

Superior Court of New Jersey,
Appellate Division.
STATE of New Jersey, Plaintiff-Respondent,
v.
Earic S. BILLUE, Defendant-Appellant.
Submitted Sept. 19, 2006.
Decided Oct. 5, 2006.

SYNOPSIS

On appeal from the Superior Court of New Jersey, Law Division, Camden County, 02-01-0009.

Yvonne Smith Segars, Public Defender, attorney for appellant ([Linda Mehling](#), Assistant Deputy Public Defender, of counsel and on the brief).

Anne Milgram, Acting Attorney General, attorney for respondent (Leslie-Ann Justus, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

Before Judges [AXELRAD](#) and [R.B. COLEMAN](#).

PER CURIAM.

*1 Tried to a jury, defendant was convicted of first-degree aggravated manslaughter, [N.J.S.A. 2C:11-4\(1\)](#), a lesser-included offense of murder (count one), and second-degree possession of a weapon (a firearm) for an unlawful purpose, *N.J.S.A. 2C:39-4a* (count two). He was acquitted of unlawful possession of a weapon (count three). The court sentenced defendant to a thirty-year term with an 85% parole ineligibility pursuant to the No Early Release Act (NERA) on count one and a concurrent ten-year term with an 85% NERA parole ineligibility period on count two. The appropriate mandatory applicable fines and assessments were also imposed. On appeal, defendant argues:

POINT I

THE TRIAL COURT'S FAILURE TO CLARIFY THE JURY'S REQUEST TO SEE EVIDENCE FROM THE AUTOPSY SHOWING WHERE THE BULLETS ENTERED AND EXITED THE VICTIM'S BODY WAS HIGHLY PREJUDICIAL, DEPRIVING DEFENDANT OF HIS RIGHT TO A FAIR TRIAL. (Not Raised Below)

POINT II

THE JUDGE'S RESPONSE TO THE JURY'S INQUIRY, WHICH ASKED WHY IT HAD RECEIVED INSTRUCTIONS ON THE LESSER-INCLUDED OFFENSES TO MURDER, IMPROPERLY SUGGESTED THAT HE BELIEVED THAT THERE WAS EVIDENCE TO CONVICT DEFENDANT OF MANSLAUGHTER, IN GROSS VIOLATION OF DEFENDANT'S RIGHT TO DUE PROCESS AND A FAIR TRIAL.

POINT III

THE ADMISSION OF A GRUESOME PHOTOGRAPH OF THE DECEDENT DEPRIVED DEFENDANT OF THE RIGHT TO A FAIR TRIAL. [U.S. CONST. AMEND. VI, XIV](#); [N.J. CONST. ART. I, PAR. 9, 10](#).

POINT IV

THE CONVICTION FOR POSSESSION OF A WEAPON FOR AN UNLAWFUL PURPOSE SHOULD HAVE BEEN MERGED INTO THE CONVICTION FOR AGGRAVATED MANSLAUGHTER. (Not Raised Below)

POINT V

THE IMPOSITION OF THE MAXIMUM TERM, 85% TO BE SERVED WITHOUT PAROLE, IS MANIFESTLY EXCESSIVE BECAUSE THE TRIAL COURT IMPROPERLY FOUND AND GAVE UNDUE WEIGHT TO THE AGGRAVATING FACTORS.

POINT VI

THE SENTENCE MUST BE REMANDED FOR RESENTENCING.

In a pro se supplemental brief, defendant asserts the following legal arguments:

POINT I

DEFENDANT WAS DENIED HIS RIGHT TO TRIAL BY JURY UNDER THE SIXTH AMENDMENT AND FOURTEENTH AMENDMENT DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION, TOGETHER WITH [ARTICLE 1, PARAGRAPH 8](#), [ARTICLE 1, PARAGRAPH 9](#), AND [ARTICLE 1, PARAGRAPH 10, OF THE NEW JERSEY STATE CONSTITUTION](#), BASED UPON THE TRIAL COURT ERRONEOUSLY FAILING TO CHARGE THE JURY WITH RESPECT TO THE STATE'S BURDEN OF PROOF CONCERNING N.E.R.A., AN ESSENTIAL ELEMENT OF THE OFFENSE.

POINT II

DEFENDANT WAS DENIED HIS RIGHT TO TRIAL BY JURY UNDER THE SIXTH AMENDMENT AND FOURTEENTH AMENDMENT DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION, TOGETHER WITH [ARTICLE 1, PARAGRAPH 8](#), [ARTICLE 1, PARAGRAPH 9](#), AND [ARTICLE 1, PARAGRAPH 10, OF THE NEW JERSEY STATE CONSTITUTION](#), BASED UPON THE TRIAL COURT ERRONEOUSLY FAILING TO CHARGE THE JURY WITH RESPECT TO THE STATE'S BURDEN OF PROOF CONCERNING THE GRAVES ACT, AS AN ESSENTIAL ELEMENT OF THE OFFENSE.

We are not persuaded by defendant's arguments challenging the conviction, and affirm the conviction. As to the sentence, the State concedes the weapon possession conviction should have been merged with the aggravated manslaughter conviction and that the case should be remanded for resentencing under [*State v. Natale*, 184 N.J. 458 \(2005\)](#) (*Natale II*).

*2 The testimony presented at trial was that after Jermaine Glasco exited the Cotton Club, a bar on Fourth Street in Camden, on January 3, 2001 around midnight, defendant shot him and ran him over with his vehicle, dragging him about three blocks. Defendant testified that he left the club shortly after the victim and when he heard shots, he assumed he was an intended target and that someone was trying to rob him. Consequently, he ran to his car, and as he was attempting to speed away, his rear wheels hit a patch of ice and the back of his car began to fishtail and slide along the ice. He heard a "loud thumping" noise, which he thought was only a flat tire, but he did not want to stop the car to check because he feared for his safety and wanted to leave the area quickly. Eventually, the noise stopped and his car began to run normally. Defendant drove to his sister's house, where he checked the car, but claimed he did not observe any damage.

Two witnesses, both drug addicts, testified for the State concerning the shooting. One of them, Gregory Williams, stated he saw defendant and Glasco exiting the bar and walking across the street, heard them having a conversation about "a fair one," then he saw defendant aiming the gun at the victim's head or upper body, heard gunshots and saw the victim fall to the ground. Williams saw defendant flee, and then saw a white car drive around the corner, make a wide turn and run over the victim lying in the street. He recognized defendant as a bartender at the Cotton Club, who he had observed through the window, and the white car was one that he had washed for defendant on occasion. Williams also made an in-court identification of defendant.

Defendant's automobile, a white 1997 Infinity Q45, was subsequently seized pursuant to a search warrant. Blood, matching the victim, was recovered from the A-frame splash guard of the front passenger tire of defendant's automobile.

The officers and investigators at the crime scene testified that Glasco's body was found face down in the middle of Seventh Street. As a result of the dragging, Glasco's body was left partially clothed and shoeless. Drag marks and a bloody trail extended from Fourth and Chestnut Street down Kaigns Avenue to Seventh Street. One of the victim's shoes and his bloody leather jacket, which was ripped and bullet-ridden, were found at Seventh and Chestnut Streets, as well as a bloody piece of plastic from a vehicle. The victim's other shoe was found at Kaigns Avenue. The victim's gold chain, four shell casings, two bullets and a bullet fragment were found on a corner opposite the Cotton Club.

The coroner opined the cause of death was multiple gunshot wounds. He testified that Glasco's clothes were extremely torn and tattered with bullet holes in them. Glasco had four gunshot wounds on the right side of the back and one in his hand: one bullet passed through his cervical spine, neck, back and spinal cord; the second bullet went through his

left lung, [fractured ribs](#) and left collar bone, and clavicle; the third bullet went through soft tissue; and the fourth bullet went through his right hand. No stippling was observed on the body, which meant the shooter could have fired from a probable distance greater than two to three feet. The coroner opined that the presence of stippling could have been affected by the clothing having been dragged underneath the car for approximately half a mile. Dr. Robert Segal further testified that the victim's injuries unrelated to the gunshot wounds were very extensive: his head, face, arms, and body had a number of lacerations and abrasions, and skin was also missing from his shoulder and head. He also sustained [fractured ribs](#), a torn liver, a torn right lung, a [fractured skull](#) with [injury to the brain](#), a [fractured pelvis](#) and a torn urinary bladder, which most likely occurred while the victim was either dead or dying.

*3 Over the objection of defense counsel, the court admitted one photograph of the victim's body lying in the street.

After the deliberations began, the jury inquired as to whether there were photographs showing entry and exit wounds and asked to hear a tape of Williams' police statement. The judge indicated that no autopsy photographs were available as none had been entered into evidence. He further explained that only the portions of the statement that had been entered into evidence would be made available to the jury and asked for a clarification as to whether the jury desired a read-back of part or all of Williams' testimony. The jury requested a read-back of all of Williams' testimony, which was done.

Relying on [State v. Graham, 285 N.J. Super. 337 \(App. Div. 1995\)](#), defendant contends the trial judge committed plain error by failing to: (1) clarify the motivation behind the jury's request to see the photographs of the autopsy showing where the bullets entered and exited the victim's body and (2) direct them to other evidence describing the bullet wounds. Defendant contends the judge should have realized the jurors were concerned with the inconsistency between Williams' initial statement to the police that the victim had been shot in the head twice and the medical evidence that none of the bullets had entered the victim's head. We disagree. *Graham* is inapposite. In *Graham* we found that when a request by a jury is ambiguous and defense counsel objects to the trial judge's response to the request and asks the court to seek clarification, the trial court had an obligation to ask the jury its meaning and clear up any confusion a jury may have when it requests clarification. *Id.* at 342. Here the judge explained why the jury could not see the photographs and advised it could have a read-back of part or all of anybody's testimony. The explanation was apparently satisfactory to the jurors and counsel, and there was no indication of any further jury confusion. The judge was under no obligation to direct the jury's attention to any particular piece of evidence; if the jurors needed the description of the bullet wounds, they could have sent a follow-up note. We are satisfied with the trial judge's method of handling this matter and that it did not result in any error, let alone an error "clearly capable of producing an unjust result." *R.* 2:10-2.

During deliberations, the jury also sent a note to the judge asking why it had been instructed on the lesser-included offenses of aggravated manslaughter and reckless manslaughter when defendant had been indicted for murder, and for an explanation of the

differences between the three offenses. The judge explained it was part of his role to instruct the jury on lesser crimes that it would be “appropriate” for them to “consider,” but reminded the jurors the outcome of the case was their ultimate responsibility and that the State had the burden of proving each element beyond a reasonable doubt. We are satisfied the trial judge's presentation was balanced and did not in any way taint the deliberations or lead the jurors to believe they were obligated to convict defendant on any of the offenses. Read as a whole, the jury instruction was not clearly capable of producing an unjust result. See [State v. Robinson, 165 N.J. 32, 47 \(2000\)](#).

*4 Nor do we find error by the court in admitting into evidence gruesome photographs showing the mutilation of portions of the victim's body. In *State v. Micheliche*, we explained the standard for evaluating a trial court's determination for admitting photographs of a victim of a crime:

The admissibility of photographs of a crime victim rests within the discretion of the trial judge and his ruling will not be overturned in the absence of a palpable abuse of that discretion. Photographs will be deemed inadmissible only when their probative value is so significantly outweighed by their inflammatory potential to divert the minds of the jurors from a reasonable and fair evaluation of the basic issue of guilt or innocence. Although all pictures of a murdered body are likely to be unpleasant and cause emotional stirring, that of itself does not render them inadmissible. Nor does the fact that this evidence was cumulative render it inadmissible.

[\[220 N.J. Super. 532, 544-45 \(App. Div. 1987\), certif. denied, 109 N.J. 40 \(1987\)\]](#) (citations omitted).]

In that case we held it was proper for the trial court to admit vivid photographs of the victim as they were relevant to demonstrate the perpetrator's state of mind, i.e., that the jury could infer from the pictures that the attack was performed with such “convulsive ferocity that it could only have been the product of a knowing purpose to cause death.” *Id.* at 545.

Although defendant contends the photo was unduly prejudicial and inflammatory, the court appropriately found the photograph was relevant to explain the absence of stippling on the victim's body. A stippling is ordinarily seen when a gun is fired within two to three feet of its target. The State's position was the photographs showed the extent of the damage caused by the dragging of the body, which it asserted destroyed any evidence of stippling. The photograph was also a necessary part of the State's proofs to demonstrate the crime was committed in a purposeful and knowing manner as it showed destruction to the body from multiple gunshot wounds. We are satisfied with the trial judge's determination that the inflammatory potential of the single photograph did not significantly outweigh its probative value.

The arguments contained in defendant's pro se supplemental brief that are not encompassed in the *Natale* remand are of insufficient merit to warrant further discussion. R. 2:11-3(e)(2).

The trial court imposed the thirty-year NERA sentence on the aggravated manslaughter conviction, the maximum range of a first-degree offense, based on a finding of aggravating factors one, three, six and nine. As previously stated, the trial court's application of aggravating factor number one and imposition of a sentence in excess of the former presumptive term requires a remand for resentencing in light of *State v. Natale*.

The conviction is affirmed; the matter is remanded for merger of count two with count one, and for resentencing in accordance with *State v. Natale*.