

STEPHEN W. KIRSCH, Esq.
3111 Route 38, Suite 11, #302
Mount Laurel, NJ 08054
e-mail: SteveKirschLaw@gmail.com
phone: 609-354-8402
Attorney I.D. 034601986
Designated Counsel

Joseph E. Krakora, Public Defender
Attorney for Defendant-Appellant
31 Clinton St., 8th Floor
Newark, NJ 07102

Date: April 14, 2023

SUPREME COURT OF NEW JERSEY
DOCKET NO. 087742

STATE OF NEW JERSEY,

CRIMINAL ACTION

Plaintiff-Respondent,

v.

KALIL COOPER,

Defendant-Appellant.

: On Appeal from an Order of
: the Superior Court of New
: Jersey, Appellate Division
:
:
:
: Sat Below:
: Hon. Mary Gibbons Whipple, J.A.D.
: Hon. Hany A. Mawla, J.A.D.
: Hon. Morris G. Smith, J.A.D.

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANT-APPELLANT

DEFENDANT IS CONFINED

TABLE OF CONTENTS

	<u>Page Nos.</u>	
PROCEDURAL HISTORY	1	
STATEMENT OF FACTS	2	
LEGAL ARGUMENT	2	
POINT I		
CONSPIRACY TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE IS <u>NOT</u> A PREDICATE CRIME OF PROMOTING ORGANIZED STREET CRIME UNDER <u>N.J.S.A.</u> 2C:33-30, AND SHOULD NOT HAVE BEEN INSTRUCTED TO THE JURY AS SUCH; DEFENDANT’S CONVICTION FOR THAT CRIME, AND THE PORTION OF THE APPELLATE DIVISION DECISION REGARDING THAT CONVICTION, SHOULD BOTH BE REVERSED		2
CONCLUSION.....	15	

INDEX TO APPENDIX

	<u>Page Nos.</u>
Judgment of Conviction After Resentencing	DSa 1 to 4
Order Granting Certification	DSa 5 to 6

TABLE OF AUTHORITIES
CASES

State v. Afanador, 151 N.J. 41 (1997) 10

State v. Bailey, 231 N.J. 474 (2018)..... 11

State v. Branch, 155 N.J. 317 (1998)..... 14

State v. Butler, 27 N.J. 560 (1958)..... 10

State v. Concepcion, 111 N.J. 373 (1988) 10

State v. Drury, 190 N.J. 197 (2007)..... 7

State v. Galloway, 133 N.J. 631 (1993)..... 6

State v. Gelman, 195 N.J. 475 (2007)..... 8

State v. Green, 86 N.J. 281 (1981) 10

State v. Grey, 147 N.J. 4 (1996)..... 6

State v. Jordan, 147 N.J. 409 (1997) 11

State v. Lenihan, 219 N.J. 251 (2014) 8

State v. Livingston, 340 N.J. Super. 133 (App. Div. 2001)..... 8

State v. Martin, 119 N.J. 2 (1990)..... 10

State v. McKinney, 223 N.J. 475 (2015) 10, 12

State v. Rhett, 127 N.J. 3 (1992)..... 10, 12

State v. Schmidt, 110 N.J. 258 (1988)..... 14

State v. Smith, 279 N.J. 131 (App. Div. 1995) 7

State v. Staten, 327 N.J. Super. 349 (App. Div.), certif. den.
164 N.J. 561 (2000) 7

State v. Valentin, 105 N.J. 14 (1987) 6

State v. Vick, 117 N.J. 288 (1989) 11

STATUTES

N.J.S.A. 2C:7.2d..... 7

N.J.S.A. 2C:11-3a(3) 7

N.J.S.A. 2C:13-1(c)(2)..... 7

N.J.S.A. 2C:14-2a(3) 7

N.J.S.A. 2C:29-9 5

N.J.S.A. 2C:33-30..... passim

N.J.S.A. 2C:34-1 5, 8

N.J.S.A. 2C:41-1 3

PROCEDURAL HISTORY

For this supplemental brief, defendant Kalil Cooper relies on the Procedural History in his principal Appellate Division brief, with the addition of three events subsequent to the filing of that brief. On December 2, 2022, the Appellate Division affirmed all of defendant's convictions but remanded the matter for resentencing. (Pa 1 to 36)¹. Thereafter, on January 24, 2022, the trial judge resentenced defendant to a slightly lower aggregate prison term: 14 years, seven without parole, instead of 16 years, eight without parole. (DSa 1 to 4) Then, on March 28, 2023, this Court entered an order granting defendant's petition for certification on one issue: the challenge to the jury instruction that labeled conspiracy to distribute a controlled dangerous substance as the predicate offense to Count Four, promoting organized street crime, N.J.S.A. 2C:33-30. (DSa 5 to 6)

STATEMENT OF FACTS

For this supplemental brief, defendant relies on the Statement of Facts in his principal Appellate Division brief.

¹ Da – appendix to defendant's Appellate Division brief
Db – defendant's Appellate Division brief
Pa – appendix to defendant's petition for certification
DSa – appendix to this supplemental brief

LEGAL ARGUMENT

POINT I

CONSPIRACY TO DISTRIBUTE A CONTROLLED DANGEROUS SUBSTANCE IS NOT A PREDICATE CRIME OF PROMOTING ORGANIZED STREET CRIME UNDER N.J.S.A. 2C:33-30, AND SHOULD NOT HAVE BEEN INSTRUCTED TO THE JURY AS SUCH; DEFENDANT'S CONVICTION FOR THAT CRIME, AND THE PORTION OF THE APPELLATE DIVISION DECISION REGARDING THAT CONVICTION, SHOULD BOTH BE REVERSED.

Defendant was accused by the State of being the head of a group of Crips in Elizabeth and committing a litany of offenses, some of which were first-degree crimes. (Da 1 to 16) However, the jury did not believe most of the State's case, and acquitted defendant of the most serious charges. (Da 17 to 23) He ended up convicted only of second-degree "promoting organized street crime," under N.J.S.A. 2C:33-30, and a few lesser charges -- third-degree conspiracy to distribute "heroin or cocaine," third-degree possession of cocaine, and simple assault. The matter before this Court addresses only one issue: the jury instruction that was given on the N.J.S.A. 2C:33-30 offense. The Appellate Division opinion approves of an instruction that listed conspiracy to distribute a controlled dangerous substance (CDS) as a predicate offense of N.J.S.A. 2C:33-30 when the statute fails to enumerate conspiracy as one of the predicate offenses in what is otherwise a detailed, specific list of such predicates. Indeed,

the only predicate offense that the jury found for N.J.S.A. 2C:33-30 was that very conspiracy offense. (Da 20) Because the Appellate Division decision conflicts with the plain language of N.J.S.A. 2C:33-30, as well as with a long history of case law regarding predicate offenses, defendant's conviction under N.J.S.A. 2C:33-30, and the Appellate Division's ruling with respect to that conviction, should be reversed. Conspiracy is simply not a predicate offense of promoting organized street crime. Defendant was convicted of a crime that does not exist.

The issue arose as follows. N.J.S.A. 2C:33-30a defines "promoting organized street crime" as follows: "A person promotes organized street crime if he conspires with others as an organizer, supervisor, financier or manager to commit any crime specified in chapters 11 through 18, 20, 33, 35, or 37 of Title 2C of the New Jersey Statutes; N.J.S. 2C:34-1; N.J.S. 2C:39-3; N.J.S. 2C:39-4; N.J.S. 2C:39-4.1; N.J.S. 2C:39-5; or N.J.S. 2C:29-9." But in this case, Count Four of the indictment strangely specified the crime that defendant allegedly conspired with others to promote as none of the ones listed in the statute, but rather: "a continuing series of crimes which constitute a pattern of racketeering activity under the provisions of N.J.S.A. 2C:41-1." (Da 7)

When it came time to discuss the jury instruction at the charge conference, the trial judge and counsel agreed that racketeering under Chapter 41 is simply

not one of the predicate crimes listed in N.J.S.A. 2C:33-30a.² Over defense objection,³ the court decided to charge the jury that any one of the crimes listed as part of the “pattern of racketeering” charged in Counts One and Two (of which defendant was eventually acquitted) of the indictment could be the crime that the defendant sought to promote via a conspiracy “with others.” (26T 6-19 to 11-12) Those “pattern of racketeering” crimes were: conspiracy to distribute CDS, conspiracy to commit murder, and the substantive crime of aggravated assault, and the judge instructed those three crimes⁴ to the jury as the crimes that the State was alleging that the defendant conspired with others to promote. (28T 197-11 to 200-17; 29T 11-2 to 20) Ultimately, when convicting defendant of promoting organized street crime under N.J.S.A. 2C:33-30, the jury chose only conspiracy to distribute CDS as the crime that defendant conspired with others

² In its decision, the Appellate Division agreed, going so far as to say that Count Four, as written in the indictment, “was legally incorrect.” (Pa 18)

³ Defense counsel’s objection, which he also renewed to no avail at the motion for a new trial (34T 4-1 to 41-17), was considerably broader than the one raised on appeal by appellate counsel. Trial counsel’s objection was that the judge should not charge the jury at all in variance with the language of Count Three of the indictment (26T 6-19 to 7-13), whereas appellate counsel’s complaint on appeal is simply that the statute at issue, N.J.S.A. 2C:33-30, does not encompass conspiracy to distribute CDS as a predicate crime, so the judge should not have charged it as such. Consequently, in what may be an excess of caution, in the Appellate Division, defendant labeled that argument as only “Partially Raised Below.”

⁴ The elements of those three crimes were instructed to the jury elsewhere in the instruction. (Conspiracy to distribute CDS: 28T 176-25 to 183-9; conspiracy to commit murder; 28T 183-13 to 192-11; aggravated assault: 28T 149-18 to 155-12)

to promote. (Da 20) Defendant was acquitted of promoting either of the other two charged predicates. The problem? The jury instruction allowed the jury to convict of a crime that does not exist. Conspiracy is simply not a predicate crime of N.J.S.A. 2C:33-30.

As noted, the “promoting organized street crime” statute criminalizes a conspiracy with “others” (i.e., more than one person) as an organizer, supervisor, financier, or manager to commit any of a laundry list of crimes that are specifically enumerated by the chapter of Title 2C in which they appear, or by the specific statute in which they appear. N.J.S.A. 2C:33-30. Those “chapters” are: homicide offenses (Chapter 11); assault offenses (Chapter 12); kidnapping offenses (Chapter 13); sexual offenses (Chapter 14); robbery offenses (Chapter 15); bias crimes (Chapter 16); arson and other destruction of property (Chapter 17); burglary and trespass offenses (Chapter 18); theft offenses (Chapter 20); riot (Chapter 33); drug (CDS) crimes (Chapter 35); and gambling offenses (Chapter 37). Also enumerated as predicate crimes are the specific crimes of prostitution, N.J.S.A. 2C:34-1; a series of specific weapons offenses from Chapter 39; and criminal contempt, N.J.S.A. 2C:29-9. Notably, the crime of conspiracy, N.J.S.A. 2C:5-2 does not appear in the N.J.S.A. 2C:33-30 list of predicate crimes.

