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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-4022-15T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EDWARD L. GRIMES, a/k/a  
EDDIE CHAMBERS,

Defendant-Appellant.

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Submitted December 19, 2017 — Decided February 23, 2018

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Union County, Indictment No. 93-  
12-1562.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Joseph Anthony Manzo,  
Designated Counsel, on the brief).

Thomas K. Isenhour, Acting Union County  
Prosecutor, attorney for respondent (Milton S.  
Leibowitz, Special Deputy Attorney  
General/Acting Assistant Prosecutor, of  
counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant appeals from an order entered by the trial court on February 11, 2016, which denied his motion for reconsideration of an earlier order denying his motion for a new trial based on newly discovered evidence. We affirm.

I.

In December 1993, a grand jury in Union County returned an indictment charging defendant with first-degree murder, N.J.S.A. 2C:11-3(a) (count one); fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (count two); third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d) (count three); and three counts of second-degree aggravated assault, N.J.S.A. 2C:12-1(b) (counts four, five, and six). Defendant was tried before a jury.

At the trial, evidence was presented indicating that during the early morning hours of July 4, 1993, defendant was playing poker with R.B., in R.B.'s apartment.<sup>1</sup> After the game, defendant went into the kitchen for a glass of water. Defendant returned with a twelve-inch knife and began to stab R.B. and three other persons, W.W., F.N., and R.N. R.B. was able to escape the apartment and call for help. The police responded. They found defendant in the apartment. R.N.'s dead body was lying face down on the floor.

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<sup>1</sup> We use initials to identify names of the individuals involved in this matter to protect their privacy.

Defendant admitted he stabbed R.B., W.W., and F.N., but denied he stabbed R.N. The jury found defendant guilty on all counts.

At sentencing, the trial court merged count three with count one and sentenced defendant on count one to life imprisonment, with thirty years of parole ineligibility. The court also sentenced defendant to three consecutive terms of ten years, each with five years of parole ineligibility, on counts four, five, and six. The court also imposed a concurrent term of eighteen months, nine months without parole, on count two. The court filed a judgment of conviction (JOC) dated September 15, 1995.

Defendant appealed, challenging his conviction and sentences. He argued that a statement he made was inadmissible, his consecutive sentences were excessive, and the JOC contained an error. We affirmed defendant's conviction and sentences, but remanded the matter to the trial court to correct the error in the JOC. State v. Grimes, No. A-1454-95 (App. Div. Sept. 30, 1997) (slip op. at 5).

Defendant then filed a petition for post-conviction relief (PCR) and alleged the ineffective assistance of his trial and appellate attorneys. In May 1999, the PCR court denied the petition. Defendant appealed and we affirmed. State v. Grimes, No. A-4931-99 (App. Div. Dec. 7, 2001) (slip op. at 4). The Supreme

Court denied defendant's petition for certification. State v. Grimes, 172 N.J. 181 (2002).

In March 2003, defendant filed a second PCR petition, raising additional claims of ineffective assistance of counsel. The PCR court conducted an evidentiary hearing and heard testimony from defendant and his first PCR attorney. The court denied the petition. Defendant appealed and we affirmed. State v. Grimes, No. A-6017-04 (App. Div. June 11, 2007) (slip op. at 16). The Supreme Court denied defendant's petition for certification. State v. Grimes, 192 N.J. 482 (2007).

In October 2010, defendant filed a petition for a writ of habeas corpus in federal district court. On October 22, 2010, the court dismissed the petition as time-barred and refused to issue a certificate of appealability. Grimes v. Ricci, No. 08-5027, 2010 U.S. Dist. LEXIS 20166, at \*24 (D.N.J. Mar. 5, 2010). The Court of Appeals for the Third Circuit denied defendant's request for a certificate of appealability. Grimes v. Ricci, No. 11-3430 (3d Cir. Dec. 14, 2011). The Court of Appeals later denied defendant's petition for rehearing. Grimes v. Ricci, No. 11-3430 (3d Cir. Jan. 17, 2012).

In January 2010, defendant filed his third petition for PCR. The PCR court denied the petition. Defendant appealed and we affirmed. State v. Grimes, No. A-3482-07 (App. Div. Apr. 29, 2010)

(slip op. at 6). The Supreme Court denied defendant's petition for certification. State v. Grimes, 203 N.J. 440 (2010).

