

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-03580-23

STATE OF NEW JERSEY, : CRIMINAL ACTION

Plaintiff-Respondent, : On Appeal from a Judgment of
v. : Conviction of the Superior Court of
ANNAMARIE TIERNO, : New Jersey, Law Division, Camden
Defendant-Appellant. : County.
: Indictment No. 22-12-03623-I
: Sat Below:
: Hon. Yolanda C. Rodriguez J.S.C.,

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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Dated: July 10, 2025

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PRELIMINARY STATEMENT

Ms. Annamarie Tierno is a 63-year-old woman who has lived in poverty for the majority of her life. In 2022, she was introduced to a man named Garry Carter who, she was told, sold cars for a living and was interested in buying her house for \$55,000. Carter helped Tierno complete the logistics of the sale, first formally transferring the deed at the county office before helping her open up a new bank account, and depositing the \$55,000 that Carter provided in cash into the account. Instead of this being a joyous occasion for Tierno, this became the basis for her conviction for third-degree money laundering that resulted in her forfeiting her interest in the \$55,000. Unbeknownst to Tierno, Carter was the target of a long-term investigation into a Camden drug trafficking network where police accused Carter of being the network's leader.

Tierno's act of simply selling Carter her house for cash did not, in fact, constitute criminal conduct under the money laundering statute, N.J.S.A. 2C:21-25. Accusations that a defendant entered into a transaction involving property derived from criminal activity must be prosecuted under subsection (b) of N.J.S.A. 2C:21-25. Under subsection (b), the act of entering into a transaction with proceeds from criminal activity is not a crime unless and until the State proves that the transaction was conducted either with the intention to promote the underlying criminal activity, or with knowledge that the transaction was

conducted to conceal its criminal nature or avoid a reporting requirement. Tierno had no such intention or knowledge.

Despite this, the trial court accepted Tierno's plea and found her guilty under a different subsection of the money laundering statute – subsection (a) – which criminalizes the distinct conduct of transporting or possessing criminally derived property. Under a correct interpretation of N.J.S.A. 2C:21-25, however, Tierno's conduct of transacting cannot be prosecuted under subsection (a). And the statutory construction of N.J.S.A. 2C:21-25 that is required in order to uphold Tierno's conviction under subsection (a) would be improper and unenforceable for two reasons. First, the interpretation would render an entire subsection of the money laundering statute, N.J.S.A. 2C:21-25(b), unnecessary and superfluous, contrary to the Legislature's intent. Second, such an interpretation would make it impossible to know what the money laundering statute criminalizes, thereby making the statute unconstitutionally vague and unenforceable as applied to Tierno. Because these consequences run contrary to longstanding principles of statutory interpretation, and in order to avoid a constitutional defect, Tierno's guilty plea must be vacated.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Camden County Indictment No. 22-12-3623-I charged Tierno with one count of third-degree money laundering under subsections “[([a])] and/or [(b)]” of N.J.S.A. 2C:21-25. (Da24) Tierno was charged only under count twenty-three of the twenty-eight count indictment. (Da1-29) The remaining counts charged the five other codefendants with drug distribution and related charges stemming from a “yearlong investigation” into what the State alleged was a large drug trafficking network. (1T25-22 to 26-13) The State alleged that the drug network was operated by codefendant Garry S. Carter, who was charged with first-degree leader of a narcotics trafficking network along with twenty-two other drug distribution related charges. (Da2-25) Tierno was the only codefendant not charged with a drug distribution or related offense. (Da1-29)

On July 11, 2023, the Honorable Yolanda C. Rodriguez, J.S.C. heard argument on Tierno’s motion to dismiss the single count of money laundering for failure to make out a prima facie case. (1T) The facts elicited at grand jury testimony focused on details of the sale of the house, including that Tierno’s codefendants picked her up and drove her to the bank; that Tierno opened a bank account on the same day as the sale; and that her codefendants paid for the house

¹ Due to the interrelated nature of the procedural history and statement of facts in this case, the two sections have been combined for clarity.

in cash. (1T25-22 to 28-10) Because the State’s case was limited to details of the sale of the house itself, Tierno argued that the facts could not make out a prima facie case of money laundering under N.J.S.A. 2C:21-25 where there was not sufficient proof that Tierno knew that Mr. Carter was involved in the drug trade, and that it’s “not illegal...to sell your house to somebody for cash.” (1T3-23 to 4-7) Following briefing and argument, the trial court denied the motion in an oral ruling on the record, holding that regardless of whether Tierno actually knew that the property in question was derived from criminal activity, the State had made out a prima facie case that she at least “should have known” that it was derived from criminal activity. (1T33-4 to 11)

On January 30, 2024 Tierno entered a guilty plea to third-degree money laundering. (Da37-42) The plea form did not indicate what subsection of the money laundering statute she would plead guilty to, describing the offense only as “money laundering[.]” (Da37) At the plea hearing, defense counsel initially began eliciting the factual basis:

Q: [O]n or about September 22, 2022 [...] you had a home; is that correct?

A: Yes.

Q: And you received some money for that home, correct?

A: Yes.

Q: And you engaged in – did you engage in the transaction of violent² property known to derive from the criminal activity?

A: Yes.

Q: And you put the property in a bank, right?

A: Yes.

Q: And that was to avoid any transaction reporting requirement, correct?

[(2T8-10 to 9-2)]

The State then interjected to address the confusion over which subsection Tierno was pleading to, asking, “[i]t’s one or the other?” (2T9-3) Defense counsel replied, “[w]hich one – which one –” before continuing without indicating whether Tierno was pleading to subsection (a) or subsection (b) of N.J.S.A. 2C:21-25. (2T9-4) Defense counsel’s questioning continued:

Q: Did you intend to conceal the nature of the proceeds?

A: No.

[(2T9-5 to 7)]

The State then took over questioning:

² The money laundering statute, N.J.S.A. 2C:21-25, makes no reference to violent property or violence of any kind. This reference to “violent property” seems to have been a misstatement or scrivener’s error, and will not be considered in Tierno’s argument as to the sufficiency of the factual basis.

Q: Ms. Tierno, did you sell your house to an individual?

A: Yes.

Q: And you knew that the proceeds that you were receiving for that house were proceeds – money derived from criminal activity; is that correct?

[Defense Counsel]: Is that correct?

Q: If you don't –

A: Yes. I guess.

Q: Okay.

A: Yes.

[(2T9-14 to 24)]

The State then asked a series of questions to determine where specifically Tierno deposited the proceeds from the sale of the house. Tierno was confident that she deposited the money in a TD Bank, but she could not remember if the bank was in fact located in Camden City, as the State alleged, explaining that “[i]t was a while ago.” (2T10-1 to 12) When the State noted that there were pictures taken of her in a TD Bank “with other individuals,” Tierno said that she “didn't see the pictures” but she ultimately agreed that if the State told her “that the pictures in this case came from a TD Bank in Camden” she would not have “any reason to dispute that[.]” (2T10-13 to 11-8) The State continued:

Q: And you knew that the money you were depositing into the account you created that day, correct?

A: Yes.

Q: And that proceeds of criminal activity, correct?

A: Yes.

[(2T11-9 to 15)]

Defense counsel asked one final question to determine the basis of Tierno's knowledge that the money she deposited was derived from criminal activity:

Q: And the criminal activity that you knew what – that this person was involved with drug sales, correct?

A: Yes.

[(2T11-17 to 24)]

Satisfied with the questioning, the court accepted her guilty plea and outlined the details of the plea agreement wherein in exchange for Tierno's plea, the State recommended a sentence of "two-years non-custodial probation" and "forfeiture of whatever interest [Tierno] may have had in the \$55,000 that was deposited in the bank account" as proceeds of the sale of her home. (2T7-17 to 24)

On May 10, 2024, the court sentenced Tierno to those conditions outlined in the plea. (3T9-15 to 18) The presentence report and judgment of conviction both indicate that Tierno was convicted under subsection (a) of the money laundering statute. N.J.S.A. 2C:21-25(a). (PSR1) (Da43)

Tierno filed a timely notice of appeal on July 18, 2024. (Da47-49) Her appeal was initially placed on the Sentencing Oral Argument docket before being transferred to the plenary docket for briefing upon this Court's grant of Tierno's motion to transfer. (Da50-53) This brief follows.

LEGAL ARGUMENT

POINT I

DEFENDANT'S GUILTY PLEA MUST BE VACATED BECAUSE (A) UNDER THE CORRECT INTERPRETATION OF THE MONEY LAUNDERING STATUTE THE FACTUAL BASIS OF HER GUILTY PLEA WAS INSUFFICIENT FOR A CONVICTION, AND (B) THE COURT'S INTERPRETATION OF THE STATUTE IS UNENFORCEABLE AGAINST DEFENDANT BECAUSE IT IS UNCONSTITUTIONALLY VAGUE AS APPLIED. (Not Raised Below)³

Tierno was accused of engaging in a transaction with property known to be derived from criminal activity. Allegations of unlawful transactions are

³ Tierno argued at the motion to dismiss the indictment that the facts as alleged by the State were not sufficient to make out even a prima facie case of money laundering. (1T3-15 to 9-6) However, Tierno is not appealing the trial court's ruling on the motion to dismiss because at that hearing Tierno did not take issue with either the court's construction of the money laundering statute nor the constitutional propriety of the statute as applied to her conduct – the two arguments she raises now with respect to the sufficiency of her guilty plea. (1T) If Tierno prevails on appeal, she reserves the right to reopen her motion to dismiss the indictment against her and challenge the sufficiency of the grand jury testimony as failing to establish a prima facie case for money laundering under the correct interpretation of that statute argued for herein.

governed by subsection (b) of the money laundering statute. The facts elicited at Tierno's guilty plea did not meet all the essential elements for a conviction under subsection (b). This defect should have been fatal to the State's prosecution. Instead, Tierno was convicted under subsection (a) of the money laundering statute which governs the transportation or possession of criminally derived property. However, when the statute is properly construed in accordance with principles of statutory interpretation, and in avoidance of issues of vagueness, subsection (a) cannot apply to allegations involving transactions. Tierno's guilty plea must be vacated because, under the statutory interpretation Tierno asks this Court to adopt, the facts elicited at her guilty plea are inadequate to satisfy the essential elements of money laundering under either subsection (a) or subsection (b). Alternatively, if this Court does not adopt Tierno's requested interpretation, then her guilty plea must be vacated because the money laundering statute – as interpreted by the trial court – is unconstitutional as applied. U.S. Const. amends. V; XIV; N.J. Const. art. I, ¶¶ 1, 10.

Tierno was charged under both subsection (a) and subsection (b) of the money laundering statute, N.J.S.A. 2C:21-25, which holds that:

A person is guilty of a crime if the person:

- a. transports or possesses property known or which a reasonable person would believe to be derived from criminal activity; or

b. engages in a transaction involving property known or which a reasonable person would believe to be derived from criminal activity

- (1) with the intent to facilitate or promote the criminal activity; or
- (2) knowing that the transaction is designed in whole or in part:
 - (a) to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or
 - (b) to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States; or

[N.J.S.A. 2C:21-25.]

Subsection (a) carries only two required elements that must be proven for the State to secure a conviction: first, that defendant knowingly “transported or possessed property,” and second, that defendant “knew or a reasonable person would have believed that the property was derived from criminal activity.” Model Jury Charge (Criminal), “Financial Facilitation of Criminal Activity, Money Laundering, N.J.S.A. 2C:21-25(a)” (approved Jun. 15, 2009) (emphasis added). Subsection (b), on the other hand, carries three required elements. The first two elements are analogous to subsection (a) but criminalize the distinct act of transacting with criminally derived property, requiring proof that defendant “knowingly engaged in a transaction involving property” and that defendant

“knew, or a reasonable person would have believed, that the property was derived from criminal activity.” Model Jury Charge (Criminal), “Financial Facilitation of Criminal Activity, Money Laundering, N.J.S.A. 2C:21-25(b)(1) [Promotion Prong]” (approved Jun. 15, 2009) (emphasis added).

The third required element of subsection (b) can be proven by a satisfaction of either the “promotion prong” under subsection (b)(1) or the “concealment prong” under subsection (b)(2). Under subsection (b)(1) – the “promotion prong” – the State must prove that the “defendant’s intent was to facilitate or promote criminal activity.” Model Jury Charge (Criminal), “Financial Facilitation of Criminal Activity, Money Laundering, N.J.S.A. 2C:21-25(b)(1) [Promotion Prong]” (approved Jun. 15, 2009). And under subsection (b)(2) – the “concealment prong” – the State must prove that defendant “knew that the transaction was designed in whole or in part” to either (a) conceal certain details of the criminally derived property or (b) avoid a “transaction reporting requirement.” Model Jury Charge (Criminal), “Financial Facilitation of Criminal Activity, Money Laundering, N.J.S.A. 2C:21-25(b)(2) [Concealment Prong]” (approved Jun. 15, 2009).

Under the “plain meaning” of the money laundering statute, Tierno’s conduct clearly falls under subsection (b). See State v. Grate, 220 N.J. 317, 330 (2015) (citation omitted). At her guilty plea, the only act Tierno admitted to was

engaging in a “transaction” by “sell[ing] [her] house to an individual[.]” (2T8-20 to 11-24) The facts elicited at Tierno’s guilty plea, however, did not establish – nor did the State even allege – that Tierno satisfied either the concealment or promotion prong required for a conviction under subsection (b).

When defense counsel asked Tierno if she “intend[ed] to conceal the nature of the proceeds?” she unequivocally replied, “No.” (2T9-5 to 7) And the State asked no questions at all as to the concealment or promotion prong. The factual basis was thus inadequate to meet the required elements under the plain language of the money laundering statute, wherein Tierno’s conduct, i.e. a transaction, must be prosecuted under subsection (b), with the concomitant requirement of satisfying either the concealment or the promotion prong. N.J.S.A. 2C:21-25.

Tierno, however, was convicted and sentenced under subsection (a) of the money laundering statute, N.J.S.A. 2C:21-25(a), which criminalizes the distinct act of “transport[ing] or possess[ing]” property known to be derived from criminal activity. N.J.S.A. 2C:21-25(a). The presumable justification for prosecuting Tierno under subsection (a), although unstated by either the State or the trial court, seems to be that the act of transacting with property will also necessarily entail the act of possessing that property. Under this interpretation,

all transactions involving property derived from criminal activity would be prosecutable under either subsection (a) or subsection (b).

This interpretation, applied in effect by the trial court through Tierno's conviction, is inconsistent with several principles of statutory construction and is therefore incorrect, and unenforceable. Specifically, as will be discussed in Point I.A., the applied interpretation would render all of subsection (b) as unnecessary surplusage, thereby depriving the Legislature of their intent in creating that subsection with its own unique element. The applied construction would also render the statute unconstitutionally vague as applied to Tierno's conduct because a person of ordinary intelligence would not be able to determine with sufficient clarity what conduct the statute actually prohibits.

Accordingly, this Court must clarify that under N.J.S.A. 2C:21-25, a defendant accused of engaging in a transaction involving property known or which a reasonable person would believe to be derived from criminal activity may only be prosecuted under subsection (b) and will only rise to criminal culpability upon a successful showing of either the concealment or the promotion prong pursuant to subsections (b)(1) and/or (b)(2). N.J.S.A. 2C:21-25(b). Under this interpretation, the facts elicited at Tierno's guilty plea are inadequate for a conviction under either subsection (a) or subsection (b), requiring that her plea be vacated. State v. Tate, 220 N.J. 393, 404 (2015) (“[I]f

a factual basis has not been given to support a guilty plea, the analysis ends and the plea must be vacated.”).

Alternatively, if this Court declines to adopt this construction of N.J.S.A. 2C:21-25, this Court must nonetheless vacate Tierno’s guilty plea because the statute, as interpreted by the trial court, was unconstitutionally vague as applied to Tierno for the reasons set forth in Point I.B., and is therefore unenforceable against her.

A. The Factual Basis Of Defendant’s Guilty Plea Does Not Constitute Criminal Conduct Under The Money Laundering Statute When Properly Construed To Comport With Principles Of Statutory Interpretation And To Avoid Constitutional Defect.

Principles of statutory interpretation and the prohibition against unconstitutionally vague statutes compel the same construction of the money laundering statute. That is, in order to give effect to the plain meaning of the statute without rendering subsection (b) as surplusage, and in order to avoid the constitutional defect of vagueness, N.J.S.A. 2C:21-25 must be interpreted such that transactions involving property known to be derived from criminal activity can only be prosecuted under subsection (b), and cannot be prosecuted under subsection (a).

Appellate courts consider issues of statutory interpretation de novo. Grate, 220 N.J. at 329. To give effect to the Legislature’s intent, courts first assess the plain meaning of the statute’s language. Id. at 330. If the plain language is

unclear, courts may review extrinsic evidence, such as the legislative history. State v. Munafo, 222 N.J. 480, 488 (2015). And if an analysis of that evidence “fails to resolve a statutory ambiguity with respect to a criminal statute, that ambiguity is resolved in favor of the defendant.” State v. Majewski, 450 N.J. Super. 353, 361 (App. Div. 2017) (citation omitted); see also State v. Shelley, 205 N.J. 320, 328 (2011) (“[W]e must strictly construe the language of [a penal statute] where there is some uncertainty as to its application.”).

Two principles of statutory construction are particularly relevant here: the requirement that courts interpret statutes to avoid rendering portions of a statute as surplusage, and the requirement that courts interpret statutes to avoid constitutional defects. Concerning issues of surplusage, courts “should strive for an interpretation that gives effect to all of the statutory provisions and does not render any language inoperative, superfluous, void or insignificant.” G.S. v. Department of Human Services, Div. of Youth and Family Services, 157 N.J. 161, 172 (1999). Courts “must presume that every word in [the] statute has meaning and is not mere surplusage, and therefore must give those words effect and not render them a nullity.” In re Attorney General’s ‘Directive on Exit Polling: Media and Non-Partisan Public Interest Groups,’ Issued July 18, 2007 (A-47-08), 200 N.J. 283, 298 (2009).

Concerning issues of vagueness, when interpreting a challenged statute, courts should “proceed ‘under the assumption that the legislature intended to act in a constitutional manner.’” State v. Burkert, 231 N.J. 257, 276-280 (2017) (citing State v. Johnson, 166 N.J. 523, 540-41 (2001)). Provided that a statute is “reasonably susceptible” to an interpretation that will render it constitutional, courts must construe the statute to conform to the Constitution, thus removing any doubt about its validity. Id. at 277 (citing State v. Profaci, 56 N.J. 346, 350 (1970)). The constitutional defect at issue here – vagueness – occurs where “a person of ordinary intelligence [is unable] to reasonably determine what conduct is prescribed by the statute so that he or she may act in conformity therewith.” State v. Brady, 332 N.J. Super. 445, 450-51 (App. Div. 2000). In order to avoid issues of vagueness, courts must interpret statutes in a manner that sufficiently distinguishes between innocent and criminally culpable conduct. New York v. Ferber, 458 U.S. 747, 764 (1982).

When applied here, these principles of statutory construction require that N.J.S.A. 2C:21-25 be interpreted such that allegations of transactions can only be prosecuted under subsection (b). This construction is necessary for two reasons. First, as discussed in Point I.A.i., the plain language of the statute contemplates that transactions be prosecuted only under subsection (b) – an interpretation that is supported by both existing case law and the rule against

surplusage. Second, as argued in Point I.A.ii., this interpretation would avoid rendering the statute unconstitutionally vague as applied to Tierno's conduct. When the statute is properly construed in this manner, it becomes clear that the facts Tierno admitted to at her guilty plea were not, in fact, sufficient to make out the necessary elements of N.J.S.A. 2C:21-25, therefore requiring that her plea be vacated, as argued in Point I.A.iii.

- i. Under the plain language of the money laundering statute, transactions involving property derived from criminal activity may only be prosecuted under subsection (b) of N.J.S.A. 2C:21-25.**

“The plain language of a statute is the best indicator of the statute's meaning, and statutory words should be read as they are commonly used and ordinarily understood.” State v. Scriven, 226 N.J. 20, 34 (2016). In interpreting the statute's plain meaning, courts should “read and construe words and phrases in their context,” and “consider the words of a statute in context with related provisions so as to give sense to the legislation as a whole.” State v. Carter, 247 N.J. 488, 513 (2021) (internal quotations omitted). “If the plain language leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources.” State v. D.A., 191 N.J. 158, 164 (2007).

Here, the plain language of the money laundering statute leads to a “clear and unambiguous result[.]” Ibid. Tierno pled guilty to entering into a transaction with property known to be derived from criminal activity. (2T8-10 to 9-24)

Subsection (b) is the only subsection that criminalizes the act of engaging “in a transaction” involving property known to be derived from criminal activity. N.J.S.A. 2C:21-25(b). Under the statute’s plain meaning, Tierno’s conduct is prosecutable under subsection (b) alone.

This conclusion is supported by this Court’s findings in State v. Harris, 373 N.J. Super. 253, 256 (App. Div. 2004) The defendant there, like Tierno, was accused of engaging in an unlawful transaction: she was an attorney representing a real estate agent who had engaged in the fraudulent practice of “sell[ing] a house prior to actually owning a house so he could use the funds in a subsequent purchase.” Id. at 257. In rejecting Harris’s argument that “the money laundering statute is inapplicable to her actions,” this Court made several findings relevant here. First, the Court found that, “[t]he statute is clear on its face.” Id. at 269. Next, the Court found that “[t]he text of N.J.S.A. 2C:21-25 makes clear by use of the designations (a) or (b) or (c) that it criminalizes three distinct types of conduct.” Id. at 263 (emphasis added). Finally, the Court found that “Defendant was properly charged” when she was indicted and convicted under subsection (b). Ibid.

Tierno, like Harris, is accused of entering into a transaction with money known to be derived from criminal activity. As was true in Harris, an accusation

of an unlawful transaction is properly charged under subsection (b), and not under subsection (a) which governs a “distinct typ[e] of conduct.” Id. at 263.

The statutory interpretation here need not be more complex than that. Because the plain meaning of the text and this Court’s existing statutory interpretation from Harris both support the conclusion that Tierno may only be prosecuted under subsection (b), the “interpretive process should end” here. D.A., 191 N.J. at 164. For purposes of completeness, however, it is worth addressing the presumable – yet unspoken – construction of the statute relied upon by the State and the trial court that would support Tierno’s conviction under subsection (a). That is, because every transaction of property also necessarily entails possession of that property, a defendant who is prosecutable under subsection (b) – governing transactions – must also necessarily be prosecutable under subsection (a) governing transportation or possession of property.

This interpretation cannot be upheld as proper because it would render all of subsection (b) as unnecessary surplusage, contrary to the Legislature’s intent. As noted, courts must “presume that every word in [the interpreted] statute has meaning and is not mere surplusage.” M.R. v. N.J. Dep’t of Corrs., 478 N.J. Super. 377, 387 (App. Div. 2024). The reason that courts must avoid rendering portions of a statute as surplusage is that in doing so, courts necessarily fail to

give effect to the now-superfluous language. Such a result runs contrary to the “general principle of statutory construction that reviewing courts must give meaning to every word and phrase in a statute.” State v. C.C.W., ___ N.J. Super. ___, No. A-3637-23, 2025 WL 1226544, *5 (App. Div. Apr. 29, 2025).

The trial court’s construction of the money laundering statute here is improper for this very reason: it fails to give effect to any of subsection (b). That is, in order for Tierno’s conviction under subsection (a) to be upheld, N.J.S.A. 2C:21-25 must be interpreted as allowing for allegations of unlawful transactions to be prosecuted under either subsection (a) or subsection (b). If Tierno could be prosecuted under either subsection, as the trial court held, then there would be no reason for the State to ever prosecute a case under subsection (b), which carries the additional necessary element of satisfying the concealment or promotion prong under (b)(1) or (b)(2). N.J.S.A. 2C:21-25(b). This construction would leave subsection (a) with no meaning or effect – it would be “mere surplusage.” M.R., 478 N.J. Super. at 387.

Tierno’s case illustrates this clearly. As a defendant accused of engaging in a transaction involving property known to be derived from criminal activity, the Legislature intended for her to be tried under subsection (b) where she would only be found guilty if the State could prove that she intended to promote the underlying criminal activity, or knew that the transaction was intended to

conceal its criminal origin or avoid a transaction reporting requirement. N.J.S.A. 2C:21-25. The State could not prove either of these latter requirements under the promotion or concealment prong. When asked at her guilty plea if she had the intention of concealing the criminal nature of the proceeds, Tierno said “No.” (2T9-5 to 7) The State asked no follow-up questions. The failure to prove this necessary element under subsection (b) should have been a fatal flaw in the State’s prosecution. Instead, the unproven element was rendered unnecessary when the State simply prosecuted Tierno under subsection (a) which does not carry an analogous element requiring proof of either promotion or concealment. In other words, the concealment and promotion prongs in Tierno’s case had no effect – they were rendered unnecessary, meaningless surplusage. Such interpretations are prohibited. G.S., 157 N.J. at 172.

To avoid this prohibited result – as well as the constitutional defect discussed below – this Court must adopt Tierno’s interpretation wherein transactions may only be prosecuted under subsection (b) and not under subsection (a) of N.J.S.A. 2C:21-25.

- ii. This Court must construe N.J.S.A. 2C:21-25 in this manner to avoid rendering the statute unconstitutionally vague as applied to Defendant’s conduct.**

As discussed, the trial court’s interpretation justifying Tierno’s conviction under subsection (a) of N.J.S.A. 2C:21-25 is improper because it runs contrary to the

plain language of the statute, and it fails to fails to give effect to subsection (b) of N.J.S.A. 2C:21-25, rendering that subsection surplusage. The court's interpretation would also be improper because it would leave persons of ordinary intelligence guessing as to what conduct N.J.S.A. 2C:21-25 criminalizes, and what standards of guilt must be satisfied to make out a conviction. Statutes that fail to adequately specify what conduct they prohibit must be voided as unconstitutionally vague. In light of the principle that courts must adopt interpretations which avoid constitutional defects such as this, this Court must interpret the money laundering statute in the requested for manner where allegations of transactions may only be prosecuted under subsection (b) and not subsection (a).

Courts must construe statutes to conform with Federal and State Constitutions. Burkert, 231 N.J. at 277 (citation omitted). The constitutional defect which must be avoided in Tierno's case is vagueness. The void for vagueness doctrine is "essentially a procedural due process concept grounded in notions of fair play." State v. Lashinsky, 81 N.J. 1, 17 (1979). A statute is vague if "a person of ordinary intelligence [is unable] to reasonably determine what conduct is prescribed by the statute so that he or she may act in conformity therewith." Brady, 332 N.J. Super. at 450-51 (citations omitted). Vague laws are unconstitutional because they make it impossible for any person to discern the difference between innocent and criminal conduct; they permit unbridled discretion in their application; and they allow

for discriminatory and arbitrary enforcement. Carter, 247 N.J. at 518-21; State v. Cameron, 100 N.J. 586, 591-94, 602 (1985).

The test for determining whether a criminal statute is unconstitutionally vague on its face is whether “persons of common intelligence must necessarily guess at its meaning and differ as to its application.” State v. Mortimer, 135 N.J. 517, 532 (1994) (internal citation omitted). A statute may also be challenged as vague “as applied” “if the law does not with sufficient clarity prohibit the conduct against which it sought to be enforced.” Cameron, 100 N.J. at 591-94. “A party may test a law for vagueness as applied only with respect to his or her particular conduct; if a statute is vague as applied to that conduct, it will not be enforced even though the law might be validly imposed against others not similarly situated.” Id. at 593.

Unless N.J.S.A. 2C:21-25 is construed in accordance with the arguments set forth above, the statute does not give sufficiently clear and precise notice that the act of transacting with property known to be derived from criminal activity is prosecutable under subsection (a), making it impossible for a person of reasonable intelligence to know that they may be convicted under the standards of proof in subsection (a), as opposed to those outlined in subsection (b). The broad reading of the statute applied by the trial court in Tierno’s case must therefore be held as unconstitutionally vague because the statute so construed fails to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited,” and it fails

to “provide explicit standards” detailing how, and if, such conduct will be prosecuted. Ibid.; Winters v. New York, 333 U.S. 507, 515 (1948) (“There must be ascertainable standards of guilt.”). That is, without a clear and specific clarification as to which subsection can govern the prosecution of transactions, a person of ordinary intelligence would not be able to determine that the act of transacting would be evaluated under the standards of guilt from subsection (a). Such a statute – that fails to provide the applicable standards of guilt – must be invalidated as unconstitutionally vague. Cameron, 100 N.J. at 591-94.

To illustrate this lack of adequate notice, it will be helpful to consider a hypothetical person contemplating engaging in the conduct as admitted to at Tierno’s guilty plea who is attempting to “steer between lawful and unlawful conduct” and is consulting N.J.S.A. 2C:21-25 to guide their behavior accordingly. Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972); see C.C.W., ___ N.J. Super. at ___, 2025 WL at *10 (posing “hypothetical scenarios” in order to “tes[t] the boundaries of a statute” as part of its ruling on a question of statutory interpretation). Suppose that a cashier is working the cash register at a convenience store on a block where there are a considerable number of open-air drug sales. The cashier begins to recognize one individual whom the cashier often sees engaging in what appear to be drug sales. One day, right after the cashier sees the individual engage in an assumed drug sale, the individual walks into the convenience store and attempts

to purchase a bottle of water with a \$1 bill, explaining that it is hot outside and he is thirsty. The cashier consults N.J.S.A. 2C:21-25 to determine if it would be lawful to sell the individual the bottle of water.

By a plain reading of the statute, the cashier would justifiably assume that the propriety of the sale is governed under subsection (b) concerning transactions. Under subsection (b), even if the cashier knew that the \$1 bill was derived from criminal activity, he would conclude that the circumstances to satisfy the third element – the concealment or promotion prong – was not present: the cashier has no intent to facilitate or promote drug sales, and there is no reason to think that the transaction was intended to conceal the nature of the money's origin or avoid any transacting requirement because the \$1 sale was not unusual in any manner, and the buyer offered a reasonable, and believable explanation as to the reason for his purchase.

Under the court's interpretation, however, it does not matter that the cashier had no intent to promote criminal activity or no knowledge that the transaction was an attempt to conceal the criminal nature of the money or avoid any reporting requirements. As discussed, under the court's interpretation, subsection (b) has no effect because the cashier could just as properly be tried under subsection (a) where that additional element is absent. Under the court's interpretation, then, a police officer or prosecutor would be permitted to

conclude that, if the cashier goes forward with the sale, then he will have violated subsection (a) of N.J.S.A. 2C:21-25 because he will now be in possession of a \$1 bill which he knew to be derived from criminal activity. This, however, is not a conclusion that the cashier, or any person of ordinary intelligence, could reasonably conclude upon review of the text of N.J.S.A. 2C:21-25.

Accordingly, the money laundering statute so construed would be unconstitutionally vague as applied to the conduct admitted to at Tierno's guilty plea because it "lack[s] sufficient clarity respecting the conduct against which it is sought to be enforced." State v. Lenihan, 219 N.J. 251, 267 (2014) (quotation omitted). Because the trial court's broad interpretation leads to a constitutional defect, it must be rejected in favor of Tierno's interpretation argued for above which properly avoids any such defect. Carter, 247 N.J. at 518 (rejecting State's proposed "broad" reading of a statute which raised "constitutional concerns" because it did not "give clear and precise notice that it reaches [as] far" as the State's interpretation would allow for, and the Defendant's more "narrow" interpretation was consistent with the "plain meaning of the statute's wording").

- iii. Upon application of this interpretation of the statute, Defendant's plea must be vacated because the factual basis was insufficient to establish the necessary elements of N.J.S.A. 2C:21-25.**

Should this Court adopt this statutory construction, then it must vacate Tierno's guilty plea because the factual basis of her plea was insufficient to make out a conviction under either subsection (a) or subsection (b) as so construed. A trial court may accept a guilty plea only after "elicit[ing] from the defendant a comprehensive factual basis, addressing each element of a given offense in substantial detail." State v. Campfield, 213 N.J. 218, 236 (2013). The "court is not permitted to presume facts required to establish the essential elements of the crime." State v. Gregory, 220 N.J. 413, 421 (2015) (internal citations omitted). Rather, the "court must be satisfied from the lips of the defendant . . . that he committed every element of the crime charged." State v. Perez, 220 N.J. 423, 433 (2015) (internal citations omitted). This requirement "is designed to protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge." Id. (citing State v. Barboza, 115 N.J. 415, 421 (1989)). When an appellate court concludes on direct appeal that the plea lacked an adequate factual basis, "the analysis ends and the plea must be vacated." Tate, 220 N.J. at 404.