There are, thus, two very basic reasons why conspiracy is not a predicate crime of N.J.S.A. 2C:33-30. The first of those reasons is because it is not listed

as one of the predicate crimes, and case law in New Jersey has made it eminently plain, over and over, that when a statute enumerates predicate crimes, that list is deemed to be exclusive. Secondly, because promoting organized street crime is itself a conspiracy offense, the notion of a “conspiracy to conspire” is a nearly nonsensical one -- or certainly at best one that allows for a more amorphous notion of what is being “conspired” -- and this Court should not strive to give criminal statutes nonsensical readings or readings that expand their reach beyond the plain language. Defendant will address both of those reasons in detail.

Penal statutes must be strictly construed against the State. State v. Galloway, 133 N.J. 631, 658-659 (1993); State v. Valentin, 105 N.J. 14, 17 (1987). Both this Court and the Appellate Division have previously held that where an offense -- whether an inchoate crime such as attempt or conspiracy, or a substantive crime -- is not included in a list of predicate crimes in a criminal statute, that statute should be strictly read to exclude those offenses from its predicates. In State v. Grey, 147 N.J. 4, 15-17 (1996), the Court made clear that conspiracy to commit arson -- as opposed to the substantive crime of arson -- is not a predicate crime for felony murder. Why? For the simple reason that the felony murder statute enumerates the predicate crimes, and conspiracy is not on that list. Id. at 15. The Court wrote succinctly: “We know that the substantive crime of conspiracy is not a predicate offense for felony murder” because it is

not included in the list of predicate felonies in that statute. N.J.S.A. 2C:11-3a(3). Id. (emphasis added). Similarly, in State v. Drury, 190 N.J. 197, 210 (2007), the Court held that carjacking is not a predicate offense to elevate a second-degree sexual assault to first-degree aggravated sexual assault because the plain language of the statute, N.J.S.A. 2C:14-2a(3), does not list it as one of those predicate felonies -- despite the fact that robbery is on that list, and carjacking is often thought of as a form of robbery.

Likewise, in State v. Smith, 279 N.J. 131, 143-144 (App. Div. 1995), the court held that the enhanced sentencing provisions for kidnapping under N.J.S.A. 2C:13-1(c)(2) applied only to the actual commission of the offenses listed in that statute, not to attempts to commit those offenses because the statute did not specifically name attempts as predicate crimes. Similarly, in State v. Staten, 327 N.J. Super. 349, 354-355 (App. Div.), certif. den. 164 N.J. 561 (2000), the court refused to apply the No Early Release Act (NERA) to a mere attempt to cause serious bodily injury when the statute spoke only of the actual causing of such injury. Staten notes: "The failure to include the word 'attempt' is strongly indicative of the Legislature's intention that NERA does not apply to a mere attempt, without more, to cause serious bodily injury." Id. at 355. Thereafter, the legislature corrected the omission and amended the NERA statute to apply to a list of "crimes or an attempt or conspiracy to commit any of these crimes." N.J.S.A. 2C:7.2d. Similarly, the Graves Act extended-term

provision was read to exclude carjacking from its reach for the simple reason that carjacking is not listed in the statute as a predicate Graves Act extended-term offense. State v. Livingston, 340 N.J. Super. 133, 140 (App. Div. 2001) (“Because the Graves Act extended term sentencing provisions enumerate the crimes that trigger such sentences, and because carjacking is not so enumerated, we agree that [the defendant]’s sentence for carjacking should have been imposed without a Graves Act extended term”) (emphasis added).

Only where the statute in question does not enumerate the predicate crimes is some level of “interpretation” required to determine what is and is not a predicate crime. See State v. Lenihan, 219 N.J. 251, 263-265 (2014) (where the statute in question, N.J.S.A. 2C:40-18, makes any “law intended to protect the public health and safety” a predicate offense, a seat-belt violation is a predicate crime). But even then, where the intent of the legislature is anything less than crystal clear in the State’s favor, at a bare minimum the rule of lenity will apply, and the statute will be read in the defendant’s favor. See State v. Gelman, 195 N.J. 475, 478 (2007) (the rule of lenity applies because N.J.S.A. 2C:34-1 is “insolubly ambiguous concerning whether a defendant can be charged with [a higher-degree version] of prostitution based on a prior petty disorderly persons conviction under the predecessor statute”).

Here, however, there is no need to fall back upon the rule of lenity in order to rule in defendant’s favor because there is no ambiguity. There is a list in

N.J.S.A. 2C:33-30 of predicate offenses -- just like in Grey, Drury, Smith, Staten, and Livingston -- and, quite clearly, conspiracy is not on that list. Moreover, as noted, promoting street crime is itself a conspiracy offense. If conspiracy is held to be a predicate offense of that crime, then that would mean the legislature was criminalizing a “conspiracy to conspire.” There is simply nothing in the statute to indicate that legislative intent. In fact, the legislature could be no clearer in enumerating the crimes that are predicate offenses, and conspiracy is not one of them. N.J.S.A. 2C:33-30

So, how did the Appellate Division go so wrong, one has to wonder? It is hard to know. That court’s “reasoning” in rejecting the defense claim on appeal, and in finding that conspiracy is a predicate offense of promoting organized street crime is brief -- just one sentence -- and spectacularly inaccurate. That court writes: “Here, N.J.S.A. 2C:33-30 specifically prohibits conspiracy to commit a wide range of chapters and a wide range of offenses, including conspiracy to distribute CDS.” (Pa 19) (emphasis added). As noted, that statute does nothing of the sort. Conspiracy is most certainly not one of the enumerated predicate crimes. The Appellate Division appears to have just misread the statute.

Thus, a critical error was made by the trial judge in instructing this jury that conspiracy to distribute CDS was a predicate offense of the crime of promoting organized street crime. It is not. The next question is whether

somehow that error could be deemed harmless beyond a reasonable doubt. It is absolutely clear that it cannot, for reasons both general and specific to this case.

First of all, one of the most basic principles of New Jersey criminal law is that "[a]n essential ingredient of a fair trial is that a jury receive adequate and understandable instructions." State v. McKinney, 223 N.J. 475, 495 (2015), quoting State v. Afanador, 151 N.J. 41, 54 (1997); see also State v. Concepcion, 111 N.J. 373, 379 (1988) ("Accurate and understandable jury instructions in criminal cases are essential to a defendant's right to a fair trial"). "[T]he trial court has an absolute duty to instruct the jury on the law governing the facts of the case." State v. Butler, 27 N.J. 560, 595 (1958). The charge must provide a "comprehensible explanation of the questions that the jury must determine, including the law of the case applicable to the facts that the jury may find." State v. Green, 86 N.J. 281, 287-288 (1981)." Concepcion, 111 N.J. at 379. "A charge is a road map to guide the jury, and without an appropriate charge a jury can take a wrong turn in its deliberations. Thus, the court must explain the controlling legal principles and the questions the jury is to decide." State v. Martin, 119 N.J. 2, 15 (1990). Therefore, instructional errors on essential matters, even in cases where those errors are not raised below, are traditionally deemed prejudicial and reversible error because they interfere with the jury's proper assessment of the defendant's culpability. State v. Rhett, 127 N.J. 3, 5-7 (1992); Concepcion, 111 N.J. at 379.

More specifically, it will always be reversible error for a jury to be told the wrong elements of a crime, even where the jury would have almost certainly found those elements had it been properly instructed. State v. Vick, 117 N.J. 288, 292 (1989) (failing to properly charge the “absence of a gun permit” element of unlawful possession of a firearm without a permit is reversible plain error even in a case where the defendant could not possibly have had a permit because he did not own the weapon in question). That rule is so strict because an improper jury instruction on a critical element means that there can be no proper jury findings under that instruction. Id. at 291. “[T]here is simply no substitute for a jury verdict.” Id.; see also State v. Bailey, 231 N.J. 474, 489 (2018) (conviction reversed when jury instruction failed to define an element properly and thus “the jury could not have made a finding on that issue”). The Sixth Amendment and the state constitution guarantee no less than a jury verdict on every element of the crime, even if an element is uncontested or conceded, and without a proper explanation of that element, the verdict is not valid. Vick, 117 N.J. at 291; Bailey, 231 N.J. at 489. Thus, even where there has been no objection lodged by trial counsel, an erroneous instruction on such a fundamental matter will necessarily be deemed plain error worthy of reversal. State v. Jordan, 147 N.J. 409, 422-423 (1997), citing Vick, 117 N.J. at 291.

Even more specifically to this case, there is an enormous difference between a conspiracy to commit a substantive offense and what was instructed

here: a conspiracy to conspire. The former is an agreement to actually commit a substantive crime. The latter is merely an “agreement to agree” sometime in the future -- a far less certain (and far more poorly-defined) matter than an actual agreement to commit a substantive offense. This jury may have merely decided that defendant and two others agreed that at some point in the future they would come to some kind of agreement, to be determined later, about drug distribution. That might be a “conspiracy to conspire” but it is not a conspiracy to actually commit a substantive drug offense. Most importantly, it is not a predicate offense for the crime of which defendant was convicted.

Here, conspiracy to distribute CDS simply is not a predicate crime of promoting organized street crime, but it was wrongly instructed as such. Thus, when that was the only predicate crime found by the jury for Count Four, the jury returned a verdict on a non-existent crime and that verdict must be reversed.

The only remaining question is the remedy. Ordinarily, the remedy for an erroneous instruction on an element is a reversal and remand for retrial. See, e.g., McKinney, 223 N.J. at 502-503; Vick, 117 N.J. at 292-293; Rhett, 127 N.J. at 8-9.⁵ But here, there is nothing left to retry. The conviction for Count Four

⁵ In the Appellate Division, appellate defense counsel wrote a multi-pronged jury-instruction point (Point II), and asked for a reversal and remand for retrial on this subpoint (subpoint II(a)), as he did with all the subpoints of that point. (Db 41) That was a mistake with respect to subpoint II(a). As set forth in this

should simply be reversed. As noted, the indictment incorrectly charged defendant with “a pattern of racketeering” as the predicate offense for Count Four. (Da 7) When all parties and the trial judge agreed that the offense of racketeering is not a predicate offense of N.J.S.A. 2C:33-30, the judge determined that, because the three predicate offenses of the very first racketeering count -- enumerated as the “pattern of racketeering” in that count (Da 4) -- were aggravated assault, conspiracy to murder, and conspiracy to distribute CDS, defendant was justifiably on notice that those were also the “pattern of racketeering” referred to in Count Four. But, as explained in detail in this brief, conspiracy is not a valid predicate crime of Count Four, so really only one of those three crimes listed in the indictment as the “pattern of racketeering” could have validly been instructed as a predicate crime of N.J.S.A. 2C:33-30/Count Four. Defendant was acquitted of Count Four with respect to both that valid predicate offense (aggravated assault) as well as with respect to one of the invalid ones (conspiracy to murder). All he was convicted of on Count Four was with respect to one of the invalid predicates, a crime that does not

brief, the proper remedy is simply a reversal of the conviction for Count Four. There is nothing left to retry. Defendant was acquitted of the only version of Count Four that was properly submitted to the jury. That was for promoting organized street crime with a predicate offense of aggravated assault. The two conspiracy offenses that were submitted as alternate predicate offenses (conspiracy to murder and conspiracy to distribute CDS) were not proper predicate offenses of N.J.S.A. 2C:33-30.

exist: promoting organized street crime with an invalid predicate offense of conspiracy to distribute CDS. That conviction should be reversed, but, when it is reversed, there is nothing left to retry. He cannot be retried on a crime that does not exist.

Defendant was only on notice in the indictment of just three offenses as the “pattern of racketeering” for the racketeering counts. (Da 4) When that “pattern of racketeering” was also indicted as the predicate for Count Four, only whatever offenses of that “pattern of racketeering” that were also valid predicate offenses for Count Four -- promoting organized street crime -- could justifiably be instructed as such predicates for Count Four. Defendant was acquitted of Count Four as to that one sole potential valid predicate offense, i.e., aggravated assault. For all the reasons argued in this brief, he obviously cannot be retried for promoting organized street crime with conspiracy as the predicate offense, and there is no lawful basis for a retrial on some other, unindicted, uncharged predicate offense. State v. Schmidt, 110 N.J. 258, 265-276 (1988) (when only an incorrect theory of guilt was instructed on a count for which defendant was convicted, the remedy is reversal and entry of a judgment of acquittal; defendant cannot be retried on a theory that was not presented to the first jury if the theory that was presented is legally insufficient); see also State v. Branch, 155 N.J. 317, 325 (1998) (a predicate offense to felony murder that was not instructed to the jury at defendant’s trial cannot be the basis for a conviction or retrial; felony-

murder verdict vacated and acquittal entered). The Appellate Division decision with respect to this issue should be reversed, as should be the conviction for Count Four. The matter should also be remanded for entry of a judgment of acquittal on that count. Defendant was convicted of a crime that does not exist. Such a conviction cannot stand.

CONCLUSION

For all of the reasons set forth in this brief, the Appellate Division decision regarding Count Four should be reversed, and the conviction on that count should be reversed and the matter remanded for entry of a judgment of acquittal on that count.

Respectfully submitted,

Joseph E. Krakora
Public Defender
Attorney for Defendant-Appellant

BY: /s/Stephen W. Kirsch
STEPHEN W. KIRSCH
Designated Counsel
Attorney I.D. No. 034601986

Date: April 14, 2023



Change of Judgment of Conviction & Order for Commitment RESENTENCE Superior Court of New Jersey, UNION County

State of New Jersey v.

Last Name COOPER	First Name KALIL	Middle Name
Also Known As COOPER KALIL , COOPER KALIL M, COOPER KHALIL		
Date of Birth 02/15/1990	SBI Number 223687D	Date(s) of Offense 11/19/2015
Date of Arrest	PROMIS Number 15 003243-011	Date Ind / Acc / Complt Filed 04/22/2016
Original Plea <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty		Date of Original Plea 06/06/2016
Adjudication By <input type="checkbox"/> Guilty Plea <input checked="" type="checkbox"/> Jury Trial Verdict <input type="checkbox"/> Non-Jury Trial Verdict <input type="checkbox"/> Dismissed / Acquitted		
Date: 03/12/2019		
<input type="checkbox"/> Sealed (N.J.S.A. 2C:52-5.2)		

Original Charges				
Ind / Acc / Complt	Count	Description	Statute	Degree
16-04-00286-I	1	RACKETEERING-EMPLOYEE PARTICIPATES-VIOLENCE/1ST DEG/ETC	2C:41-2C	1
16-04-00286-I	3	RACKETEERING-CONSPIRE IN RACKETEERING-VIOL/1ST DEG/ETC	2C:41-2D	1
16-04-00286-I	4	PROMOTING ORGANIZED STREET CRIME - UNDERLYING 1ST/2ND	2C:33-30A	1
16-04-00286-I	5	CONSPIRACY - LEADER OF ORGANIZED CRIME	2C:5-2G	2
16-04-00286-I	6	RACKETEERING-EMPLOYEE OF ENTERPRISE PARTICIPATES	2C:41-2C	1
		CONSPIRACY - AGREE/ENGAGE IN CONDUCT CONSITUTE A CRIME	2C:5-2A(1)	
		MURDER - PURPOSELY	2C:11-3A(1)	

(Cont...)

