FILED, Clerk of the Supreme Court, 16 Oct 2020, **084990**

SUPREME COURT OF NEW JERSEY
S-19 September Term 2020
084990

State of New Jersey,

Plaintiff,

v.

DISPOSITION OF
EMERGENT
APPLICATION

Wildemar A. Dangcil,

Defendant.

Pending before the Court is defendant's application for emergent relief, pursuant to Rule 2:9-8, seeking leave to appeal from the judgment of the Superior Court, Appellate Division, affirming the trial court's denial of defendant's order to show cause (OTSC) challenging the hybrid-virtual jury selection procedure adopted in response to the COVID-19 pandemic. Defendant also seeks an emergent stay of the trial proceedings scheduled to resume on Monday, October 19, 2020.

In the criminal proceeding that gives rise to this application, defense counsel initially participated in the hybrid-virtual jury selection process. After thirteen jurors had been interviewed, counsel filed an OTSC, contending that the hybrid-virtual jury selection procedure produced a jury array that was not representative of the community, but rather reflected an oversampling of

young jurors and those of higher economic status. The trial judge scheduled oral argument on the OTSC and continued with jury selection. Over the next three days, the judge and counsel virtually examined 178 prospective jurors, sixty-three of whom were selected to return for in-person jury selection. Following the in-person selection process, sixteen jurors were empaneled, and counsel indicated they were satisfied with the panel.

On September 28, 2020, the judge heard oral argument on the OTSC and rendered an opinion on the record. The trial judge rejected defense counsel's arguments, noting that counsel had conceded the process itself was not defective. The trial court found that the jury selection process was lawful, and that there was no evidence demonstrating that any group of people was excluded from the array. The judge also found that jury management handled requests for disqualification in the same manner as it did before the pandemic.

Defendant filed an emergent application in the Appellate Division, which was granted. The Appellate Division also stayed defendant's trial pending the motion for leave to appeal. Following expedited briefing, the Appellate Division granted leave to appeal, summarily affirmed the trial court's order, and lifted the temporary stay of trial court proceedings. Specifically, the Appellate Division concluded that "there has been no showing, technical or otherwise, to rebut the presumption of validity, or any

evidence to suggest that the selection was non-random or that any constitutionally cognizable group was excluded from the array."

Turning to the application now pending, the Court notes that the jury has been on hold for several weeks during the pendency of defendant's challenge. The empaneled jury is scheduled to return on Monday, October 19, 2020, to resume defendant's trial.

The Court has reviewed the arguments by the parties and amici and concludes that defendant has not made a sufficient showing that entitles him to emergent relief. In light of the detailed findings by both the trial court and the Appellate Division, defendant's application seeking additional, emergent review during the pendency of the trial is denied.

At the same time, the Court recognizes the importance of the issue raised by defense counsel. The Court's denial of defendant's interlocutory request for review and for a further stay of trial proceedings is without prejudice to defendant's filing of a motion for direct certification of the issue to the Court post-trial. The Court would entertain such an application on an expedited basis together with a request to sever any appeal as to the jury selection process from any appeal on other issues raised in direct appeal, which issues could be considered by the Appellate Division in the ordinary course.

In addition to the parties' participation, leave to appear in any post-trial application to the Court is granted to the Public Defender, the American Civil

Liberties Union of New Jersey, the New Jersey State Bar Association, and the Association of Criminal Defense Lawyers of New Jersey, should they wish to continue to participate in this case. No other entity may appear without permission of the Court.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 16th day of October, 2020.

CLERK OF THE SUPREME COURT