

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5222-12T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

AMR M. ELSOBKY,

Defendant-Appellant.

Argued October 14, 2014 – Decided January 30, 2015

Before Judges Sabatino and Leone.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. 12-04-0622.

Philip Nettle argued the cause for appellant (Benedict and Altman, attorneys; Mr. Nettle, on the brief).

Jason M. Boudwin, Assistant Prosecutor, argued the cause for respondent (Andrew C. Carey, Middlesex County Prosecutor, attorney; Brian D. Gillet, Deputy First Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Amr M. Elsobky appeals from his judgment of conviction, arguing that the prosecutor wrongfully denied him

Pretrial Intervention (PTI). The trial court upheld the prosecutor's decision, but termed it a "very . . . close call." The State subsequently cast serious doubt upon the validity of one of its bases for rejecting PTI. In part for that reason, we vacate the court's order and remand for the prosecutor to consider whether the remaining valid reasons justify denial of PTI.

I.

At about 9:49 p.m. on January 28, 2012, Carteret Police Officer Eric Reuter observed defendant driving a Mazda RX8 with one headlight out. The officer pulled over defendant's car. The officer saw a .45-caliber Glock 21 handgun on the passenger seat. Defendant immediately handed the officer his North Carolina concealed handgun permit and his U.S. Army Identification Card. The officer removed the handgun, which was loaded with thirteen bullets. The officer then arrested defendant. During the stop and subsequent investigation, defendant made several statements which the State alleged were false.

The grand jury indicted defendant for second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), fourth-degree possession of prohibited hollow-nose bullets, N.J.S.A.

2C:39-3(f)(1), and two counts of third-degree hindering apprehension, N.J.S.A. 2C:29-3(b)(4).

The PTI Director recommended defendant for enrollment in PTI. The PTI Director noted that defendant had immigrated to the United States, became a naturalized citizen, and enlisted in the U.S. Army Reserve. Defendant graduated from the U.S. Army Defense Language Institute, and speaks twenty-seven languages and dialects. He was twice deployed to Iraq, where he was shot and wounded with shrapnel. This was defendant's first adult arrest. The PTI Director concluded that "there were substantial grounds tending to justify the defendant's conduct, though failing to establish a defense. Additionally, the character and attitude of the defendant indicate he is unlikely to commit another offense."

The prosecutor refused to consent to PTI, finding several "significant factors . . . strongly militated against defendant's admission to PTI." Defendant appealed the prosecutor's PTI denial to the Law Division, and provided extensive documentation to the trial court (defendant's documentation). After briefing and argument, the trial court upheld the prosecutor's denial of PTI by a "close small margin."

Subsequently, defendant pled guilty to second-degree unlawful possession of a handgun. Pursuant to the plea

agreement, the remaining charges were dismissed, the prosecutor moved under N.J.S.A. 2C:43-6.2 to waive the mandatory prison term required by N.J.S.A. 2C:43-6(c), and the prosecutor sought probation conditioned on 180 days in the county jail. The court sentenced defendant to five years of non-custodial probation, ordered a mental health evaluation, and required him to participate in mental health counseling if recommended.

Defendant appeals from the May 21, 2013 judgment of sentence. See R. 3:28(g). He raises the following arguments:

THE STATE'S REJECTION OF DEFENDANT FROM PTI, AGAINST THE RECOMMENDATION OF THE PTI DIRECTOR, SHOULD BE REVERSED, BECAUSE IT WAS A PATENT AND GROSS ABUSE OF DISCRETION.

A. THE STATE CONSIDERED INAPPROPRIATE FACTORS AGAINST DEFENDANT'S ADMISSION INTO PTI, AND FAILED TO CONSIDER POSITIVE FACTORS.

B. THE STATE'S DECISION IS A CLEAR ERROR IN JUDGMENT WHICH SUBVERTS THE GOALS OF PTI.

II.

Deciding whether to permit diversion to PTI "is a quintessentially prosecutorial function." State v. Wallace, 146 N.J. 576, 582 (1996). "'Prosecutorial discretion in this context is critical for two reasons. First, because it is the fundamental responsibility of the prosecutor to decide whom to prosecute, and second, because it is a primary purpose of PTI to augment, not diminish, a prosecutor's options.'" State v.

