

STATE OF NEW JERSEY,

Plaintiff-Movant,

v.

NIRAV PATEL,

Defendant-Respondent.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 090380

APP. DIV. DOCKET NO.: A-000337-23

CRIMINAL ACTION

**ON STATE'S MOTION FOR LEAVE
TO APPEAL INTERLOCUTORY
ORDER OF THE SUPERIOR
COURT, APPELLATE DIVISION**

Sat below:
Hon. Jessica R. Mayer, P.J.A.D.
Hon. Lisa A. Puglisi, J.A.D.

AMENDED BRIEF IN SUPPORT OF
DEFENDANT-RESPONDENT NIRAV PATEL

Galantucci & Patuto, Esqs.
21 Main Street, Suite 151
Court Plaza South – West Wing
Hackensack, New Jersey 07601
(201) 646-1100
Attorneys for Defendant
David J. Altieri, Esq. on the Brief
Attorney ID No. 028322009
dja@gpesq.com

Cillick and Smith, Esqs.
25 Main Street, Suite 202
Court Plaza North
Hackensack, New Jersey 07601
(201) 342-0808
Attorneys for Defendant
Edward W. Cillick, Esq. on the Brief
Attorney ID No. 018971979
edwardcillick@cillickandsmith.com

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PRELIMINARY STATEMENT

In its submission to this Court, the State has recited the same arguments that failed to persuade both the trial court and the Superior Court, Appellate Division. While the granting of a motion for a new trial based on newly discovered evidence is indeed a sparingly exercised remedy, the State now argues that this Court should abrogate the “reasonable diligence” standard ensconced in our jurisprudence in favor of a far narrower rule that the State believes would fit the facts of this case.

There is no dispute that the finality of verdicts is an issue of public importance, which is precisely why our Court Rules and case law have provided for stringent standards by which lower and appellate courts must abide in considering motions for a new trial. In this case, the trial court and the Appellate Division applied those stringent standards through careful consideration of the complicated facts presented to them. In making its assertion, the State comfortably ignores another issue of public importance: whether innocent people should be incarcerated.

Regardless, the State makes no contention, nor could it reasonably, that denying its application to this Court will result in “irreparable injury,” as is required by the Court Rules for leave to be granted by this Court on an interlocutory order. The State simply does not address the applicable standard.

PROCEDURAL HISTORY¹

On May 9, 2019, Mr. Patel was charged in Municipal Court Complaint No. S-2019-000514-0905 with one count of second-degree theft by deception, contrary to the provisions of N.J.S.A. 2C:20-4, for conduct occurring on or about March 18, 2014 in the City of Hoboken. On May 17, 2019, Mr. Patel was charged in Indictment No. 19-05-00046-S with the same offense. (Sa1-3). The allegations involved a claim of the misappropriation of seven hundred and fifty thousand dollars (\$750,000.00) from a group of investors between March and May of 2014.

From the outset, Mr. Patel has denied the allegation that any deception or theft took place as he attempted to develop the Hoboken World of Beer project

¹ 1T refers to the trial transcript from April 4, 2023.

2T refers to the trial transcript from April 5, 2023.

3T refers to the morning trial transcript from April 6, 2023.

4T refers to the afternoon trial transcript from April 6, 2023.

5T refers to the trial transcript from April 18, 2023.

6T refers to the trial transcript from April 19, 2023.

7T refers to the trial transcript from April 20, 2023.

8T refers to the hearing transcript from October 12, 2023.

9T refers to the hearing transcript from December 14, 2023.

Mb refers to Movant's Brief

Ma refers to the Appendix to Movant's Brief

Sb refers to Movant's Brief filed in the Appellate Division

Sa refers to Movant's Appendix to Brief filed in the Appellate Division

Db refers to Defendant's Brief filed in the Appellate Division

Da refers to Defendant's Appendix to Brief filed in the Appellate Division

in a restaurant space in which his family's business held an extended leasehold and also maintained a liquor license for that location.

The matter proceeded to trial on March 28, 2023 and concluded on April 20, 2023. The trial was put on hold for the week of April 10, 2023 due to a juror, a Deputy Attorney General, support staff, and defense counsel contracting COVID-19.

On April 20, 2023, following a mere hour and ten minutes of deliberation, even denying the opportunity for a lunch break and perhaps cognizant that at least one (1) juror had upcoming vacation plans, the jury returned a guilty verdict on the single count on which Mr. Patel was charged. (Sa4).

On April 28, 2023, defense counsel timely filed a Motion for a New Trial and a Motion for a Judgment of Acquittal. (Sa5-13). The trial court then heard testimony on October 12, 2023, (8T), and December 14, 2023, (9T). On February 16, 2024, the trial court granted Mr. Patel's Motion for a New Trial. (Sa14-33). The State then filed a Motion for Leave to Appeal, (Sa34-35), which was granted on April 8, 2024, (Sa36-37).

On February 3, 2025, the Appellate Division issued an opinion denying the State's Motion for Leave to Appeal. (Ma1-Ma18). The State's application to this Court then followed.

STATEMENT OF FACTS

The State alleged at trial that Mr. Patel misappropriated seven hundred and fifty thousand dollars (\$750,000.00) from a group of investors between March of 2014 and May of 2014, (Sa1-3), intended to be used to develop a World of Beer restaurant franchise at 100 Sinatra Drive in Hoboken, New Jersey.

At the time, Mr. Patel's family's business, Bhagu, Inc. operated a Melting Pot restaurant franchise at that location, holding a seventeen (17) year leasehold at 100 Sinatra Drive in addition to the liquor license to operate at that location. (6T 8:14 to 9:13; 6T 10:21 to 10:25; 6T 101:7). When Mr. Patel renegotiated the lease in furtherance of developing the World of Beer project, he secured a full twenty (20) year timeframe and two hundred thousand dollars (\$200,000.00) in tenant improvement funds, or "T.I." dollars, while offering a personal guarantee on the lease. (Da11; 6T 104:1 to 105:22).

The liquor license was indispensable not only due to the location, but the landlord would not agree to lease the premises if Tapmasters, LLC, the company developing the World of Beer franchise that Mr. Patel was also a part of, did not agree to secure it from Bhagu, Inc.: "Tenant hereby represents that Tenant has entered into an agreement with Prior Tenant... to purchase a Plenary Retail Consumption License for the sale of alcoholic beverages." (Da48) (emphasis added). World of Beer Hoboken would not have a location but for Bhagu, Inc.

agreeing to transfer the liquor license. That agreement was entered into between Bhagu, Inc. and Tapmasters Hoboken, LLC on November 25, 2014. (Da83-88).

Mr. Patel had been trained in and was well-versed in the business and was personally acquainted with city officials, vendors, and banks. (6T 10:23 to 11:16). It was that expertise that attracted fellow investor Will Mingo to Mr. Patel in 2012, who proposed the establishment of World of Beer franchises in New York, New Jersey, Pennsylvania, and Connecticut, as evidenced by the series of Franchise Agreements that they entered into along with additional investors. (6T 85:19 to 86:4; 6T 88:9 to 89:4).

In 2013, when the World of Beer corporate office was creating pressure to open at least four (4) locations per year, it was agreed by corporate, Mr. Patel, Will Mingo, and their partners, that 100 Sinatra Drive would be the perfect location, and, conveniently, the extended leasehold on that property and a liquor license was controlled by Bhagu, Inc., in which Mr. Patel was in an excellent position to effectuate that transfer as the head of the company. (6T 97:19 to 99:8). As a result, Bhagu, Inc. was made the sole franchisee of World of Beer as of January 22, 2014, giving Mr. Patel full authority to develop the franchise. (Sa130-189). On April 9, 2014, Bhagu, Inc. paid the initial franchise fee to World of Beer Franchising, Inc. in the amount of thirty thousand dollars

(\$30,000.00). (Sa211). That agreement was renewed on May 7, 2015. (Sa234-292).

At the time, Mr. Patel and his partners had opened World of Beer locations in New Brunswick, New Jersey; Syracuse, New York; Albany, New York; and in Chelsea in Manhattan. In each of these prior agreements, Mr. Patel had either an equal ownership interest or an interest slightly reduced due to the number of partners. In no instance was Mr. Patel a five percent (5%) partner. In New Jersey, it was always his understanding that the split would be 40/30/30 in New Brunswick and Hoboken split between Will Mingo, Mr. Patel, and Jerrid Douglas respectively. That arrangement was memorialized in a Tapmasters Principal Owner's Guaranty. (Sa294-296). The document specifically acknowledges that Tapmasters II, LLC was formed under the laws of New Jersey. (Sa294-296). The original Tapmasters II, LLC had been formed on February 8, 2013 with only Mr. Patel and Willie Mingo as "Members" of the company. (Da89-99). By October 11, 2013, Jerrid Douglas was included as a 30% partner, with Willie Mingo at 40% and Mr. Patel 30%. (Da100-110).

In documented communications, e.g. text messages, phone messages, and other communications with his partners, Mr. Patel repeatedly confirmed that he would be raising money for the project. (Da111-Da114; Da139). Will Mingo and Jerrid Douglas even acknowledged and personally witnessed Mr. Patel

being handed checks totaling three hundred thousand dollars (\$300,000.00) for the project. (Da115-138).

Despite all of the evidence pointing to Mr. Patel's authority to raise funds for the project, he was convicted after minimal deliberation by the jury. Knowing the history, his family fully expected that Mr. Patel would be found not guilty and were "shocked," (8T 12:22), and "dumbfounded" by the result. (8T 30:11). It was only then, sifting through an incredible volume of documents relating to his family's many businesses, that his sister, Lina Patel, was able to uncover the newly discovered documents at issue. Once Mr. Patel reviewed them, they began to realize their exculpatory significance and performed a search through past emails to see if they would come up there. Not only were they able to recover these documents as email attachments, but the emails were contemporaneous to the execution of the agreements, demonstrating Mr. Patel's authority to raise funds and negating the State's assertion that these newly discovered documents were falsified.

STANDARD

In its brief, the State does not cite the Court Rule that governs appeals to the Supreme Court from interlocutory orders:

Appeals may be taken to the Supreme Court by its leave from interlocutory orders:

(a) Of the Appellate Division when necessary to prevent irreparable injury; or

(b) On certification by the Supreme Court to the Appellate Division pursuant to R. 2:12-1.

R. 2:2-2. See also State v. McQueen, 248 N.J. 26, 38 HN3 (2021).

ARGUMENT

THE STATE HAS FAILED TO DEMONSTRATE
THAT THE DENIAL OF THIS MOTION WILL
RESULT IN IRREPARABLE INJURY

The State cannot reasonably contend that the denial of the instant “Motion for Leave to Appeal from an Interlocutory Order of the Superior Court of New Jersey, Appellate Division” will result in irreparable injury, and it makes no such contention. Rather, the State will have the opportunity to present its proofs at a retrial, which provides it with the prospect of remediating any injustice it perceives to have been exacted upon it.

As to the underlying merits of the State’s argument, the State correctly acknowledges that with respect to a motion for a new trial based upon newly discovered evidence, the evidence must be “(1) material, and not ‘merely’

cumulative, impeaching, or contradictory; (2) that the evidence was discovered after completion of the trial and was “not discoverable by reasonable diligence beforehand”; and (3) that the evidence “would probably change the jury's verdict if a new trial were granted.” State v. Ways, 180 N.J. 171, 187 (2004) (quoting State v. Carter, 85 N.J. 300, 314, 426 (1981)). The State then, however, endeavors to have this Court narrow the “reasonable diligence” standard in a manner that has never been recognized under New Jersey law.

The State cites State v. Szemple, 247 N.J. 82 (2021), a case involving the State’s discovery obligations in response to a Post-Conviction Relief (PCR) petition, in which this Court applied the “reasonable diligence” standard to the facts before it:

[E]verything relied on by defendant in this appeal has been known to him for more than twenty-five years, and the discovery sought could have been requested a quarter century ago. Defendant offers no explanation for his delay and has offered no evidential support for the existence -- let alone the exculpatory nature -- of the evidence.

Id. at 111. In this case, Mr. Patel did not delay in providing the evidence once discovered. Unlike in Szemple, there is no issue as to the existence and exculpatory nature of these documents, and they were not the subject of a post-verdict discovery request. Further, the motion for a new trial was made prior to sentencing – not twenty-five years thereafter in a second PCR petition.

In its brief, the State reviews federal case law from various jurisdictions not applicable in the case at hand, (Mb15-Mb16), furthering evidencing that the State's argument in this motion is less about the exercise of reasonable diligence in Mr. Patel's case under New Jersey law, but more about its position that this Court should abandon the "reasonable diligence" standard entrenched in our jurisprudence for a narrower standard that would assist in overturning the decisions of the trial court and Appellate Division.

More to the point, the trial court thoroughly considered the circumstances of the discovery of the documents in this case, noting that they were:

discovered by Defendant's sister, Ms. Patel, in the family's garage. Ms. Patel found eleven miscellaneous pages in the family's garage from the documents. Considering Defendant had invested in approximately seventeen (17) businesses, the evidence was discovered among presumably thousands of documents. Upon discovering the pages, Ms. Patel showed them to Defendant who began searching his email in attempt to find the documents. Defendant searched his email for around an hour before any emails with the documents "popped up." The documents discovered were signed and dated four years before the Indictment and seven years before the trial.

(Sa24). The Appellate Division relied upon the trial court's analysis in making its determination. (Ma11-Ma12).²

² In its brief, the State suggests that newly discovered evidence should be disfavored because withholding documents could be employed as "trial strategy," "gamesmanship," or for the purpose of "test[ing] a preferred theory." (Mb18). It is unclear why the State would believe that a criminal defendant facing a second-degree crime would only produce evidence after a verdict as a matter of trial strategy.

In its submission to this Court, the State focuses not on the several days the Patel family spent searching through boxes, but the approximately one hour it took for Mr. Patel to recover the documents in his email. To be clear, Lina Patel testified that they searched for days:

Q. So in the document that you certify that you found the documents; is that correct?

A. I found, yes.

Q. And you certify that you searched for days; is that correct?

A. Yes.

Q. And that you were searching in the garage; is that correct?

A. Garage and family room in, in my parents's place. In the garage, yes.

Q. Does the certification say anywhere besides the garage? You know what, it's not relevant. Strike that. My question is do you certify that those documents are authentic in the certification?

A. Yes.

Q. You state that they're authentic?

A. Yes.

Q. And you know that they're authentic documents?

A. Yes. 'Cause I found them on the email.

(8T 34:6 to 34:25). It is important to note that it was the email search that took approximately an hour, using a search engine, which occurred only after the partial document was discovered in the garage after days of searching.

The email search was also performed in open court, under oath, as noted by the trial court: “This court watched Defendant retrieve the documents from his email which are dated at or around the time of the creation of the agreements and the parties stipulated to this fact.” (Sa25) (8T 38:22 to 46:21).

Still, the State insists that the jury’s verdict would not have changed because these agreements were fabricated – despite them being authenticated in open court as being contemporaneous with the transactions in question. At the time, the State conceded that those documents were attached to emails contemporaneous with their execution, (8T 53:25 to 54:13), and not generated after Mr. Patel’s verdict. Nevertheless, in this motion the State provides an unsubstantiated claim that they were fabricated in support of its claim that the jury would not change its verdict.

The State argues that leave should be granted in the “interests of justice” because of the “impos[ition of] significant real-world costs.” (Mb24). In the event that this motion is granted, and the Appellate Division is ultimately reversed, the real-world costs would be borne not by the State of New Jersey or

any witnesses (in a financial crime case), but by Mr. Patel, who would be incarcerated despite the discovery of exculpatory evidence.

More to the issue at hand, the State has made no argument that leave to appeal to this Court is “necessary to prevent irreparable injury” pursuant to Rule 2:2-2(a). Any perceived injury can be redressed at a retrial.

CONCLUSION

Based on the foregoing, it is respectfully requested that this Court deny the State’s Motion for Leave to Appeal from an Interlocutory Order of the Superior Court of New Jersey, Appellate Division.

Respectfully submitted,

GALANTUCCI & PATUTO, ESQS.

BY: s/ David J. Altieri
DAVID J. ALTIERI

CILLICK AND SMITH, ESQS.

BY: s/ Edward W. Cillick
EDWARD W. CILLICK