

To: New Jersey Law Revision Commission
From: Eileen Funnell
Re: Throwing of Bodily Fluid at Law Enforcement Officer - N.J.S. 2C:12-13 (*State v. Majewski*)
Date: September 10, 2018

MEMORANDUM

Executive Summary

In the case of *State v. Majewski*¹, the Appellate Division considered whether N.J.S. 2C:12-13, which prohibits the throwing of bodily fluids at law enforcement officers, required the State to prove that the defendant intended to hit the officer with bodily fluid, or if intent was irrelevant under the doctrine of transferred intent.²

The Court decided that both aspects of the statute, including throwing bodily fluids at law enforcement and causing (in some other way) contact of bodily fluid with an officer, call for purposeful conduct in order for a defendant to be considered guilty of aggravated assault.³ For this reason, the Court reversed the previous decision, vacated the defendant's conviction, and dismissed the indictment without prejudice.⁴

Background

The incident at hand occurred on June 14, 2015, during a "routine move" of an inmate at the county jail, where the defendant was also an inmate. During this routine move, the defendant allegedly spit in the face of one of the correction's officers, which another officer witnessed.⁵ The defendant and other inmate witnesses told the investigating sheriff's officer that the defendant's target was the inmate the officer was escorting, not the officer specifically. The defendant was accused of "throw[ing] bodily fluids at [the correction's officer]...[while the] said officer...was acting in the performance of her duties while in uniform or exhibiting evidence of her authority," contrary to N.J.S. 2C: 12-13.⁶

The defendant moved to dismiss the indictment, arguing that the statute required the State to prove that the defendant intended to hit the officer with bodily fluid. The defendant said that even if it was an offense, "spitting at someone" should not be elevated into aggravated assault simply because the fluid accidentally hit an officer.⁷ The defendant also contended that the Court

¹ *State v. Majewski*, 450 N.J. Super. 353 (App. Div. 2017).

² *Id.* at 360.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 358.

⁶ *Id.* at 359.

⁷ *Id.*

should dismiss the indictment on the grounds that the State failed to present exculpatory evidence to the jury, which included the investigating sheriff's officer's administrative disciplinary charge and interviews. In this charge, the sheriff's officer concluded that the defendant did, in fact, spit at the other inmate and not the officer, as the other inmates insisted.⁸

The State acknowledged the statute's ambiguity regarding the requisite mental state, but argued that the statute explicitly incorporated the doctrine of transferred intent because it criminalized not only the throwing of a bodily fluid at an officer, but also conduct that "otherwise purposely subjected [the officer] to contact with a bodily fluid."⁹ The State also contended that the statements of the other inmates were not clearly exculpatory evidence that negated the defendant's guilt, and it therefore had no obligation to charge the jury "regarding a potential defense."¹⁰

The Trial Court concluded that the investigative report and statements from the sheriff's officer were not clearly exculpatory and therefore the prosecutor did not violate *State v. Hogan* by not producing them before the jury.¹¹ However, the Court specifically "left for another day" any decision regarding the culpable mental state required by statute, noting there was "some further analysis that need be considered... before the matter is listed for trial."¹² The Court denied the defendant's motion. Three days later, the defendant entered her guilty plea and admitted under oath that she had gotten into an altercation with another inmate and spat at her. The defendant also admitted that her spit landed on the corrections officer, who was holding her intended target.¹³

Statute

N.J.S. 2C: 12-13

A person who throws a bodily fluid at a Department of Corrections employee, county corrections officer, juvenile corrections officer, juvenile detention staff member any sheriff, undersheriff or sheriff's officer or any municipal, county or State law enforcement officer while in the performance of his duties or otherwise purposely subjects such employee to contact with a bodily fluid commits an aggravated assault. If the victim suffers bodily injury, this shall be a crime of the third degree. Otherwise, this shall be a crime of the fourth degree. A term of imprisonment imposed for this offense shall run consecutively to any term of imprisonment currently being served and to any other term imposed for another offense committed at the time of the assault. Nothing herein shall be deemed to

⁸ *Id.*

⁹ *Id.* at 360.

¹⁰ *Id.*

¹¹ *State v. Hogan*, 144 N.J. 216, 237 (1996).

¹² *State v. Majewski*, 450 N.J. Super. 353, 360 (App. Div. 2017).

¹³ *Id.*

preclude, if the evidence so warrants, an indictment and conviction for a violation or attempted violation of chapter 11 of Title 2C of the New Jersey Statutes or subsection b. of N.J.S. 2C:12-1 or any other provision of the criminal laws.¹⁴

On appeal, the Appellate Division identified the main ambiguity in the plain language of this statute as the lack of clarity regarding whether the Legislature intended the same culpable mental state—“purposely”—that expressly applies to “subject[ing] [an officer] to contact with a bodily fluid” to also apply to “throw[ing] a bodily fluid at” such an officer.¹⁵ The Court noted that since its enactment in 1997, no published decision has construed this specific statute, and therefore the Court chose to turn to the question of statutory construction.¹⁶

The Appellate Division recognized that “the absence of an explicitly stated culpability requirement in the first portion of the statute could support an argument that knowledge applies under N.J.S. 2C:2-2(c)(3).”¹⁷ However, the Model Criminal Jury Charge Committee explains in a footnote that the subsequent statutory reference to “purpose” requires that “purpose” be applied to all material elements of offense under N.J.S. 2C: 2-C(1).¹⁸ The Model Charge adopted the same reasoning that follows in the Appellate Division’s decision.

The Appellate Division determined that in order for a defendant to be found guilty of aggravated assault under N.J.S. 2C: 12-13, the State must prove that: (1) the defendant acted purposely in throwing bodily fluid or otherwise purposely subjected the victim to contact with a bodily fluid; (2) the defendant acted purposely with respect to the nature of his/her conduct or as a result of thereof if it is a person’s conscious object to engage in conduct of that nature or cause such a result; and finally, (3) that one can be deemed to be acting purposely if one acts with design, with a purpose, with a particular object, or if one really means to do what he or she does.¹⁹

As set forth in N.J.S. 2C: 2-2(c)(3) “[w]hen the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all material elements of the offense, unless a contrary purpose plainly appears.”²⁰

The Court suggested that the scant legislative history of the statute demonstrates that the Legislature intended to broadly criminalize certain conduct specified in the statute, and although the statute does define two different types of aggravated assault, there was nothing to indicate that the Legislature intended two different levels of culpability.²¹

¹⁴ N.J.S. 2C: 12-13.

¹⁵ *State v. Majewski*, 450 N.J. Super. 353, 361 (App. Div. 2017).

¹⁶ *Id.* at 360.

¹⁷ *Id.* at 361.

¹⁸ *Model Jury Charge (Criminal)*, “Aggravated Assault (Throwing Bodily Fluid at a Corrections Employee) (N.J.S.A. 2C:12–13),” n.1, (June 10, 2002) (the Model Charge).

¹⁹ *Id.* at 1-2.

²⁰ N.J.S. 2C: 2-2(c)(3).

²¹ *State v. Majewski*, 450 N.J. Super. 353, 362 (App. Div. 2017).

Ultimately, the Court concluded that N.J.S. 2C: 12-13 does in fact require the State to prove that a defendant acted purposely, whether throwing bodily fluid or otherwise subjecting an officer to it.²² Additionally, the Court decided that the doctrine of transferred intent does not apply because a defendant does not violate the statute unless the conduct was purposeful and the result was within his or her design.²³ Finally, the Appellate Division concluded that the Trial Court mistakenly exercised its discretion by not dismissing the indictment because the State failed to properly charge the grand jury on the elements of N.J.S. 2C: 12-13.

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding this issue in order to determine whether modifying N.J.S. 2C: 12-13 would aid in interpreting the statute and potentially obviate the need for additional litigation regarding the issue addressed in *State v. Majewski*.

²² *Id.*

²³ *Id.* at 364.