No. _____

IN THE

Supreme Court of the United States

RAMHAM DUPRIEST,
Petitioner

v.

STATE OF NEW JERSEY,
Respondent

APPENDIX
ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF NEW JERSEY

JOSEPH E. KRAKORA, Esq.
New Jersey Public Defender

PETER T. BLUM, Esq.
New Jersey Assistant Deputy Public Defender

Office of the NJ Public Defender
31 Clinton St, 9th Floor
P.O. Box 46003
Newark, New Jersey 07101
(973) 877-1200
(973) 877-1239 (fax)
peter.blum@opd.nj.gov

Attorney for Petitioner

SUPREME COURT OF NEW JERSEY
C-790 September Term 2022
088202

State of New Jersey,

Plaintiff-Respondent,

v. ORDER

Ramham Dupriest,

Defendant-Petitioner.

A petition for certification of the judgment in A-003498-19 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 27th day of June, 2023.

Heather J. Baker

CLERK OF THE SUPREME COURT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3498-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAMHAM DUPRIEST,

Defendant-Appellant.

Argued October 20, 2022 – Decided April 24, 2023

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 11-06-0922.

Kevin S. Finckenauer, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Melanie K. Dellplain, Assistant Deputy Public Defender, of counsel and on the brief).

Kaili E. Matthews, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney

General, attorney; Kaili E. Matthews, of counsel and on the brief).

PER CURIAM

Defendant Ramham Dupriest appeals from a January 16, 2020 judgment of conviction (JOC), which sentenced him to a flat term of three years' imprisonment for third-degree endangering the welfare of a child, contrary to N.J.S.A. 2C:24-4(a). Based upon our review of the record and the governing legal principles, we affirm.

We discern the following facts from the record. In January of 2011, defendant contacted fourteen-year-old T.B. through an online multiplayer game. Defendant, a twenty-one-year-old male at the time, initiated a conversation with T.B. by telling him that his voice sounded familiar, that defendant attended the same high school as T.B., and that defendant was sixteen years old. Following that initial contact, defendant continued to communicate with T.B. through text message and email, utilizing the email addresses jdickmaster34@xxxxx.com and j.hood23@xxxxx.com. At some point during their communications, T.B. revealed to defendant that he was gay. Defendant then sent text messages saying that he loved T.B. and would soon travel to see T.B. Specifically, an email from defendant, delivered on January 28, 2011 at 3:02 a.m., read:

> Text me when you wake up, okay. Love you, babe. It's not going to be this weekend that I'm going to come up. My sister said that she will bring me up one weekend that she don't have work but text me at [defendant's phone number]. Love you and night.

Over the course of their communications, T.B. and defendant exchanged photographs of themselves. On February 4, 2011, T.B. emailed defendant a photograph of himself dressed as a penguin for Halloween. Defendant responded by sending T.B. three photos of himself: an image of his bare chest, an image of him completely naked with his hand on his buttocks, and an image of his penis.

Defendant eventually arranged to meet T.B. at T.B.'s grandparents' house in Piscataway. T.B. often spent weekends at the house because his mother worked long shifts as a nurse. On Friday, February 4, 2011 at around 6:00 p.m., defendant arrived at T.B.'s grandparents' house with an overnight bag. T.B. introduced defendant as a friend from school and spent about four hours with defendant. During that time, T.B. and defendant socialized in the living room and T.B.'s bedroom.

After T.B. and defendant had moved to the bedroom, and while defendant was in the bathroom, T.B. looked through defendant's bag and found clothes, deodorant, a toothbrush, and condoms. After spending the remainder of the

evening with each other, T.B.'s grandmother drove defendant to the train station at around 11:30 p.m.

On Sunday, February 6, 2011, before 6:30 a.m., defendant returned to T.B.'s grandparents' house.[1] T.B.'s grandfather found defendant on the porch and T.B.'s grandmother, again, drove him to the train station. That morning, T.B.'s grandparents informed T.B.'s mother about defendant's visits to their house. After speaking with T.B., his mother contacted the Piscataway police to report T.B.'s communications with defendant, including the text messages, emails, and photographs. Pursuant to their investigation, police identified defendant as twenty-one-year-old Ramham Dupriest from Philadelphia, Pennsylvania.

On June 9, 2011, defendant was indicted on charges of third-degree endangering the welfare of a child, contrary to N.J.S.A. 2C:24-4(a) (count one), and third-degree obscenity, contrary to N.J.S.A. 2C:34-3(b) (count two). On October 3, 2011, defendant pled guilty to count one; the State ultimately agreed to dismiss count two and recommended a sentence of incarceration for 364 days and parole supervision for life (PSL).

[1] T.B.'s testimony indicated that defendant also returned on the morning of February 5, 2011, but did not meet with T.B.

On February 21, 2012, the trial judge sentenced defendant to probation for a term of three years with the condition that he serve 364 days in the Middlesex County Adult Corrections Center. It was also ordered that defendant be "subject to Megan's Law as well as [PSL]; . . . shall refrain from having any contact, direct or indirect[,] with the victim[,] . . . [and] remain offense free and report to probation as ordered."

On August 13, 2013, defendant filed his first application for post-conviction relief (PCR). That application was dismissed without prejudice on January 14, 2014. On December 4, 2017, defendant was sentenced to 364 days in custody of the Commissioner of the Department of Corrections for failing to register in accordance with Megan's Law.

On April 26, 2018, defendant filed a second PCR petition, which the PCR judge granted on March 18, 2019. On October 3, 2011, the judge vacated defendant's guilty plea on the ground that he was not properly advised that he could be subject to civil commitment on his conviction. A retrial was held on October 1, 2, 3, and 8, 2019.

On October 1, 2019, the judge held an in limine motion hearing, in which he dismissed the third-degree obscenity count, N.J.S.A. 2C:34-3(b), at the State's request. Thereafter, the judge rejected defendant's argument that he

should be able to present the same mistake-of-age affirmative defense available to defendants charged with obscenity pursuant to N.J.S.A. 2C:34-3(b). In so doing, the judge reasoned:

> In that obscenity charge, there is a defense that's permitted that the defense could pursue with respect to the issue of age, whether or not the person either represented themselves to be younger. . .but under the statute with respect to endangering, it's not.

Defendant then moved to exclude the photographs of fourteen-year-old T.B., the condoms found by T.B., his visits to T.B.'s grandparents' house, and to sanitize his email addresses. The judge denied defendant's motion, reasoning that the evidence was not extremely prejudicial and that it was "part and parcel" of the events in explaining the case to the jury. Further, the judge explained that the defendant's visits to T.B.'s grandparents' house would contextualize defendant's messages, photographs, and actions for the jury—i.e., that defendant's journey to T.B.'s grandparents' house occurred after defendant had seen a photograph of T.B. and after defendant sent sexually explicit photographs of himself to T.B. In refusing to exclude evidence of the condoms, the judge found that they were relevant as to "whether or not [defendant's] conduct in its totality [was] a violation of the statute," which was a question for the jury.

On October 8, 2019, after the parties presented their summations, defendant objected to the following remarks by the prosecutor:

> As I sat there, listening to defense argue to you what [T.B.] said about his age, all I could think of was, are you kidding me? There are two very important points I want to make with regard to defendant's very irrelevant and unpersuasive argument that [T.B.] represented himself to be something other than he was[]. The defendant believed he was something else, as far as [T.B.'s] age is concerned.[2]

In reply, the prosecutor said, "[j]udge, that's my argument to [the] defense, that the[ir] arguments are irrelevant." The judge agreed and found that the prosecutor's statements were in response to the defendant's own arguments and assertions, stating: "I don't think it's a personal attack. . . It's an attack on [defendant's] statements."

Following the trial, the jury found defendant guilty of endangering the welfare of a child by engaging in sexual conduct that would impair or debauch the morals of a child. On January 6, 2020,[3] the judge sentenced defendant to

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[2] Because the trial transcript is indiscernible, the parties' briefs were used to find the State's offending statement.

[3] Defendant's sentence was ordered and adjudged on January 6, 2020. Defendant's judgment was entered on January 16, 2020.

three years flat in prison, subject to PSL and Megan's Law requirements. On appeal, defendant presents the following arguments for our consideration:

> POINT I
>
> DEFENDANT SHOULD HAVE BEEN PERMITTED TO P[RE]SENT A MISTAKE-OF-AGE DEFENSE FOR ENDANGERING BECAUSE THE ENDANGERING STATUTE PERMIT[]S THE DEFENSE FOR ALL UNDERLYING SEXUAL CONDUCT THAT IS NOT A SEXUAL OFFENSE UNDER TITLE 2C, CHAPTER 14, AND THE DEFENSE IS ALSO EXPLICITLY PROVIDED FOR IN THE OBSCENITY STATUTE.
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> POINT II
>
> THE TRIAL COURT ERRED IN ADMITTING EVIDENCE THAT WAS IRRELEVANT AND UNDULY PREJUDICIAL AND WAS TURNED OVER BELATEDLY, IN VIOLATION OF THE STATE'S DISCOVERY OBLIGATIONS.
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> POINT III
>
> THE STATE'S SUMMATION WAS UNDULY PREJUDICIAL BECAUSE THEY CONTAINED AN INACCURATE FACTUAL STATEMENT AND DENIGRATED THE DEFENSE.
>
> POINT IV
>
> THE CUMULATIVE I[]MPACT OF THE ERRORS DENIED DEFENDANT DUE PROCESS AND A FAIR TRIAL.

POINT V

DEFENDANT'S SENTENCE MUST BE VACATED AND THE MATTER REMANDED FOR RESENTENCING BECAUSE DEFENDANT IS ENTITLED TO ADDITIONAL JAIL AND GAP-TIME[]CREDITS AND THE COURT MUST APPLY MITIGATING FACTORS FOUR AND FOURTEEN.

Our review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is de novo. See State v. Courtney, 243 N.J. 77, 85 (2020) (regarding an interpretation of sentencing provisions in the Criminal Code). The central issue in this case is whether defendant is entitled to assert a mistake-of-age defense to a charge of child endangerment. In analyzing this issue, we start with the plain language of the child endangerment statute:

> a. (1) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this paragraph to a child is guilty of a crime of the third degree.
>
> b. (1) As used in this subsection:
>
> "Child" means any person under 18 years of age.
>
> [N.J.S.A. 2C:24-4.]

We note that the statute does not contain any mens rea requirement concerning the victim's age. While endangering the welfare of a child is not a strict liability offense, State v. Demarest, 252 N.J. Super. 323, 329 (App. Div. 1991) (noting that the prosecutor must establish the appropriate mens rea for the sexual conduct component of the offense), lack of knowledge or mistake of the victim's age is not a defense to a violation of the statute. State v. Perez, 177 N.J. 540, 555 (2003). In Perez, our Supreme Court held: "[T]he child-endangerment statute requires only objective proof that the alleged victim was a child under the age of sixteen, not that the accused knew or reasonably should have known that fact."[4] Id. at 555. Perez is thus fatal to defendant's argument that he should have been allowed to assert at trial that he had a mistaken belief about the victim's age.

We next reject defendant's argument that the judge abused his discretion in his evidentiary rulings. See State v. Kuropchak, 221 N.J. 368, 385 (2015) (establishing that trial court evidentiary rulings should be affirmed unless "it constitutes an abuse of discretion." (quoting State v. Feaster, 156 N.J. 1, 82 (1998))). Here, we conclude the judge correctly found that the evidence

[4] The statute was amended in 2013 to define a child as someone under 18. L. 2013, c. 51.

admitted was relevant to contextualize the events and the sexual purpose of defendant's visit to T.B.'s grandparents' house.

Likewise, we find that the statements by the prosecutor were insufficiently prejudicial to require reversal. "Prosecutors can sum up cases with force and vigor, and are afforded considerable leeway so long as their comments are 'reasonably related to the scope of the evidence presented.'" State v. Pressley, 232 N.J. 587, 593 (2018) (quoting State v. Timmendequas, 161 N.J. 515, 587 (1999)). In that regard, it is clear from the record that the prosecutor's remarks were fair comment on the evidence of the case and legitimate rebuttal of the defendant's irrelevant arguments in closing about his mistaken belief as to the victim's age.

Finally, the State agrees with defendant that a limited remand is necessary to correct the JOC for the purpose of jail and gap time credits.

To the extent we have not addressed defendant's remaining arguments, we find that they lack sufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(2).

We affirm the conviction and remand for the limited purpose of correcting the JOC.