On January 8, 2014, defendant filed a motion for a new trial pursuant to Rule 3:20-1, based on newly discovered evidence, specifically, F.N.'s JOC from June 1994 and the plea agreement related to that conviction. Defendant apparently obtained these records by making a request for documents under the Open Public Records Act, N.J.S.A. 47:1A-1 to -13.

Defendant claimed the State failed to disclose F.N.'s 1994 conviction. He also claimed F.N.'s plea agreement contradicted her testimony at trial that she received no favors for the plea. In addition, defendant sought permission to examine the prosecutor's file regarding other witnesses.

In August 2014, the judge filed a letter opinion addressing the motion. The judge noted that at trial, the assistant prosecutor "clearly and unequivocally" referenced F.N.'s recent conviction. The judge found that even if the State had not provided the defense with F.N.'s JOC from 1994 or any record of F.N.'s criminal history, the existence of the JOC would have been "apparent to any attorney." Counsel could have obtained a copy of the JOC in the "exercise of ordinary diligence."

The judge stated that even if trial counsel had not obtained a copy of the JOC, defendant and PCR counsel were on notice of the

existence of that document. The judge therefore found that the JOC was not newly discovered evidence and denied the motion for a new trial. The judge also denied defendant's request for permission to inspect the prosecutor's file, stating that defendant's request was a request to conduct a "fishing expedition."

In September 2014, defendant filed a motion for reconsideration with the court. On February 8, 2016, the judge filed a letter opinion in which he reiterated his earlier findings and stated that defendant had not provided any basis for reconsideration. The judge entered an order dated February 11, 2016, denying defendant's motion. This appeal followed.

On appeal, defendant's counsel raises the following argument:

POINT I

THE PROSECUTOR'S FAILURE TO DISCLOSE THE EXISTENCE OF A KEY WITNESS'S PLEA ARRANGEMENT THAT RESULTED IN A REDUCED SENTENCE FOR THAT WITNESS VIOLATED THE DEFENDANT'S DUE PROCESS RIGHTS UNDER THE FEDERAL CONSTITUTION THEREBY WARRANTING A REVERSAL OF THE CONVICTION.

In addition, defendant has filed a supplemental pro se brief in which he argues:

POINT I

THE STATE FAILED TO DISCLOSE A PLEA AGREEMENT WITH A CRITICAL STATE'S WITNESS WHO LIED TO THE JURY DURING DIRECT EXAMINATION BY THE PROSECUTOR ABOUT RECEIVING A PLEA DEAL FOR PROBATION TO TESTIFY AT DEFENDANT'S TRIAL. THE PROSECUTOR KNEW OR SHOULD HAVE KNOWN HER WITNESS WAS LYING AND DID NOTHING TO CORRECT IT.

POINT II  
THE LAW DIVISION JUDGE USED THE WRONG STANDARD  
OF REVIEW WHEN HE DENIED [DEFENDANT'S] MOTION  
FOR [A] NEW TRIAL BASED ON MULTIPLE BRADY  
VIOLATIONS.

II.

As noted, the order before us on appeal is an order denying defendant's motion for reconsideration. A motion for reconsideration is committed to the sound discretion of the court, which should be "exercised in the interest of justice." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Reconsideration is appropriate only when a court has rendered a decision "based upon a palpably incorrect or irrational basis," or failed to consider or "appreciate the significance of probative, competent evidence." Ibid. (quoting D'Atria, 242 N.J. Super. at 401-02). We are convinced the trial court did not err by denying defendant's motion for reconsideration.

As we have explained, defendant filed a motion for a new trial pursuant to Rule 3:20-1, based on newly discovered evidence, specifically, the JOC for F.N.'s 1994 conviction for cocaine possession and the plea agreement related to that conviction. To warrant granting a new trial based on newly discovered evidence, the evidence must be "(1) material to the issue and not merely

cumulative or impeaching or contradictory; (2) discovered since the trial and not discoverable by reasonable diligence beforehand; and (3) of the sort that would probably change the jury's verdict if a new trial were granted." State v. Nash, 212 N.J. 518, 549 (2013) (quoting State v. Carter, 85 N.J. 300, 314 (1981)).

The record supports the trial court's determination that a new trial was not warranted based on F.N.'s plea agreement and the resulting JOC. Defendant asserts that F.N. was a critical witness for the State. She testified at trial that defendant was the only perpetrator of the attacks and that defendant was responsible for the murder of her husband and the stabbings of the other victims.

Defendant asserts that in February 1994, F.N. was arrested and charged with third-degree possession of a controlled dangerous substance, specifically cocaine, contrary to N.J.S.A. 2C:35-10(a)(1). She pled guilty prior to the trial and was sentenced to three years of probation.

As noted, long after the trial, defendant obtained a copy of the plea agreement, which states that as a condition to the plea, F.N. would testify truthfully. The JOC dated June 3, 1994, required "[d]efendant to testify truthfully about [the] incident."

The judge found that the plea agreement had been fully disclosed at trial. Indeed, at trial, the assistant prosecutor asked F.N. if she had been arrested for possessing cocaine. She



said she had been. F.N. was asked if she had been sentenced to probation. She said, "Yes." In addition, the following colloquy ensued between the assistant prosecutor and F.N.:

Q. And at the time of your sentence, did I assist in getting you any reduced sentence at all?

A. No.

Q. Okay. And did I have any input in your sentence whatsoever?

A. No.

. . . .

Q. [Ms. N.], are you testifying in exchange for any reward?

A. No.

Q. Any promise of money?

A. No.

Q. Do you expect anything?

A. No.

As the motion judge found, defense counsel could have obtained a copy of the JOC and the plea agreement by the exercise of "ordinary diligence." Furthermore, neither document indicates that F.N. was given favorable treatment in exchange for testifying against defendant. She agreed to provide truthful testimony about an "incident," but neither the plea agreement nor the JOC states that F.N. agreed to testify at defendant's trial. Moreover, at

trial, F.N. stated that the assistant prosecutor did not assist her in getting a reduced sentence for the drug offense. The record supports the court's decision that the JOC and plea agreement did not meet the definition of newly discovered evidence, and a new trial was not warranted.

### III.

Defendant argues, however, that the State violated its duty under Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose the existence of a plea agreement that allegedly resulted in a reduced sentence for one of its witnesses, in exchange for her "truthful" testimony against him. He asserts that the assistant prosecutor permitted F.N. to testify falsely at trial that there was no such plea agreement. He notes that he did not obtain a copy of F.N.'s plea agreement until August 2013, about eighteen years after the conclusion of the trial.

Defendant did not raise the Brady issue in the trial court. Ordinarily, we will not consider an issue that was not presented to the trial court when a party had the opportunity to do so "unless the question[] so raised on appeal [goes] to the jurisdiction of the trial court or concern[s] matters of great public interest." Nieder v. Royal Indemn. Ins. Co., 62 N.J. 229, 234 (1973). Defendant's Brady claim has no bearing on the trial

court's jurisdiction and it is not a matter of public interest. In any event, the claim is entirely without merit.

"In order to establish a Brady violation, the defendant must show that: (1) the prosecution suppressed evidence; (2) the evidence is favorable to the defense; and (3) the evidence is material." State v. Martini, 160 N.J. 248, 268 (1999). Here, there is no proof the State failed to provide defense counsel with F.N.'s JOC or the plea agreement. Moreover, as we have explained, at trial, the assistant prosecutor questioned F.N. about the plea. Defense counsel could have obtained the plea agreement and the JOC through the exercise of reasonable diligence.

Furthermore, even if the State had not provided defense counsel with these documents, the allegedly missing discovery was not material. The jury was aware that F.N. had been convicted for possession of cocaine and sentenced to probation. The details of the plea agreement were not mentioned, but the plea form and JOC do not indicate that the State agreed to a reduced sentence in exchange for F.N.'s testimony against defendant.

As noted, the plea agreement required F.N. to provide truthful testimony, and the JOC stated that F.N. would "testify truthfully about [the] incident." There is no reference to defendant or defendant's trial in either the plea agreement or the JOC. Therefore, the documents do not support defendant's claim that

F.N. was given a favorable sentence for agreeing to testify against him.

IV.

In his pro se supplemental brief, defendant argues that the judge applied the wrong standard when denying his motion for a new trial. He argues the judge failed to apply the correct standard for an alleged Brady violation. The contention lacks sufficient merit to warrant discussion. R. 2:11-3(e)(2).

We note, however, that defendant filed a motion for a new trial based on newly discovered evidence. He did not raise the Brady issue in his motion. The trial court applied the correct standard in deciding the motion for a new trial.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION