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LETTER BRIEF AND APPENDIX IN SUPPORT OF DEFENDANT'S MOTION FOR LEAVE TO APPEAL – REDACTED VERSION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.
INDICTMENT NO. 24-01-134

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff-Respondent,	:	On Appeal From an Interlocutory Order of the Superior Court of New Jersey,
v.	:	Law Division, Hudson County.
DEVOYNE SANFORD,	:	Sat Below:
Defendant-Appellant.	:	Hon. Daniel DeSalvo, J.S.C.

Honorable Judges:

This letter is submitted in lieu of a formal brief pursuant to Rule 2:6-2.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

On April 20, 2022, New Jersey State Police responded to a 911 call from complainant John Lane in Hudson County. Mr. Lane alleged that occupants of a white Honda Accord bearing New Jersey registration [redacted] fired gunshots at his car on the Turnpike. Mr. Lane was not able to identify the occupants and there was no surveillance video or other witnesses. Upon arrival, police found no shell casings, bullet fragments, or bullets.

Three days later, on April 23, 2022, Union Township police officers pulled over the Honda Accord in Union County. Darryl Sanford was identified as the driver and authorized user of the car and Devoyne Sanford was the passenger. Both occupants were detained, and the car was impounded. Days later and upon a consent search, officers recovered a BB gun in the car. Both Darryl and Devoyne Sanford were charged with the BB gun in Union County.

Upon arrest in Union County, both Darryl and Devoyne Sanford gave statements to police. During Devoyne Sanford's statement, officers told him that they wanted to talk about "what occurred in Union Township in Union County." He provided a statement and answered the officers' questions, noting that he did not own a BB gun and did not know who owned the BB gun recovered from the

[1] For the purposes of this brief, the Statement of Facts and Procedural History are combined, as they are innately intertwined.

car. Mr. Sanford acknowledged that he saw images of Mr. Darryl Sanford with a BB gun and that they would use it as a prop in music videos. Mr. Devoyne Sanford did not provide any information on the April 20, 2022, incident in Hudson County. Both Darryl and Devoyne Sanford were charged under Union County Indictment 22-11-860. The Indictment was eventually dismissed against both defendants after Devoyne Sanford pled to a disorderly persons offense to obstruction and Darryl Sanford was admitted into the Pretrial Intervention Program.

On January 30, 2024, Devoyne Sanford was charged under Hudson Indictment 24-01-134 with one count of Second-Degree Possession of a Weapon for an Unlawful Purpose in violation of N.J.S.A. 2C:39-4(a)(1), one count of Third-Degree Unlawful Possession of a Weapon in violation of N.J.S.A 2C:39-5(b)(2), and one count of Fourth-Degree Aggravated Assault by Pointing in violation of N.J.S.A. 2C:12-1(b)(4). (Dma 1-2)[2] Darryl Sanford was not charged.

The State filed a Notice of Motion to admit Devoyne Sanford's statement from the Union County case on April 5, 2024. On April 16, 2024, the State filed a brief in support of its motion. The Defense filed a response brief on May 2, 2024. Mr. Sanford raised several arguments in opposition to the State's motion,

[2] Dma – Defendant's motion appendix

including that the statement constituted inadmissible propensity evidence in violation of Rule 404(b). Notably, the State did not address Rule 404(b) in its briefs or oral argument. Hearings were conducted on May 15 and July 11, 2024, and oral argument was held on August 28, 2024. The Court entered an order grating the motion to admit Mr. Sanford's statement on September 9, 2024, along with a written decision. (Dma 3-14) This motion for leave to appeal follows.

LEGAL ARGUMENT

POINT I

THE INTERESTS OF JUSTICE REQUIRE IMMEDIATE APPELLATE REVIEW.

Rule 2:2-4 allows the Appellate Division to grant leave to appeal from an interlocutory order when it is in the interests of justice. An appellate court will exercise its discretion to grant leave to appeal "where there is some showing of merit and justice calls for . . . interference in the cause" and "where some grave damage or injustice may be caused by the order below." Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div.), certif. denied, 22 N.J. 574 (1956), cert. denied, 53 U.S. 923 (1957). Defendant recognizes that "[t]the grant of interlocutory review is 'highly discretionary' and 'customarily exercised only sparingly.'" Vitanza v. James, 397 N.J. Super. 516, 517 (App. Div. 2008). This case, however, presents precisely the type of rare circumstances in which the interests of justice require interlocutory review, as the issue goes to the core of Mr. Sanford's right to a fair trial.

The interests of justice require interlocutory review because the trial court incorrectly authorized the State's use of "other crimes" evidence regarding statements made in a Union County indictment against the defendant. Unlike other applications of N.J.R.E. 404(b), the "other crimes" evidence in question here were dismissed.

Rule of evidence 404(b) is "a rule of exclusion rather than a rule of inclusion." State v. Willis, 225 N.J. 85, 100 (2016) (quoting State v. Marrero, 148 N.J. 469, 483 (1997)). The rule prohibits the admissibility of other crimes, wrongs, or prior bad acts as propensity evidence, or evidence to suggest that a defendant acted in conformity with his prior behavior. See N.J.R.E. 404(b). "Prior-conduct evidence has the effect of suggesting to a jury that a defendant has a propensity to commit crimes, and, therefore, that it is 'more probable that he committed the crime for which he is on trial.'" Id. at 97 (quoting State v. Weeks, 107 N.J. 396, 406 (1987)). Due to the "'unique tendence' to prejudice a jury, [other crimes] must be admitted with caution. Id. (quoting State v. Reddish, 181 N.J. 533, 608 (2004)). It is because of this unique prejudice that interlocutory review is required and why this Court has granted leave in other cases involving "other crimes" evidence. See State v. J.M., J.R., 438 N.J. Super. 215, 220 (App. Div. 2014) (granting leave to appeal and reversing trial court's order admitting "other crimes" evidence) aff'd State v. J.M., J.R., 225 N.J. 146, 150 (2016).

Here, Mr. Sanford's due process rights and judicial economy both demand that this issue be determined on an interlocutory basis, rather than proceeding with a lengthy trial that may be rendered moot if these issues were decided in the defendant's favor on direct appeal. Therefore, the harm would be irreparable,

and the damage would be grave. Forcing Mr. Sanford to go to trial and face improper propensity evidence would deny him his constitutionally guaranteed right to a fair trial.

POINT II

THE TRIAL COURT ERRED BY ADMITTING MR. SANFORD'S STATEMENT FROM THE UNION COUNTY INDICTMENT BECAUSE IT IS NOT ADMISSIBLE UNDER ANY EXCEPTION TO RULE 404(b). (Dma 3-14)

At its threshold, Mr. Sanford's statement is evidence of other crimes or bad acts. As discussed above and acknowledged by the motion court, the statements at issue do not concern the case at bar—the Hudson County case—but a separate case, charged, indicted, and disposed of in Union County. Therefore, the statement is evidence of other crimes or bad acts and its admission must be evaluated under Rule 404(b).

In New Jersey, State v. Cofield governs the admissibility of prior bad acts. 127 N.J. 328 (1992). "[T]o avoid the over-use of extrinsic evidence of other crimes or wrongs," the Cofield test demands that: 1. The evidence must be admissible as relevant to a material issue; 2. It must be similar in kind and reasonably close in time to the offense charged; 3. The evidence of the other crime must be clear and convincing; and 4. The probative value of the evidence must not be outweighed by its apparent prejudice. Id. Here, the trial court erred

by finding that the statement was admissible under Cofield.

First, the trial court erred by finding that the Union County statement is relevant to the Hudson County indictment. The first prong of the Cofield test tracks the language of the final clause of N.J.R.E. 404(b). Thus, any other-wrongs evidence proffered for an admissible purpose must be "relevant to a material issue in dispute." State v. Gillispie, 208 N.J. 59, 86 (2011). This means an actual contest over the issue to which the other-wrongs evidence allegedly relates is necessary. See State v. Stevens, 115 N.J. 289, 307 (1989) (noting that the defendant need not specifically contest an element of an offense in order for it to be deemed contested). Importantly, the relevance prong of Cofield is closely aligned with the test for relevance under N.J.R.E. 401. See Gillispie, 208 N.J. at 86; State v. Covell, 157 N.J. 554, 565 (1999). Under that test, the inquiry should focus on the "'logical connection between the proffered evidence and a fact in issue.'" Covell, 157 N.J. at 565 (quoting State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990)). Pursuant to Rule 404(b), other crimes, wrongs or acts are only admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence or mistake, or lack of accident.

Here, without any explanation, the trial court found that the Union County statement may be relevant to "proving opportunity, knowledge, identity, absence of mistake, or lack of accident." (Dma 10). This finding is in error. Mr. Sanford's

statement where he acknowledged his presence in the Honda Accord on April 23, 2022, and denied ownership of the BB gun sheds no light on his opportunity, knowledge, identity, absence of mistake, or lack of accident as to the Hudson County Indictment from April 20, 2022. Simply put, there is no nexus between what occurred in Union County and what is alleged to have occurred in Hudson County. Mr. Sanford's presence in the Honda three days later in Union, does not make it any more likely he was in the Honda in Hudson, nor does it make it any more likely that he fired at Mr. Lane's truck.

Second, the trial court erred by finding that the second Cofield prong was met. The second Cofield factor requires that the evidence be similar in kind and reasonably close in time to the offense charged. This language is not included in the language of N.J.R.E. 404(b), and therefore, it "need not receive universal application in [N.J.R.E.] 404(b) disputes." Williams, 190 N.J. at 131. Although this evidence is similar in kind to the offenses charged, it is not reasonably close in time. Indeed, this is not a situation where the car was stopped hours later in Union County or hours prior. The car was stopped three days later. There is no continuing transaction or occurrence between the alleged events of April 20 and the car stop on April 23. They are two distinct dates, events, and even charges, and are not temporally related to justify admission.

Third and most glaringly, the trial court erred by neglecting the third

Cofield factor. Indeed, the trial court performed no analysis on whether the proffered evidence is clear and convincing. "The third prong of our Cofield test requires that the judge serve as gatekeeper to the admission of other-crime evidence." State v. Hernandez, 170 N.J. 106, 123 (2001). In doing so, the trial court must "ensure that the jury hears only clear and convincing proof that the other crime or bad act occurred, and that the defendant was responsible for the conduct." Id. at 123-24 (citing State v. G.V., 162 N.J. 252, 275 (2002). "Clear and convincing evidence is that which produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable (the factfinder) to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." Id. at 127 (internal citations omitted).

While there is clear and convincing evidence that Mr. Sanford was in the Honda Accord in Union County there is no clear and convincing evidence that Mr. Sanford possessed the BB gun, exercised control over the BB gun, had access to the BB gun, or even knew of its existence. Indeed, the Union County indictment was dismissed, and Mr. Sanford was only convicted for one count of obstruction, a disorderly persons' offense. See Union County Indictment 22-11-860. As expressed in his statement, Mr. Sanford was not aware of the BB gun and there is no evidence to support the claim that he exercised any control over

the weapon. Therefore, the statement fails to clear the third Cofield prong and is inadmissible.

Fourth and last, the risk of undue prejudice of the statement outweighs its limited probative value. Due to the inflammatory nature of other wrongs or acts evidence, the court must balance its probative value against the potential for prejudice and confusion, to guarantee the party affected by the evidence a fair and impartial trial. Gillispie, 208 N.J. at 89–90; State v. Barden, 195 N.J. 375, 389, 392 (2008); Williams, 190 N.J. at 131–33. This prong is "the most difficult to overcome." State v. Rose, 206 N.J. 141, 160 (2011) (citing Barden, 195 N.J. at 389). This fourth Cofield factor "requires an inquiry distinct from the familiar balancing required N.J.R.E. 403: the trial court must determine only whether the probative value of such evidence is outweighed by its potential for undue prejudice, not whether it is substantially outweighed by that potential as in the application of Rule 403." State v. Green, 236 N.J. 71, 83-84 (2018) (citing Barden, 195 N.J. at 389).

Here, the chance for prejudice is high. The jury may assume that because Mr. Sanford was involved in a traffic stop and was arrested in a separate matter that he has the propensity to break the law. What's more is that this evidence has the potential to confuse the jury. As discussed, the events of April 23, 2022, were the basis for a separate charge and indictment in Union County. The jury

may confuse the events in Union County with the events in Hudson County.

Last, the probative value, as discussed under factor one, is minimal as his presence in the Honda Accord on April 23, 2022, does not make any issue at dispute more or less probable. Considering the same, the risk of prejudice outweighs whatever non-propensity relevance these accusations have, of which the defense asserts are none.

POINT III

THE TRIAL COURT ERRED BY ADMITTING MR. SANFORD'S STATEMENT BECAUSE IT CANNOT BE SANITIZED BY ANY JURY INSTRUCTION OR REDACTION. (Dma 3-14)

The trial court further erred by determining a limiting instruction could be used to protect against any undue prejudice created by Mr. Sanford's statement. (Dma 10-11). There is no limiting instruction or redaction that could sanitize the prejudice inherent in Mr. Sanford's statement—namely, that he was arrested and charged with possession of a BB gun in Union County. To admit the statement, is to admit that Mr. Sanford was arrested and faced charges other than those before the jury and court in Hudson County.

Additionally, the trial court fails to address exactly *how* the jury will be instructed about the Union County statement. Critically, the trial court left unanswered as to whether the jury will be instructed that Mr. Sanford's charges stemming from his Union County statement were dismissed. See J.M., J.R., 438

N.J. Super. at 234 (finding "the order under review troubling and unsustainable because of a dangling question the trial judge did not consider: if the evidence is admitted, should the jury be told that defendant was acquitted of [other crimes evidence]?"). The admission of Mr. Sanford's Union County statement presents a practical problem for the court as there is no way to include the statement, without ultimately instructing the jury that the charges resulted in dismissal. This practical problem cannot be solved with a limiting instruction and the trial court erred in finding it could.

CONCLUSION

For the foregoing reasons, Mr. Sanford's motion for leave to appeal should be granted.

Respectfully submitted,

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FILED, Clerk of the Appellate Division, October 04, 2024, **A-000427-24**

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LETTER IN LIEU OF BRIEF AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent) v.
Devoyne A. Sanford, (Defendant-Appellant)
Docket No. AM-000052-24
Ind. No. 24-01-0134-I
State's Letter-Brief
Superior Court of New Jersey
Law Division, Hudson County
Sat Below: Hon. Daniel DeSalvo, J.S.C.

Honorable Judges:

Pursuant to R. 2:6-2(b) and R. 2:6-4(a), this letter in lieu of formal brief and appendix is submitted on behalf of the State.

FILED, Clerk of the Appellate Division, October 04, 2024, **A-000427-24**

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POINT I 3

THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION TO ADMIT DEFENDANT'S STATEMENT BECAUSE IT IS RELEVANT TO PROVING IDENTITY AND POSSESSION OF THE BB GUN, AND ANY APPARENT PREJUDICE CAN BE CURED WITH REDACTIONS AND LIMITING INSTRUCTIONS. 3

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

The State adopts the procedural history and statement of facts as set forth in defendant Devoyne Sanford's (defendant) September 27, 2024 brief and additionally adds the following facts:

On May 15, 2024, New Jersey State Police Detective Andrew McCoy testified regarding defendant's Miranda[1] statement. During the hearing, the State moved the Miranda waiver form and defendant's recorded statement into evidence. (See Pa1; Pa2).[2] The State also provided a copy of the transcript of defendant's recorded statement to the motion court. (See Pa3-19).

Prior to defendant being advised of and waiving his Miranda rights, Detective McCoy advised defendant off-camera of his charges arising out of Union County. At that time, defendant had not been charged for anything pertaining to the April 20, 2022 incident.

During the recorded statement, defendant, in the presence of his attorney, admitted to being an occupant of the same vehicle that was used during the shooting incident that occurred on April 20, 2022. (Pa2; Pa7). He also denied knowing who the owner of the BB gun was. (Pa2; Pa9-10).

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[1] Miranda v. Arizona, 384 U.S. 436 (1966).

[2] The State adopts the abbreviations used in defendant's brief and additionally uses the following abbreviations:

Db - defendant's brief
Pa – The State's appendix

Defendant objected to the statement being admissible, arguing defendant did not knowingly and voluntarily waive his Miranda rights because he was not advised of the charges arising from the April 20, 2022 incident prior to waiving his rights. Defendant further argued the statement was not admissible under N.J.R.E. 404(b).

After considering the evidence presented at the hearing, as well as the parties' arguments, the motion court entered an order and opinion dated September 9, 2024, granting the State's motion to admit defendant's statement. (See Dma3-14). In so holding, the court determined that officers were not required to advise defendant of charges arising out of the April 20, 2022 incident before questioning defendant because no such charges were pending at the time of the Miranda statement. (Dma8-9). Accordingly, the court found defendant knowingly, voluntarily, and intelligently waived his Miranda rights. (Dma7-9).

The court also determined the statement was admissible under N.J.R.E. 404(b)(2) with the appropriate redactions and limiting instructions to protect defendant against any undue prejudice that may result from the admission of such evidence. (Dma9-11).

Defendant moves for leave to appeal from the court's order granting the State's motion to admit defendant's statement, arguing the interests of justice require immediate appellate review because the court erred by finding

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defendant's statement was admissible pursuant to N.J.R.E. 404(b). This brief follows.

LEGAL ARGUMENT

POINT I[3]

THE TRIAL COURT PROPERLY GRANTED THE STATE'S MOTION TO ADMIT DEFENDANT'S STATEMENT BECAUSE IT IS RELEVANT TO PROVING IDENTITY AND POSSESSION OF THE BB GUN, AND ANY APPARENT PREJUDICE CAN BE CURED WITH REDACTIONS AND LIMITING INSTRUCTIONS.

Defendant moves for leave to appeal from the motion court's order granting the State's motion to admit defendant's statement. Defendant contends the statement is not admissible under N.J.R.E. 404(b) and that the statement cannot be adequately sanitized by any redaction or jury instruction. (Db9-15).

"Trial court decisions concerning the admission of other-crimes evidence should be afforded 'great deference,' and will be reversed only in light of a 'clear error of judgment.'" State v. Gillispie, 208 N.J. 59, 84 (2011) (quoting State v. Barden, 195 N.J. 375, 390-91 (2008)). "The admissibility of such evidence is left to the sound discretion of the trial court, as that court is in the best position to conduct the balancing required under Cofield due to its 'intimate knowledge of the case.'" Ibid. (quoting State v. Covell, 157 N.J. 554, 564

[3] Point I of the State's brief addresses Points II and III of defendant's brief.

(1999)). "Therefore, a trial court's decision concerning the admission of other-crimes evidence will not be disturbed absent a finding of abuse of discretion." Ibid.

N.J.R.E. 404(b) governs the admissibility of "other crimes, wrongs, or acts" evidence. "Evidence of a defendant's other crimes, wrongs, or acts may not be admitted into evidence to prove a defendant's criminal disposition as a basis for proving guilt of the crimes charged." State v. Koskovich, 168 N.J. 448, 482 (2001); N.J.R.E. 404(b)(1). However, such evidence may be admitted for other purposes, such as to prove opportunity, knowledge, or identity. N.J.R.E. 404(b)(2).

To determine whether other-crimes evidence is admissible, courts will apply the Cofield test, which permits the admittance of such evidence if the following criteria is met:

> 1. The evidence of the other crime must be admissible as relevant to a material issue;
>
> 2. It must be similar in kind and reasonably close in time to the offense charged;
>
> 3. The evidence of the other crime must be clear and convincing; and
>
> 4. The probative value of the evidence must not be outweighed by its apparent prejudice.
>
> [State v. Cofield, 127 N.J. 328, 338 (1992) (citation omitted).]

However, the Cofield test only applies to other-crimes evidence; thus, if the evidence is not that of an "other crime, wrong, or act," then it is not necessary to apply the Cofield test. Cf. State v. Figueroa, 358 N.J. Super. 317, 325-26 (App. Div. 2003) (finding it was not necessary to conduct a 404(b) analysis when the other-crimes evidence related to other people and not of crimes committed by the defendant).

As noted above, the first Cofield prong requires the evidence to be "relevant to a material issue genuinely in dispute." State v. Green, 236 N.J. 71, 82 (2018) (quoting Gillispie, 208 N.J. at 86). "'Relevant evidence' means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. In other words, relevant evidence must have "probative value" and be "material." State v. Buckley, 216 N.J. 249, 261 (2013). Probative value is "the tendency of the evidence to establish the proposition that it is offered to prove." State v. Wilson, 135 N.J. 4, 13 (1994). Meanwhile, "[a] material fact is one which is really in issue in the case." State v. Hutchins, 241 N.J. Super. 353, 359 (App. Div. 1990).

When determining whether evidence is relevant, the "inquiry focuses on 'the logical connection between the proffered evidence and a fact in issue.'" Buckley, 216 N.J. at 261 (quoting Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 15 (2004)). "Evidence need not be dispositive or even strongly probative in

order to clear the relevancy bar." State v. Cole, 229 N.J. 430, 447 (2017) (quoting Buckley, 216 N.J. at 261). "Once a logical relevancy can be found to bridge the evidence offered and a consequential issue in the case, the evidence is admissible, unless exclusion is warranted under a specific evidence rule." State v. Burr, 195 N.J. 119, 127 (2008).

Here, evidence of defendant being in the same vehicle used in the April 20, 2022 incident, and his knowledge regarding ownership of the vehicle and the BB gun are relevant to proving defendant's identity and possession of the BB gun. Given that the evidence is relevant, the first Cofield prong is satisfied.

The second prong requires the evidence to be "similar in kind and reasonably close in time to the offense charged." Cofield, 127 N.J. at 338. The second prong applies only in "limited . . . cases that replicate the circumstances in Cofield." State v. Rose, 206 N.J. 141, 160 (2011) (quoting State v. Williams, 190 N.J. 114, 131 (2007)). This case is not similar to Cofield; thus, the second prong does not apply. See State v. Skinner, 218 N.J. 496, 515 (2014).

Nevertheless, defendant's presence in the vehicle a mere three days after the shooting incident and his knowledge regarding the BB gun found in that vehicle are similar in kind and reasonably close in time to the offense charged in this case. Thus, the second Cofield prong is met.

The third prong requires that evidence of the other crime be clear and convincing. State v. Garrison, 228 N.J. 182, 197 (2017). The clear and convincing standard means more than proof by a preponderance of the evidence but less than proof beyond a reasonable doubt. State v. Campbell, 436 N.J. Super. 264, 270 (App. Div. 2014). "Clear and convincing 'evidence is that which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable (the factfinder) to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."'" State v. Hernandez, 170 N.J. 106, 127 (2001) (quoting In re Samay, 166 N.J. 25, 30 (2001)).

Here, the other-crime evidence is defendant's own statement, which, as the State has proven beyond a reasonable doubt and which the motion court properly found, was given after defendant knowingly, voluntarily, and intelligently waived his Miranda rights. See State v. Tillery, 238 N.J. 293, 316 (2019) (recognizing the State bears the burden of proving beyond a reasonable doubt that a defendant's Miranda waiver was knowing, intelligent, and voluntary). Given that the evidence is defendant's own statement, which was knowingly, intelligently, and voluntarily given, the third prong of the Cofield test is satisfied. See Covell, 157 N.J. at 559-60, 567-68 (finding a defendant's

statement to police officers about a prior alleged act where he was never charged and it was never established that he committed that prior alleged act nevertheless satisfied the third Cofield prong).

The fourth prong requires a showing that the probative value of the evidence is not outweighed by its apparent prejudice. Cofield, 127 N.J. at 338. "In the weighing process, the court should also consider the availability of other evidence that can be used to prove the same point." Gillispie, 208 N.J. at 90 (quoting Barden, 195 N.J. at 389).

Here, defendant's presence in the vehicle and his knowledge regarding ownership of the vehicle and the BB gun are relevant to identity and possession of the BB gun. The probative value of this evidence is not outweighed by the fact that defendant was involved in a traffic stop since traffic stops are common occurrences. Likewise, the fact that defendant was charged and such charges were dismissed is not so prejudicial that it would warrant exclusion of the statement. The court thus properly determined the statement was admissible.

Defendant further contends the evidence is inadmissible because it cannot be adequately sanitized.

When a court finds other-crime evidence is admissible, it must sanitize the evidence when appropriate and carefully instruct the jury as to its limited use. State v. Barden, 195 N.J. 375, 390 (2008). "[T]he court's instruction

'should be formulated carefully to explain precisely the permitted and prohibited purposes of the evidence, with sufficient reference to the factual context of the case to enable the jury to comprehend and appreciate the fine distinction to which it is required to adhere.'" Ibid. (alteration in original) (quoting State v. Fortin, 162 N.J. 517, 534 (2000)).

Initially, the motion court properly observed the statement could be sanitized by removal of any references to defendant's outstanding warrants. Such redactions are appropriate to reduce any inherent prejudice in the admission of other-crimes evidence.

Moreover, the court determined that if this case went to trial, it would instruct the jury on the limited use of the evidence. The court can adequately instruct the jury by relying on the model jury charge, see Model Jury Charges (Criminal), "Proof of Other Crimes, Wrongs, or Acts (N.J.R.E. 404(b))" (rev. Sept. 12, 2016), and molding it to the purpose of introducing the evidence here. Specifically, the court can instruct as to its use to prove identity and possession of the BB gun.

Given that the motion court will be able to adequately sanitize the evidence and give the jury a limiting instruction, it did not abuse its discretion by finding the other-crime evidence admissible.

For these reasons, the motion court properly granted the State's motion to admit defendant's statement.

POINT II[4]

IMMEDIATE APPELLATE REVIEW IN THIS CASE IS NOT APPROPRIATE BECAUSE GRANTING THE STATE'S MOTION TO ADMIT WAS PROPER.

Defendant contends he has demonstrated it is in the interests of justice for the Appellate Division to grant leave to appeal from the trial court's interlocutory order. (Db7-9).

"Interlocutory review is 'highly discretionary' and is to be 'exercised only sparingly.'" Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008) (quoting State v. Reldan, 100 N.J. 187, 205 (1985)). This is so because judicial policy "favors an 'uninterrupted proceeding at the trial level with a single and complete review.'" Reldan, 100 N.J. at 205 (citation omitted). An appellate court will only exercise its discretion if the moving party not only "establish[es], at a minimum, that the desired appeal has merit," Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008), but also demonstrates that "justice calls for [an appellate court's] interference in the cause," ibid. (alteration in original) (quoting Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956)). An appellate court will not grant a party leave to appeal "to correct minor

[4] Point II of the State's brief addresses Point I of defendant's brief.

injustices." Grow Co., Inc., 403 N.J. Super. at 461 (quoting Brundage, 195 N.J. at 599).

For the reasons set forth above, the trial court properly granted the State's motion to admit defendant's statement. Given that the grant was proper, defendant has not demonstrated his appeal has merit or that justice calls for the Appellate Division's interference. Accordingly, this Court should not grant defendant leave to appeal from the court's order granting the State's motion to admit.

CONCLUSION

Based on the foregoing, the State submits that defendant's motion for leave to appeal should be **DENIED**.

Respectfully submitted,

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