Final Charges				
Ind / Acc / Complt	Count	Description	Statute	Degree
16-04-00286-I	AMENDED 4	PROMOTING ORGANIZED STREET CRIME - UNDERLYING 3RD DEGRE	2C:33-30A	2
16-04-00286-I	AMENDED 7	SIMPLE ASSAULT-PURPOSELY/KNOWINGLY CAUSE BOD. INJURY	2C:12-1A(1)	DP
16-04-00286-I	11	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
16-04-00286-I	23	CONSPIRACY - AGREE/ENGAGE IN CONDUCT CONSITUTE A CRIME	2C:5-2A(1)	3
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	

Sentencing Statement

It is, therefore, on 01/24/2023 **ORDERED** and **ADJUDGED** that the defendant is sentenced as follows:

- PER THE APPELLATE DIVISION DECISION A-4975-18, ISSUED ON DECEMBER 2, 2022, THE DEFENDANT IS RESENTENCED AS FOLLOWS:
 - AS TO COUNT 23: THE DEFENDANT IS COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 4 YEARS WITH 2 YEARS OF PAROLE INELIGIBILITY.
 - COUNT 23 IS TO RUN CONSECUTIVE TO COUNT 4 PURSUANT TO N.J.S.A. 2C:33-30(B).
 - COUNT 23 IS TO RUN CONCURRENT WITH COUNTS 7 AND 11.
- THE REMAINDER OF THE SENTENCE PREVIOUSLY IMPOSED ON MAY 31, 2019 REMAINS AS FOLLOWS:
 - AS TO COUNT 4: THE DEFENDANT IS COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 10 YEARS WITH 5 YEARS OF PAROLE INELIGIBILITY.
 - COUNT 4 IS TO RUN CONSECUTIVE TO COUNT 23.
 - COUNT 4 IS TO RUN CONCURRENT WITH COUNTS 7 AND 11.
- AS TO COUNT 7: THE DEFENDANT IS COMMITTED TO THE CUSTODY OF THE UNION COUNTY CORRECTIONAL CENTER FOR A TERM OF 6 MONTHS.
 - COUNT 7 IS TO RUN CONCURRENT WITH COUNTS 4, 11 AND 23.
- AS TO COUNT 11: THE DEFENDANT IS COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF THE DEPARTMENT OF

(Cont...)

It is further **ORDERED** that the sheriff deliver the defendant to the appropriate correctional authority.

Total Custodial Term 014 Years 00 Months 000 Days	Institution Name CARE COMMISS/CORR	Total Probation Term 00 Years 00 Months
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DSa001

State of New Jersey v.
COOPER, KALIL

S.B.I. # 223687D Ind / Acc / Compl # 16-04-00286-I

<p>DEDR (N.J.S.A. 2C:35-15 and 2C:35-5.11)</p> <p>A mandatory Drug Enforcement and Demand Reduction (DEDR) penalty is imposed for each count. (Write in number of counts for each degree.)</p> <p><input type="checkbox"/> DEDR penalty reduction granted (N.J.S.A. 2C:35-15a(2))</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">Standard</th> <th></th> <th style="text-align: center;">Doubled</th> </tr> </thead> <tbody> <tr> <td>1st Degree</td> <td style="text-align: center;">_____ @ \$</td> <td></td> <td style="text-align: center;">_____ @ \$</td> </tr> <tr> <td>2nd Degree</td> <td style="text-align: center;">_____ @ \$</td> <td></td> <td style="text-align: center;">_____ @ \$</td> </tr> <tr> <td>3rd Degree</td> <td style="text-align: center;">1 @ \$ 1,000.00</td> <td></td> <td style="text-align: center;">_____ @ \$</td> </tr> <tr> <td>4th Degree</td> <td style="text-align: center;">_____ @ \$</td> <td></td> <td style="text-align: center;">_____ @ \$</td> </tr> <tr> <td>DP or</td> <td style="text-align: center;">_____ @ \$</td> <td></td> <td style="text-align: center;">_____ @ \$</td> </tr> <tr> <td>Petty DP</td> <td style="text-align: center;">_____ @ \$</td> <td></td> <td style="text-align: center;">_____ @ \$</td> </tr> </tbody> </table> <p style="text-align: right;">Total DEDR Penalty \$ 1,000.00</p> <p><input type="checkbox"/> The court further ORDERS that collection of the DEDR penalty be suspended upon defendant's entry into a residential drug program for the term of the program. (N.J.S.A. 2C:35-15e)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">Forensic Laboratory Fee (N.J.S.A. 2C:35-20)</td> <td style="width:50%;">Total Lab Fee</td> </tr> <tr> <td>1 Offenses @ \$ 50.00</td> <td>\$ 50.00</td> </tr> </table> <p>VCCO Assessment (N.J.S.A. 2C:43-3.1)</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Counts</th> <th>Number</th> <th></th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>4</td> <td style="text-align: center;">1</td> <td style="text-align: center;">@</td> <td>\$ 50.00</td> </tr> <tr> <td>7</td> <td style="text-align: center;">1</td> <td style="text-align: center;">@</td> <td>\$ 50.00</td> </tr> <tr> <td>11</td> <td style="text-align: center;">1</td> <td style="text-align: center;">@</td> <td>\$ 50.00</td> </tr> <tr> <td>23</td> <td style="text-align: center;">1</td> <td style="text-align: center;">@</td> <td>\$ 50.00</td> </tr> </tbody> </table> <p style="text-align: right;">Total VCCO Assessment \$ 200.00</p> <p>Vehicle Theft / Unlawful Taking Penalty (N.J.S.A. 2C:20-2.1)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Offense</td> <td style="width:30%;">Mandatory Penalty</td> </tr> <tr> <td></td> <td>\$ _____</td> </tr> </table> <p>Offense Based Penalties</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Penalty</td> <td style="width:30%;">Amount</td> </tr> <tr> <td></td> <td>\$ _____</td> </tr> </table> <p>Other Fees and Penalties</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; vertical-align: top;"> Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3) <input checked="" type="checkbox"/> \$ 30.00 </td> <td style="width:50%; vertical-align: top;"> Safe Neighborhoods Services Fund Assessment (N.J.S.A. 2C:43-3.2) <input checked="" type="checkbox"/> 4 Offenses @ \$ 75.00 Total: \$ 300.00 </td> </tr> <tr> <td style="vertical-align: top;"> Probation Supervision Fee (N.J.S.A. 2C:45-1d) <input type="checkbox"/> \$ _____ </td> <td style="vertical-align: top;"> Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6) <input type="checkbox"/> _____ Offenses @ \$ _____ Total \$ _____ </td> </tr> <tr> <td style="vertical-align: top;"> Transaction Fee (N.J.S.A. 2C:46-1.1) <input type="checkbox"/> </td> <td></td> </tr> <tr> <td style="vertical-align: top;"> Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4) <input type="checkbox"/> \$ _____ </td> <td style="vertical-align: top;"> Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7) <input type="checkbox"/> \$ _____ </td> </tr> <tr> <td style="vertical-align: top;"> Fine \$ _____ </td> <td style="vertical-align: top;"> Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10) <input type="checkbox"/> \$ _____ </td> </tr> <tr> <td style="vertical-align: top;"> Restitution Joint & Several \$ _____ <input type="checkbox"/> </td> <td style="vertical-align: top;"> Total Financial Obligation \$ 1,580.00 </td> </tr> </table> <p><input type="checkbox"/> Entry of Civil Judgment for court-ordered financial assessment (N.J.S.A. 2C:52-5.2)</p> <p>Details</p>		Standard		Doubled	1st Degree	_____ @ \$		_____ @ \$	2nd Degree	_____ @ \$		_____ @ \$	3rd Degree	1 @ \$ 1,000.00		_____ @ \$	4th Degree	_____ @ \$		_____ @ \$	DP or	_____ @ \$		_____ @ \$	Petty DP	_____ @ \$		_____ @ \$	Forensic Laboratory Fee (N.J.S.A. 2C:35-20)	Total Lab Fee	1 Offenses @ \$ 50.00	\$ 50.00	Counts	Number		Amount	4	1	@	\$ 50.00	7	1	@	\$ 50.00	11	1	@	\$ 50.00	23	1	@	\$ 50.00	Offense	Mandatory Penalty		\$ _____	Penalty	Amount		\$ _____	Law Enforcement Officers Training and Equipment Fund Penalty (N.J.S.A. 2C:43-3.3) <input checked="" type="checkbox"/> \$ 30.00	Safe Neighborhoods Services Fund Assessment (N.J.S.A. 2C:43-3.2) <input checked="" type="checkbox"/> 4 Offenses @ \$ 75.00 Total: \$ 300.00	Probation Supervision Fee (N.J.S.A. 2C:45-1d) <input type="checkbox"/> \$ _____	Statewide Sexual Assault Nurse Examiner Program Penalty (N.J.S.A. 2C:43-3.6) <input type="checkbox"/> _____ Offenses @ \$ _____ Total \$ _____	Transaction Fee (N.J.S.A. 2C:46-1.1) <input type="checkbox"/>		Domestic Violence Offender Surcharge (N.J.S.A. 2C:25-29.4) <input type="checkbox"/> \$ _____	Certain Sexual Offenders Surcharge (N.J.S.A. 2C:43-3.7) <input type="checkbox"/> \$ _____	Fine \$ _____	Sex Crime Victim Treatment Fund Penalty (N.J.S.A. 2C:14-10) <input type="checkbox"/> \$ _____	Restitution Joint & Several \$ _____ <input type="checkbox"/>	Total Financial Obligation \$ 1,580.00	<p>Additional Conditions</p> <p><input checked="" type="checkbox"/> The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided (N.J.S.A. 53:1-20.20 and N.J.S.A. 53:1-20.29).</p> <p><input type="checkbox"/> The defendant is hereby sentenced to community supervision for life (CSL) if offense occurred before 1/14/04 (N.J.S.A. 2C:43-6.4).</p> <p><input type="checkbox"/> The defendant is hereby sentenced to parole supervision for life (PSL) if offense occurred on or after 1/14/04 (N.J.S.A. 2C:43-6.4).</p> <p><input type="checkbox"/> The defendant is hereby ordered to serve a _____ year term of parole supervision, pursuant to the No Early Release Act (NERA), which term shall begin as soon as the defendant completes the sentence of incarceration (N.J.S.A. 2C:43-7.2).</p> <p><input type="checkbox"/> The court imposes a Drug Offender Restraining Order (DORO) (N.J.S.A. 2C:35-5.7h). DORO expires _____</p> <p><input type="checkbox"/> The court continues/imposes a Sex Offender Restraining Order (SORO) if the offense occurred on or after 8/7/07 (Nicole's Law N.J.S.A. 2C:14-12 or N.J.S.A. 2C:44-8).</p> <p><input type="checkbox"/> The court imposes a Stalking Restraining Order (N.J.S.A. 2C:12-10.1).</p> <p><input type="checkbox"/> The defendant is prohibited from purchasing, owning, possessing, or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun (N.J.S.A. 2C:25-27c(1)).</p> <p>Findings Per N.J.S.A. 2C:47-3</p> <p><input type="checkbox"/> The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.</p> <p><input type="checkbox"/> The court finds that the defendant is amenable to sex offender treatment.</p> <p><input type="checkbox"/> The court finds that the defendant is willing to participate in sex offender treatment.</p> <p>License Suspension</p> <p><input type="checkbox"/> CDS / Paraphernalia (N.J.S.A. 2C:35-16) <input type="checkbox"/> Waived</p> <p><input type="checkbox"/> Auto Theft / Unlawful Taking (N.J.S.A. 2C:20-2.1)</p> <p><input type="checkbox"/> Eluding (N.J.S.A. 2C:29-2)</p> <p><input type="checkbox"/> Other</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">Number of Months</td> <td style="width:50%;"> <input type="checkbox"/> Non-resident driving privileges revoked </td> </tr> <tr> <td style="text-align: center;">6</td> <td></td> </tr> </table> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">Start Date</td> <td style="width:50%;">End Date</td> </tr> <tr> <td style="text-align: center;">05/31/2019</td> <td style="text-align: center;">12/01/2019</td> </tr> </table> <p>Details</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">Driver's License Number</td> <td style="width:30%;">Jurisdiction</td> </tr> <tr> <td></td> <td></td> </tr> </table> <p>If the court is unable to collect the license, complete the following: Defendant's Address 1011 OLIVE STREET</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">City</td> <td style="width:25%;">State</td> <td style="width:25%;">Zip</td> </tr> <tr> <td style="text-align: center;">ELIZABETH</td> <td style="text-align: center;">NJ</td> <td style="text-align: center;">07201-0000</td> </tr> </table> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Date of Birth</td> <td style="width:33%;">Sex</td> <td style="width:33%;">Eye Color</td> </tr> <tr> <td style="text-align: center;">02/15/1990</td> <td style="text-align: center;"><input type="checkbox"/> M <input type="checkbox"/> F</td> <td></td> </tr> </table>	Number of Months	<input type="checkbox"/> Non-resident driving privileges revoked	6		Start Date	End Date	05/31/2019	12/01/2019	Driver's License Number	Jurisdiction			City	State	Zip	ELIZABETH	NJ	07201-0000	Date of Birth	Sex	Eye Color	02/15/1990	<input type="checkbox"/> M <input type="checkbox"/> F	
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DSa002

State of New Jersey v.
 COOPER, KALIL

S.B.I. #223687D Ind / Acc / Complt # 16-04-00286-I

Continuation

ORIGINAL CHARGES (Cont.)

Ind / Acc / Complt	Count	Description	Statute	Degree
16-04-00286-I	7	AGG ASSAULT-ATTEMPT/CAUSE SIGNIFICANT BODILY INJURY	2C:12-1B(7)	3
16-04-00286-I	9	UNLAWFUL POSSESSION OF WEAPONS - ASSAULT FIREARM	2C:39-5F	2
16-04-00286-I	10	PROHIBITED WEAPONS AND DEVICES - LARGE CAPACITY AMMO	2C:39-3J	4
16-04-00286-I	11	POSS CDS/ANALOG - SCHD I II III IV	2C:35-10A(1)	3
16-04-00286-I	12	CDS - MANU/DISTR/PWID - HEROIN/COCAINE - < .50Z	2C:35-5B(3)	3
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	
16-04-00286-I	13	POSS/DISTR WITHIN 500 FT CERTAIN PUBLIC PROPERTY	2C:35-7.1A	2
16-04-00286-I	23	CONSPIRACY - AGREE/ENGAGE IN CONDUCT CONSTITUTE A CRIME	2C:5-2A(1)	3
		MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS	2C:35-5A(1)	

SENTENCING STATEMENT (Cont.)

CORRECTIONS FOR A TERM OF 5 YEARS. THE DEFENDANT'S DRIVING PRIVILEGES ARE HEREBY SUSPENDED IN THE STATE OF NEW JERSEY FOR A PERIOD OF 6 MONTHS.

- COUNT 11 IS TO RUN CONCURRENT WITH COUNTS 4, 7 AND 23.
- ALL FINES AND PENALTIES ARE TO BE COLLECTED THROUGH THE DEPARTMENT OF CORRECTIONS.
- ALL ASSESSMENTS SHALL BE DEDUCTED THROUGH ANY INCOME FROM PRISON WORK OR SHALL BE DEDUCTED THROUGH THE DEFENDANT'S PERSONAL ACCOUNT.
- COUNTS 1, 3, 5, 6, 9, 10, 12 AND 13 OF 16-04-00286-I ACQUITTED BY JURY ON MARCH 12, 2019.

DSa004

SUPREME COURT OF NEW JERSEY
C-509 September Term 2022
087742

State of New Jersey,
Plaintiff-Respondent,

v.

Kalil Cooper, a/k/a
Kalil M. Cooper and
Khalil Cooper,
Defendant-Petitioner.

O R D E R

A petition for certification of the judgment in A-004975-18
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is granted, limited to
defendant's challenge that the trial court improperly instructed the jury that
conspiracy is a predicate crime of N.J.S.A. 2C:33-30 (promotion of organized
street crime). See Defendant's Appellate Division brief at Point II.A. and as
incorporated in the petition; and it is further

ORDERED that the appellant may serve and file a supplemental brief on
or before May 12, 2023, and respondent may serve and file a supplemental

brief thirty (30) days after the filing of appellant's supplemental submission,
or, if appellant declines to file such a submission, on or before June 12, 2023.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
28th day of March, 2023.

A handwritten signature in cursive script, reading "Heather J. Baker". The signature is written in black ink and is positioned above the printed title.

CLERK OF THE SUPREME COURT