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Lesson Plan

State vs. Outland, N.J. (2021)
Right of Self-Representation

Because the trial court quizzed defendant on his knowledge of substantive law rather than provide the information required by New Jersey case law to confirm he was making a knowing and voluntary waiver of counsel, the denial of defendant's request to represent himself was an abuse of discretion.

The trial court took the time to engage defendant in an extensive inquiry regarding his desire to represent himself at trial. However, the Crisafi-Reddish inquiry requires trial courts to inform defendants of the nature of the charges, statutory defenses, and the range of punishment. Instead of informing defendant about those topics, the trial court tested defendant's knowledge. Although the trial court followed the format of the Crisafi-Reddish inquiry by covering the topics required, the court erred in quizzing defendant on those areas and not providing him the substantive information regarding the nature of his charges and applicable defenses. The Court finds this case similar to King, where the trial court's questioning of a defendant seeking to proceed *pro se* improperly focused on whether defendant had technical legal knowledge, not whether he comprehended the risks and consequences of acting as his own attorney.

State vs. Dunbrack, N.J. (2021)
Request For a Jury Charge on a Lesser-Included Offense

When a defendant requests a charge to a lesser included offense, the trial court is obligated to examine the record thoroughly to determine if there is a rational basis for finding that the defendant was not guilty of the higher offense charged but guilty of a lesser-included offense. If a defendant did not request a charge or did not object to the omission of a charge to a lesser included offense, the Court's appellate review assesses whether the record "clearly indicated" the charge, such that the trial court was obligated to give it *sua sponte*. In determining whether the facts clearly indicate that a charge should be given, the trial court is not required to scour the statutes to determine if there are some uncharged offenses of which the defendant may be guilty. The trial court is also not saddled with the burden of sifting through the record to find some combination of facts and inferences that might rationally sustain the lesser included offense. The record clearly indicates a lesser-included charge if the evidence is jumping off the page.

A trial court should only instruct the jury on theft as a lesser included offense of robbery if there is a question whether the defendant's act of inflicting bodily injury, using force upon another or threatening another with or purposely putting him in fear of bodily injury occurred in the course of committing a theft.

State vs. Maisonet, N.J. (2021)
Adjournment of Trial to Secure New Counsel

The Court affirms settled principles of law that require trial judges to conduct a “reasoned, thoughtful analysis” of certain factors when they consider a request for an adjournment to hire new counsel. If a trial judge does not conduct the proper analysis, it may be necessary to reverse a conviction. But defendants are not automatically entitled to a new trial. When a reviewing court can glean or infer the relevant considerations from the record, it may evaluate the appropriate factors. The Court does not find an actual deprivation of the right to counsel of choice here, so the doctrine of structural error does not apply. The trial court must strike a balance between (a) its right to control its own calendar and the public’s interest in the orderly administration of justice and (b) a defendant’s constitutional right to obtain counsel of his choice. To do so, New Jersey courts use eight factors. The Court reaffirms the use of those factors and reminds trial judges to analyze them when defendants request an adjournment to obtain counsel.

Trial courts have broad discretion in weighing the factors. An arbitrary or erroneous ruling that amounts to an actual deprivation of the right to counsel of one’s choice implicates structural error, and prejudice is presumed. But courts cannot presume structural error from a trial court’s failure to ask questions or make explicit findings if the record otherwise reveals that an adjournment to seek to hire new counsel was not appropriate. If an appellate court can glean or infer the relevant considerations from the record, it can analyze the factors to determine whether the trial court abused its discretion in denying an adjournment.

The Court evaluates the relevant factors on the record here; though thin, the record allows consideration of nearly all of the factors. First, as to the length of the requested delay, defendant’s request was open-ended, and he acknowledged he had not yet approached either his family, to see if they could provide funds, or a private attorney.

One can infer the delay would have been considerable. Second, the Court cannot tell whether other continuances had been requested and granted. The Court measures the third factor--the balanced convenience or inconvenience to the litigants and the court--in part by the timing of the request. Here, the jurors were summoned, witnesses were prepared, and the trial court’s schedule was cleared prior to defendant’s last-minute request.

As to the fourth factor, defendant’s sole reason for the request was that his lawyer lacked sufficient experience. The trial court made an express finding there was no

reason to believe the experienced counsel could not represent defendant fairly. This implied the trial court's view that denying the continuance would not result in identifiable prejudice to defendant, the seventh factor. Fifth, defendant alone contributed to the circumstance that gave rise to the motion by waiting until the day of trial to ask for an adjournment and failing to act with reasonable diligence. Sixth, no other competent counsel was prepared to try the case: defendant had not yet approached his family or private counsel. As to the complexity of the case, the eighth factor, no defendant can be expected to stand trial for murder with an attorney who has not begun to prepare the case.

The Court disapproves of what happened at the abbreviated hearing and directs that trial courts analyze requests for continuances to hire counsel of choice in accordance with settled case law. To accomplish that, trial judges should ask defendants questions designed to elicit information relevant to the relevant. That inquiry does not have to be lengthy to facilitate a reasoned analysis of the applicable factors.

State vs. Garcia, N.J. (2021)
Prosecutorial Misconduct

In his summation, the prosecutor attacked the credibility of defendant's family members, misrepresenting that they made no attempt to speak with the police at the scene. The prosecutor specifically discredited the mother, arguing that the mother was aware she had to speak with the detective and not the police officers, that she saw a witness taking notes, and that she did not respond the way a mother naturally would respond if she had helpful information concerning her son to "tell the police at the scene" about what had happened. The excluded video refuted the image he conveyed to the jury. The prosecutor exploited a favorable evidentiary ruling to strike an unfair blow at the defense and give a misleading presentation to the jury unrelated to the truth. In fulfilling the duty to seek justice, a prosecutor must refrain from making inaccurate factual assertions to the jury and from employing improper methods calculated to produce a wrongful conviction. Although the prosecutor is free to discuss the direct and inferential evidence presented at trial, the prosecutor cannot press an argument that is untrue -- that is contradicted by an objective video recording excluded from evidence for reasons unrelated to its authenticity. That otherwise trustworthy and reliable evidence may be deemed inadmissible, for one reason or another, does not give a party, including the prosecutor, a right to freely portray a false picture of events. This case was a pitched credibility contest between the witnesses presented by the State and the defense.

The prosecutor's synthetic argument that defendant's family members, in essence, lied when they testified that they tried to speak with the police at the scene had the clear capacity to tip the scales against defendant. For if the jury believed that argument, then it was within its rights to disregard the whole of their testimony supporting defendant's self-defense claim. Under the plain error doctrine, the trial court's error in excluding the video from evidence and the prosecutor's improper exploitation of that evidentiary ruling combined to deny defendant a fair trial.

State vs. Williams, 244 N.J. 592(2021)
“Here’s Johnny!”

The duty of a prosecutor is as much to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. While prosecutors are expected to make vigorous and forceful closing arguments to juries, their comments should be reasonably related to the scope of the evidence presented. References to matters extraneous to the evidence may constitute prosecutorial misconduct. When a prosecutor’s 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. Courts reverse a conviction only if the prosecutorial misconduct was so egregious as to deprive defendant of a fair trial. Factors to be considered in making that decision include: (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.

To avoid objection or possible error, the Court encourages counsel to disclose to each other and the court any visual aids intended to be used during closing argument but does not require that practice. Nevertheless, the Court reminds prosecutors that they must ensure their strategy and commentary fall within the boundaries of permissibly forceful advocacy. Prosecutors must walk a fine line when making comparisons, whether implicit or explicit, between a defendant and an individual whom the jury associates with violence or guilt. The use of a sensational and provocative image in service of such a comparison, even when purportedly metaphorical, heightens the risk of an improper prejudicial effect on the jury. Such a risk was borne out here. Visual aids such as PowerPoint presentations must adhere to the same standards as counsels’ spoken words. Slides may not be used to put forward impermissible evidence or make improper arguments before the jury. A PowerPoint may not be used to make an argument visually that could not be made orally. The PowerPoint here fell short of that standard.

In re Expungement of T.O., 244 N.J. 514(2021)
Expungement Following a Pardon

Pardons remove legal disabilities linked to the conviction itself but do not erase the underlying facts of an offense. Here, T.O. faced a statutory bar that prevented him from being eligible for expungement. That legal disability came into play solely because of his prior convictions. The pardon --which removed the legal disabilities that arose from those convictions --therefore dissolved the statutory bar. With the bar removed, T.O. is eligible to be considered for expungement on the merits.

State vs. Jackson, 243 N.J. 52(2020)
Cooperating Witnesses

The jury should have had full access to the cooperating witness's plea agreement history through the defense counsel's unfettered examination of that history. The trial court's limitations on defendant's cross examination were in error. Defendant was deprived of his right to confrontation and denied a fair trial.

Trial courts often withhold sentencing information from juries because the jury should not be influenced by a consideration of what will be the result of its verdict. New Jersey state courts have not addressed the scenario in which a trial court limits cross-examination into the term of imprisonment a cooperating witness avoided by testifying for the government where the defendant and witness were charged with the same crime.

The State substantially premised its case on the jury's acceptance of Clarke as a credible witness. Had the jury been aware that Clarke was potentially facing an extended term of ten years in state prison when taking a plea deal of 180 days in county prison, it may well have drawn an inference of bias, which could have perhaps yielded a full acquittal. The Court cannot conclude beyond a reasonable doubt that the trial court's limitation on defendant's cross-examination of Clarke constituted harmless error. And the court's general instruction was not sufficient to overcome the imbalance created through its inconsistent approach to the witness's sentencing exposure.

State vs. Desir, 245 N.J. 179(2021)
Right of Discovery in a Franks Hearing

A defendant seeking discovery in connection with a Franks hearing may - in the trial court's discretion and on showing a plausible justification that casts reasonable doubt on the veracity of the affidavit - be entitled to limited discovery described with particularity that is material to the determination of probable cause.

Defendants seeking to challenge the basis of a search warrant must make an evidentiary showing before a hearing will be granted: they must first establish by preponderance of the evidence that the allegedly false statement in the affidavit was made either deliberately or in reckless disregard of the truth. Under our case law, a defendant's "attack must be more than conclusory, supported by more than a mere desire to cross-examine, and accompanied by an offer of proof.

We will henceforth require a defendant to describe with reasonable particularity the information sought in discovery, sustained by a plausible justification "casting a reasonable doubt on the truthfulness of statements made in the affidavit." Id. at 647. The discovery request should be buttressed by support for assertions of misstatements or omissions in the search warrant affidavit that are material to the determination of probable cause, the basis for believing that the information exists, and the purpose for which the information is sought. The application of this standard and the determination of whether it has been met in an individual case must rest in the sound discretion of the trial judge, who will review the appropriately redacted discovery in camera. Only after such in camera review will the judge determine whether the discovery sought contradicts material facts set forth in the affidavit, should therefore be disclosed, and to what limitations or redactions the discovery might be subject.

State vs. Greene, 244 N.J. 368(2020)
Prosecutor's Opening Statement

Because the testimony of witnesses is not always predictable, proceeding with a modest degree of caution in an opening statement may be the safer course when the anticipated testimony is fraught with uncertainty. A prosecutor who describes in excessive detail the testimony he intends to elicit does so at his peril if he is unable to deliver the evidence. Clearly, not every variance between a prosecutor's opening statement and the actual presentation of evidence will constitute reversible error, particularly when the court gives a proper limiting instruction. Nevertheless, some remarks included in an opening statement could be so prejudicial that a finding of error would be unavoidable.

When, in his opening statement, the prosecutor alerts the jury that it will hear testimony that the defendant confessed to the crime and then fails to present evidence to support that anticipatory pledge, the defendant's fair-trial rights are directly implicated. A prosecutor - even one who is acting in good faith -- cannot in an opening statement dangle an incriminating statement in front of jurors, tell them it implicates a particular defendant, and then expect that they will not use it against that person. Although the Court has not had occasion to squarely address a prosecutor's opening statement that detailed evidence of a defendant's guilt that never materialized because the anticipated witness refused to testify, the Appellate Division and courts from other jurisdictions have ordered new trials under such circumstances.

State vs. Williams, N.J. Super (App.Div.2021)
Municipal Appeals

After the municipality painted white lines on a paved area, defendant painted over the lines with black paint and then painted a new white line. She claimed the paved area was a "parking bay" on her property; the municipality claimed it was a public street.

In a trial de novo, the Law Division convicted defendant of violating a municipal ordinance that prohibited a person from unnecessarily obstructing "any . . . street, or public place in the [municipality] with any kind of vehicle, boxes, lumber, wood, or any other thing[.]"

Without addressing the property-ownership issue, the court perpended the plain-language meanings of "obstruct" and considered two Law Division decisions, one by then-Judge Virginia A. Long interpreting that term as used in the statute prohibiting obstruction of highways and other public passages, N.J.S.A. 2C:33-7. Because defendant's actions did not block or otherwise impede passage, the court concluded she did not violate the ordinance and reversed her conviction.

State vs. Horton, 242 N.J. 428(2020)
Seating a New Juror After Partial Verdict

Under settled law, juror substitution is impermissible if the jury has reached a partial verdict. The proper course is for the trial court to take the partial verdict and declare a mistrial on the open counts. In a case like this, courts cannot know whether the jury will “start anew” with the entry of a substitute juror and discard their views simply because there is a new juror amongst them. Nor can courts know if the new juror will exercise independence or simply go along with the opinions of the existing jurors. Courts cannot know or speculate whether the replacement juror was a full participant the mutual exchange of ideas. The safest and fairest course is to take a partial verdict, declare a mistrial, and constitute a new jury to hear the remaining counts.

State vs. Gerena, 465 N.J. Super 548(App. Div. 2021)
Lay Opinion

In this criminal appeal, defendant principally contends the trial judge should not have admitted opinion testimony from a police officer and a civilian eyewitness estimating the range of heights and ages of children they had observed near defendant in a public park. The witnesses saw the group of children, accompanied by several adults, playing on equipment in a playground. The State relied on their testimony to prove that one or more of the children was under the age of thirteen, a statutory grading element of the charged offenses of lewdness and sexual assault by contact.

The trial court rejected defendant's contention that the opinion testimony was too speculative to be considered by the jury. On appeal, defendant reiterates this argument, contending as a general proposition that witnesses commonly misjudge the ages and heights of other persons.

For the reasons that follow, we affirm the court's evidentiary ruling. In the circumstances presented, the two witnesses had an adequate opportunity to view the physical characteristics and activities of the group of children to enable them to provide lay opinions under N.J.R.E. 701 about the perceived ranges of the children's heights and ages.

Although we appreciate the inherent risks of imprecision and mistake when eyewitnesses estimate the heights or ages of other persons, such lay opinions nonetheless may be admissible under Rule 701 and helpful to the trier of fact, subject of course to cross-examination and other forms of impeachment.

In evaluating the admissibility of such evidence, a court should consider a variety of factors, such as (1) distance, (2) length of time of the observation, (3) any observed activity of the person, (4) physical comparisons with the height or size of nearby objects or other persons, (5) whether the eyewitness attests to a range rather than a specific height or age, (6) whether the observed individual has a comparatively similar age or height as the witness, (7) whether there is corroborating proof, and (8) the totality of circumstances. In appropriate cases, the court may exclude or limit the opinion testimony in its discretion under N.J.R.E. 403 and, if warranted, provide jurors with a limiting or cautionary instruction.

State vs. Bell, 241 N.J. 552(2020)
Instruction to Grand Jury on Applicable Law

The decision to prosecute and what charge to file or bring before a grand jury generally rests entirely in the prosecutor's discretion. A deficiency premised upon alleged prosecutorial misconduct does not require dismissal of an indictment unless the prosecutor's misconduct is extreme and clearly infringes upon the grand jury's decision-making function. Where a prosecutor's instructions to the grand jury were misleading or an incorrect statement of law, the indictment fails. (pp. 6-9)³. Instructions on lesser-included offenses began as a way to aid the prosecution so that it would not fail entirely where some element of the greater offense was not established. In the context of a petit jury, lesser-included-offense instructions also protect the accused by avoiding the coercive prejudice inherent in giving the jury the choice of all -or-nothing.

In the grand jury setting, on the other hand, an all-or-nothing choice jeopardizes the prosecution: If the prosecutor does not explain lesser-included offenses to the grand jurors and probable cause is not found for the offense presented, the grand jury will return a no bill. If evidence of lesser-included offenses, though not clearly exculpatory, exists but is not presented to the grand jury, or if the evidence is presented but the grand jury is not instructed on lesser-included offenses, the trial court must nonetheless instruct the petit jury on lesser-included offenses at the close of trial.

Courts in other jurisdictions have generally found no affirmative duty to instruct grand juries on lesser-included offenses but have been nearly uniform in ruling that prosecutors may not mislead grand jurors if they pose questions about lesser-included offenses. Applying the principles from the treatment of lesser-included offenses before petit juries, the Court agrees that the constitutional protections afforded defendants by the grand jury process are not undermined by the failure to charge lesser-included offenses.