Tierno's plea must be vacated because the factual basis was insufficient to establish the crime of money laundering properly construed. Tierno entered into a guilty plea and was convicted under N.J.S.A. 2C:21-25(a), but the facts at her guilty

plea established only that she entered into a transaction involving property known to be derived from criminal activity. (2T8-10 to 9-24) Because Tierno pled guilty to N.J.S.A. 2C:21-25(a), the absence of facts establishing the essential element of “transport[ing] or possess[ing]” property, requires that her plea must be vacated. See Tate, 220 N.J. at 404.

And even if the plea could be recharacterized under subsection (b) the factual basis is likewise inadequate to establish the offense under that subsection because it did not make out the required elements of either the promotion or concealment prongs required by N.J.S.A. 2C:21-25(b). In fact, Tierno affirmatively denied that the transaction was done with the intent to “conceal the nature of the proceeds” as is required under subsection (b)(2). (2T9-5 to 7) The factual basis was thus insufficient under subsection (b) of N.J.S.A. 2C:21-25 as well. See State v. Gorman, 454 N.J. Super. 343, 348–49 (App. Div. 2018) (finding the defendant did not establish a factual basis for theft by deception where he affirmatively disavowed a required element). For these reasons, the factual basis was inadequate to establish Tierno was guilty of the crime of money laundering and her plea must be vacated. Tate, 220 N.J. at 404.

B. If This Court Does Not Construe The Money Laundering Statute In This Manner to Avoid a Constitutional Defect, This Court Must Find the Statute Unconstitutionally Vague as Applied to Defendant.

As discussed, N.J.S.A. 2C:21-25 should be interpreted such that allegations of transactions involving property known to be derived from criminal activity can only be prosecuted under subsection (b) and cannot be prosecuted under subsection (a). If this Court does not adopt Tierno's requested interpretation and instead upholds the interpretation applied by the trial court, this Court must nonetheless vacate Tierno's guilty plea because the statute so construed would be unconstitutionally vague as applied to her conduct.

For the reasons discussed in Part I.A.ii, a person of ordinary intelligence could not have known that N.J.S.A. 2C:21-25 can be interpreted so broadly as to allow for prosecutions of transactions under subsection (a). Because Tierno, and any person of ordinary intelligence in her position, could not "reasonably determine" that her conduct of transacting was "prescribed by the statute" under which she was convicted, her conviction must be vacated. Brady, 332 N.J. Super. at 450-51; Cameron, 100 N.J. at 593 ("[I]f a statute is vague as applied to [Defendant's] conduct, it will not be enforced[.]").

Lastly, this Court must consider Tierno's constitutional challenge on the merits even though her challenge is being raised for the first time on appeal. While a defendant who pleads guilty is usually prohibited from raising on appeal an argument

that “the State violated his constitutional rights prior to the plea[,]” State v. Knight, 183 N.J. 449, 470 (2005), questions about the constitutionality of a statute cannot be waived because they are jurisdictional – they concern whether the court had the power to enter the conviction at all. See United States v. Skinner, 25 F.3d 1314, 1317 (6th Cir. 1994) (“Although a guilty plea waives all non-jurisdictional defects... a vagueness challenge is a jurisdictional defect.”) (citing Blackledge v. Perry, 417 U.S. 21 (1974)); Menna v. New York, 423 U.S. 61, 62 n. 2 (1975) (guilty plea does not waive a claim that “the charge is one which the State may not constitutionally prosecute”); States v. Whited, 311 F.3d 259, 262 (3rd Cir. 2002) (although issue was not preserved by plea, jurisdictional issues, including those contesting constitutionality of a statute, are not barred by guilty plea); State v. Truglia, 97 N.J. 513, 523 (1984) (claims of merger may be raised following guilty plea).

Thus, a defendant does not forfeit her right to challenge the constitutionality of a statute upon which her conviction rests when she enters a guilty plea. Accordingly, as these issues are not waived by Tierno’s plea agreement, this Court should fully consider them and rule in her favor by reversing her conviction.

CONCLUSION

For the reasons explained above, the facts as elicited at Tierno's guilty plea (a) are insufficient for a conviction under the money laundering statute properly construed, and (b) cannot be enforced against her under the court's interpretation of the statute which is unconstitutionally vague as applied to Tierno. This Court must therefore vacate Tierno's guilty plea, reverse her convictions, and remand to the trial court for further proceedings.

Respectfully submitted,
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October 23, 2025

**LETTER-BRIEF IN LIEU OF FORMAL BRIEF
ON BEHALF OF THE STATE OF NEW JERSEY**

Honorable Judges of the Superior Court of New Jersey Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent)
v. Annamarie Tierno

(Defendant-Appellant)

Docket No. A-03580-23T5

Criminal Action: On Appeal from a Final Judgment of the
Superior Court of New Jersey, Law Division, Camden County.
Indictment No. 22-12-03623-I

Sat Below: Hon. Yolanda C. Rodriguez, J.S.C.

DEFENDANT IS NOT CONFINED

Honorable Judges:

Pursuant to R. 2:6-2(b) and R. 2:6-4(a) this letter-brief is submitted on behalf
of the State of New Jersey.

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COUNTERSTATEMENT OF PROCEDURAL HISTORY AND FACTS^{1,2}

Pursuant to Indictment Number 22-12-03623, a Camden County Grand Jury indicted defendant Annamarie Tierno with one count of third-degree money laundering and financial facilitation, in violation of N.J.S.A. 2C:21-25a and/or b (Count Twenty-Three). (Da24).

On July 11, 2023, following a hearing, the Honorable Yolanda C. Rodriguez, J.S.C., denied defendant's motion to dismiss. (1T).

On January 30, 2024, defendant pled guilty to third-degree money laundering. (2T3-20 to 24). In exchange for a guilty plea, the State recommended a sentence of two-years' non-custodial probation. (2T3-24 to 4-2). During the factual basis of the plea, defendant testified that on or about September 22, 2022, she had a home and "received some money for that home." (2T8-10 to 19). Defense counsel asked defendant: "And you engaged in -- did you engage in the transaction of violent [sic] property known to derive from the criminal activity?". (2T8-10 to 22). Defendant responded affirmatively. (2T8-23).

¹ For the sake of clarity, the State respectfully submits a combined Counterstatement of Procedural History and Facts under a single point heading.

² "1T" refers to motion to dismiss transcript dated July 11, 2023.

"2T" refers to the guilty plea transcript dated January 30, 2024.

"3T" refers to the sentencing transcript May 10, 2024.

"Da" refers to appendix to defendant's brief.

"Db" refers to defendant's brief.

"PSR" refers to defendant's presentence report.

Defendant also admitted she put the property, the money she received for her home, in a bank. (2T8-24 to 25). Defense counsel asked, “And that was to avoid any transaction reporting requirement, correct?” (2T9-1 to 2). Before any response from defendant, the prosecutor asked, “It’s one or the other?”. (2T9-1 to 3). Defense counsel responded by stating, “Which one -- which one --“. (2T9-4). Defense counsel then continued by asking defendant, “Did you intend to conceal the nature of the proceeds?” (2T9-5 to 6). Defendant responded, “No.” (2T9-7).

The court allowed the prosecutor, upon request, to question defendant. (2T9-8 to 12). Defendant admitted she sold her house to an individual and knew that the proceeds she received for that house was money derived from criminal activity. (2T9-14 to 24). Defendant later admitted, during defense counsel’s questioning, the criminal activity that the person was involved in was drug sales. (2T11-21 to 24).

The prosecutor further asked defendant: “And you took that money and you – although your house is in Clementon, you deposited it into a bank account in Camden City; is that correct?” (2T9-25 to 10-2). Defendant said, “No. I deposited it into TDBank.” (2T10-3). Defendant questioned whether the bank was in Camden, but stated it was a while ago. (2T10-4 to 12). She ultimately stated she had no reason to dispute that the prosecutor had pictures in this case from a TD Bank in Camden. (2T11-3 to 8). Defendant testified she deposited the money into an account that she created that day. (2T11-9 to 12).

