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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1491-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WAYNE CRYMES,

Defendant-Appellant.

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Submitted February 13, 2018 - Decided March 8, 2018

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Atlantic County, Indictment No.  
13-12-3128.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Michele A. Adubato, Designated  
Counsel, on the brief).

Damon G. Tyner, Atlantic County Prosecutor,  
attorney for respondent (John J. Santoliquido,  
Assistant Prosecutor, of counsel and on the  
brief).

PER CURIAM

Defendant Wayne Crymes appeals from his conviction, focusing  
on a February 24, 2015 order denying his motion to dismiss a nine-

count indictment. Defendant was indicted for his role in a robbery, assault and kidnapping of an individual. Defendant argues his indictment should be dismissed based on improper and incompetent evidence presented to the grand jury. We affirm.

Defendant moved to dismiss the indictment prior to trial arguing: (1) the indictment was improperly procured based on hearsay testimony; (2) the State's sole witness before the grand jury improperly gave an opinion as to defendant's guilt or innocence; and (3) the State failed to produce any evidence that defendant participated in the crimes charged.

After considering the written submissions and arguments of counsel, the motion judge denied defendant's motion to dismiss the indictment. Relying on well-settled case law, the judge reasoned the State's use of hearsay testimony and other evidence, which may be inadmissible at trial, did not warrant dismissal of the indictment. The judge further found the testimony of the State's sole witness, Detective Thomas Holton, did not subvert the function of the grand jury. The judge concluded that the detective "did not opine as to the defendant's guilt or innocence relating to the charge" and his testimony did not "commandeer the grand jury — jurors into arriving at a result they would otherwise not have reached." The judge, giving the State every reasonable inference, also concluded that the State presented evidence to the grand jury

"sufficient to determine . . . that [each] crime has been committed."

After denial of his motion to dismiss the indictment, defendant entered a guilty plea to the kidnapping charge. Defendant expressly reserved his right to appeal the denial of his motion.

In his sole argument on appeal, defendant contends:

THE IMPROPER PROCEDURE UTILIZED AND THE  
INCOMPETENT EVIDENCE PRESENTED BEFORE THE  
GRAND JURY MANDATED THAT DEFENDANT'S PRE-TRIAL  
MOTION TO DISMISS THE INDICTMENT BE GRANTED.

"An indictment is presumed valid and should only be dismissed if it is 'manifestly deficient or palpably defective.'" State v. Feliciano, 224 N.J. 351, 380 (2016) (quoting State v. Hogan, 144 N.J. 216, 229 (1996)). The decision whether to dismiss an indictment lies within the discretion of the trial court and is reviewed only for clear abuse. State v. Zembreski, 445 N.J. Super. 412, 424 (App. Div. 2016). We have held that a trial court should dismiss a grand jury indictment only on the "clearest and plainest ground." Id. at 425 (quoting State v. Williams, 441 N.J. Super. 266, 271 (App. Div. 2015)).

To issue an indictment, a grand jury must be presented with sufficient evidence, viewed in the light most favorable to the State, establishing a prima facie case as to each crime. Hogan,

144 N.J. at 227. In establishing a prima facie case, "the State may not deceive the grand jury or present its evidence in a way that is tantamount to telling the grand jury a 'half-truth.'" Id. at 236. To warrant a dismissal of the indictment, the grand jury instructions must be "blatantly wrong"; incomplete or imprecise instructions are not enough. State v. Triestman, 416 N.J. Super. 195, 205 (App. Div. 2010) (quoting State v. Hogan, 336 N.J. Super. 319, 344 (App. Div. 2001)). Moreover, "[a]n indictment may be based largely or wholly on hearsay and other evidence which may not be legally competent or admissible at the plenary trial." State v. Holsten, 223 N.J. Super. 578, 585 (App. Div. 1998) (alteration in original) (quoting State v. Schmidt, 213 N.J. Super. 576, 584 (App. Div. 1986), rev'd on other grounds, 110 N.J. 258 (1988)).

We find the motion judge did not abuse his discretion in denying the motion to dismiss the indictment. The judge correctly held that the use of hearsay testimony is proper in the presentation of evidence for an indictment. Moreover, the detective who testified for the State familiarized himself with the written reports from the other police departments regarding the crimes and personally interviewed the victim prior to testifying before the grand jury.


Nor do we find the grand jury's function was subverted by the testimony of the State's witness. The detective testified as to his knowledge of the law, not whether defendant was guilty or innocent.

We concur with the judge that the prosecutor pointed to "some evidence" before the grand jury to support the charges against the defendant such that "a grand jury could reasonably believe that a crime occurred and that the defendant committed it." State v. Saavedra, 222 N.J. 39, 57 (2015) (quoting State v. Morrison, 188 N.J. 2, 13 (2006)). At the grand jury stage, the State is not required to present evidence to sustain a conviction. State v. Schenkolewski, 301 N.J. Super. 115, 137 (App. Div. 1997).

Based on our review of the record, including a transcript of the grand jury testimony, we find no legal or factual basis to disturb the motion judge's decision denying defendant's motion to dismiss the indictment.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION