

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-0921-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAWN REEVES,

Defendant-Appellant.

Argued December 20, 2022 – Decided March 6, 2023

Before Judges Susswein, Berdote Byrne and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 18-06-1843.

Cody T. Mason, Deputy Public Defender II, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Cody T. Mason, of counsel and on the briefs).

Matthew E. Hanley, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent (Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney; Matthew E. Hanley, of counsel and on the briefs).

David Chen argued the cause for amicus curiae Office of the New Jersey Attorney General (Matthew J. Platkin, Attorney General, attorney; Angela Cai, Deputy Solicitor General, of counsel and on the brief).

PER CURIAM

Defendant Shawn Reeves appeals from his jury trial convictions for unlawful possession of a handgun and impersonating a police officer. He obtained a permit that allowed him to carry a firearm only while he was performing his duties as a private security guard. During a traffic stop, he waved a badge at the officers and stated, "I'm an officer just like you." Defendant was wearing a loaded firearm in a holster. He was arrested for unlawfully carrying the firearm in public beyond the scope of his carry permit.

Defendant contends his firearm conviction was invalidated by the United States Supreme Court's decision in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. ___, 142 S. Ct. 2111 (2022). He also contends multiple errors were committed at trial, including: (1) the trial court failed to instruct the jury sua sponte that he could only be found guilty of the gun offense if he knowingly exceeded the scope of his carry permit; (2) the trial court should not have instructed the jury on the law governing how firearms may be lawfully transported; and (3) the prosecutor committed numerous instances of misconduct.

The Supreme Court's interpretation of the Second Amendment in Bruen invalidated the "justifiable need" requirement that had been codified in N.J.S.A. 2C:58-4(d), thus precipitating a significant change to the criteria used to determine whether an applicant should be awarded a firearm carry permit in this State. 142 S. Ct. at 2124, 2156; see L. 2022, c. 131, § 3. That decision does not, however, preclude defendant from being convicted for flouting restrictions imposed under the limited firearm carry permit he possessed.

To remove restrictions from a duly issued permit in light of Bruen, it is incumbent upon the permit holder to apply for an unrestricted permit. Defendant could not simply disregard the restrictions imposed by the carry permit issued to him, especially since defendant violated those restrictions long before Bruen was decided. After carefully reviewing the record in view of the governing legal principles, we also reject defendant's contentions with respect to the asserted trial errors and affirm the convictions.

I.

In June 2018, defendant was charged by indictment with second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), and fourth-degree impersonating a police officer, N.J.S.A. 2C:28-8(b). He was tried before a jury in December 2019. The jury found him guilty of both charges.

The trial court granted defendant's motion for a Graves Act¹ sentencing waiver pursuant to N.J.S.A. 2C:43-6.2. On October 7, 2020, defendant was sentenced to two years of probation and 100 hours of community service.

We briefly summarize the relevant facts adduced at trial. On October 7, 2016, two East Orange Police Department detectives were patrolling in an unmarked vehicle. At approximately 7:45 p.m., the detectives pulled over defendant's vehicle because it was "similar to . . . one wanted by another agency."²

When the detectives approached the vehicle, defendant waived a gold constable badge out the window. Defendant stated, "I'm on a job, I'm an officer just like you." Defendant told the detectives he was a police officer in the City of Newark. He actually was employed as a security guard for Visual Protection Security Services, a private security company located in Newark.

Defendant was wearing what appeared to be a "tactical uniform" without any insignias to indicate his employer. He also was wearing a "duty belt," which

¹ N.J.S.A. 2C:43-6(c) generally requires that defendants convicted of certain gun offenses be sentenced to at least a forty-two-month term of imprisonment.

² The trial court clarified that defendant's vehicle "matched the general description" of a vehicle police were looking for in connection with an unrelated incident. Defendant does not challenge the lawfulness of the stop.

held a radio, handcuffs, and a loaded gun in a holster. In response to the detectives' request for identification, defendant handed over his constable badge, employer identification card, and firearm carry permit, which authorized carrying a firearm only "during and in the course of employment."

The detectives inquired whether defendant was working at the time he was stopped. Defendant told the officers he had finished work for the day around 4:00 p.m. and was "running errands." Defendant's employer testified defendant worked from noon to 4:00 p.m. that day. The employer also testified that security guards' uniforms have company patches on them.

The detectives arrested defendant for unlawfully carrying a firearm. An ensuing search of defendant's vehicle recovered two emergency flashing light bars, a double magazine pouch for ammunition, and a police-style traffic jacket. Defendant's employer testified that defendant was not authorized by the employer to have flashing emergency lights in his personal vehicle.

Defendant raises the following contentions in his initial appeal brief:

POINT I

THE TRIAL COURT COMMITTED PLAIN ERROR
WHEN IT FAILED TO INSTRUCT THE JURY THAT
DEFENDANT COULD ONLY BE FOUND GUILTY
OF UNLAWFULLY POSSESSING THE HANDGUN
IF HE KNOWINGLY EXCEEDED THE BOUNDS OF
HIS CARRY PERMIT.

POINT II

THE COURT ERRED IN INSTRUCTING THE JURY ON N.J.S.A. 2C:39-6, WHICH CREATES EXEMPTIONS FOR PEOPLE WITHOUT PERMITS TO TRANSPORT FIREARMS, BECAUSE IT WAS OPPOSED BY THE DEFENSE, UNSUPPORTED BY THE RECORD, AND PREJUDICIAL TO THE DEFENDANT.

POINT III

THE STATE WRONGLY BOLSTERED ITS CASE BY SUGGESTING THAT DEFENDANT WAS DANGEROUS AND ENGAGED IN OTHER WRONGDOING, AND BY OFFERING OPINIONS ON HIS GUILT.

POINT IV

THE CUMULATIVE EFFECT OF THE ERRORS DEPRIVED DEFENDANT OF HIS RIGHTS TO DUE PROCESS AND A FAIR TRIAL SUCH THAT HIS CONVICTIONS SHOULD BE REVERSED.

Additionally, defendant raises the following contention in a supplemental brief:³

DEFENDANT'S CONVICTION FOR POSSESSION OF A HANDGUN WITHOUT A PERMIT MUST BE VACATED BECAUSE THE PERMITTING SCHEME AT THE TIME OF THE INCIDENT UNCONSTITUTIONALLY REQUIRED AN

³ Following the Bruen decision, we granted leave for both parties to file supplemental briefs. We also granted the Attorney General's motion to appear as amicus curiae.

APPLICANT TO ESTABLISH A "JUSTIFIABLE NEED" TO CARRY A HANDGUN.

II.

We first address defendant's argument that his Graves Act conviction must be overturned in light of Bruen. The United States Supreme Court addressed whether New York's firearms permitting scheme, which required applicants to show a "special need" for self-defense, violated the Second Amendment. Bruen, 142 S. Ct. at 2122. The Court struck down New York's special need requirement. Id. at 2156. The Court also explicitly noted that New Jersey's "justifiable need" requirement was analogous to New York's unconstitutional standard. Id. at 2124.

The day after Bruen was decided, the New Jersey Attorney General issued guidance on this subject. See Directive Clarifying Requirements for Carrying of Firearms in Public (June 24, 2022) (Directive 2022-7). That directive acknowledges that Bruen "prevents us from continuing to require a demonstration of justifiable need in order to carry a firearm, but it does not prevent us from enforcing the other requirements in our law." Id. at 1.

Defendant argues the justifiable-need requirement was the sole basis for limiting the scope of his carry permit to employment purposes. Because we now know the justifiable-need provision is unconstitutional, defendant argues he was

not actually in violation of his permit even though he had not been on duty for over three hours when he was caught in possession of a firearm in public. We disagree.

On August 3, 2015, defendant applied for a carry permit. The permitting judge construed defendant's request as an "application for permission to carry [a] handgun, while in the employment of Visual Protection Services . . . , while serving as an armed security guard, and assigned to the City of Newark." (emphasis omitted). The permit defendant received was limited to those circumstances.