The trial court here did not abuse its discretion in denying defendant's motion to dismiss the indictment. The facts revealed an altercation while defendant and his partner picked up her child from the victim. In that altercation, defendant allegedly stabbed the victim. In that context, it is reasonable that a grand juror would seek clarification about "degrees" for murder, and specifically about premeditation. In response, the prosecutor mentioned "lesser included lower offenses," the grand jury's responsibility, and the model jury charge for murder. The prosecutor made no misstatements or misleading representations. No subversion of the grand jury process occurred. The prosecutor dutifully, honestly, and in good faith answered the grand juror's questions. That the prosecutor did not instruct the grand jury on lesser-included offenses for murder does not constitute an abuse of the prosecutor's broad discretion warranting dismissal of the indictment. In any event, the trial court may be obliged to instruct the petit jury on lesser-included offenses at the close of trial.

State vs. Nyema, 465 N.J. Super 181(App.Div.2020)
Motor Vehicle Stop Based Upon Race

Following the denial of his motion to suppress physical evidence, defendant pled guilty to first-degree robbery, N.J.S.A. 2C:15-1. Police officers seized the evidence following an investigatory stop of an automobile in which defendant was a passenger. The arresting officer testified he stopped the car because he was advised two black men had robbed a store. The officer used a spotlight mounted to his car to illuminate the interiors of passing vehicles as he traveled to the store. In one car, he observed three black men who did not react to the light. The officer stopped the car based on those observations. The court holds that knowledge of the race and gender of criminal suspects, without more, does not establish a reasonable articulable suspicion that the men in the car had robbed the store. Accordingly, the court reverses defendant's conviction, vacates his sentence, and remands for further proceedings.

State vs. Sims, N.J. Super (App.Div.2021)
Miranda

In this appeal, the court determined as a matter of first impression that the Supreme Court's holdings in State vs. A.G.D., 178 N.J. 56(2003), and State vs. Vincenty, 237 N.J. 122(2019), requiring that police inform a defendant subject to custodial interrogation of specific charges filed against him before he can waive his Miranda rights, also applies to an interrogee who was arrested and questioned prior to any charges being filed, where the arrest was based upon information developed through an earlier police investigation

The court also concluded that the trial court erred by admitting the victim's statement to police through a police officer's hearsay testimony at trial because defendant was deprived of a meaningful opportunity to challenge the victim's statement through cross examination at a pretrial hearing or before the jury, where at the pretrial hearing the victim could not recall ever giving the statement to police and he later refused to appear at trial to testify before the jury.

State vs. Radel, 465 N.J.Super 65(App.Div.2020)
Protective Sweeps.

[Pending Supreme Court review]

Charged with numerous weapons and drug offenses, defendant moved in the trial court for the suppression of evidence – guns, ammunition, drugs, and drug paraphernalia – seized pursuant to a search warrant based on information police obtained during a warrantless entry into defendant's home. The trial judge denied the suppression motion, finding the police conducted a permissible protective sweep of the home. The court disagreed with the trial judge's application of State vs. Davila, 203 N.J. 97(2010), concluding that the police lacked both a reasonable and articulable suspicion of danger and a legitimate purpose for remaining on the premises, since defendant was arrested outside the home and handcuffed before police conducted the sweep.

State vs. Chen, N.J. Super (App.Div.2021)
Conditions on PTI Admittance

These consolidated appeals ask the court to determine whether the Middlesex County Prosecutor's Office (Prosecutor's Office) can condition defendants' admissions into the pretrial intervention program (PTI) applications, N.J.S.A. 2C:43-12, on service of jail time after they were released on their own recognizance.

In accordance with plea agreements, defendants pled guilty to amended charges of third-degree criminal mischief, N.J.S.A. 2C:17-3, and they were each sentenced to a four-year term of noncustodial probation. Pursuing rights preserved in their plea agreements, defendants sought to overturn the denials of their PTI applications with appeals to the trial judge, claiming the Prosecutor's Office abused its discretion by proposing that they serve jail time to gain admission. The trial judge rejected defendants' requests without addressing the impact of the jail time proposals.

We reverse. The Prosecutor's Office abused its discretion by tainting the PTI application process through unsuccessfully seeking to have defendants agree to serve jail time to gain admission. Although imposing the condition of jail time for PTI admission was not expressly permitted or prohibited by the governing statute, court rule, or guidelines in effect at the time, we conclude it was illegal to do so because vesting such authority to the Prosecutor's Office would afford it powers contrary to the Legislature's intent in creating PTI. The trial court shall therefore enter orders vacating defendants' guilty pleas and admit them into PTI.