroom by pulling her hair extensions. J.S. stated that she lost her hair because of the pulling. In addition, J.S. stated that her mother used a belt to strike her on her shoulders leaving welts. J.S. stated she was wearing a tank top during the incident. J.S. said there were photos of these injuries on her phone.

Detectives played the video clip of the incident between J.S. and Mrs. Small from January 7, 2024. J.S. told detectives that her mother hit her in the face three to five times during that incident.

J.S. stated on another occasion her father hit her on her legs with his hands leaving bruising in that area of her body while she was sitting on a barstool. This incident occurred in her father's "man cave." J.S. provided detectives photographs of her injuries using her cell phone.

J.S. stated that the videos found on E.L.'s iPad were recordings of some of those incidents mentioned. The voices of J.S.'s father, mother, grandmother, and at times her younger brother can be heard throughout the video.

J.S. stated that she not only text messaged E.L. using her current cell phone, but also shared with him via text multiple photos showing her injuries from the abuse. As J.S. was showing the images to detect his, the phone lost battery power.

J.S. stated that prior to the telehealth video chat on January 23, 2024, she disclosed the abuse to an Atlantic City High School employee.

Detectives retrieved J.S.'s cellular phone for forensic examination.

Instant messages between J.S. starting from January 23, 2024, at approximately 9:00 PM, revealed E.L. writing, "choking you," "slamming you," "and you got video evidence" and "photos" and "they tryna put you on drugs." Then the messages continued with the E.L. writing, "get off y'all phone," and "stay muted" while J.S. replied with, "I think he's coming upstairs."

On February 1, 2024, detectives met with J.S. at Atlantic City High School to return her cell phone and speak with her for clarification from her previous interview. J.S. provided a more detailed video recorded sequence of events that led to her becoming unconscious on or around January 13, 2024, as a result of her father striking her multiple times on her head/face area with a broom. J.S. stated her father found the broom in her bedroom because it was left when she was cleaning. J.S. stated she was inside her bedroom and being physically abused. J.S. further stated that when she regained consciousness, her father, her mother, and her younger brother were standing over her. J.S. stated that she heard someone saying to bring water and then in a recriminatory tone her mother told her father, "you need to stop, you're doing too much," in reference to hitting her and that it was wrong what he was doing to J.S.

On February 5, 2024, detectives interviewed Toria Young. Ms. Young works as a main office secretary at Atlantic City High School. Ms. Young is also J.S.'s older cousin. Ms. Young stated that J.S. was dealing with some major issues that have caused a conflict between her personal life, school, and her boyfriend. She confirmed that there was a lot of contention between J.S. and her parents due to their disapproval of her boyfriend.

Ms. Young stated that J.S. disclosed to her that she had been beaten by her father. Ms. Young witnessed an injury to J.S.'s face in mid-January 2024. She had also seen bruises on J.S.'s arm. She said that J.S. and her parents have been having problems like this for the past two months.

On February 16, 2024, detectives from the Atlantic County Prosecutor's Office interviewed Director Andrea Davis of the AtlantiCare Teen Center. The Teen Center is located inside of Atlantic City High School and provides support services for students. Dr. Davis explained that J.S. has been receiving services from the Teen Center within the last few months. She stated that recently J.S. had come in on a few occasions for wellness check-ins to process some of the things she had been going through. Dr. Davis stated that in late January 2024, J.S. has told Dr. Davis that she was having problems with her parents specifically interactions with her father. She had told Dr. Davis that she had been hit by her father at home that left a mark on her face. J.S. did not go into other details about the incident. J.S. further told Dr. Davis that she disclosed this information to an Atlantic City High School employee. Dr. Davis stated that if J.S. had not already told someone else about the abuse then she would have made a report to DCPD.

On February 21, 2024, detectives reviewed the Instagram social media account records for J.S.

On December 8, 2023, J.S. had a direct message conversation on Instagram with the person later identified as a juvenile with the initials M.C. That message is below:

J.S.: can I stay w (with) you wherever you go? Cs (because) I'm not staying home.
M.C.: I'm going w (with) my sister's boyfriend or to the movies they can get in trouble for that . . . just asked to come over.
J.S.: Okay well I'm not going home if they ask don't tell them.
M.C.: do not do you not know what your father is?
J.S.: Idgaf (I don't give a fuck) is he was the president . . . shit don't phase me.
J.S.: (later in the conversation) I live in a house not a home . . . my dad called me a nobody
M.C.: omg
J.S.: cs (because) I'm not cheering . . . like they physically mentally and emotionally abuse me.

On December 13, 2023, J.S. and M.C. had another direct message conversation on Instagram:

M.C.: who phone you on . . . that's a mark on your arm bru?
J.S.: old phone I'm sneaking it got it take ts (this shit) to school tomorrow.
J.S.: bruise . . .
M.C.: from?!
J.S.: mother.

On March 25, 2024, detectives obtained a sworn recorded statement from M.C. During the statement, M.C. confirmed Instagram messages as being between her and J.S.

On December 21, 2023, J.S. had direct message on Instagram with another user. A portion of that direct messages below:

J.S.: siyaa you said you wanted to ttm (talk to me) but I'm on punishment cs (because) I snuck my boyfriend in the house but they only found out cs (because) my mom went threw my phone when I was sleep and they was abusing me idc (I don't care) they dda (didn't do anything) was then didn't go to school for like 3 days had doctors appointments testing me for everything in the book my mom don't fw (fuck with) with neither my dad they keep bashing me and I'm tired of it like they need to leave me alone . . . but my mom keeps calling me a loser and a disappointment because of it . . .

On December 22, 2023, J.S. had a direct message on Instagram with another user. A portion of that direct message is below:

J.S.: hey sister, so if you been trying to text me I haven't had my phone so basically my mom went through my phone when I was sleep and found out I snuck chummy in my house yea I was wrong for it they told me to stop talking to him and I didn't want to because he is literally my safe person and I feel safe and comfortable and happy with him so he order food cs (because) I haven't ate and she threw it in the street then she abused me her and my dad like beat me bruises all over had so many appointments lots of name calling they called the cops on me literally said I literally said can I go leave get away so recently I got suspended for defending myself cs (because) this girl came up to me popping shit and they are blaming Chummy for it and it's not his fault I just want to leave honestly don't want to stay here like I can't I don't feel safe like I've been mentally emotionally verbally and physically abused and it's a lot and I'm overwhelmed and I keep cry[ing] every night having headaches they calling me mental and crazy saying ima disappointment all this stuff sis I need help my bags is packed I'm so ready to leave just wanted to let you know what was going on . . . and it's like all the pictures and stuff but they are never there for me mentally and physically like didn't even have Thanksgiving together like this is not a family at all and ima say whatever ima say to them however they take it cs idc atp (because I don't care at this point) like take it how you like take it how they want urb (you are bad) . . . they took me to the doctor . . . ran all these tests... took mad blood out . . . they the pediatrician saying ion (I don't) love myself and I'm crazy and all this other stuff . . . trying to put me on meds . . . saying I'm dumb ima zombie i'm a disappointment . . . my dad said he wants another daughter cut me off multiple times.

On January 4, 2024, J.S. had a direct message on Instagram with another user (S.M.). A portion of that direct message is below:

S.M.: Excuse me why ian see you

J.S.: didn't want my dad to take me to school so we was arguing . . . shit ain't sweet with him

S.M.: What happened

J.S.: cs (because) he said im taking you to school and I said no, I'm taking the bus and he was standing by my door and I kept pushing him so he can move and then he pushed me and I said ion wan be w you (I don't want to be with you) and he said im a nasty disgusting person and ima drop out and he call me dumb and he gon send me away all this bs (bullshit) like then he said he was gon (going to) throw me down the steps well "earth slam" and he said I'm not taking you and I changed my clothes and layed down . . . yup ain't playing w (with) him at all.

On March 28, 2024, detectives conducted a court approved search of the Defendants' residence. Detectives located a handwritten letter dated December 28, 2023, from J.S. to her parents behind clothing in Mrs. Small's bedroom closet. The beginning of the letter stated, "honestly, I'm going for peace, I keep disappointing you all, I'm just going to go. Must hate me

for not being perfect. Getting called dumb, crazy, mental and sick hurts but that's okay, I guess I'm the biggest disappointment for defending myself."

DEFENSE ARGUMENT

The Defense argues that (1) the indictment was manifestly deficient and palpable defective based upon insufficient evidence to establish a prima facie case supporting a violation of N.J.S.A. 2C:24-4(a), endangering the welfare of a child; (2) the State failed to provide a definition of "abused or neglected" child, which improperly influenced the grand jury's independence and decision making; (3) the State failed to provide exculpatory evidence; (4) the State failed to sever the indictments against the Defendant and Mr. Small which caused undue prejudice; and (5) the State's decision to prosecute the Defendant for the second-degree offense was arbitrarily capricious.

STATE'S ARGUMENT

The State argues that (1) the grand jury heard both legal instruction and testimony sufficient to substantiate that the Defendant knowingly cause the child harm and knew such conduct would cause the child harm that would make the child abused or neglected, as required by N.J.S.A. 2C:24-4a(2); (2) the grand jury was provided with the definition of "abused or neglected" child; (3) the State presented clearly exculpatory evidence to the grand jury, as required by Hogan; (4) the indictment properly joined the Defendant with Mr. Small such that dismissal is not warranted; and (5) the State may charge the Defendant with Endangering the Welfare of a Child, even though the Defendant's actions also implicate the child abuse and neglected statute without violating the Separation Powers Doctrine.

LEGAL ANALYSIS

I. The Indictment is Neither Manifestly Deficient nor Palpably Defective to Warrant Dismissal.

Defendants may bring a Motion to Dismiss an Indictment based on a legal insufficiency or an evidential insufficiency. Evidential insufficiency motions are reserved for the pretrial stage in accordance with R. 3:10-2 cmt. n.3.2.3 (2010).

The defendant must clearly and plainly prove that the indictment is "manifestly deficient or palpably defective." State v. Hogan, 144 N.J. 216, 228 (1996). Every reasonable inference is to be given to the State when determining the sufficiency of the evidence to sustain the indictment. State v. Schenkolewski, 301 N.J. Super. 115, 137-38 (App. Div. 1997); State v. Morrison, 188 N.J. 2, 12-13 (2006). The Court in Hogan held that the State may not deceive the Grand Jury, nor may the State present "half-truth[s]." Hogan, 144 N.J. at 236.

When moving to dismiss an indictment, the defendant needs to prove clearly and plainly following: (1) the indictment was technically inadequate in setting forth the allegations. See State v. Spano, 128 N.J. Super. 90, 92 (App. Div. 1973), aff'd 64 N.J. 560 (1974); OR that (2) the State failed to present evidence that both directly negates an element of the offense and is clearly exculpatory. Hogan, 144 N.J. at 237.

When analyzing the adequacy of setting forth the allegations, the Court must determine whether the defendant showed that the State failed to provide a factual basis for the indictment, either on its face or in grand jury proceedings. State v. Mason, 355 N.J. Super. 296, 299 (App. Div. 2002). The defendant must also demonstrate that the State's evidence to support the charge against him is "clearly lacking." State v. McCrary, 97 N.J. 132, 142 (1984). The State only needs to present "some evidence" that establish the *prima facie* elements of the crime charged. State v. Morrison, 188 N.J. 2 (2008). The evidence, coupled with reasonable inferences, needs to lead a grand jury to conclude *both* that a crime has been committed *and* the defendant committed it. Id. The evidence on which the State relies does not need to be enough to sustain a conviction. State v. New Jersey Trade Waste Ass'n., 96 N.J. 8, 27 (1984). In addition to the Grand Jury making a determination that the State has established a *prima facie* case has been committed, it must be show that the accused was the actual person who committed it. Id. Even evidence that may be inadmissible at trial, such as hearsay, would be sufficient to sustain an indictment. Costello v. United States, 350 U.S. 359 (1956).

When analyzing failure to present exculpatory evidence, the Court must look at whether the State failed to present evidence that *both* directly negates an element of the offense *and* is clearly exculpatory. Hogan, 144 N.J. at 237. For evidence to be considered "clearly exculpatory", the evidence should be analyzed in the context of the nature and source of the evidence, and the strength of the State's case." State v. Evans, 352 N.J. Super. 178, 187 (2001). A defendant's self-serving statements or a potentially biased witness are not considered credible enough to be considered clearly exculpatory. Hogan, 144 N.J. at 238. The State is under no obligation to present the defendant's defense to a grand jury.

Although the decision to dismiss an indictment is within the discretion of the trial court, the indictment should be disturbed only "on the clearest and plainest ground" and only "when the indictment is manifestly deficient or palpably defective." Hogan, at 229. Additionally, the Court should give "due regard to the prosecutor's own evaluation of whether the evidence in question is clearly exculpatory." Id.

An indictment should be dismissed on prosecutorial misconduct grounds where the State's misconduct "is extreme and clearly infringes upon the [grand] jury decision-making function," such that it "substantially influenced the grand jury's decision to indict," or raises "grave doubt that the determination ultimately reached was arrived at fairly and impartially." Hogan, 336 N.J. Super at 339-40. The defendant must show more than doubt exists, there must be a grave doubt that the grand jury's determination was reached fairly and impartially before a court may dismiss an indictment. State v. Sivo, 341 N.J. Super. 302, 317 (2000). This can be based on either prosecutorial misconduct or selective prosecution. Id. An indictment is "manifestly deficient or palpably defective" when the defendant establishes that the indictment was a result of abdication to the prosecutor, or the grand jury acted with bad faith or misconduct. State v. Ferrante, 111 N.J. Super. 299 (App. Div. 1970).

In the instant matter, the Defense asserts that the Defendant's conduct merely amounted to a concerned mother disciplining her defiant daughter and that the State failed to present to the grand jury that J.S. was actually harmed. However, the State need only present "some evidence" that establish the *prima facie* elements of the crimes charged. Here, the State presented testimony concerning photographs of J.S.'s bruises and through the testimony of Detective Piatt and

Sergeant Ripley, recounted J.S.'s statements concerning her abuse (and her attempts to recant her statements) that corroborated the abuse alleged by J.S. to others. Therefore, the State presented sufficient evidence to establish the *prima facie* elements of Endangering the Welfare of a Child.

II. The State Provided Clear Instructions to the Grand Jury on the Definition of "abused or neglected child" as defined in N.J.S.A. 9:6-8.21.

The Defense alleges that the State failed to provide the Grand Jury with the definition of an "abused and neglected child." The Defense further alleges that such a definition was necessary in order to indict the Defendant on charges including such terminology. Without such definition, the Defendant argues, the State has failed to present a *prima facie* case.

It is "well-established that an indictment cannot stand if it fails to charge an offense." State v. Wein, 80 N.J. 491, 497 (1979). "An indictment must adequately identify and explain the criminal offense to enable the accused to prepare a defense." Ibid. (citing State v. Buratto, 80 N.J. 506 (1979)). This does not require the State to define each element of the offense, but instead to provide the elements themselves. Cf. State v. Wein, 80 N.J. at 498-99 (finding that the allegation that the Defendant acted willfully included the necessary scienter of knowingly for a crime of conspiracy and, although neither mens rea was defined, the grand jury presentment was nonetheless sufficient).

The State is not required to define each element of a crime in its grand jury presentment. It is enough that the State present some evidence of each element. See, State v. Bennet, *supra*. Here, the Grand Jury Transcript establishes that the State defined "abused or neglected" child to the Grand Jury. Undoubtedly, the State did not recite the definition of "abused or neglected" child *ad verbum*. See N.J.S.A. 9:6-1; N.J.S.A. 9:6-8.21; N.J.S.A. 9:6-3.¹ Nevertheless, the State went beyond what is required by law and provided the following definition to the Grand Jury:

The second element that the State must prove by *prima facie* evidence is that the defendants knowingly caused the child harm that would make the child abused or neglected. An abused -- An abused or neglected child means, among other things: "A child whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of the defendant or defendants to exercise a minimum degree of care in providing the child with proper supervision or guardianship by unreasonably inflicting or allowing to be inflicted, or a substantial risk thereof, including the infliction of excessive corporal punishment, or any other acts of a similarly serious nature requiring the aid of the court."

[T 4:12-5:3]

N.J.S.A. 9:6-8.21 in pertinent part, defines "abused or neglected child" as including:

(1) a child whose guardians inflict or allow to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted

¹ N.J.S.A. 9:6-3 and N.J.S.A. 9:6-1 are inapplicable in this case.

impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ.” (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court[.]

Id.

The Defense attacks the indictment with arguments disputing the circumstances of the alleged incidents between December 2023 and January 2024. These arguments touching upon factual disparities and other perceived inadequacies in the evidence are not germane at this juncture. Should the Defense choose to go to trial there will be the opportunity to challenge the facts, including that the Defendant’s alleged actions and the circumstances surrounding the alleged instances of abuse, and whether J.S., by definition, was an “abused or neglected child.” However, these assertions do not have an impact upon the sufficiency of the evidence offered by the State. As such, the evidence presented to the Grand Jury through the testimony of Sergeant Ripley and Detective Piatt more than adequately met the State’s burden to provide some evidence on each element of the offense. Moreover, the legal instructions provided were sufficient to allow the Grand Jury to carry out its accusatory function. Therefore, it is apparent that the instructions and definitions provided to the Grand Jury were not palpably defective to warrant dismissal.

III. The State Presented the Grand Jury with Facts Related to J.S.’s Initial Denial of the Allegations of Abuse to DCPD.

Even when the State has presented a *prima facie* case that the accused has committed a crime, and the indictment is, therefore, “technically adequate,” the indictment must be dismissed if the State has failed to present clearly exculpatory evidence to the grand jury. After reviewing U.S. v. Williams, 504 U.S. 36 (1992), which held that under no circumstance could a federal

court dismiss an indictment based on a prosecutor's failure to present exculpatory evidence, the New Jersey Supreme Court determined that New Jersey precedent, on the other hand, "...make[s] clear that this Court may invoke its supervisory power to remedy perceived injustices in grand jury proceedings." Hogan, 144 N.J. at 231. A defendant must show that the prosecutor failed to include evidence in its presentation that both directly negates guilt and is clearly exculpatory. Id. at 237.

As stated by the Court:

[T]he Grand Jury cannot be denied access to evidence that is credible, material, and so clearly exculpatory as to induce a rational grand juror to conclude that the State has not made out a *prima facie* case against the accused...The second requirement, that the evidence in question be clearly exculpatory, requires an evaluation of the quality and reliability of the evidence.

Id. at 236 (internal quotations removed).

The Hogan Court listed reliable physical evidence among evidence that should be presented to the jury as clearly exculpatory. The Court in State v. Evans further analyzed the holding of the Hogan Court:

The Court found that the first requirement is met only if the evidence squarely refutes an element of the crime in question. As to the second requirement, the Court concluded that a determination as to whether evidence is 'clearly exculpatory' requires an evaluation of its quality and reliability. The exculpatory value of the evidence should be analyzed in the context of the nature and source of the evidence, and the strength of the State's case.

State v. Evans, 352 N.J. Super. 178, 187 (Law Div. 2001) (internal quotations removed).

Finally,

[T]he State may not deceive the grand jury or present its evidence in a way that is tantamount to telling the grand jury a "half-truth." Although the grand jury is not the final adjudicator of guilt and innocence, the presence of the right to indictment in the State Constitution indicates that the grand jury was intended to be more than a rubber stamp of the prosecutor's office.

Hogan, 144 N.J. at 236.

Keeping this in mind, the scope of this court's review is limited and indictments are not to be disturbed except upon a showing of fundamental unfairness to a defendant or the

intentional subversion of the grand jury process by the prosecutor. It is an arduous task for any defendant to meet the burden of proof sufficient to dismiss an indictment on the basis of either prosecutorial misconduct or selective prosecution. State v. Sivo, 341 N.J. Super. 302, 317 (2000). An indictment should not be dismissed unless the prosecutor's error was "clearly capable of producing an unjust result." Treistan, 416 N.J. Super. at 202. More than mere doubt or uncertainty that an indictment was arrived at improperly is required; New Jersey courts have required that there be grave doubt that the Grand Jury's determination was reached fairly and impartially before a court may dismiss an indictment. Sivo, 341 N.J. Super. at 317. Ultimately, however, discretion rests with this Court when it reviews the facts of the immediate case and considers defendant's motion to dismiss the indictment. See State v. McCrary, 97 N.J. 132, 144 (1984).

Here, the Defense argues that the State failed to provide exculpatory evidence that J.S. denied allegations of abuse on multiple instances. However, Sergeant Ripley during the Grand Jury proceedings testified that J.S. denied allegations of abuse during a meeting with DCP&P on January 24, 2025, amongst other similar instances. For instance, the transcript provides:

- Q. Later that night of the 24th of January did workers from DCP&P go to the Small residence to interview J.S. and her younger brother?
- A. Yes.
- Q. And according to the DCP&P worker, both interviews were conducted in the presence of Marty and La'Quetta Small, correct?
- A. Yes.
- Q. In your experience as a detective with SVU, is that normal to interview victims in front of their alleged abusers?
- A. No.
- Q. During the interview of both J.S. and her younger brother, did they both deny any abuse was happening?
- A. Yes.
- Q. And did J.S., in fact, tell DCP&P that she made the whole thing up?
- A. Yes.
- Q. And did she tell DCP&P why she made it up?
- A. She told DCP&P she made it up because her parents took her phone away, and neither of her parents agreed with her relationship with her boyfriend.

[T 18:12-19:9]

The record shows that instances of J.S. denying the abuse was presented to the Grand Jury to fully consider the charges against the Defendant. As such, the Defendant's assertions do not provide any legal basis to dismiss the indictment. The factual contentions between the parties are within the province of the petit jury, not the Grand Jury.

IV. The State was not Required to Sever Defendants for the Grand Jury Proceedings and the Defendant did not Suffer Undue Prejudice by a Joint Presentation to the Grand Jury.

R. 3:7-7, which permits the State to charge two or more defendants in the same indictment, requires that the defendants "are alleged to have participated in the same act or transaction" . . . [s]uch defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

In the State's introduction to the Grand Jury the State explained:

Today we have a case captioned State of New Jersey vs. Marty Small, Sr. and La'Quetta Small. It is a three count indictment charging both defendants with endangering the welfare of a child, and charging Marty Small with terroristic threats and aggravated assault.²

[T 3:4-8]

Here, it appears that the Grand Jury was properly instructed as to which counts of the indictment corresponded with each Defendant. The abuse alleged to have occurred over a two-month period encompasses a series of incidents between the Defendants and their daughter, J.S., in which several instances allege joint participation of the Defendants against J.S. The transcript of the grand jury presentation shows that the State made an orderly, logical and straightforward presentation of the testimony regarding the events between J.S. and her parents that occurred over the span of several weeks. The witness testimony was clear and understandable. The facts elicited from the witnesses, and the reasonable inferences that could be drawn from those facts, more than adequately and clearly delineated the specific acts that supported the allegations made against the Defendant by J.S. As such, the Grand Jury was not deprived of their accusatory function and the Defendant did not suffer undue prejudice by a joint presentation before the Grand Jury.

V. The State's Decision to Charge the Defendant with Second Degree Endangering the Welfare of a Child was Wholly within its Discretion and does not Warrant Dismissal of the Indictment.

"Specific conduct may violate more than one statute." State v. D.V., 348 N.J. Super, 107, 114 (App. Div. 2002) (citing State v. Blount, 60 N.J. 23, 21 (1972)). "Where two criminal statutes prohibit the same basic act, the prosecutor may in the exercise of sound discretion proceeding under with or both statutes as long as only [a] single conviction survives. Id. (internal citations omitted). "The discretionary authority of the prosecutor in enforcement of criminal laws is well-settled." Id. at 115. It is the fundamental responsibility of the prosecutor to decide whom to prosecute and what charges are to be considered." Id. (citing State v. Kraft, 265 N.J. Super.

² In the Defense's supplemental brief dated May 6, 2025, the Defense argues that dismissal of the indictment is required because the State provided the definition of conspiracy to the Grand Jury during its preliminary instructions. However, the Court finds that the preliminary general instructions to the Grand Jury on June 28, 2024, did not adversely effect the Grand Jury's deliberations during the presentation of the Defendant's case on September 17, 2024. Additionally, the record shows that there was no mention of conspiracy during the presentation of the Defendant's case.

106, 111 (App.Div.1993)). “The factual complex, the conduct of defendant and the extent of sentencing exposure are relevant considerations for the prosecutor to consider.” *Id.* (citing *Lagares*, 127 N.J. 20, 27 (1992)). “More than two decades ago the United States Supreme Court held that when ‘an act violates more than one criminal statute, the Government may prosecute against either so long as it does not discriminate against any class of defendants.’” *Id.* (quoting *United States v. Batchelder*, 442 U.S. 114, 123-24 (1979)).

[T]here is not appreciable difference between the discretion a prosecutor exercises when deciding whether to charge under one of two statutes with different elements and the discretion he exercises when choosing one of two statutes with identical elements. In the former situation, once he determines that the proof will support conviction under either statute, his decision is distinguishable from the one he faces in the latter context. The prosecutor may be influenced by the penalties available upon conviction, but this fact, standing alone does not give rise to a violation of the Equal Protection of Due Process Clause.

Id. (citing *Batchelder*, *supra*, 442 U.S. at 125)

Concerning the State of New Jersey’s laws criminalizing endangering the welfare of a child, a prosecutor’s decision to “select between a crime of the second degree under the Criminal Justice Code and a fourth degree offense under Title 9 does not mean that the exercise of discretion in favor of the charge with the greater penalty is ‘unfettered’ or ‘unbridled.’” *Id.* “Generally, where specific conduct may violate more than one statute, the more serious grade or offense will govern. *Id.* (citing *State v. Eure*, 304 N.J. Super. 469, 475, 701 A.2d 464 (App. Div.), *certif. denied*, 152 N.J. 193, 704 A.2d 23 (1997)). “Furthermore, the primary concern of Title 9 is protection of children, while the focus of the Criminal Justice Code is in fact the criminal culpability of those accused.” *Id.* (internal citations omitted). “Those prosecuted for violation of *N.J.S.A.* 9:6-3 are arguably guilty of less egregious or repetitive criminal conduct than those confronted with the second degree penalties of *N.J.S.A.* 2C:24-4a.” “The selection of the charge rests in the sound discretion of the prosecutor.” *D.V.*, 348 N.J. Super. at 115-116.

However, “prosecutorial discretion is not without limits. Where it is clearly and convincingly shown that an exercise of prosecutorial discretion is arbitrary, capricious or otherwise constituted a patent or gross abuse of discretion, the judiciary will intervene” *Id.* at 116.

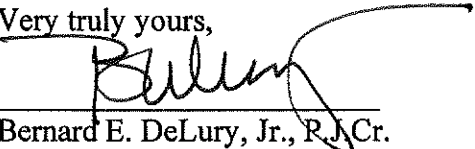
Here, the Defense failed to show an arbitrary or capricious abuse of discretion in charging the Defendant with second degree endangering the welfare of a child pursuant to *N.J.S.A.* 2C:24-4a. The conduct alleged is within the purview of the statute and does not require the Court to intervene in view of the prosecutor’s exercise of sound discretion. The discretionary decisions of the State in this case appear within the ambit of prosecutorial discretion. It would appear, based on the circumstances of inter-familial violence ranging over several weeks, that the Defendant’s conduct was more egregious and repetitive warranting a charging decision under the more serious version of child abuse.

CONCLUSION

The Court concludes that the Defendant's motion to dismiss the Indictment Number 24-09-2951 must be and hereby is **DENIED**. The Court has prepared, entered and attached an Order setting forth its decision.

BED/ep
Encl.

Very truly yours,


Bernard E. DeLury, Jr., P.J.Cr.