Defendant informed the trial court that she was pleading guilty to Count Twenty-Three, third-degree money laundering. (2T12-15 to 23). The court told defendant the next step of the process was the preparation of a presentence report. (2T13-6 to 23). The court accepted her plea as it was satisfied that it was entered knowingly and voluntarily and there was an adequate factual basis for the plea. (2T13-24 to 14-7). Defendant's subsequent presentence report stated defendant's original and final charge of money laundering was in violation of N.J.S.A. 2C:21-25a. (PSR).

On May 10, 2024, defendant appeared for sentencing. (3T). Defense counsel made a correction to the presentence report only as to defendant's address. (3T4-1 to 8). In accordance with her plea agreement, defendant was sentenced to a two-year term of non-custodial probation. (3T9-15 to 18). The judgment of conviction stated that defendant's final charge was for third-degree money laundering-transportation/possession of criminal property, in violation of N.J.S.A. 2C:21-25a. (Da43).

On July 18, 2024, defendant filed a notice of appeal. (Da47-49). The case was originally scheduled on the Sentencing Oral Argument calendar, but was moved the plenary calendar. (See Da50-53).

This appeal follows:

LEGAL ARGUMENT

POINT I: THE TRIAL COURT PROPERLY ACCEPTED DEFENDANT’S GUILTY PLEA TO MONEY LAUNDERING AS THERE WAS A SUFFICIENT FACTUAL BASIS TO SUPPORT THE PLEA. [(Not Raised Below).]³

For the first time on appeal, defendant challenges the factual basis for her guilty plea and raises a constitutional challenge to the money laundering statute as applied to her. Defendant claims her guilty plea must be vacated because the factual basis elicited was inadequate to satisfy the essential elements of money laundering under N.J.S.A. 2C:21-25a or b. (Db9, 27-28). She argues, when the statute is properly construed in accordance with the principles of statutory interpretation and in avoidance of issues of vagueness, subsection (a) cannot apply to allegations involving transactions. (Db9, 21-26). Defendant asks this Court to find that the elicited facts were inadequate or, alternatively, vacate her guilty plea because the money laundering statute, as interpreted by the trial court, was unconstitutional as applied. (Db9 (citing U.S. Const. amends. V; XIV; N.J. Const. art. I, ¶¶ 1, 10), Db29-30).

Defendant’s arguments must fail because she provided an adequate factual basis for violating N.J.S.A. 2C:21-25a. She admitted to, and was convicted of, possessing property she knew was derived from criminal activity, the elements of

³ The State’s Point I addresses defendant’s Point I and subpoints.

subsection (a). Further, defendant pled guilty to that offense, and thus waived any constitutional challenge to the statute. Additionally, because defendant provided a sufficient factual basis for violating N.J.S.A. 2C:21-25a, there is no need for this Court to reach her constitutional argument. Accordingly, the State respectfully requests that this Court deny defendant's arguments and affirm her conviction and sentence.

Pursuant to New Jersey Court Rule 2:10-2, while an appellate court may, in the interest of justice, notice plain error not brought to the attention of the trial court, “[a]ny error or omission shall be disregarded” “unless it is of such a nature as to have been clearly capable of producing an unjust result”. “Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below.” State v. Galicia, 210 N.J. 364, 383 (2012) (citing Deerfield Estates, Inc. v. E. Brunswick, 60 N.J. 115, 120 (1972); State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006)). Appellate courts, however, can address questions that “go to the jurisdiction of the trial court or concern matters of great public interest.” State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

When a defendant pleads guilty to an offense, “our law requires that each element of the offense be addressed in the plea colloquy.” State v. Campfield, 213 N.J. 218, 231 (2013) (citations omitted). “The factual foundation may take one of

two forms; defendant may either explicitly admit guilt with respect to the elements or may ‘acknowledge [] ... facts constituting the essential elements of the crime.’” Ibid. (quoting State v. Sainz, 107 N.J. 283, 293 (1987)).

Here, defendant was indicted with one count of money laundering and financial facilitation, in violation of N.J.S.A. 2C:21-25a and/or b. (Da24). Those subsections of N.J.S.A. 2C:21-25 state:

A person is guilty of a crime if the person:

a. transports or possesses property known or which a reasonable person would believe to be derived from criminal activity; or

b. engages in a transaction involving property known or which a reasonable person would believe to be derived from criminal activity

(1) with the intent to facilitate or promote the criminal activity; or

(2) knowing that the transaction is designed in whole or in part:

(a) to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or

(b) to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States;

[N.J.S.A. 2C:21-25a, b.]

Thus, subsection (a) has two elements that the State must prove beyond a reasonable doubt: (1) the defendant knowingly transported or possessed property; and (2) the defendant knew or a reasonable person would have believed that the property was derived from criminal activity. Model Jury Charges (Criminal),

“Financial Facilitation of Criminal Activity [Money Laundering] (N.J.S.A. 2C:21-25a) (approved June 15, 2009).

Here, defendant pled guilty to, and was convicted of, third-degree money laundering in violation of N.J.S.A. 2C:21-25a, as noted in her presentence report and judgment of conviction, neither of which defendant objected to below. (PSR; Da43). At the guilty plea, defendant provided a sufficient factual basis, admitting to the two elements of the offense. First, she admitted that she received money for her home and she put it in a bank, (2T8-17 to 19, 8-24 to 25), thus she knowingly possessed the property. Defendant testified she deposited the money into an account she created that day. (2T11-9 to 12). Second, she admitted she sold her house to an individual knowing the proceeds she was receiving was money derived from criminal activity. (2T9-14 to 24). She further admitted, in response to defense counsel’s question, the criminal activity that the person was involved in was drug sales. (2T11-21 to 24). Thus, defendant admitted to the two elements of money laundering in violation of N.J.S.A. 2C:21-25a—possession of property and knowledge that it was derived from criminal activity. Accordingly, she provided a sufficient factual basis for that offense.

For the first time on appeal, defendant challenges the factual basis for her guilty plea, ignoring the fact that she admitted to the two elements of subsection (a), and focusing on arguments that transactions involving property derived from

criminal activity may only be prosecuted under subsection (b). (Db17-21). While defendant was questioned during her plea colloquy about a “transaction”, which would be relevant to subsection (b), those additional questions and her admissions did not diminish or retract from the factual basis that supported subsection (a) based on her possession and knowledge.

Defendant further contends that the presumable justification for prosecuting her under subsection (a) seemed to be that the act of transacting with property necessarily entailed the act of possessing it, and that interpretation is inconsistent with several principles of statutory construction and is incorrect and unenforceable. (Db12-13). She argues that that interpretation would render all of subsection (b) “unnecessary surplusage, thereby depriving the Legislature of their intent in creating that subsection with its own unique element.” (Db13, 19).

Defendant’s adequate factual basis to subsection (a), however, would not render subsection (b) “surplusage”. Subsection (b) applies to a different type of conduct, transactions, for actors who are not required to possess the property derived from criminal activity. The Legislature clearly intended subsection (b) to apply to persons engage in a transaction, for example, a real estate agent or an attorney, with intent to promote or conceal, without requiring possession. Thus, the two subsections criminalize different conduct. Defendant’s factual basis based on her possession does not render the transaction provisions “surplusage”. Furthermore,

defendant's factual basis that provided more admissions than were necessary for subsection (a), with mention of a transaction, did not make her guilty plea insufficient for pleading guilty to possession of property known to be derived from criminal activity

Defendant also contends that if this Court does not adopt her interpretation of N.J.S.C. 2C:21-25, such that allegations of transactions can only be prosecuted under subsection (b), not subsection (a), that her guilty plea should be vacated because the statute so construed would be unconstitutionally vague as applied to her conduct. (Db29). As defendant acknowledges, however, this issue is being raised for the first time on appeal. (Db29). Defendant waived her right to challenge the constitutionality of the money laundering statute when she pled guilty. See State v. Smith, 307 N.J. Super. 1, 7 (App. Div. 1997) (“Generally, a guilty plea constitutes a waiver of all issues that were or could have been raised in prior proceedings.” (citations omitted)); State v. Raymond, 113 N.J. Super. 222, 226–27 (App. Div. 1971) (ruling the defendant waived a constitutional challenge to the abortion statute when he pled guilty and understood the consequences of doing so). Thus, this Court should deny her claim raised for the first time on appeal.

Although defendant argues that questions about the constitutionality of the statute cannot be waived because they are jurisdictional, she cites to only one a New Jersey case that addressed merger, among other federal cases. (Db30 (citing State v.

Truglia, 97 N.J. 513 (1984), Menna v. New York, 423 U.S. 61 (1975), United States v. Skinner, 25 F.3d 1314, 1317 (6th Cir. 1994), United States v. Whited, 311 F.3d 259 (3d Cir. 2002)). In that cited New Jersey case, the New Jersey Supreme Court ruled that its conclusion that the defendant failed to satisfy his burden regarding merger rendered its consideration of his argument against waiver unnecessary. Truglia, 97 N.J. at 522. “[I]n the interest of bringing some uniformity of disposition to an area that [then] suffer[ed] from some confusion,” it offered additional rulings “albeit by way of dictum.” Ibid. The State submits that Truglia is irrelevant because it dealt with an issue of merger, and any rulings the Court provided on the waived merger issue were specifically provided as dictum.

Finally, the State submits that, given defendant provided a sufficient factual basis to subsection (a), there is no need for this Court address defendant’s constitutionality argument. See State v. J.H.P., 478 N.J. Super. 262, 283 (App. Div. 2024) (“As a general rule, our courts strive to avoid reaching constitutional issues unless they are ‘imperative to the disposition of the litigation.’” (quoting Strategic Env’t Partners, LLC v. N.J. Dep’t of Env’t Prot., 438 N.J. Super. 125, 147 (App. Div. 2014))). Accordingly, based on the foregoing, the State submits that defendant provided a sufficient factual basis for pleading guilty to N.J.S.A. 2C:21-25a and respectfully requests that this Court affirm her conviction and sentence.

CONCLUSION

For all the reasons set forth herein, the State respectfully urges this Court to affirm defendant's conviction and the sentence imposed thereon.

Respectfully submitted,

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November 21, 2025

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LETTER REPLY ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-03580-23

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of
v.	:	Conviction of the Superior Court of
ANNAMARIE TIERNO,	:	New Jersey, Law Division, Camden
Defendant-Appellant.	:	County.
	:	Indictment No. 22-12-03623-I
	:	Sat Below:
	:	Hon. Yolanda C. Rodriguez J.S.C.,

Honorable Judges:

This letter is submitted in lieu of a formal reply brief pursuant to R. 2:6-2(b).

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant Annamarie Tierno relies on the procedural history and statement of facts set forth in her opening brief. (Db3-8)¹

LEGAL ARGUMENT

Tierno relies on her appellate briefing already submitted in this matter, as well as the following, in response to a few arguments made by the State.

POINT I

DEFENDANT’S GUILTY PLEA MUST BE VACATED FOR TWO REASONS.

The money laundering statute, N.J.S.A. 2C:21-25, has two subsections relevant to this appeal: subsection (a) which criminalizes the act of transporting or possessing criminally derived property, and subsection (b) which criminalizes the act of engaging in a transaction involving criminally derived property. N.J.S.A. 2C:21-25. Subsection (b) carries a unique element – which is not required under subsection (a) – wherein the State must prove that the defendant not only transacted with the criminal property, but did so with the intent to either conceal or promote the underlying criminal activity. N.J.S.A. 2C:21-25(b)(1), (2). In her opening brief, Tierno argued that her conviction for money laundering under subsection (a) of N.J.S.A. 2C:21-25 must be reversed for two reasons.

¹ Db – Defendant’s Appellant Brief
Sb – State’s Respondent Brief

First, Tierno admitted in her plea colloquy only to “transacting” with criminally derived property, and she did not admit to “possessing” criminally derived property. (2T8-10 to 9-24) Under the correct interpretation of the money laundering statute – wherein her conduct can only be characterized as a transaction – the factual basis for her plea did not include the required element of “possession” and must therefore be vacated. (Db8-28) Second, if this Court rejects this requested statutory interpretation, Tierno argued that her conviction must still be reversed because the money laundering statute would be unconstitutionally vague as applied to her conduct, and therefore unenforceable. (Db29-30) The State’s response to both of Tierno’s arguments are considered in turn.

A. The Factual Basis of Defendant’s Guilty Plea Does Not Constitute Criminal Conduct Under The Money Laundering Statute When Properly Construed To Comport With Principles of Statutory Interpretation And To Avoid Constitutional Defect.

It is now undisputed that the facts as established at Tierno’s plea colloquy did not include any intent on Tierno’s part to conceal or promote the underlying criminal activity. (Sb1-3) Because such intent is required under subsection (b), the facts from Tierno’s guilty plea are insufficient to make out a conviction under subsection (b). N.J.S.A. 2C:21-25(b). Accordingly, the State does not argue that Tierno’s plea colloquy was sufficient for a conviction under subsection (b), and instead argues that her conviction under subsection (a)

should be upheld. (Sb7-9) The relevant question is thus whether Tierno’s conduct can properly be prosecuted as “possession” under subsection (a) despite the fact that she admitted only to “transacting” with the property in question.

In her opening brief, Tierno argued that the statutory interpretation required to find her guilty under subsection (a) would render certain elements of subsection (b) as unnecessary surplusage, thereby violating principles of statutory construction. (Db8-28) To reiterate, the conduct that Tierno admitted to was as follows: she sold her house to two men whom she know sold drugs, and then put that money into her bank account. (2T8-10 to 9-24) Consistent with Tierno’s actual admission, under the plain meaning of the term, Tierno clearly “engage[d] in [a] transaction[.]” (2T8-20 to 22) (Db17-21) Tierno thus should have been prosecuted under subsection (b) wherein the State, in order to make out a conviction, would have been required to prove that, in selling her house, Tierno had intended to conceal or promote the underlying criminal activity. N.J.S.A. 2C:21-25(b).

In order to prosecute her under subsection (a) the conduct described above – selling her house and putting the proceeds of the sale into her bank account – would need to be characterized as the act of possession. N.J.S.A. 2C:21-25(a). The problem with characterizing Tierno’s conduct as possession is not that it is descriptively inaccurate; indeed, whenever someone makes a sale, they will

come into literal possession of the proceeds of that sale. The problem, rather, is that if Tierno's conduct can be prosecuted as a form of possession, then there would never be a need to prosecute a defendant under subsection (b), and the State could always obtain convictions for transactions without ever having to prove the element of intent to conceal or promote crime. (Db21-26) The State now argues that Tierno's factual basis was sufficient for a conviction under subsection (a) because her act of depositing the illicit funds in the bank constituted possession. (Sb7) ("[Tierno] admitted that she received money for her home and she put it in a bank....thus she knowingly possessed the property.") (internal transcript citations omitted). Contrary to the State's characterization, Tierno's depositing of the money in a bank was not an independent act of possession separate and apart from the act of transacting; rather, it can only lawfully be characterized as the inevitable final step of her transaction.

The reason for this is that if the final step of every transaction – coming into possession of the property – were sufficient to transform the conduct into possession, then subsection (a) would swallow subsection (b) in its entirety: every transaction could be prosecuted under subsection (a) by virtue of the transacting party's inevitable possession of the illicit property. (Db19-21) The State's attempt at singling out the final act of Tierno's transaction (placing

money in the bank) as an independent act of possession thus does not rectify the core issue with the interpretation necessary to convict Tierno under subsection (a). If this interpretation were allowed, the State would never have to prove the concealment or promotion prongs under (b)(1) and (b)(2), and could instead characterize every transaction as a possession by virtue of its inevitable final step, thereby avoiding the intent requirement entirely. Such an interpretation is improper because it would render subsections (b)(1) and (b)(2) of N.J.S.A. 2C:21-25 as unnecessary surplusage, and it would erase any distinction between the conduct contemplated in subsection (a) and subsection (b), contrary to this Court's finding that the two subsections criminalize "distinct types of conduct." State v. Harris, 373 N.J. Super. 253, 263 (App. Div. 2004).

The State next argues that characterizing Tierno's conduct as possession does not render subsection (b) as unnecessary surplusage because "[t]he Legislature clearly intended subsection (b) to apply to persons engage in a transaction, for example, a real estate agent or an attorney, with intent to promote or conceal, without requiring possession." (Sb8) This argument is unavailing for two reasons. First, the State provides no authority to support this proposition. (Sb8) Second, the State does not offer any explanation as to how anyone – be they a real estate agent or an attorney – could engage in a transaction involving illicit property without at any point possessing that illicit property. In

State v. Harris, for example, the defendant was an attorney convicted of money laundering under subsection (b) for helping her client engage in the fraudulent act of “flipping” houses prior to actually owning the house he was selling. 373 N.J. Super. at 257. As part of her role as attorney, Harris not only received payment from the client whose profits were illicit, but also maintained an attorney trust account for the illicit transactions. Ibid. Under the State’s proposed interpretation of the statute – wherein placing illicitly derived funds in a bank account is sufficient for possession – Harris could have been prosecuted under subsection (a), thereby freeing the State from the obligation of proving under subsection (b) that she had an intent to conceal or promote the criminality.

And even if the attorney in Harris did not open a bank account and was working pro bono for her client (and thus did not receive payment), the State’s interpretation would still leave her subject to prosecution under subsection (a) for constructively possessing the property. Model Jury Charge (Criminal), “Financial Facilitation of Criminal Activity, Money Laundering, N.J.S.A. 2C:21-25(a)” (approved Jun. 15, 2009) (“[S]omeone who has knowledge of the character of an item and knowingly has both the power and the intention at a given time to exercise control over it, either directly or through another person or person, is then in constructive possession of that item.”) (emphasis added). The State’s attempt to characterize subsection (b) as capturing conduct not

covered under subsection (a) thus fails. Under the interpretation needed to find Tierno guilty of possession, all conduct prosecutable under subsection (b) would likewise be prosecutable under subsection (a). This interpretation must be rejected because it would violate principles of statutory interpretation by rendering the unique requirements in (b)(1) and (b)(2) superfluous.

B. If This Court Does Not Construe the Money Laundering Statute This Way to Avoid a Constitutional Defect, The Court Must Find the Statute Unconstitutionally Vague as Applied to Defendant.

Alternatively, should this court decline to adopt the above statutory interpretation, Tierno's conviction must nonetheless be reversed because without her requested interpretation, the money laundering statute would be rendered unconstitutionally vague, and thus unenforceable. (Db29-30) More specifically, if N.J.S.A. 2C:21-25 is interpreted broadly enough to allow for Tierno's conduct to be prosecuted as possession under subsection (a), then the statute would be rendered unconstitutionally vague because a person of ordinary intelligence in Tierno's position would not be able to "reasonably determine" that her actions were "proscribed by the statute" under which she was convicted. State v. Brady, 332 N.J. Super. 445, 450-51 (App. Div. 2000).

The State, in response, does not address the merits of Tierno's constitutional argument. (Sb9-10) The State does not argue, for example, that a person of ordinary intelligence could, in fact, "reasonably determine" that

Tierno’s actions could be prosecuted under N.J.S.A. 2C:21-25(a). (Sb9) Instead, the State argues only that Tierno “waived her right to challenge the constitutionality of the money laundering statute when she pled guilty.” (Sb9) (citing State v. Smith, 307 N.J. Super. 1, 7 (App. Div. 1997). Tierno, however, did not waive her right to argue that the money laundering statute is unconstitutionally vague because arguments as to the constitutionality of criminal statutes are both jurisdictional and implicate matters of great public interest, and therefore must be addressed on appeal.²

The parties are in agreement that, even though a defendant is generally prohibited from raising an argument on appeal that “the State violated his constitutional rights prior to the plea,” there are exceptions to this rule. State v. Knight, 183 N.J. 449, 470 (2005). As the State has acknowledged, “[a]ppellate courts....can address questions that ‘go to the jurisdiction of the trial court or concern matters of great public interest.’” (Sb5) (citing State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234

² Tierno’s argument in Point I.A. – as to the insufficiency of her factual basis – is not an issue that can be waived upon the entry of a guilty plea. See State v. Tate, 220 N.J. 393, 404 (2015) (“[I]f a factual basis has not been given to support a guilty plea, the analysis ends and the plea must be vacated.”). Thus, regardless of whether this Court agrees with Tierno’s argument as to why this Court must consider her unconstitutionally vague argument in Point II.B. – i.e. that it is a jurisdictional question concerning matters of great public importance – this Court must nonetheless address her factual basis argument above on the merits.

(1973))). Tierno’s argument as to the constitutionality of the money laundering statute is such a question that goes to the jurisdiction of the trial court and concerns matters of great public interest, and must therefore be considered by this Court.

The U.S. Supreme Court has held, in no uncertain terms, that challenges to the constitutionality of criminal statutes are not waived by a guilty plea: “The question is whether a guilty plea by itself bars a federal criminal defendant from challenging the constitutionality of the statute of conviction on direct appeal. We hold that it does not.” Class v. United States, 583 U.S. 174, 178 (2018). See also Menna v. New York, 423 U.S. 61, 62 n.2 (1975) (finding that guilty plea did not bar defendant from arguing on appeal that the State could not “constitutionally prosecute” him). (Sb10) (citing to Menna, 423 U.S. 61). Contrary to the State’s characterization, this rule is not rendered irrelevant simply because it is federal law. Rather, it is controlling precedent from the United States Supreme Court clarifying the type of legal questions that cannot be waived on appeal without offending the Due Process Clause of the Fourteenth Amendment.

The “rationale” for the above rule from Class was established in Blackledge v. Perry, 417 U.S. 21 (1974). Class, 583 U.S. at 179 (“[S]ubsequent decisions offe[r] a rationale that applies here.”) (citing to Blackledge, 417 U.S.

at 30). In Blackledge, the Supreme Court rejected the State's argument that defendant's guilty plea barred him from raising his constitutional challenge on appeal. 417 U.S. at 24, 30-31. In so finding, the Court made clear that it was the Due Process Clause which guaranteed the defendant's right to raise his argument on appeal: "The practical result dictated by the Due Process Clause in this case is that North Carolina simply could not permissibly" permit defendant's prosecution in light of the reasons defendant raised on appeal. Id. at 31 (internal quotation omitted). "That being so, it follows that his guilty plea did not foreclose him from attacking his conviction in the Superior Court proceedings through a federal writ of habeas corpus." Ibid. As was the case in Blackledge, Tierno likewise argues that it is the Due Process Clause which prohibits her prosecution under an unconstitutional scheme. (Db9) (arguing her conviction must be vacated because it is unconstitutional as applied, citing U.S. Const. amends. V; XIV; N.J. Const. art. I, ¶¶ 1, 10). "That being so, it follows that h[er] guilty plea d[oes] not foreclose" her from raising this argument on appeal. Blackledge, 417 U.S. at 31. Accordingly, Tierno's "guilty plea does not make irrelevant the kind of constitutional claim [she] seeks to make." Class, 583 U.S. at 181.

Moreover, New Jersey courts have likewise held that arguments concerning the constitutionality of a criminal statute must be considered on

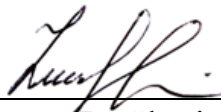
appeal, regardless of whether they were raised below. As noted, the parties agree that the entry of a guilty plea does not waive a defendant's right to raise an issue that goes "to the jurisdiction of the trial court or concern[s] matters of great public interest." Nieder, 62 N.J. at 234. In State v. Hill, this Court found that a constitutional challenge based on a statutory interpretation argument is one such issue that must be considered on appeal. 474 N.J. Super. 366 (App. Div.), rev'd on other grounds, 256 N.J. 266 (2024). In Hill, this Court rejected the State's argument that the Court "should not consider defendant's overbreadth and vagueness contentions" because the constitutional challenges were not raised below. Id. at 375. Citing to the above rule from Nieder, the Hill Court "ch[ose] to address defendant's constitutional arguments," noting that the "problem of witness intimidation" (the criminal statute under challenge) was "a matter of great public interest [and] one that has a direct impact on the integrity of the criminal justice process and public safety[.]" Ibid.

The constitutional infirmity of the money laundering statute is likewise an issue of great public importance, ibid, that asks whether the statute is one which the State may, in fact, "constitutionally prosecute[.]" Menna, 423 U.S. at 62 n.2. Accordingly, this Court must address Tierno's constitutional challenge to the money laundering statute on the merits. Upon consideration of her challenge, this Court should hold that the State cannot lawfully enforce the money

laundrying statute against her because it is unconstitutionally vague, and should reverse her conviction accordingly.

Respectfully submitted,

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Dated: November 21, 2025