Bruen changed the previously accepted understanding of the Second Amendment, precipitating a change in the way carry permit applications are now reviewed and approved. It did not, however, automatically convert existing limited permits into unrestricted ones. We agree with the Attorney General that a criminal prosecution is not the proper venue for demonstrating that defendant would have been granted an unrestricted permit if the justifiable-need requirement did not exist. Citizens are not free to act as if they possess an unrestricted permit simply because they may be eligible to obtain such a permit through proper channels.

Defendant was obliged to comply with the court-ordered restrictions in the permit that was issued to him. Although Bruen changed the criteria for issuing a carry permit in this State, it certainly did not empower permit holders to disregard judicial orders. The proper procedure in these circumstances, rather, is to apply to amend the permit or apply for a new one. It also bears repeating that defendant was violating the bounds of his permit years before Bruen was decided. The Second Amendment, we add, does not authorize a private citizen to masquerade as an armed police officer.

III.

We next address defendant's trial contentions, beginning with his argument the trial court erred by failing to instruct the jury that defendant could be found guilty only if he "knowingly" exceeded the scope of the carry permit.

It is well-established that jury instructions must give a "comprehensible explanation of the questions that the jury must determine, including the law of the case applicable to the facts that the jury may find." State v. Green, 86 N.J. 281, 287–88 (1981). We examine the jury charge "as a whole to determine its overall effect." State v. Wilbely, 63 N.J. 420, 422 (1973). Importantly for purposes of this appeal, Rule 1:8-7(b) require the trial judge to hold a charge conference during which both parties "make requests to charge in a format

suitable for ready preparation and submission to the jury." Objections to the instructions to the jury, moreover, must be made in accordance with Rule 1:7-2.

The model jury charge for unlawful possession of a handgun explains that the third element of the crime is that "the State must prove beyond a reasonable doubt . . . that the defendant did not have a permit to possess such a handgun." Model Jury Charges (Criminal), "Unlawful Possession of a Handgun (Second Degree) (N.J.S.A. 2C:39-5(b))" (rev. June 11, 2018). Both parties agreed at the charge conference that because defendant had a valid permit, the model jury charge needed to be tailored. Defendant provided a proposed change to the model charge, to which the State agreed. The agreed upon proposal read:

The third element that the State must prove beyond a reasonable doubt is that the defendant did not have a permit that authorized him to be in possession of such a handgun at the time of his arrest. The parties stipulate that the defendant possessed a valid permit to carry a handgun only during and in the course of employment.

In accordance with the agreement reached at the charge conference, the trial court instructed the jury as follows with respect to the third element of the offense defined in N.J.S.A. 2C:39-5(b):

The third element that the State must prove beyond a reasonable doubt is that the defendant did not have a permit that authorized him to be in possession of such a handgun at the time of his arrest. The parties stipulate that the defendant possessed a valid permit to

carry a handgun only during and in the course of employment, [in] evidence as Exhibit 7.

[Pursuant] to [N.J.S.A.] 2C:58-4(d) the [c]ourt may, at [its] discretion, issue a limited type [of] permit which would restrict the applicant as to the types of handguns he may carry, and where and for what purposes, the handguns may be carried.

If you find the defendant was issued a limited type [of] permit which restricted where and for what purpose the handgun, marked as State's Exhibit S-5[,] could be carried, and that the defendant did carry S-5 within the bounds imposed by the permit, you must find the defendant not guilty.

Defendant now argues, for the first time on appeal, that this charge was deficient because it failed to require the jury to find that defendant "knowingly" exceeded the scope of his permit. "[W]hen a defendant does not object to the [jury] charge, 'there is a presumption that the charge was not error and was unlikely to prejudice . . . defendant's case.'" State v. Cotto, 471 N.J. Super. 489, 544 (App. Div. 2022) (omission in original) (quoting State v. Montalvo, 229 N.J. 300, 320 (2017)). In this instance, both parties agreed to the tailored jury charge. Indeed, the pertinent portion of the tailored instruction was drafted by defense counsel. Cf. State v. A.R., 213 N.J. 542, 561 (2013) (noting "trial errors that 'were induced, encouraged or acquiesced in or consented to by defense

counsel ordinarily are not a basis for reversal on appeal'" (quoting State v. Corsaro, 107 N.J. 339, 345 (1987))).

In these circumstances, defendant is hard pressed to establish that the jury instruction was error, much less plain error. As explained in State v. Ross, "[a] defendant who does not raise an issue before a trial court bears the burden of establishing that the trial court's actions constituted plain error." 229 N.J. 389, 407 (2017). A defendant must assume this burden "because 'to rerun a trial when the error could easily have been cured on request, would reward the litigant who suffers an error for tactical advantage either in the trial or on appeal.'" Ibid. (quoting State v. Weston, 222 N.J. 277, 295 (2015)).

IV.

Defendant also contends that the judge erred in instructing the jury regarding the legal requirements for transporting a firearm set forth in N.J.S.A. 2C:39-6. Before trial, defendant argued that the court should not charge the jury on exemptions set forth in N.J.S.A. 2C:39-6. Specifically, defendant argued to the trial court:

The [c]ourt has already indicated that the [c]ourt believes that the requirements of [N.J.S.A.] 2C:39-6(g) are applicable to this case. Judge, I have yet and the State, in its brief, did not cite to any authority or any indication, any legal indication, that [N.J.S.A.] 2C:39-6](g) applies to [defendant]. As we stated in our brief,

Judge, the title of [N.J.S.A.] 2C:39-6 is exemptions. It deals specifically -- the entire statute deals with persons that are exempt from the requirement to obtain a permit.

[Defendant] was not that such person, that's why he got a permit to carry. He is not an exempt person. That entire statute, the entirety of [N.J.S.A. 2C:]39-6 applies to persons that are exempt and it talks about how they become exempt, how they stay exempt and what they have to do while they are exempt. [Defendant] is not an exempt person and none of that statute applies to him.

The trial court explained its reasoning for believing the provisions of N.J.S.A. 2C:39-6 were applicable:

The reason why sub-section (g) is relevant and applies to not just [defendant] who has a limited carrying permit but to all that have firearms and a purchaser's I.D. identification is that they are bound by those rules of transportation under sub-section (g). In addition, they are bound by those rules under sub-section (e). If somebody had a firearm in the backseat of their car loaded. They get pulled over by the police and somehow it's discovered and they have a firearm purchaser's I.D. card, they would be violating sub-section (g). And if they were not going to and from the prescribed areas in sub-section (e), they would be violating that, as well and thus, [N.J.S.A.] 2C:39-5.

. . . [T]he [c]ourt is simply not adding elements to this crime but rather, the jury has to know the clear parameters, as well as this defendant. Count one of the indictment states, "[t]he Grand Jurors of the State of New Jersey, for the County of Essex, upon their oath, present that [defendant], on the 17th of October, 2016, in the City of East Orange, the County of Essex,

aforesaid within the jurisdiction of this [c]ourt, knowingly had in his possession a handgun." And, quote, "[a]nd carried same outside the bounds of his permit," close quote, contrary to provisions of [N.J.S.A.]2C:39-5, a crime of the second degree and against the peace of the State, the governing dignity of the same.

When [d]efense states -- the issue is, does the jury treat the defendant as someone who has a permit or not? It goes beyond that because the question is whether or not -- not if [defendant] had a carrying permit but whether or not he was carrying it within the bounds of that carrying permit.

Thereafter, during the charge conference, defense counsel renewed her objection to the court instructing the jury with respect to N.J.S.A. 2C:39-6. The trial court reaffirmed its prior reasoning, finding that the jury would be confused if the court did not explain the exemptions. The court explained:

I added the language, because if I didn't . . . then a person outside of the scope of their permit, if the jury so found, they would automatically be guilty.^[4]

The trial court then charged the jury as follows regarding N.J.S.A. 2C:39-6:

If you find that the defendant was issued a limited type of permit which restricted where and for what purpose the handgun, marked as State's Exhibit 5[,]

⁴ Defendant filed a motion for leave to appeal the trial court's decision to charge N.J.S.A. 2C:39-6(g), which we denied.

could be carried, and that the defendant did carry S-5 outside the restrictions imposed by the permit in violation of [N.J.S.A.] 2C:58-4(d), then you must determine whether or not he was properly transporting the weapon as mandated under [N.J.S.A.] 2C:39-6(g), when he was stopped by the New Jersey Police on October 7th, 2016.

. . . .

If you find the State has proven the first two elements beyond a reasonable doubt and with regard to the third element that the defendant did not comply with the restrictions placed upon him by a limited type [of] permit referenced earlier, and that he failed to properly transport the weapon under [N.J.S.A.] 2C:39-6(g), you must find him guilty. If you find the State has failed to prove any of the three elements beyond a reasonable doubt, then you must find him not guilty.

It is a "bedrock principle of our criminal justice system that '[a]ppropriate and proper charges to a jury are essential for a fair trial.'" State v. Watson, 472 N.J. Super. 381, 508 (App. Div. 2022) (alteration in original) (quoting State v. Carrero, 229 N.J. 118, 127 (2017)). "[W]hen defense counsel requests an affirmative defense . . . the trial court should provide the requested charge on the affirmative defense when there is a rational basis to do so based on the evidence." State v. Daniels, 224 N.J. 168, 181 (2016) (citing State v. Walker, 203 N.J. 73, 86–87 (2010)). If such a charge is not requested, "the court should

still give it when the evidence clearly indicates that it is appropriate." Ibid. (citing Walker, 203 N.J. at 87).

In Daniels, our Supreme Court provided guidance on how trial courts should evaluate situations where a defendant opposes an affirmative defense instruction:

In situations where a criminal trial record presents evidence of an imperfect or incomplete defense, the trial court must consider: (1) the need to educate the jury on how to evaluate evidence from a legal perspective, in keeping with the court's responsibility to administer the justice system and the jury's truth-finding function; and (2) the need to protect a defendant's rights and not undermine the defense that has been advanced at trial. Although a defendant has a right to choose the defense he will present, the court must be concerned about the countervailing public consideration that all legal concepts necessary for the jury's truth-seeking function are presented to the jury for the proper administration of justice. A court should assess a number of considerations when not all of the elements of an affirmative defense are present and a defendant resists the affirmative defense because it is asserted to be inconsistent with his chosen defense.

[Id. at 186.]

Applying these general principles to the circumstances of this case—where defendant was authorized to carry a firearm while working as a private security guard—we agree with the trial court that it was appropriate to explain to the jury the law on how defendant might legally transport the firearm from

his home to a workplace and back. We conclude the court did not err in providing this explanation. Furthermore, nothing in the challenged instruction undermined the defense theory. To the contrary, the challenged instructions reinforced that the jury must find whether defendant carried a firearm in public beyond the scope of the limited permit. We reiterate that the jury instruction is reviewed "as a whole to determine its overall effect." Wilbely, 63 N.J. at 422. As we noted in the preceding section, the jury was properly instructed with regard to defendant's carry permit.

V.

We turn next to defendant's contention the prosecutor engaged in several instances of prosecutorial misconduct. We begin our analysis by acknowledging that "prosecutors in criminal cases are expected to make vigorous and forceful closing arguments to juries" and are "afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented." State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Frost, 158 N.J. 76, 82 (1999)). Remarks should stay within the bounds of the evidence. Ibid. (quoting State v. R.B., 183 N.J. 308, 330 (2005)); see also State v. Jackson, 211 N.J. 394, 408 (2012) ("A finding of prosecutorial misconduct prejudicing a defendant's right to a fair trial may be based upon

references to matters extraneous to the evidence."). When remarks "stray over the line of permissible commentary," courts must "weigh 'the severity of the misconduct and its prejudicial effect on the defendant's right to a fair trial,' and . . . reverse a conviction on the basis of prosecutorial misconduct only if 'the conduct was so egregious as to deprive defendant of a fair trial.'" McNeil-Thomas, 238 N.J. at 275 (quoting State v. Wakefield, 190 N.J. 397, 437 (2007)).

"In deciding whether prosecutorial conduct deprived a defendant of a fair trial, 'an appellate court must take into account the tenor of the trial and the degree of responsiveness of both counsel and the court to improprieties when they occurred.'" State v. Williams, 244 N.J. 592, 608 (2021) (quoting Frost, 158 N.J. at 83). Reviewing courts should consider the following factors: "(1) whether defense counsel made timely and proper objections to the improper remarks; (2) whether the remarks were withdrawn promptly; and (3) whether the court ordered the remarks stricken from the record and instructed the jury to disregard them." Ibid. (quoting Frost, 158 N.J. at 83).

Defendant asserts that the prosecutor went beyond the scope of evidence and sought to inflame the jury when he argued to the jury that:

Licenses are given out, permits are given out by the State for various activities, this is a driver's license, allows me to travel on the highways and the byways of the State of New Jersey.

What it does not allow me to do, is drive [seventy-five] miles through a school zone with kids present. It doesn't allow me to drink a fifth of vodka, and then see if I can redline my car at 130 miles an hour on the highway. It does not allow me to bypass a line of cars on the sidewalk, and then run through a light to bypass a funeral procession.

With a license, with a permit, go responsibilities.

. . . .

Doctors, they have a license to practice medicine. It does [not] give them the right to run [a] pill mill out of their office. And an electrician has a license to wire houses. It doesn't mean that he or she can use substandard equipment, cause a fire and kill three people in that house. The permit doesn't permit them to do that. With permits, with licenses go responsibilities.

We conclude it was not inappropriate for the prosecutor to argue that individuals with licenses have certain privileges and limitations, especially considering that defendant did not object to the prosecutor's comments. See Frost, 158 N.J. at 84 (noting "[t]he failure to object suggests that defense counsel did not believe the remarks were prejudicial at the time they were made").

Defendant asserts that the prosecutor engaged in misconduct by reading a quote from the Nuremberg trials to the jury.⁵ The prosecutor said:

⁵ Specifically, the prosecutor pieced together two statements from United States Chief of Counsel Robert Jackson's closing argument. See Robert H. Jackson,

I'd like to read a quote of a very famous case, years ago. And it was for a jury by a famous [p]rosecutor. It was a very, very big case, a multiple homicide case. But the words then are as true today as they were then. It reads as follows: "The suspended judgment with which we open[ed] this case is no longer appropriate. The time has come for final judgment. And if the case I present seems harsh and uncompromising it is because the evidence makes it [so]. If you were to sa[y of] these men, that they are not guilty it would be as true to say there are no s[lain], there has been no crime."

We are not persuaded the prosecutor's quotation requires that this conviction be reversed. Although, as a general matter, prosecutors should not reference the trial of Nazi war criminals, importantly, the jury was not told that the quote was from the Nuremberg trials. Nor does the quoted text reveal its source. And, significantly, defendant did not object to this quote, suggesting the prosecutor's comments were not prejudicial in the context of the trial. See Frost, 158 N.J. at 83–84. The failure to object also deprived the trial court the opportunity to take remedial action.

In these circumstances, and given the overwhelming evidence that defendant impersonated a police officer and disregarded the limits imposed on

Closing Arguments for Conviction of Nazi War Criminals, 20 Temp. L.Q. 85, 86, 107 (1946).

his firearms carry permit, we conclude the prosecutor's comments did not deprive defendant of a fair trial. See Wakefield, 190 N.J. at 437.

Defendant next asserts the prosecutor improperly conveyed his personal opinions when he argued:

Now, you might be saying to me, gee, all right, I understand, you've explained to me, but if it's -- that open -- you know, if it's that clear cut why am I sitting here. Why did you pull me away from my lawful business, my job, my home, you know, my wife to sit here and listen to this case. Ladies and gentlemen, in the United States of America and in the State of New Jersey you are entitled to a trial by jury when you are accused by indictment of a crime, that's why you're sitting here.

We see no error in the prosecutor stressing that a defendant charged with a crime is entitled to trial by jury, especially considering that defendant did not object to this remark. See Frost, 158 N.J. at 84.

Defendant argues the prosecutor committed misconduct during closing argument by stating: "[Y]ou must determine the credibility of witnesses who come before you. You must weigh their evidence. Brown, Thorn [sic], Perez, you think they came in here and lied to you? Do you? You've got two officers of law out there"

Defense counsel objected to this comment. The judge overruled the objection, finding the prosecutor simply asked the jury if they thought they were

being lied to. Given the wide latitude afforded to prosecutors during summation, we see no reason to substitute our judgment for that of the trial court. McNeil-Thomas, 238 N.J. at 275.

Also during summation, the prosecutor commented: "Ladies and gentlemen, I've got to tell you something. I rarely write notes. I've written more notes in the last day and a half on this case, than I did in the prior six cases I've done."

Defense counsel objected to this comment and the judge stopped the prosecutor from continuing with that argument. We believe the prosecutor's comment was inappropriate but did not deprive defendant of a fair trial. Ibid. (explaining "even when a prosecutor's remarks stray over the line of permissible commentary, we reverse a conviction on the basis of prosecutorial misconduct only if 'the conduct was so egregious as to deprive defendant of a fair trial'" (quoting Wakefield, 190 N.J. at 437)).

Defendant also contends the prosecutor committed misconduct by eliciting and commenting on testimony. Defendant asserts, for example, that the prosecutor improperly elicited testimony that defendant was not permitted to have the emergency light bars that were found in his car. An officer testified that the only vehicles allowed to display those lights are police vehicles or

emergency vehicles. Defendant objected to this testimony, but the trial court overruled the objection, finding that it was relevant to the impersonating a police officer charge. We see no error in that ruling.

Defendant further asserts that the prosecutor should not have been permitted to turn the lights on for the jury, and that the trial court erred in not providing a limited instruction because evidence of the lights triggered "other crimes" evidence. See N.J.R.E. 404(b). That testimony, however, never suggested that defendant was previously charged with or convicted for impersonating a police officer or any other crime or bad act. Rather, this evidence was relevant to prove the current impersonating a police officer charge. Accordingly, no limiting instruction was required.

Defendant also asserts the prosecutor improperly elicited testimony from an officer that "running errands"—as defendant allegedly claimed to be doing—was "outside" the scope of his employment, and from defendant's employer that defendant was not authorized by the employer to carry his firearm at the time of his arrest.

In both instances, the testimony was factual, not opinion testimony. The officer's testimony explained why defendant was arrested. The testimony from the employer explained the scope of defendant's employment with respect to

carrying a firearm. Importantly, defendant did not object to either the testimony elicited from the officer or from the employer. See State v. Johnson, 216 N.J. Super. 588, 609–10 (App. Div. 1987) ("A timely objection is necessary to provide the court and the prosecutor with an opportunity to cure any error caused by an improper remark and signifies that defense counsel did not believe that the comments were prejudicial in the atmosphere of the trial." (first citing State v. Johnson, 31 N.J. 489, 511 (1960); and then citing State v. Marks, 201 N.J. Super. 514, 533–34 (App. Div. 1985))).

VI.

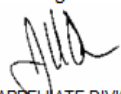
Finally, we address defendant's cumulative error argument. "When legal errors cumulatively render a trial unfair, the Constitution requires a new trial." State v. Weaver, 219 N.J. 131, 155 (2014) (citing State v. Orecchio, 16 N.J. 125, 129 (1954)). Furthermore, "[i]f a defendant alleges multiple trial errors, the theory of cumulative error will still not apply where no error was prejudicial and the trial was fair." Ibid. "[D]evised and administered by imperfect humans, no trial can ever be entirely free of even the smallest defect. Our goal, nonetheless, must always be fairness. A defendant is entitled to a fair trial but not a perfect one." Ibid. (alteration in original) (quoting Wakefield, 190 N.J. at 537).

For reasons we have explained, we are not persuaded that any prejudicial errors were committed, much less multiple ones. We conclude defendant has failed to establish that he was deprived of the right to a fair trial, especially considering the overwhelming evidence of guilt.

To the extent we have not specifically addressed them, any remaining contentions raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION