STATE OF NEW JERSEY

v.

CLANCY WIGGUM,
Defendant - Appellant

A-09-1234-T3

Superior Court, Appellate Division

Submitted August 22, 2009 - Decided September 8, 2009

Before Judges GRIM, REAPER and MERCY.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Cr-08-9028.

Lionel Hutz argued the cause for the defendant-appellant (Phil & Hartman, L.L.P., attorneys for defendant-appellant; Mr. Hutz of counsel and on the brief)

James L. Brooks, First Assistant Prosecutor, argued the cause for the State of New Jersey (Matt Groening, Essex County Prosecutor; Mr. Brooks of counsel and on the brief).

GRIM, J.A.D. joined by **REAPER, J.A.D.**

On March 6, 2009, following a four-day trial in Superior Court, Law Division, Essex County, defendant Clancy Wiggum was convicted of attempted murder, aggravated assault, possession of a firearm for unlawful purposes, and unlawful possession of a weapon. The trial court ordered that defendant be forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions, pursuant to N.J.S.A. 2C:51-2(d).

In this appeal, defendant contends that the trial court erred in two respects. First, he claims that the trial court improperly allowed the jury to consider eyewitness testimony that was allegedly influenced by a suggestive identification procedure. Secondly, he claims that the offenses of which he was convicted did not “touch upon” his public office and, therefore, the permanent forfeiture provision of N.J.S.A. 2C:51-2(d) did not apply.

We disagree on both counts. We hold that the eyewitness testimony was properly admitted into evidence by the trial court because the allegedly suggestive identification procedure was not conducted by the police and because the procedure did not preclude the witness' ability to independently identify the defendant in a subsequent police line-up. We similarly hold that the trial court properly ordered that the defendant be barred from future public office.

The Facts

On September 17, 2008, at approximately 8:30 p.m., Homer Simpson (“Homer”) was driving home via his usual route from the local power plant where he worked, when he stopped at a traffic light on the corner of Washington and New Streets in the City of Newark. He noticed a large man wearing a hood, sunglasses, and gloves on the southeast corner. The man was bending down and appeared to be looking into Homer's car. Suddenly, the man opened the car door and sat in the passenger seat. He then took out a gun and directed him to “stay cool and drive when the light turns green.” After Homer started driving, the man directed Homer to turn left on James Street.

As they drove west on James Street, Homer asked the man what he wanted, but the man just jabbed the gun into Homer's ribcage and told him to “shut up and drive, you ugly bastard.” As they approached Boyden Street, the man told Homer to pull over next to a parking lot. The man told Homer to keep his hands on the steering wheel as he pointed the gun at Homer's head. Stating “with you out of the way, she will be mine,” the man pulled the trigger but it did not fire because the safety was on. As the man removed the safety, Homer grabbed for the gun and began to fight the man. The gun discharged and struck Homer in the thigh. Nevertheless, Homer managed to wrest control of the weapon from the man and it fell to the floor. After the man lost control of the gun, Homer began punching him in the face and chest. The man got out of the car and ran North on Boyden Street. Homer quickly called 911 on his mobile phone.

The police and ambulance arrived on the scene shortly thereafter. Homer was taken to the hospital for treatment of the gunshot wound to the leg. Officer Ned Flanders recovered a 9mm pistol with duct tape on the grip from the floor of the car. The gun had been reported by the owner as stolen from a home in a neighborhood known for drug trafficking over a year ago. The police were unable to recover any fingerprints from the weapon.

Officer Flanders interviewed Homer in the hospital and he gave the following description of his assailant: “a heavy set white male between forty and fifty years old with a round face, wide pig-like nose and nasal voice.” He said, and later testified, that the man wore a black hooded jacket, jeans, aviator sunglasses, black leather gloves and white sneakers.

On September 18th, after Homer returned home from the hospital, his close friend Seymour Skinner came to visit. Homer had known Skinner since they went to high school together back in Springfield. Skinner worked with Homer's wife Marge Simpson (“Marge”) at the Rutgers University Newark campus. When Homer recounted the incident and described his assailant, Skinner was deeply troubled, and said that he believed he knew the identity of the assailant.

Skinner told Homer that there was a campus police officer stationed at the university named Clancy Wiggum who met the description of the assailant. Skinner further stated that Wiggum seemed to be spending a lot of time with Marge and that he had seen them eating lunch together several times at Moe's Tavern on New Street. He said that he began to suspect that the two might be having an affair when he saw them having an intense conversation at Moe's the previous week. Skinner suggested that they drive down to the campus to see if they could get a look at Wiggum.

When they arrived at the campus, Skinner parked the car on University Avenue approximately 25 yards away from the front door of the campus police station. The two remained in the car observing police officers entering and leaving the station. After waiting approximately 45 minutes, Skinner recognized Officer Wiggum and his partner, Officer Edna Krabappel, as they left the station, and he pointed out Wiggum to Homer. After some conversation between Skinner and Homer, Homer identified Wiggum as his assailant.

When Homer returned to his home, he confronted his wife about Skinner's suspicion that she was having an affair with Wiggum. After first denying it, she confessed to the affair after learning that Wiggum might have been the man who attacked her husband. Marge revealed that she had had an intimate relationship with Wiggum for approximately three months but that she had recently broken off the relationship when Wiggum started asking her to leave Homer. After speaking with his wife about the affair, Homer immediately called Officer Flanders and told him that he knew the identity of the man who shot him. Homer told Flanders about how he and Skinner spotted Wiggum outside the campus police station. He also told Officer Flanders the details of conversation he had with his wife.

Officer Flanders and his partner, Barney Gumble, arrested Wiggum at his home that evening and brought him Police Headquarters on Green Street. Wiggum denied any involvement in the attack on Homer. He claimed that he was home alone drinking beer and watching his favorite team, the Springfield Atoms, play Monday night football against the Shelbyville Sharks. Wiggum also claimed that he got the bruises on his face when he tripped over his coffee table after having too many beers.

Meanwhile, the police called Homer to ask him to come down to Police Headquarters to view a line-up to determine if he could pick out the man who had attacked him. Wiggum requested that his lawyer be present for the line-up. Wiggum's lawyer arrived prior to and was present for the line-up. Homer selected Wiggum from a line-up of men who generally matched the description of the man who had attacked him.

The next day, Officers Flanders and Gumble questioned Officer Krabappel about what she knew about Wiggum. Krabappel said that she knew that Wiggum had been having an affair with a married woman but that she did not know who it was. However, Krabappel noted that Wiggum had told her that he was worried about being discovered by the woman's husband. He told her that the husband was friends with “someone who was a top honcho” at the university who was “tight with the chief of police,” and that “they would have it in” for Wiggum if the affair was discovered. Krabappel said that she told Wiggum to break it off with the woman, but Wiggum said he was in love with and would not leave the woman. Krabappel further stated that Wiggum told her that he hoped that his lover would “dump her husband so that they could be together forever.”

The Prosecution

Defendant was indicted on October 14, 2008, in a four-count indictment charging him with an attempt to commit murder (N.J.S.A. 2C:5-1), aggravated assault in the second degree (N.J.S.A. 2C:12-1(b)(1)), possession of a firearm for unlawful purposes in the second degree (N.J.S.A. 2C:39-4(a)(1)), and unlawful possession of a weapon in the second degree (N.J.S.A. 2C:39-5(b)). He was arraigned and entered a not guilty plea on

October 16, 2007. Numerous motions were filed throughout 2008 and early 2009 which required consideration and resolution prior to trial.

Of relevance to this appeal in particular, defense counsel filed a motion in limine to suppress all evidence with respect to Homer's eyewitness identification of defendant, both on the scene at the campus and in the police line-up, because the identification procedure was unduly suggestive and, therefore, inherently unreliable. The motion also sought a pretrial hearing pursuant to *United States v. Wade*, 388 U.S. 218 (1967). The trial court (Hon. Constance Harm, J.S.C.) held that the identification procedure was not conducted by the police, was therefore not subject to suppression, and could be introduced at defendant's trial. In addition, the trial court determined that the circumstances of the identification procedure did not raise sufficient questions of reliability to warrant a *Wade* hearing.

Trial began on March 2, 2009. The jury heard testimony from Homer Simpson, Marge Simpson, Seymour Skinner, Officer Ned Flanders, and Officer Edna Krabappel. Defendant testified in his own behalf consistent with his pretrial statement.

The jury returned its verdict on March 6, 2009, finding the defendant guilty on all counts. On April 9, 2009, defendant was sentenced to 10 years imprisonment for attempted murder (N.J.S.A. 2C:12-1(b)(1)).* Referring in part to the testimony of Officer Krabappel, the trial court further ordered that defendant be forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions, pursuant to N.J.S.A. 2C:51-2(d). The defendant was committed to the custody of the Department of Corrections; bail pending appeal was denied.

On May 26, 2009, defendant filed a notice of appeal to this Court.

Discussion

We conclude, first, that the trial court did not err in determining that the identifications of the defendant by Homer Simpson at the university campus in Newark and in the police line-up were admissible at trial. First, we do not find the procedure utilized in this case to be unduly suggestive. Second, even assuming that the procedure was unduly suggestive, we do not find that the exclusionary rule applies to identification evidence obtained by private individuals utilizing a suggestive procedure. Finally, we do not find that the defendant was entitled to a hearing pursuant to *United States v. Wade*, 388 U.S. 218 (1967), to determine the reliability of the identification evidence.

The mere fact that the initial identification took place as the result of what might be described as a show-up does not render that identification suspect. See generally *State v. Romero*, 191 N.J. 59, 77-79 (2007):

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*. Defendant was also found guilty of aggravated assault in the second degree (N.J.S.A. 2C:12-1(b)(1)), possession of a firearm for unlawful purposes in the second degree (N.J.S.A. 2C:39-4(a)(1)), and unlawful possession of weapons in the second degree (N.J.S.A. 2C:39-5(b)). Those convictions merged with defendant's conviction for attempted murder pursuant to N.J.S.A. 2C:1-8.

> The identification procedure here was not impermissibly suggestive in that it originated from the victim's own observation of someone he believed was his assailant. Had he and the officers found defendant walking down the street when they were canvassing the neighborhood together, that would not have constituted an impermissibly suggestive show-up. Yet when the officers and Cavaliere separated and the officers, minutes later, saw defendant in the vicinity matching the description Cavaliere had just provided, bringing defendant into Cavaliere's view was not the type of show-up that is fraught with the worries typically generated by a suggestive police-initiated show-up.

See also *State v. Herrera*, 187 N.J. 493, 504 (2006) (“standing alone a show-up is not ... impermissibly suggestive”).

The kinds of cases in New Jersey where courts have found problems with identifications have involved factual situations far different from the facts here. See e.g. *State v. Moore*, 188 N.J. 182 (2006) (reasoning that hypnosis is not accepted by the scientific community as a reliable way to refresh memory and “that procedural safeguards [could not] guard effectively against the risks associated with hypnotically refreshed testimony”); *State v. Michaels*, 136 N.J. 299, 312-316 (1994) (where there was “significant risk” that “coercive or highly suggestive interrogation techniques” would undermine the reliability of witness' testimony at trial). Homer's initial identification of the defendant bears no resemblance to the identifications in *Moore* and *Michaels*. In the present case, the defendant was merely pointed out by a friend of the victim. Homer was able to pick defendant out of a properly conducted line-up in the presence of defense counsel shortly after the incident occurred. Because the initial identification procedure was no different in nature from that utilized in *State v. Romero*, above, it was not unduly suggestive. Since it was not unduly suggestive, it had no capacity to taint the identification at the line-up, which all parties agree was properly conducted. Both identifications therefore were admissible at trial.

Even if we were to view the initial identification as suggestive, however, the exclusion of identification evidence where a private citizen conducts a suggestive identification procedure is not required under federal or state law. The U.S. Supreme Court has reasoned that the use of such a procedure does not “intrude upon a constitutionally protected interest.” *Manson v. Brathwaite*, 432 U.S. 98, 101 (1977). The exclusion of evidence arising from unnecessarily suggestive *police* procedures serves to deter future misconduct by the police. However, the same reasoning does not apply to actions by *private individuals* because such individuals are not engaged in the ongoing enterprise of law enforcement. See, e.g., *United States v. Stevens*, 935 F.2d 1380, 1390 n.11 (3d Cir.1991) (concluding that in order to establish constitutional grounds for exclusion, the defense must show that government agents arranged a suggestive confrontation); *People v. Owens*, 97 P.3d 227, 233-34 (Colo. App. 2004) (finding that, in a majority of jurisdictions, “a showing of state action is required because due process protects an accused only from the admission of unreliable evidence caused by governmental action”); *People v. Alexander*, 162 A.D.2d 164, 556 N.Y.S.2d 576 (1990) (“only identification procedures linked to official law enforcement conduct provide the basis for the suppression of identification testimony“).

Rather than exclude such identification evidence entirely, the adversarial system provides ample opportunity to test the reliability of evidence. See *Manson v. Brathwaite*,

432 U.S. at 113-14. Here, defense counsel had every opportunity to cross-examine Homer as to the identification and to place the issue of the reliability of the identification squarely before the jury. For that reason, a *Wade* hearing would have served no purpose and therefore the trial court's decision not to hold such a hearing was not an abuse of its discretion. See generally *People v. Calinda*, 83 Misc. 2d 520, 522; 372 N.Y.S.2d 479 (Sup. Ct. 1975) ("*Wade* protection does not apply to confrontations arranged by private citizens but is limited only to those viewings arranged by the State. Since the State had no hand in the identification of the defendant, there is no *Wade* issue to rule upon").

In the present case, exclusion of the identification evidence would have no deterrent effect because, police were not involved in the initial identification of the defendant. In addition, defense counsel had the opportunity to cross examine Homer Simpson when he testified at trial. The mandates of due process having been satisfied, the identification procedure and the admission of the identification evidence at trial was proper.

Secondly, we conclude that the trial court did not err in ordering that defendant be forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions, pursuant to N.J.S.A. 2C:51-2(d). While continuing to proclaim his innocence, defendant argues that even if he committed the acts charged, his actions would have been a purely personal matter that did not "touch upon" his public office. We disagree. We find that Officer Krabappel's testimony by itself establishes that defendant's crimes did "touch upon" his public office. Consequently, forfeiture of future public office pursuant to N.J.S.A. 2C:51-2(d) was warranted.

The statute provides in relevant part:

> any person convicted of an offense involving or touching on his public office, position or employment shall be forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions. As used in this subsection, "involving or touching on his public office, position or employment" means that the offenses that offense was related directly to the person's performance in, or circumstances flowing from, the specific public office, position or employment held by the person.

N.J.S.A. 2C:51-2(d). While forfeiture of office arises out of a defendant's conviction, it is nevertheless a civil penalty. See *Old Bridge Public Wkrs. v. Old Bridge Twp.*, 231 N.J. Super. 205, 209-210 (App.Div.1989).

"Touches the office" is defined broadly in *Moore v. Youth Correctional Inst.*, 119 N.J. 256 (1990), a case involving a petty disorderly persons offense, harassment of his supervisor by a prison guard. The Court established the standard for forfeiture under the section, 119 N.J. at 270:

> When the infraction casts such a shadow over the employee as to make his or her continued service appear incompatible with the traits of trustworthiness, honesty, and obedience to law and order, then forfeiture is appropriate.

Under the *Moore* test, it is critical to consider the responsibilities of police officers, who take an oath to uphold the law. See generally *State v. Gismondi*, 353 N.J. Super.

178, 185 (App. Div. 2002). These positions require a high level of honesty, integrity, sensitivity, and fairness in dealing with members of the public, knowledge of the law, and a pattern and exhibition of law-abiding conduct. A police officer has an enhanced responsibility to upholding the law, as one "'who stands in the public eye as an upholder of that which is morally and legally correct.'" *Hartmann v. Police Dept. of Ridgewood*, 258 N.J. Super. 32, 40 (App. Div. 1992). Conduct so antithetical to the legal norms as that involved in attempted murder would tend to destroy public respect of and confidence in the value of upholding the law itself.

Defendant's actions clearly fall within the *Moore* definition of "touching upon" his office as a police officer. The defendant's motivation was similar to that of the defendant in *Moore*, a corrections officer who harassed his supervisor in retaliation for disciplinary charges that had been filed against him. Officer Krabappel's testimony reveals that the defendant acted based in part on his fear that he would face retribution from his superiors for his affair with Marge Simpson. Defendant's attempt to murder Homer Simpson was clearly motivated by his fear that the affair would be discovered and that he would suffer negative repercussions on the job as a result.

Accordingly, the decision of the trial court is hereby ***affirmed***.

MERCY, J.A.D., dissenting

I find the majority's conclusions to be irreconcilable with a proper reading of the law and the Constitution and, therefore, I respectfully dissent.

First, the eyewitness testimony of Homer Simpson ("Homer") should not have been admitted at trial because it was clearly tainted by a highly suggestive identification procedure conducted by a quasi-state actor. At a minimum, defendant was entitled to a hearing pursuant to *United States v. Wade*, 388 U.S. 218 (1967), to determine the extent to which the initial highly suggestive identification made it impossible for Homer to identify the defendant *independently* of the earlier suggestiveness in the subsequent line-up.

I do not agree that the actions of Seymour Skinner in this case can be so readily dismissed as those of a private actor who merely pointed the defendant out to the victim. The majority fails to note the fact that Skinner was not merely an employee of Rutgers University and a co-worker of Marge Simpson, Homer's wife. Rather, Skinner serves as Dean of the Rutgers School of Law-Newark and, in that capacity, sits as an ex officio member of the Disciplinary Review Board for the Rutgers Campus Police. His unique role at the University takes him out of the category of private actor, and puts his conduct into the realm of state action. Dean Skinner's role in devising the procedure by which Homer would first identify the defendant serves as a basis for invoking the exclusionary rule as a deterrent against future actions of similarly situated individuals.

Moreover, the actions at issue here went far beyond merely pointing out Wiggum to Homer so that Homer could determine if he was the man responsible for the attack. As noted by my colleagues of the majority, Skinner told Homer that he believed he knew who the attacker was. It was Skinner who then arranged the circumstances whereby Homer was able to see Wiggum. Critically important to the analysis here is that, when

Skinner pointed to Wiggum and his partner and said “that's Wiggum over there, does he look like the guy who shot you?”, Homer looked closely but initially could not identify Wiggum as the attacker. Instead, Homer said “I'm not sure, he is the right build but it is hard to tell because that guy is dressed like a cop.” However, as Wiggum approached the car, Skinner noticed that Wiggum had several bruises on the left side of his face and called them specifically to Homer’s attention. It was only at that point that Homer then said, “He must be the one.”

These highly suggestive circumstances clearly had the capacity to taint the identification, without which the conviction in this case cannot stand. As noted by the U.S. Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 198 (1972), “It is the likelihood of misidentification which violates a defendant's right to due process... Suggestive confrontations ... increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous.” For that reason, under the New Jersey Constitution if not under the U.S. Constitution, I would hold that an unduly suggestive identification procedure renders the results inadmissible even if the procedure does not involve a state actor. Indeed, a showing of state action is not necessary since, in this context, due process protects an accused not from police misconduct but from unreliable evidence per se. See *Dunnigan v. Keane*, 137 F.3d 117, 128 (2d Cir. 1998); *United States v. Bouthot*, 878 F.2d 1506, 1515-16 (1st Cir. 1989); *Thigpen v. Cory*, 804 F.2d 893, 895 (6th Cir. 1986).

“Competent and reliable evidence remains at the foundation of a fair trial, which seeks ultimately to determine the truth about criminal culpability.” *State v. Michaels*, 136 N.J. 299, 316 (1994). “The foundation of our evidence rules, at least insofar as jury trials are concerned, is to provide the fact-finder with only reliable and probative evidence.” State v. A.O., 397 N.J. Super. 8, 30 (App. Div. 2007), mod. 198 N.J. 69 (2009). Our Supreme Court has held “the preliminary inquiry as to admissibility is whether the choice made by the witness represents his own independent recollection...” *State v. Farrow*, 61 N.J. 434, 451 (1972).

Our trial courts are responsible for assuring that evidence presented at criminal trials is sufficiently reliable to be of use to jurors. They are therefore permitted to exclude relevant evidence “if its probative value is substantially outweighed by the risk of . . . undue prejudice, confusion of issues, or misleading the jury . . . ." N.J.R.E. 403. For this reason, at the very least, defendant was absolutely entitled to a pretrial hearing pursuant to *United States v. Wade*, 388 U.S. 218 (1967), to fully explore the reliability of the identification free of any concern that the jury might be misled by such an examination. A trial court must determine that evidence is relevant in order present it to a jury. N.J.R.E. 402. Evidence is relevant when it has a “tendency in reason to prove or disprove any fact of consequence to the determination of the action.” N.J.R.E. 401. Evidence that is inherently unreliable can prove nothing. Evidence indicating that an initial identification occurred under highly suggestive circumstances calls the reliability of that and subsequent identifications into question. In cases where the police are not involved in the identification procedure, a hearing is still necessary to determine the reliability of evidence if the trial court determines that the identification procedure was highly suggestive. See N.J.R.E. 104, 403. And see *State v. McCord*, 259 N.J. Super. 217 (Law Div. 1992).

Even where the due process right is not implicated, courts have referenced the fundamental principles of evidence law to exclude unreliable evidence. See, e.g., *State v. Hibl*, 714 N.W.2d 194, 201-202, 205-206 (Wis. 2006) (holding that judges should exclude evidence when "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury"); see also *Commonwealth v. Jones*, 666 N.E.2d 994 (Mass. 1996) (excluding unreliable identification evidence arising from suggestive pre-trial confrontation based on common law principles of fairness); *People v. Blackman*, 488 N.Y.S.2d 395, 397 (N.Y. App. Div. 1985) (where a suggestive identification is conducted by private individuals, "'[f]airness' under the 5th Amendment certainly requires that the proponents of that evidence meet a threshold of at least minimal reliability").

In the present case there was ample evidence on the record to compel the trial court to grant a *Wade* hearing. Homer's initial identification of the defendant occurred under highly suggestive circumstances: (1) Skinner told Homer that he suspected the defendant was the man who shot him prior to the initial identification; (2) Skinner also stated that he suspected that the defendant was having an affair with Homer's wife prior to initial identification; (3) Skinner was first to spot the defendant on the street and pointed the defendant out to Homer; (4) Homer was unsure that the defendant was the man who shot him until Skinner pointed out the bruises on his face; and (5) after the initial identification, Marge acknowledged that she was having an affair with the defendant.

For these reasons, the trial court should have either excluded the evidence or, at the very least, should have granted a *Wade* hearing to assess the impact of the initial highly suggestive identification procedure on both the initial identification and the subsequent identification by Homer at the police line-up.

Furthermore, I disagree with my colleagues regarding the trial court's order forever banning the defendant from holding future public office in the state of New Jersey pursuant to N.J.S.A. 2C:51-2(d). First, Officer Krabappel's testimony was at best inconclusive as to any link between the crimes of which defendant was convicted and the office the defendant held. Second, the statute at issue here was amended in 2007 to substantially narrow the definition of touching upon a public office and that narrowing precludes application of the statute in this case.

Even taken in the light most favorable to the prosecution, the evidence in this case shows that defendant acted based on his relationship with Marge Simpson, not based on any relationship to his official office. The evidence shows that the reason he tried to kill Homer was that he wanted to continue his relationship with Marge. Even if believed in its entirety, Officer Krabappel's shows that the defendant's concern about the possibility of adverse employment action should his relationship be discovered was clearly secondary to his desire to continue his relationship with Marge. It surely does not show that defendant's actions bore a direct and substantial relationship to his job as a police officer.

This requirement of a direct relationship was added to the statute in 2007 and the language is drawn essentially word for word from *McCann v. Clerk of Jersey City*, 167 N.J. 311 (2001). *McCann* and the new statutory language require that the crimes bear "direct and substantial relationship" to the public office. Id. at 323. This is a fundamental change from the rule set out in the case relied upon by the majority, *Moore v. Youth*

Correctional Inst., 119 N.J. 256 (1990), and it is a change that the majority fails to take into account.

The evidence in this case does not show a "direct and substantial relationship" between the crimes charged and the public office held. Therefore, the court should have found, in accordance with the amended statute and the precedent which it incorporated into the statute, that the forfeiture law did not apply to the crimes for which defendant was convicted.

I dissent.

IN THE SUPREME COURT
OF THE STATE OF NEW JERSEY

No. 61,803

STATE OF NEW JERSEY	:	
	:	
v.	:	**ORDER**
	:	
CLANCY WIGGUM,	:	
	:	
Defendant-Appellant.	:	
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This matter having been brought before the Court on September 8, 2009, by the defendant-appellant, it is, on this 9th day of September 2009, hereby docketed as to all appropriate issues. Simultaneous briefing is directed and both parties are to file briefs with the Court on or before November 23, 2009.

Gil Gunderson, Deputy Clerk
For the Court