Nwobu, 139 N.J. 236, 246 (1995) (quoting State v. Kraft, 265 N.J. Super. 106, 111 (App. Div. 1993)). Accordingly, "prosecutors are granted broad discretion to determine if a defendant should be diverted" to PTI instead of being prosecuted. State v. K.S., __ N.J. __, __ (2015) (slip op. at 10).

"Thus, the scope of review is severely limited." State v. Negran, 178 N.J. 73, 82 (2003). Reviewing courts must accord the prosecutor "'extreme deference.'" Nwobu, supra, 139 N.J. at 246 (quoting Kraft, supra, 265 N.J. Super. at 112). "In order to overturn a prosecutor's rejection, a defendant must 'clearly and convincingly establish that the prosecutor's decision constitutes a patent and gross abuse of discretion.'" State v. Watkins, 193 N.J. 507, 520 (2008).

However, as our Supreme Court has reiterated, "[w]hen a reviewing court determines that the 'prosecutor's decision was arbitrary, irrational, or otherwise an abuse of discretion, but not a patent and gross abuse of discretion,' the reviewing court may remand to the prosecutor for further consideration." K.S., supra, __ N.J. at __ (slip op. at 11) (quoting State v. Dalglish, 86 N.J. 503, 509 (1981)). "Remand is the proper remedy when, for example, the prosecutor considers inappropriate factors, or fails to consider relevant factors." Ibid.

"In making his determination, the prosecutor is not required to prove 'beyond a reasonable doubt' that a particular factor is present before taking it into account in the decision-making process. Rather, it is sufficient that the prosecutor has a reasonable belief, grounded in reliable information[.]" State v. Maddocks, 80 N.J. 98, 107 (1979). "Of course, should a defendant demonstrate that the prosecutor's belief is unfounded or based upon unreliable information, it would be inappropriate for this belief to affect defendant's admissibility." Id. at 108; accord Dalqlish, supra, 86 N.J. at 509-10.

We apply the same standard as the trial court. Thus, we review the court's reversal of the prosecutor's decision de novo. We must hew to that standard of review.

III.

The PTI program is governed by N.J.S.A. 2C:43-12 to -22 (the Act), Rule 3:28, and the Guidelines for Operation of Pretrial Intervention in New Jersey, reprinted after Rule 3:28 in Pressler & Verniero, Current N.J. Court Rules (2015) (Guidelines). The eligibility criteria for PTI are primarily set forth in Guideline 3 and in N.J.S.A. 2C:43-12(e) of the Act. Here, the prosecutor cited several bases for denying PTI.

A.

First, the prosecutor cited "[t]he nature of the offense." N.J.S.A. 2C:43-12(e)(1). Defendant conceded, and the court found, this factor weighs against PTI because he was charged with a second-degree offense. "A defendant charged with a first or second degree offense . . . should ordinarily not be considered for enrollment in a PTI program except on joint application by the defendant and the prosecutor." Pressler & Verniero, supra, Guideline 3(i) to R. 3:28. This provision represents a "decision to prevent serious offenders from avoiding prosecution in ordinary circumstances," and creates "a presumption against diversion." State v. Caliguiri, 158 N.J. 28, 42 (1999); see Watkins, supra, 193 N.J. at 523; See also Pressler & Verniero, supra, Official Comment on Guideline 3.

A defendant may rebut the presumption by "showing compelling reasons justifying the applicant's admission and establishing that a decision against enrollment would be arbitrary and unreasonable." Pressler & Verniero, supra, Guideline 3(i) to R. 3:28. "[A] defendant must demonstrate something extraordinary or unusual," not merely "that the accused is a first-time offender and has admitted or accepted responsibility for the crime." Nwobu, supra, 139 N.J. at 252. If a defendant "fails to rebut the presumption against

diversion," then "[r]ejection based solely on the nature of the offense is appropriate." Caliquiri, supra, 158 N.J. at 43.

B.

Second, the prosecutor's letter denying PTI repeatedly asserted that the bullets in the handgun were "hollow point" bullets and thus "prohibited devices." The State charged defendant with possession of "hollow nose" bullets in violation of N.J.S.A. 2C:39-3(f)(1).¹ The State's appellate briefs similarly argued defendant possessed illegal hollow-nose bullets. However, the prosecutor's letter also stated the investigation revealed the bullets were "manufactured in the manner in which they are in order to circumvent the prohibition against hollow point bullets."² At oral argument before us, the Assistant Prosecutor conceded the bullets are not hollow-nose bullets and are not illegal.

Those statements cast serious doubt on the prosecutor's rationale that PTI should be denied because defendant's bullets are "hollow-point" bullets and thus "prohibited devices" under

¹ Hollow-nose bullets, also known as hollow-point or dum-dum bullets, are "designed to expand upon entering a target," Model Jury Charge (Criminal), "Possession of Prohibited Weapons and Devices" (2013), and thus "'to inflict the maximum amount of injury,'" State v. Waters, ___ N.J. Super. ___, ___ (App. Div. 2015) (slip op. at 15 n.5).

² Defendant has maintained the nose of the bullet is rubber, not hollow.

N.J.S.A. 2C:39-3(f)(1). Given those statements, we are concerned that the prosecutor has not asserted a reasonable belief that the bullets are prohibited, or, if the bullets are not prohibited, that the Prosecutor has not asserted why the nature of the bullets is an appropriate factor weighing against PTI. Absent such an assertion, the nature of the bullets was an inappropriate factor for the prosecutor to rely on in denying PTI.

C.

Third, the prosecutor cited as "the most important factor" defendant's alleged misrepresentations. The prosecutor stressed that defendant had shown a "propensity for untruthfulness (on several levels)." The prosecutor's letter and appellate brief emphasized that defendant was charged with two counts of providing false information to law enforcement officers in nine separate instances. As set forth in the indictment, those nine allegedly false statements are: "he was issued a concealed permit card;" "he was issued a carrying permit;" "he was issued a permit to carry;" "he spoke with a dispatcher from the New Jersey State Police and received authorization to carry the firearm so long as it was not concealed in his vehicle;" "he was in the Army;" "he was on injured leave due to combat wounds suffered while stationed overseas;" "he was assigned to Army

Intelligence out of Fort Knox, Kentucky;" "he worked for the U.S. Army Intelligence Department out of Fort Knox;" "the nature of his jobs was interrogations;" and "his commanding officer was Sgt. 1st Class McGee of the H.R.C. (Human Resources Command)." The prosecutor's letter added that "defendant's untruthfulness" was further illustrated by his statement in a PTI interview that "the gun is the property of the military."

As the trial court noted, it was disputed whether those statements were "inaccurate or accurate or may have been misinterpreted by the police." Defendant contends all of these statements were true, and cites the documentation he supplied to the trial court. We therefore examine these alleged misrepresentations to determine if they were appropriate factors to justify the denial of PTI.

Regarding the first three alleged misrepresentations, defendant presented Officer Reuter with his North Carolina Concealed Handgun Permit and stated he "had a concealed permit card," "had a permit to carry the weapon," and "had a permit to carry." Investigation confirmed defendant had been stationed at Fort Bragg, North Carolina, which would explain the North Carolina permit. Defendant's documentation included military orders confirming he had been thus stationed, the unexpired permit indicating he could carry a concealed weapon with the

permit, and the papers documenting his purchase of the gun in North Carolina. The prosecutor offered no basis for asserting that defendant was lying when he said he had a concealed handgun carry permit card. To the extent the prosecutor relied on these "misrepresentations," that was an inappropriate factor in considering PTI.

Next, defendant informed police that prior to carrying the handgun, he spoke with the New Jersey State Police, and was told he was allowed to carry the firearm as long as it was not concealed in his vehicle. Defendant said the person was "a dispatcher, I guess," but he could not identify the person because the conversation occurred too long ago. Defendant's documentation included telephone records showing he made several calls to the State Police about a week before the stop. The prosecutor conceded that defendant made calls to the State Police.

Nonetheless, the prosecutor could reasonably question defendant's assertion that he had been told by the State Police he was allowed to carry the handgun in his vehicle so long as he did not conceal it.³ Such advice would contravene New Jersey law, under which carrying even unconcealed "handguns in one's

³ The prosecutor reported to the trial court that no one in the State Police Firearms Unit remembered speaking to defendant about that issue.

car or on one's person along the highways is, apart from certain exemptions, 'clearly forbidden unless the person carrying the handgun has a [New Jersey] permit issued in accordance with [N.J.S.A. 2C:58-4].'" In re Two Seized Firearms, 127 N.J. 84, 87-88 (quoting State v. Hatch, 64 N.J. 179, 186 (1973)), cert. denied, 506 U.S. 823, 113 S. Ct. 75, 121 L. Ed. 2d 40 (1992).

Such advice would also misstate federal law. Indeed, defendant's method of transporting the handgun contravened federal law in several respects. First, he was not transporting it "from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm." 18 U.S.C.A. § 926A (2014). Defendant claimed in his PTI interview that he was transporting the handgun from his home in Carteret to a storage facility in Linden. However, he could not lawfully possess or carry the firearm in either New Jersey location. Second, he was not complying with the federal requirement that "during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle." Ibid.⁴ It was appropriate for the

⁴ We note the State Police website sets forth the requirements of 18 U.S.C.A. § 926A. Transporting a Firearm Into/Through the
(continued)

prosecutor to consider as a misrepresentation defendant's claim to have received such advice from the State Police.⁵

We next address the remaining alleged misrepresentations about the military status of defendant and his gun. After he handed his U.S. Army Identification Card to Officer Reuter, defendant repeatedly said "he was in the Army." Defendant said: he was on injured leave due to combat wounds suffered overseas; he was stationed at Fort Knox, Kentucky; he was assigned and worked for U.S. Army Intelligence out of Fort Knox doing interrogations; and his commanding officer was Sergeant McGee of the Human Resources Command. Defendant said he carried the weapon for protection due to the nature of his work, specifically that he conducted interrogations.

(continued)

State of New Jersey, http://www.state.nj.us/njsp/about/fire_trans.html (last visited Jan. 20, 2015). The website also states that "[t]he New Jersey State Police is not authorized to provide legal advice to private parties." New Jersey Firearm Laws, http://www.state.nj.us/njsp/about/fire_ag2.html (last visited Jan. 20, 2015).

⁵ Defendant's counsel conceded it was "very unlikely" that the State Police would have told defendant he could carry the gun if it was not concealed. Counsel asserted that the State Police told defendant his North Carolina concealed handgun permit was not effective in New Jersey, and that he misunderstood the advice to mean he should not conceal the weapon by placing it in the trunk. The prosecutor was not required to credit those assertions.

Officer Reuter attempted to contact Fort Knox, but the offices were closed. Officer Reuter reached a Military Police sergeant, who initially reported that defendant was listed as an E4 Specialist at Fort Knox, having transferred from Fort Bragg, North Carolina. However, the sergeant soon determined defendant was a reservist, was no longer on active duty, and was not stationed at Fort Knox. The sergeant also told Officer Reuter that defendant's claim to be in Army Intelligence was probably false, and that his identification might be fake.⁶

Subsequently, defendant's documentation showed that he had been wounded in Iraq and assigned to Fort Bragg for medical treatment, and that he was later discharged from active duty in the Army, and transferred to the Reserves. The documentation showed his reserve obligations do not terminate until 2017, and that he was subject to recall to active duty. The documentation showed that his Military Occupation Specialty (MOS) remained "09L Interpreter/Translator," which is associated with Military Intelligence, and that as a reservist he was assigned to Fort Knox, where the contact for personnel "in the Individual Ready Reserves" with the "09L" MOS was Sergeant McGhee of Human

⁶ Defendant faults Officer Reuter for relying on the contrary information from the Military Police sergeant, but both the operator at Fort Knox and defendant himself had suggested Officer Reuter speak to the Military Police.

Resources Command. The prosecutor has not suggested a reasonable basis for doubting defendant's documentation. Thus, to the extent that documentation supports defendant's statements, they were not appropriately considered misrepresentations.

However, defendant's statement to Officer Reuter that he was stationed at Fort Knox was in fact misleading. Defendant's documentation shows that, when defendant was pulled over in January 2012, he was not actively serving in the reserves, and had returned home to live in Carteret since January 2011. Defendant admits he was employed by a civilian contractor who works with the Armed Forces. The documentation also shows the Department of Veterans Affairs declared defendant disabled, not due to his combat wounds, but because of a mild traumatic brain injury from an auto accident.

The Military Police sergeant also informed Officer Reuter that defendant had registered the Glock with a Military Police database. Officer Reuter then spoke to a New Jersey State Police sergeant who was formerly in U.S. Army Intelligence, and who reported the Glock had to be defendant's personal weapon because the Army issues Beretta handguns. Nonetheless, defendant stated in his PTI interview not only that the gun "was registered to the military" but also that "[t]he gun is military

issued and assigned to me," and is "property of the military." Those additional representations were incorrect, as he admitted upon further inquiry. As the prosecutor noted, those misrepresentations came "despite police intervention and court involvement."

The parties debate whether defendant, though in the Reserves, is "in" the Army. We need not resolve that debate, because the prosecutor appropriately relied on defendant's misleading statements falsely implying that he was actively serving in the U.S. Army, and that his handgun was issued by the military. Such misleading implications were relevant because they suggested his possession of a handgun was lawful under N.J.S.A. 2C:39-5. That statute does not apply to "[m]embers of the Armed Forces of the United States . . . while actually on duty, or while traveling between places of duty and carrying authorized weapons in the manner prescribed by the appropriate military authorities." N.J.S.A. 2C:39-6(a)(1).

In deciding whether to consent to PTI, the prosecutor could appropriately rely on the false or misleading nature of some of defendant's statements, suggesting the misimpression that he was actively in the military, and that the gun was the property of the military. However, the prosecutor referenced all nine charged instances of providing false information to law

enforcement, and contended defendant exhibited "a pattern of untruthfulness" and a "propensity for untruthfulness" that "militates in favor of prosecuting this case traditionally." As set forth above, defendant's documentation verified his representations in more than half of the nine charged instances, and the prosecutor has not offered any reasonable basis to disbelieve that documentation. The prosecutor thus considered inappropriate factors.

Both in his letter and on appeal, the prosecutor asserts that defendant's nine alleged misrepresentations "divert[ed] law enforcement resources from legitimate, necessary functions so they could investigate the fraudulent information he provided." We agree the prosecutor could reasonably conclude that Reuter and the other law enforcement officers invested more time in investigating defendant's statements about his military role than would have been necessary had he not made any false or misleading statements. However, the prosecutor's finding is based, in part, on the investigation of charged "misrepresentations" which were inappropriate factors, as set forth above. Moreover, Officer Reuter's report stated that "during the entire process [defendant] was corporative [sic-cooperative] and did not create any burden on this police department."

The prosecutor also considered defendant's alleged misrepresentations in evaluating defendant's medical status. The prosecutor noted that defendant suffered a mild traumatic brain injury which posed cognitive issues and led to him being declared disabled. The prosecutor stated it was "unlikely that the minimal supervision that PTI affords can adequately address the substantial treatment and supervision this defendant needs," even if his brain injury "is a causal factor in the multiple counts of hindering."

Thus, we conclude the prosecutor considered as "misrepresentations" both defendant's false and misleading statements, and his statements subsequently verified by defendant's documentation. Consequently, the prosecutor relied on both appropriate and inappropriate factors.⁷ We cannot discern on this record whether the prosecutor, if he had considered only the false and misleading statements and not the verified statements, would have concluded that defendant "exhibit[ed] a pattern of untruthfulness," showed a "propensity for untruthfulness," excessively diverted law enforcement

⁷ The trial court reached a similar conclusion at sentencing. After again considering defendant's comments to the police in light of his documentation, the court did not "find them all to be misleading," only "some of those."

resources to investigate fraudulent statements, or needed more than the minimal supervision PTI affords.

We emphasize the narrowness of our reasoning. We recognize that a defendant has no right to "an evidentiary hearing where the underlying facts that affect a defendant's suitability for PTI have been disputed." State v. Lee, 437 N.J. Super. 555, 568 (App. Div. 2014). Moreover, "[a] prosecutor is certainly free to disbelieve statements presented by defense witnesses and to instead credit the anticipated contrary testimony of the State's witnesses." Ibid.⁸ Here, however, defendant submitted documentation issued by the United States Government, and the State of North Carolina, which confirmed the accuracy of some of defendant's alleged "misrepresentations" about his military status conferred by the federal government, and his gun permit conferred by North Carolina. The prosecutor has not suggested that there is a reasonable basis to doubt the authenticity and accuracy of that documentation, or that any contrary testimony or documentation exists. In these unusual circumstances, a prosecutor does not have "the prerogative to completely disregard evidence proffered by an applicant that bears upon the

⁸ For example, the prosecutor could and did reasonably disbelieve defendant's claim in his PTI interview that he said he had a gun as soon as Officer Reuter approached the car.

applicable factors under the Guidelines and the PTI statute." Id. at 567.

IV.

As set forth above, the statements by defendant which were actually false or misleading are an appropriate factor to consider in deciding whether to grant PTI. See N.J.S.A. 2C:43-12(e)(6), (14). The prosecutor also appropriately relied on the presumption arising from this second-degree offense, N.J.S.A. 2C:43-12(e)(1), and on the general importance of prosecuting and deterring gun possession without a permit, see N.J.S.A. 2C:43-12(e)(7), (17). The trial court found all of these factors favored the denial of PTI. Based on those appropriate factors, we cannot say that denying PTI to this defendant necessarily would be "'so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention,'" or "'will clearly subvert the goals underlying Pretrial Intervention.'" Wallace, supra, 146 N.J. at 53 (citation omitted). Accordingly, we decline to order defendant's admission to PTI.⁹

However, in denying PTI, the prosecutor inappropriately relied on the assertion that the bullets were prohibited hollow-

⁹ Thus, we need not comment on the trial court's finding that denial of PTI was supported by factors not relied on by the prosecutor, namely N.J.S.A. 2C:43-12(e)(4), (9).

nose bullets, and on some charged "misrepresentations" which proved to be accurate. Further, as the trial court found, some of the factors above only narrowly favored denial of PTI. As the trial court also found, a substantial majority of the factors in N.J.S.A. 2C:43-12(e) did not favor the denial of PTI to defendant, who had no adult criminal violations, and served his country honorably. Again, the trial court found by a "close small margin" that PTI was appropriately denied, but it was a "very . . . close call."

As a result, "we cannot say with any degree of certainty what actions the prosecutor would have taken" had he not weighed the inappropriate factors along with the appropriate and countervailing factors. See State v. Bender, 80 N.J. 84, 97 (1979). Nor can we say that a remand will not serve a "useful purpose." Wallace, supra, 146 N.J. at 584. "Hence, we feel the wiser course is to remand this matter to the trial court so that the prosecutor can take a fresh look at defendant's background in the light of our rulings today." Bender, supra, 80 N.J. at 97. "A remand to the prosecutor affords an opportunity to apply the standards set forth by the court 'without supplanting the prosecutor's primacy in determining whether [PTI] is appropriate in individual cases.'" K.S., supra, __ N.J. at __ (slip op. at 11) (quoting Dalqlish, supra, 86 N.J. at 514).

Accordingly, we vacate the judgment of the Law Division, and remand this matter to the Middlesex County Prosecutor for reconsideration of defendant's application for PTI. See id. at 16. Absent additional information, the prosecutor may not consider the inappropriate factors set forth above. Defendant's sentence is stayed pending the prosecutor's decision on PTI. If the prosecutor continues to oppose PTI after reconsideration, defendant may seek further review in the trial court. Thereafter, either party may file a new appeal with this court if dissatisfied with the trial court's decision. Because we presume that the prosecutor will reconsider defendant's application in light of the Attorney General Directive to Ensure Uniform Enforcement of the "Graves Act" (Oct. 23, 2008, corrected Nov. 25, 2008, clarified Sept. 24, 2014), we decline to address in this appeal the impact of that directive. See generally Waters, supra, ___ N.J. Super. at ___ (slip op. at 24-30).

Vacated and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION