

APPENDIX - A

NOT FOR PUBLICATION WITHOUT THE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-4524-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ORAIN D. BROWN,

Defendant-Appellant.

Submitted September 28, 2021 – Decided October 12, 2021

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 19-06-1656.

Law Offices of Jef Henninger, attorneys for appellant (Jef Henninger, on the briefs).

Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney for respondent (Stephen A. Pogany, Special Deputy Attorney General/Acting Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Oraine Brown appeals his conviction and sentence to five years' imprisonment with a forty-two-month term of parole ineligibility pursuant to the Graves Act, N.J.S.A. 2C:43-6. He argues the trial court erred in denying his motion for judgment of acquittal, and further erred in not conducting a post-verdict voir dire of a juror. We disagree as to both points, and we affirm for the reasons set forth below.

After a trial, defendant was convicted of second-degree weapons charges, N.J.S.A. 2C:39-5(b). Subsequent to trial but before the July 31, 2020 sentencing, defendant filed a timely motion for judgment of acquittal pursuant to Rule 3:18-2. Just days before sentencing, on July 22, a court employee received a short email from a source purporting to be juror number twelve from defendant's trial. The email stated that the writer wished to "communicate to [the trial court] prior to the [sentencing] hearing that [they] have come to regret [their] verdict."

At sentencing, the trial court denied the motion for acquittal. The court also noted that it had reviewed the July 22 email and found its content insufficient to justify further inquiry. After disposing of these matters, the court sentenced defendant.

Defendant appeals, making the following arguments:

I. THE TRIAL COURT ERRED WHEN DENYING MR. BROWN'S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE DISCOVERY WAS IMPROPERLY EXTENDED IN THIS CASE CAUSING A DELAY IN PROSECUTION WHICH PROVIDED THE STATE WITH AN UNFAIR ADVANTAGE AT TRIAL.

II. MR. BROWN'S SENTENCE SHOULD BE REVERSED DUE TO THE LACK OF A JUDICIAL INQUIRY REGARDING THE EMAIL SENT PRIOR TO SENTENCING FROM JUROR NUMBER 12 TO A NJ COURT EMPLOYEE EXPRESSING JUROR NUMBER 12'S REGRET OF THE VERDICT IN THIS CASE (Not Raised Below).

In his first point, defendant argues that his right to a speedy trial was violated when the trial court adjourned, over defendant's initial objection, the January 6, 2020 trial date to February 10 at the request of the State. We disagree.

It is well-settled that "[t]he right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and imposed on the states by the Due Process Clause of the Fourteenth Amendment." State v. Tsetsekas, 411 N.J. Super. 1, 8 (App. Div. 2009) (citing Klopfer v. North Carolina, 386 U.S. 213, 222-23 (1967)). "The constitutional right . . . attaches upon defendant's arrest." Ibid. (alteration in the original) (quoting State v. Fulford, 349 N.J. Super. 183, 190 (App. Div. 2002)). Since it is the State's duty to promptly bring a case to trial, "[a]s a matter of fundamental fairness," the State

must avoid "excessive delay in completing a prosecution[,"] or risk violating "defendant's constitutional right to speedy trial." Ibid.

The four-part test to determine if a defendant's speedy-trial right has been violated was announced in Barker v. Wingo, 407 U.S. 514, 530-33 (1972) and adopted by our Supreme Court in State v. Szima, 70 N.J. 196, 200-01 (1976). The test requires "[c]ourts [to] consider and balance the '[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'" Tsetsekas, 411 N.J. Super. at 8 (quoting Barker, 407 U.S. at 530). "No single factor is a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial." Id. at 10 (citing Barker, 407 U.S. at 533). Courts are required to analyze each interrelated factor "in light of the relevant circumstances of each particular case." Ibid. We will not overturn a trial judge's decision whether a defendant was deprived of due process on speedy-trial grounds unless the judge's ruling was clearly erroneous. State v. Merlino, 153 N.J. Super. 12, 17 (App. Div. 1977).

The trial court reviewed the procedural history of the case under the four Barker factors. The court found that a trial postponement of thirty-four days was not undue delay where the State sought the adjournment to provide defendant new discovery, including a fingerprint analysis of the subject

handgun. The court next found no prejudice in the short delay, as defendant "was not subject to pre-trial incarceration[,] and he was free to handle his personal affairs."¹ Finally, the judge noted that the new discovery contained evidence beneficial to defendant, as it showed no fingerprints were recovered on the handgun.

We turn to defendant's second point, that the email purportedly sent from juror number twelve warranted a "reversal of [his] sentence." We treat this argument, not raised below, as a motion to seek leave for a post-verdict interrogation of the juror pursuant to Rule 1:16-1.

Appellate courts will not consider questions or issues not properly presented to the trial court, unless the question raised on appeal goes to the jurisdiction of the trial court or concerns matters of great public concern. State v. Robinson, 200 N.J. 1, 20 (2009) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Here, the email was sent after defendant's motion for judgment of acquittal had been filed and nine days before the motion hearing was scheduled. Although defendant did not file the appropriate motion for

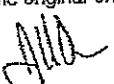
¹ Although not addressed by the trial court in its July 31 decision before sentencing, the record shows defendant asserted his speedy trial right in a timely fashion by objecting to the State's adjournment request on January 6 before a different judge.

consideration, the trial court nevertheless reviewed the email and found that its statement was insufficient to "investigate the thought processes which induced a particular juror to join in a verdict." State v. Athorn, 46 N.J. 247, 253 (1966).

Calling back a jury for questioning following discharge is an "extraordinary procedure," to be utilized "only upon a strong showing that a litigant may have been harmed by jury misconduct." Davis v. Husain, 220 N.J. 270, 279 (2014) (citations omitted). No such strong showing exists here. The email, at best, represents an unspecified expression of regret, assuming the author of the email is actually juror number twelve. Its contents allege no "event or occurrence injected into the deliberation in which the capacity for prejudice inheres." State v. Loftin, 146 N.J. 295, 381 (1996) (citation omitted). The trial court found the email was "insufficient" to order a post-verdict interrogation of juror number twelve, or any juror from the panel. We discern no basis in the record to disturb the trial court's conclusion.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

APPENDIX - B

ORDER PREPARED BY THE COURT

STATE OF NEW JERSEY,

Plaintiff,

v.

ORAINA BROWN,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – ESSEX COUNTY
INDICTMENT NO.: 19-06-01656-I

CRIMINAL ACTION

ORDER
FILED

3:11 pm, Jul 31, 2020

THIS MATTER having come before the Court by way of motion to set aside the verdict and enter an acquittal pursuant to R. 3:18-2, filed by Defendant Oraine Brown, *pro se*; and in the presence of Portia Downing, Esq., Assistant Prosecutor, on behalf of the State of New Jersey; and the Court having reviewed the written submissions; and the Court having heard the arguments of counsel and the Defendant on July 31, 2020; and for good cause shown:

IT IS on this 31st day of July 2020,

ORDERED that the motion is DENIED in its entirety for the reasons set forth on the record on July 31, 2020.



MAYRA V. TARANTINO, J.S.C.

APPENDIX - C

SUPREME COURT OF NEW JERSEY
C-462 September Term 2021
086574

State of New Jersey,

Plaintiff-Respondent,

v.

O R D E R

Oraine D. Brown,

Defendant-Petitioner.

A petition for certification of the judgment in A-004524-19
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
22nd day of March, 2022.


CLERK OF THE SUPREME COURT

SUPREME COURT OF NEW JERSEY
M-821/822 September Term 2021
086574

State of New Jersey,

Plaintiff,

v.

O R D E R

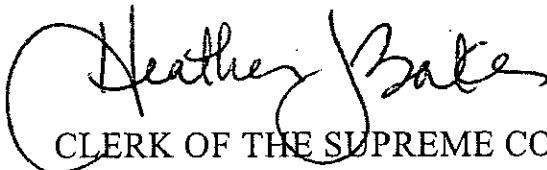
Oraine D. Brown,

Defendant-Movant.

It is ORDERED that the motion for leave to proceed as indigent (M-821) is dismissed as moot, the Court having considered the petition on the merits; and it is further

ORDERED that the motion for bail (M-822) is dismissed as moot.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 22nd day of March, 2022.


CLERK OF THE SUPREME COURT

APPENDIX - D

SUPREME COURT OF NEW JERSEY
M-1150 September Term 2021
086574

State of New Jersey,

Plaintiff,

v.

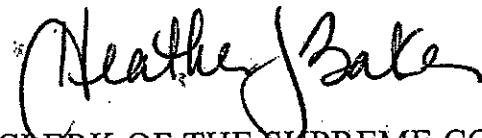
O R D E R

Oraine D. Brown,

Defendant-Movant.

It is ORDERED that the motion for reconsideration of the Court's orders denying certification and dismissing the motion for bail as moot is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
14th day of June, 2022.


CLERK OF THE SUPREME COURT

APPENDIX - E

ORDER ON MOTION

STATE OF NEW JERSEY
V
ORAINA D. BROWN

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004524-19T4
MOTION NO. M-001235-21
BEFORE PART F
JUDGE(S): HEIDI W. CURRIER
MORRIS G. SMITH

MOTION FILED: 10/25/2021 BY: ORAINE D BROWN

ANSWER(S)
FILED:

SUBMITTED TO COURT: November 22, 2021

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
24th day of November, 2021, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RECONSIDERATION OF
JUDGMENT OF ACQUITTAL OR NEW TRIAL DENIED

SUPPLEMENTAL:

FOR THE COURT:

Heidi W. Currier

HEIDI W. CURRIER, J.A.D.

19-06-01656-I ESSEX
ORDER - REGULAR MOTION
LE

APPENDIX - F

ESSEX COUNTY PROSECUTOR'S OFFICE
CONTINUATION REPORT

Page
1 of 2

1. Unit: CSIB	2. Unit-File #: CSU#151-19	3. Promis Gavel #:	
4. Case Agency(s): Essex County Prosecutor's Office		5. Crime: Weapons Offense	
6. N.J.S.:		7. Date: 04/22/2019	8. Time: 01:38 PM
9. Location of Crime: 1). Incident date & Time: (04/20/2019 08:30 PM -); Address: 1017 SANFORD AVE IRVINGTON TOWNSHIP, NJ 07111			
10. Person Reporting Incident / Crime:			
11. Suspect(s): 1). BROWN, ORAINED	12. Person Info(s): 1). SSN: [REDACTED] DOB: 12/26/1990 SBI: 988889E; SEX: MALE RACE: BLACK	13. Address(s): 1). [REDACTED]	
14. Victim(s):	15. Person Info(s):	16. Address(s):	
17. Stolen / Missing Property:		18. Weapon Used:	
NARRATIVE			

WEAPON PROCESSING

On April 22, 2019, Captain Randolph Root of the Essex County Prosecutor's Office Crime Scene Investigation Bureau (CSIB) instructed me to process recovered weapon(s) for latent fingerprints under investigation by the Irvington Police Department. The Irvington Police Department submitted the following evidence to ECPO CSIB for latent fingerprinting:

E-1 One (1) Semi-automatic handgun [REDACTED]

[REDACTED]
rounds

ACTION TAKEN

Listed evidence was digitally photographed on brown laboratory paper. The above-mentioned item(s) were visually examined for the presence of any visible friction ridge skin impressions using direct and oblique lighting. Said items appeared to have no visible prints. The items were photographed and then placed in an airtight chamber and exposed to Cyanoacrylate fumes.

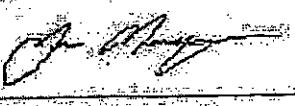
The items were then reexamined visually for the presence of any visible friction ridge skin impressions using direct and oblique lighting and then by utilizing alternate light source visualization techniques. Items were further processed by using black volcanic powder applied with a feather dusting brush.

D-017
L

No latent fingerprints / palm prints containing sufficient characteristics for comparison purposes were developed as a result.

The three (3) photographs taken were uploaded into VeriPic, Digital Evidence Manager and burned onto CD. The CD Master Copy generated was entered into evidence under BEAST #: 2019-01344.

For further information regarding this incident refer to Irvington Police incident report(s) CC# 19-3439.

Reporting Detective	Reporting Detective Signature	Date of Report	Supervisor Signature
GRACE MAROTTA		1/6/2020	

Da018

APPENDIX - G

[REDACTED]
Wed 7/22/2020 3:30 PM

To: Zeyad Assaf <zeyad.assaf@njcourts.gov>

CAUTION: This email originated from outside the judiciary organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Assaf,

I received a call from Judge Tarantino's office today informing me that a hearing is scheduled for Orairie Brown on July 31. The call was in response to one I made to the judge's chambers earlier this week requesting information.

I was juror 12 at Mr. Brown's trial. I would like to communicate to Judge Tarantino prior to the hearing that I have come to regret my verdict.

[REDACTED]
Da020

APPENDIX - H

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL
ESSEX COUNTY
INDICTMENT NO.: 19-06-1656
A.D. #

STATE OF NEW JERSEY,)
) TRANSCRIPT
) OF
 vs.) HEARING
)
 ORAINE BROWN,)
)
 Defendant.)

Place: Veterans Court House
50 West Market Street
Newark, New Jersey 07102

Date: January 6, 2020

BEFORE:

HONORABLE SIOBHAN A. TEARE, J.S.C.

TRANSCRIPT ORDERED BY:

ORAINE BROWN
[REDACTED]
Maplewood, NJ 07040

APPEARANCES:

ALLISON KORODAN, ESQ., (Assistant Prosecutor)
Attorney for the State of New Jersey

ORAINE BROWN, PRO SE
For Defendant

Deborah Hashimoto
KING TRANSCRIPTION SERVICES, LLC
3 South Corporate Drive Suite 203
Riverdale, New Jersey 07457
Audio Recorded

1 THE COURT: Indictment number 19-6-1656.

2 May I have your appearances please.

3 MS. KORODAN: Allison Korodan on behalf of
4 The State.

5 MR. BROWN: Oraine Brown, pro se.

6 THE COURT: Okay. Ms. Korodan.

7 MS. KORODAN: Yes, Judge. I realize the
8 trial is scheduled for today. I did have witnesses
9 here this morning, however, I recently came to learn
10 that the handgun at issue here was fingerprinted. As
11 Your Honor may know, this is not always the case when
12 we have handguns, so I'm trying to get a copy of that
13 crime scene unit report, involving the processing of
14 the handgun and any prints that may have been on that
15 gun.

16 I would like to present that evidence at
17 trial. As Your Honor's also --

18 THE COURT: I'm sorry, can we ask them to -
19 - . Thank you. Ms. Korodan.

20 MS. KORODAN: Yes, Judge. As Your Honor is
21 also aware of the court rules, say that I have an
22 obligation to turn this information and let defense
23 aware of this information 30 days prior to trial.

24 So I'm asking to carry this for 30 days so
25 I can provide that information to Mr. Brown. He can

1 be aware of the witness who would be called in
2 association with that processing of the handgun, and
3 then The State can proceed to introduce that evidence
4 at trial.

5 MR. BROWN: I --

6 THE COURT: Thank you. Mr. Brown.

7 MR. BROWN: -- she had several
8 opportunities to get this done. She could have got
9 it done prior -- prior to the grand jury. Prior to
10 this date --

11 THE COURT: I think she's looking for a
12 report on the gun.

13 MR. BROWN: Yeah, but she said discovery
14 final last time we were here.

15 THE COURT: Right. And she's discovered
16 that it's not. The case is less than a year old.
17 And she's going to give you -- it's my understanding
18 she wants to produce the report so that she can give
19 it 30 days before trial.

20 That's nothing unusual, Sir.

21 MR. BROWN: Okay.

22 THE COURT: So I'm gonna ask if you can --
23 I'm gonna put this on for February 10th. I'm not
24 adjourning it very far out. I'm just putting on for
25 February 10th. If you can sign for a notice for that

1 date, but if you can just wait -- do you have the
2 report with you Ms. Korodan?

3 MS. KORODAN: I don't have it in hand. If
4 Mr. Brown wants to give me an email address, I can
5 email him directly --

6 THE COURT: Okay. Do you have an email
7 address you can share with her, and she can email the
8 report to you today.

9 MS. KORODAN: Or I can email Ms. Owens --

10 THE COURT: Or do you want to wait, that's
11 up to you.

12 MR. BROWN: How long is the wait?

13 MS. KORODAN: I'm -- I'm not sure, Judge.

14 THE COURT: She's -- it could be -- I mean,
15 you could wait for as long as you want --

16 MR. BROWN: Can they -- can they --

17 THE COURT: -- and --

18 MR. BROWN: -- can they mail it?

19 THE COURT: -- or do you want to have an
20 email address for Ms. Owens, and have her send it to
21 you? I -- whatever you prefer, Sir. Or you can
22 wait. That's up to you.

23 MR. BROWN: Ms. Owens can send it to me.

24 THE COURT: Okay.

25 MR. BROWN: Another thing, are we gonna

1 have trial on the 10th, or there's gonna be another
2 conference?

3 THE COURT: No, I would think it's probably
4 going to be trial on the 10th, or the 11th or whenever
5 -- when -- like you see on Mondays, we call the case
6 to find out where we are. So usually trial doesn't
7 start until Tuesday.

8 MR. BROWN: Okay.

9 THE COURT: But you still have to be here
10 Monday to see where everything goes, I mean, you
11 know, you are out of custody. So the priority cases
12 are those that are in custody, but it's more than
13 likely it's going to start on -- on the 10th or 11th.

14 MS. KORODAN: I'll have witnesses ready for
15 the 10th.

16 MR. BROWN: Can I have a witness list. I
17 never received a witness list.

18 THE COURT: Right. You usually get them
19 the day of trial. 'Cause remember it's gonna take
20 several days to pick a jury.

21 MR. BROWN: Uh-huh.

22 THE COURT: So you still have to go over --

23 MS. KORODAN: I can also --

24 THE COURT: -- if you have the witness list
25 now, you can send it --

APPENDIX - I

Place: Essex County Veterans
Courthouse
50 West Market Street
Newark, NJ 07102

Date: February 20, 2020

BEFORE:

HONORABLE MAYRA V. TARANTINO, J.S.C.

TRANSCRIPT ORDERED BY:

JEF HENNINGER, ESO., (Law Office of Jef Henninger)

APPEARANCES:

ALLISON MARIE KORODAN, ESQ., (Assistant
Prosecutor)
Attorney for the State

19 ORAINE D. BROWN,
20 Pro se defendant

21 THERESA OWENS, ESQ.,
Standby Counsel for Defendant

Andrea Semanovich
KING TRANSCRIPTION SERVICES
3 South Corporate Drive, Suite 203
Riverdale, NJ 07457

1 Q After conducting that entire process, that
2 method were you able to conclude whether or not there
3 were any fingerprints on that firearm?

4 A Yes, I did not see any fingerprints on this
5 firearm, the ammunition, or the magazine.

6 Q You testified that -- I believe you said you
7 examined hundreds or a hundred of firearms before?

8 A Yes, correct.

9 Q Of those hundred on how many have you
10 recovered fingerprints?

11 A On the firearm I have not recovered a fingerprint.

12 Q Zero out of one hundred?

13 A Correct.

14 Q Can you describe what it is about a firearm
15 that makes it difficult to leave a fingerprint?

16 A Yes, there's multiple reasons why it's difficult
17 especially on firearms to recover fingerprints. One of
18 those reasons, if you remember me talking about
19 porous/non-porous surfaces, a firearm mostly made out
20 of metal, it's a non-porous surface, meaning the metal
21 is not going absorb any moisture. A fingerprint, like
22 I said -- I know I'm repeating myself, but ninety-eight
23 percent water, that's mostly you know moisture, the
24 oils -- it's only two percent oils. So, if a surface
25 can not -- absorb the -- the moisture, there's -- it's

Da027

1 very difficult to obtain a print from that surface,
2 cause metal isn't going to capture that moisture.

3 Another reason why is if you think about it,
4 firearms they're -- they're meant to be gripped by the
5 hands, you don't want a firearm slipping out of your
6 hand. Most of times the grip is -- is rough. It's --
7 the purpose of that is so it doesn't fall out of
8 anybody's hand. A rough surface you won't be able to
9 obtain a fingerprint, because you need a smooth, clean
10 surface to get that print. Another reason why is that
11 firearm manufacturers, many of them, they put on the
12 surface -- they coat their firearms, because they want
13 them to be durable. They coat them so they don't rust.
14 That coating on top of a firearm makes it also
15 difficult for a fingerprint to -- to be deposited on
16 that surface. Then again there are other environmental
17 factors why it would be difficult to obtain a
18 fingerprint from a firearm. They're handled, they're
19 manipulated all the time, it's a difficult surface to
20 obtain a print from.

21 Q Now, you were answering generally as to all
22 firearms?

23 A Yes.

24 Q If you wouldn't mind, can you take the item
25 in S-14 out?

Da028

1 A Yes. It's safe.

2 Q And with respect to that particular firearm,
3 can you indicate anything about the handle that would
4 prevent it from having fingerprints?

5 A Yes, as I was mentioning before this surface right
6 here, the handle where you're going to grip a firearm,
7 it's rough. The purpose of that is again so the
8 firearm doesn't slip out of somebody's hand. As you
9 can -- if -- if you could see this surface here, it is
10 smooth, but like I said, again, many firearm companies,
11 they put a coating on the outside, because they want
12 their firearms to be durable. They don't want them to
13 rust, which makes it difficult to obtain a print.
14 Also, back here -- a firearm -- you're going to --
15 manipulate with your hands a lot, so -- fingerprints
16 are very fragile. So, if you're moving this back, this
17 motion in itself if there's a perfect print on there,
18 it's going to smudge and that print's not going to be
19 there. This firearm specifically is rather small,
20 which also makes it difficult to obtain a fingerprint.
21 The trigger right here is very small, you wouldn't be
22 able to get a full fingerprint from that little piece
23 of metal right there, as well.

24 Q Detective Marotta, do you have any
25 association or affiliation with the Irvington Police Da029

APPENDIX - J

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CRIMINAL
ESSEX COUNTY
INDICTMENT NO.: 19-06-01656-I
A.D. # A-004524-19-T2

STATE OF NEW JERSEY,)
)
)
)
vs.)
)
)
)
ORAINA D. BROWN,)
)
)
Defendant.)

Place: Veterans Court House
(HEARD VIA ZOOM)

Date: July 31, 2020

BEFORE:

HONORABLE MAYRA V. TARANTINO, J.S.C.

TRANSCRIPT ORDERED BY:

JEF HENNINGER, ESQ., (Law Offices of Jef
Henninger, Esq.)

APPEARANCES:

PORȚIA DOWNING, ESQ., (Assistant Prosecutor)
Attorney for the State of New Jersey

ORAINA BROWN, DEFENDANT, PRO SE

THERESA OWENS, ESQ., (Office of the Public
Defender - Standby counsel)
Attorney for Defendant

Deborah Hashimoto
KING TRANSCRIPTION SERVICES, LLC
3 South Corporate Drive Suite 203
Riverdale, New Jersey 07457
Audio Recorded

1 THE COURT: Okay. The State?

2 MS. DOWNING: No -- no problem, Judge.

3 THE COURT: All right. So Mr. Brown, you

4 filed a motion to set aside the verdict and enter an
5 acquittal. This is back in February 27th, 2020.

6 Given COVID-19, there has been a delay in addressing
7 your motion, you know, for obvious reasons, since we
8 were all sheltering in place.

9 In any event, I have read your papers. I
10 read The State's letter brief and response, but I
11 will hear you, Mr. Brown.

12 MR. BROWN: You want to hear me first?

13 THE COURT: It's your motion, yes.

14 MR. BROWN: Okay. Prior to our trial in
15 February we had a trial scheduled for January 6th with
16 Judge Teare. On that date of trial they -- The State
17 requested an adjournment to get additional discovery
18 which was already privy to them well before that,
19 privy to them because it was produced on April 22nd of
20 2019, while I was still in custody. So they were
21 well aware of these -- these ballistics reports, and
22 all the criminal reports -- the ballistic report and
23 the fingerprinting report. They were all aware of
24 that prior to that.

25 | Prior to our January 6 court trial date,

1 discovery was final in October -- October 29th I
2 believe, of 2019. They said discovery was final. We
3 all said discovery was final, and we were going to
4 trial on the discovery that was final. And on the 6th
5 they did some -- and they said they needed some extra
6 discovery which wasn't fair to me because I didn't
7 have a fair trial because it allowed additional
8 discovery even more than what they asked for to be
9 presented during my trial, in February. That's
10 pretty much it.

11 THE COURT: Is that it? Okay. All right.
12 Ms. Downing.

13 MS. DOWNING: Your Honor, I'm gonna rely
14 primarily on the brief submitted by Ms. Cordon who
15 tried the case. That issue that the defendant
16 brought up was -- she laid out in point two of her
17 brief. It actually was an additional examination of
18 the gun that was recovered in this case.

19 An additional examination was done by a
20 different agency. They came to her attention in
21 early January so she had that report produced for the
22 defendant, got an adjournment to allow him to review
23 that report, so he wasn't prejudiced in any way by
24 not having the discovery before his trial. He had a
25 month, and is consistent with the other reports that

1 he previously had.

2 THE COURT: Okay. Go ahead, Mr. Brown.

3 MR. BROWN: The date -- all the dates of
4 those reports were in April. I don't see anybody --
5 any additional re-examination. There's no --
6 nothing to say that was additionally examined in
7 January or prior to -- prior to that.

8 Also, it allowed them to just automatically
9 transfer the tickets from Irvington Township to --
10 Irvington Township to this court, to the Superior
11 Court.

12 Also, her second point -- well, her second
13 point she said, examination, there's no additional
14 examination. I don't see any additional examination
15 anywhere. Can she provide that additional
16 examination. Where they -- this additional
17 examination had occurred, 'cause I don't see anything
18 in my discovery. I have all my discovery, I haven't
19 seen anything in the discovery that would say that.

20 THE COURT: We're not doing that now.

21 Would you like to respond?

22 MS. DOWNING: I spoke to Ms. Cordon, I
23 supervised her. She turned over all discovery in
24 this matter.

25 THE COURT: All right.

1 MR. BROWN: I know you say you don't want
2 to look at that now, but if she doesn't -- if they
3 have that then, it's proven that they're -- they're
4 either lying or they're -- they're doing something.

5 THE COURT: Anything else, Mr. Brown? On
6 your motion?

7 MR. BROWN: Yeah. She said -- she said
8 something in her -- in her reply to my motion, she
9 said -- she said the reasoning for the delay was in
10 pursuant to rule 3 -- 3:13-3.

11 THE COURT: (F).

12 MR. BROWN: I am the party -- the parties --
13 there's two parties, the defendant and The State. It
14 says within this rule that it could be delayed if the
15 party -- if the party fails -- if a party fails to --
16 fails to comply with any of the rules. I didn't fail
17 to comply with any of the rules if -- if somebody --
18 a member that works for the state, the police,
19 anybody that works in forensic failed to hand the
20 discovery over in due time, that has nothing to do
21 with me. I'm my own party. I didn't -- I followed
22 all the rules. If they didn't follow the rules,
23 that's on their behalf, that's not on my behalf. I'm
24 my own party, they're their own party. The forensic
25 team, that's also the state. I'm my own party, my

1 own person, I didn't fail to -- it said that if you
2 fail to comply with any of the rules -- if a party
3 fails to comply with any of the rules, I didn't fail
4 to comply with any of the rules. I didn't ask for
5 any discovery.

6 THE COURT: Okay.

7 MS. DOWNING: Nothing further on that -- on
8 that issue, Judge.

9 THE COURT: On June 17th, 2019, an Essex
10 County grand jury returned indictment number 19-06-
11 1656-I charging Oraine Brown with one count of second
12 degree unlawful possession of a handgun without a
13 permit, namely a 22 caliber Astra Cub -- Cub semi
14 automatic pistol, in violation of NJSA 2:39-5(b), and
15 one count of third degree receiving stolen property,
16 in violation of NJSA 2C:20-7().

17 On February 11th, 2020, the matter proceeded
18 to trial, solely on the unlawful possession of a
19 handgun count. On February 20, 2020 an Essex County
20 jury found Mr. Brown guilty of second degree unlawful
21 possession of a handgun. On February 27th, 2020 Mr.
22 Brown filed the instant motion and The Court is
23 hearing oral argument on this day.

24 The Court notes from the outset that rule
25 4:24-1(c) is inapplicable to criminal proceedings,

1 therefore any aspect of the motion relying on that
2 rule as a basis of relief is denied.

3 With respect to defendant's argument where
4 he seems to argue a speedy trial violation, the U.S.
5 Supreme Court established four -- four factors for
6 courts to consider in determining whether defendant's
7 rights to a speedy trial has been violated.

8 The criteria include the length of delay,
9 the reason for delay, the defendant's assertion of
10 his right and prejudice to the defendant. State
11 versus Gaikwad, 349 NJ Super 62 at 88, App. Div.,
12 2002.

13 In applying the four -- no single factor is
14 a necessary or sufficient condition to the finding of
15 a depravation of the right to a speedy trial. State
16 versus Tsetsekas, 411 New Jersey Super 1 at 10, App.
17 Div., 2009.

18 Regarding the first and second factors, the
19 length and reason for the delay, The Court notes this
20 case involved laboratory analysis by two agencies as
21 part of The State's investigation. Mr. Brown was
22 arrested in late April of 2019. The indictment was
23 returned on June 17th, 2019. The Court does not --
24 any undue delay in bringing this matter to trial
25 under the circumstances, especially in light of the

1 typical Essex County trial calendar.

2 There is also no indication in the record
3 that The State used adjournments to gain a tactical
4 advantage.

5 Regarding the third factor, the degree to
6 which Mr. Brown asserted his right to a speedy trial
7 is not in the record before it. However, The Court
8 notes timing of this motion as subsequent to the
9 verdict as -- anytime before as undermining this
10 factor.

11 Finally, as to the fourth factor, the lack
12 of significant prejudice suffered by Mr. Brown
13 militates against dismissal of this case. Except for
14 a six day period in 2019 following his arrest Brown
15 was not subject to pre-trial incarceration and he was
16 free to handle his personal affairs. In fact, the
17 only month -- in fact, the one month delay in
18 commencing the trial was beneficial to him as new
19 discovery showed that non fingerprints were recovered
20 on the handgun.

21 Accordingly measured against the four
22 factors in the myriad above, The Court concludes
23 there was no violation of Brown's constitutional
24 speedy trial right.

25 Brown's request for an evidentiary hearing

Finally, with respect to the third element,
The State moved into evidence without objection,
exhibit S-13, an affidavit by Detective James Hearn
of the New Jersey State Police Firearms Investigation
Unit. The affidavit -- the affidavit stated that a
search firearms investigation unit records failed to
reveal Oraine Brown making application for being
issued a permit to carry a handgun, permit to
purchase a handgun or firearm purchaser
identification card, or a permit for an assault
weapon.

14 So given the substan -- the substantial
15 evidence admitted at trial, and given The State the
16 benefit of all it's favorable testimony as well, as
17 all of the favorable inferences which re --
18 reasonably could be drawn therefrom, a reasonable
19 jury could have found -- could have found guilty --
20 could have found Mr. Brown guilty of the charge of
21 second degree unlawful possession of a handgun
22 without a permit.

23 Accordingly, the motion of the defendant
24 for judgment of acquittal -- of acquittal is denied
25 in it's entirety.

1 MR. BROWN: Can I --

2 THE COURT: One second. That's the --

3 MR. BROWN: Can I address something said?

4 THE COURT: You have my decision, but go
5 ahead.

6 MR. BROWN: Okay. You said, Officer Durble
7 said he smelled marijuana, have you -- have you run
8 back the tape or you get the transcript it's gonna
9 say he never said he smelt marijuana in my car.

10 THE COURT: In any event, Mr. Brown, given
11 the substantial evidence presented to the jury, one,
12 that -- one, the handgun, two, the testimony
13 presented that you possessed the handgun and three,
14 the evidence that you didn't have a permit, there was
15 more than substantial evidence for the jury to find
16 you guilty of unlawful possession of a handgun, so
17 again, your motion is denied.

18 Now, I want to move onto -- I want to move
19 onto an email correspondence that my law clerk
20 received from a Rick Mullen who purports to have been
21 juror number 12 at Mr. Brown's trial. And that email
22 which was received on July 22nd, 2020 reads; Dear Mr.
23 -- I received a call from Judge Tarantino's office
24 today informing that a hearing is schedule for Oraine
25 Brown on July 31st. The call was in response to one I

1 made the Judge's chambers earlier this week
2 requesting information.

3 I was jury 12 at Mr. Brown's trial and
4 would like to communicate to Judge Tarantino prior to
5 the hearing, that I have come to regret my verdict.

6 Now, this email was forwarded to all
7 counsel and to Mr. Brown and in response to that
8 email, no motion was filed with respect to same.

9 In any event, absent any outside change of
10 heart is insufficient for a court to investigate the
11 "though processes which induce a particular to join
12 in a verdict." State versus Athorn, 46 New Jersey
13 247 at 253, 1966 decision.

14 So now we're gonna move onto sentencing,
15 but before I do that, I'm gonna take a -- a break, so
16 that Mr. Brown you can confer with your standby
17 counsel who, I'm gonna ask her to explain your appeal
18 rights. Okay, Mr. Brown?

19 MR. BROWN: Okay.

20 THE COURT: Okay. All right. Off the
21 record.

22 (Break taken)

23 THE COURT: So now we're gonna turn to the
24 sentencing portion of today's calendar for you, Mr.
25 Brown. So Mr. Brown, you received a copy of your