SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1459-22

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of New Jersey, Law Division, Passaic County.
v.	:	
CHARLES M. GRANT,	:	
Defendant-Appellant.	:	Indictment No. 15-12-1007-I
	:	Sat Below:
	:	Hon. Sohail Mohammed, P.J. Cr., and a Jury.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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DEFENDANT IS CONFINED

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PROCEDURAL HISTORY

On December 21, 2015, defendant Charles M. Grant was charged in Passaic County Indictment No. 15-12-1007-I with first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2), second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a); second-degree unlawful possession of a firearm, N.J.S.A. 2C:39-5(b); and second-degree certain person not permitted to possess a firearm, N.J.S.A. 2C:39-7(b). (Da 1-4)[1]

Between September 20 and October 1, 2018, a jury trial was held before the Hon. Sohail Mohammed, P.J. Cr., after which Grant was convicted of counts one through three; count four was dismissed. (Da 5-8) However, on February 15, 2022, this Court reversed Grant's convictions and remanded for a new trial. (Da 9-45) Among other errors, this Court found that Grant was denied a fair trial by the trial court's failure to redact from Grant's video-recorded police statement several inadmissible lay opinions offered by the interviewing

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[1] "Da" refers to defendant's appendix. "PSR" refers to the presentence report. The transcript volumes correspond to the following dates:

1T -- September 15, 2022 (trial)
2T -- September 19, 2022 (trial)
3T -- September 20, 2022 (trial)
4T -- September 21, 2022 (trial)
5T -- September 22, 2022 (trial)
6T -- September 26, 2022 (trial)
7T -- September 27, 2022 (trial)
8T -- October 27, 2022 (motion)
9T -- December 15, 2022 (sentencing)

detective, which opined on Grant's guilt and credibility. (Da 21-35) In particular, this Court held that it was error to permit the jury to hear the detective's opinions that (1) Grant was guilty of the shooting death of the victim and had an obligation to explain himself; (2) Grant was lying about his alibi; and (3) surveillance video contradicted Grant's alibi. (Da 21-35)

Between September 15 and 27, 2022, a second jury trial was held again before Judge Mohammed, after which the jury found Grant guilty of counts one and two. (1T to 7T; 7T 7-1 to 23; Da 46) The jury acquitted of count three, and count four was again dismissed. (7T 7-24 to 8-1; Da 46, 62) On October 27, 2022, Judge Mohammed heard and denied defendant's motion for a judgment of acquittal or a new trial. (8T)

On December 15, 2022, Judge Mohammed merged count two into count one and sentenced Grant on count one to life in prison with a period of parole ineligibility of sixty-three years and nine months pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. (9T 36-15 to 56-20; Da 59-62)

On January 18, 2023, Grant filed a timely notice of appeal. (Da 63-66)

STATEMENT OF FACTS

The State alleged that Grant was the person who caused the shooting death of Issac "Blaze" Tucker based primarily on a series of surveillance videos from a bar/liquor store and various scattered properties leading up to the location of

the shooting. (5T 83-5 to 112-1) Grant presented a mistaken-identity defense: He acknowledged that he had been with Tucker at the bar/liquor store earlier in the evening, but Grant maintained that they split up on the way home when he turned down a side street and that he was not the man depicted in later videos closer to the shooting location. (5T 70-11 to 82-20) No witness identified Grant in the later videos or contradicted his alibi, none of the later videos clearly showed the suspect's face, and no one saw the shooting. (Da 68) No gun, DNA, or fingerprints were recovered. And no motive evidence was presented.

On February 23, 2015, Patterson police discovered Tucker's body in the road at 296 East 16th Street following an alert at 2:15 a.m. from their ShotSpotter system, which detects gunshots. (3T 8-16 to 36-20; 4T 80-25 to 83-21) Tucker had been killed by multiple gunshot wounds to the face, shoulder, and back. (4T 49-12 to 55-22) Upon receiving the call, Officer Robert Klein was patrolling Madison Avenue about two blocks away when he saw a person run from the area of East 16th across Madison toward East 22nd Street. (2T 9-10 to 16-19) As Klein pursued the suspect, they made "direct eye contact," and Klein briefly saw the suspect's face, but the suspect kept running, and Klein eventually lost him. (2T 11-11 to 14-25) Klein and other officers responded to 283 East 22nd Street, where they found in a backyard and alleyway footprints in the snow and suspected blood; however, two samples of the suspected blood later tested

negative for human DNA. (2T 13-6 to 16-19; 3T 123-14 to 127-2; 4T 17-2 to 20-17) The police never questioned the residents of 283 East 22nd. (2T 90-18 to 91-11) Though Klein had seen the suspect's face, he never identified Grant.

Near Tucker's body, the police recovered a tequila bottle, five shell casings, and one projectile; four more projectiles and one projectile fragment were found during the autopsy. (1T 99-2 to 126-13; 4T 58-14 to 19) The police did not attempt to dust the spent casings for fingerprints; one detective said such attempts proved fruitless in his past experience. (1T 120-7 to 126-23) The State's ballistics expert, Detective Seargent Robert Sloma, said the markings on four shell casings and three projectiles indicated that they were all fired from a Glock 9-millimeter pistol. (4T 152-2 to 162-12) Sloma admitted that Glock is one of the most popular firearm brands, being used by about 70% of U.S. police departments and the U.S. military, and he estimated that there are a least five million Glocks in circulation in the United States. (4T 154-16 to 166-2)

Police obtained several surveillance videos from nearby properties, which were admitted through the testimony of Detective Anthony Petrazzuolo. (Da 68) Video from a meat shop called Beef Town depicted the shooting from a distance -- though it did not clearly show the shooter's face -- and it showed that the shooter fled the scene by turning east onto Putnam Street, toward the direction

of where Klein encountered the fleeing suspect.[2] (3T 22-5 to 41-24, 123-1 to 129-14; Da 68) At trial, no witness identified the suspect in the Beef Town video. Video was also recovered from a bar/liquor store called Alto Rango, located several blocks to the south on 12th Avenue, which eventually turns into East 16th. (2T 75-3 to 17; 3T 42-13 to 45-9) The video from Alto Rango showed Tucker with others inside between about 1:54 and 1:58 a.m. (2T 41-4 to 21; 3T 42-13 to 54-5; Da 68) The police questioned some of the people shown in the video; however, at least two people seen near Tucker were never identified. (2T 41-4 to 42-6, 73-23 to 74-1; 3T 120-13 to 122-6)

Detective Audrey Adams claimed that Grant became a person of interest after his name "c[a]me up" in the investigation. (2T 42-7 to 14) Adams and Detective Maldonado (who did not testify) conducted a video-recorded interrogation of Grant, a redacted version of which was played for the jury. (2T 42-15 to 67-4; Da 67) Without having been shown any surveillance videos, Grant freely admitted that he knew Tucker; they both attended Alto Rango earlier that night; and they left together, walking along East 16th Street. (2T 100-22 to 101-7; Da 67 at 4:08 to 8:12) However, Grant explained that they split up at the intersection of East 16th and Governor Street and that he turned left

[2] Indeed, Detective Audrey Adams testified that based on Klein's report, she believed that the shooter fled east on Putnam and kept heading east, crossed over Madison, and perhaps encountered Klein on 22nd. (2T 81-6 to 82-18)

onto Governor where he lived, while Tucker stayed on East 16th and was talking to some people in a black car. (2T 67-5 to 77-22; Da 67 at 7:58 to 8:43) Grant thought he had been wearing blue pants, a black hoodie, and a black jacket, and he later identified himself in a video still-shot from the Alto Rango bar wearing a blue coat, a black hoodie, and black pants. (2T 70-16 to 72-19; 3T 120-13 to 121-18; Da 67 at 6:40 to 9:50) Despite other redactions, the interrogation video still showed Maldonado assert that Grant was lying about his alibi and repeatedly ask why he killed Tucker. (Da 67 at 17:34 to 20:39)

In support of Grant's alibi, the defense admitted a series of video still-shots from an electric company at 445 East 16th, which depicted the intersection of East 16th and Governor and showed two people walking along East 16th toward a truck, then neither person present, and then only one person reappear from behind the truck. (2T 95-17 to 100-15; 3T 84-8 to 13) In addition to the videos from Beef Town, Alto Rango, and the electric company, the State admitted videos (mostly without testimony as to what they depicted, aside from the streets) from a car wash and pizzeria, both on 12th Avenue near Alto Rango; a moving company on East 16th near its intersection with Lafayette Street, which is further north than Governor; a city camera near a fire station at the corner of East 16th and Lafayette; a car dealership further north along East 16th; and a day care under 100 yards from 296 East 16th. (3T 54-20 to 116-14; Da 68)

Finally, Dimitrius Robinson, a friend of Tucker, testified as an informant. (2T 110-17 to 135-14) On March 6, 2015, Robinson was arrested for possessing a handgun and was being detained at the Patterson Police Department when he requested to speak with Adams and Maldonado, claiming he had information about Tucker's death. (2T 101-8 to 102-12, 120-15 to 121-8) Before Robinson divulged his information, they discussed Robinson's bail amount, and Maldonado promised Robinson that they would "try to help [him] out in any way [they] can" in exchange for his information. (2T 103-23 to 105-8) Robinson proceeded to claim that he encountered Grant the day before at a shrine for Tucker and that, while there, he saw Grant spitting and brandishing a gun. (2T 111-22 to 115-23) Robinson claimed that he bought his own gun the next day to protect himself and that he happened to be arrested on the first day of owning it. (2T 123-7 to 20) Robinson struggled to recall the details of what occurred at the shrine, including what type of gun Grant had; however, after being shown a transcript of his prior testimony, Robinson said he previously testified that Grant had a Glock. (2T 111-22 to 116-15) Although Robinson recalled "plenty" of people at the shrine that day, no one else corroborated his account, and he also admitted that he had been previously convicted of twelve felonies in New Jersey. (2T 113-9 to 13, 129-17 to 130-12) After informing against Grant and being held for just one day, Robinson was released on $75,000 bail, and he ultimately

pleaded guilty to second-degree unlawful possession of a handgun and was sentenced to the minimum, five years with forty-two months of parole ineligibility. (2T 120-15 to 135-4) Robinson maintained that his actual testimony against Grant was not a condition of his plea. (2T 133-1 to 25)

In summation, the defense argued that the surveillance videos corroborated Grant's alibi -- that he turned off of East 16th onto Governor and went home -- because the Beef Town video showed the suspect wearing light-colored clothing, but the Alto Rango video showed Grant wearing dark-colored clothing. (5T 70-11 to 79-21) The prosecutor argued, based on still-shots from the car wash video, that Grant was wearing light-colored clothing consistent with the suspect's. (5T 95-22 to 98-11) For the first time at trial, the prosecutor also claimed that the Alto Rango video showed Grant look towards Tucker and do "something," which the prosecutor argued was evidence of premeditation; that the Beef Town video showed flashes of light indicative of gunfire; that the electric company video contradicted Grant's alibi because it showed a second person walking just after Governor; and that the second person in the post-Governor videos was Grant because that person had the same height and "style of walk" as Grant in the pre-Governor videos. (5T 88-8 to 105-9) Notably, the prosecutor did not argue that the suspect's face was visible in any of the surveillance videos or that the jury could compare the suspect's face to Grant's.

LEGAL ARGUMENT

POINT I

REVERSAL IS REQUIRED BECAUSE THE TRIAL COURT FAILED TO COMPLY WITH THIS COURT'S PRIOR REMAND ORDER MANDATING COMPLETE REDACTION OF THE INTERVIEWING DETECTIVE'S LAY OPINIONS ON DEFENDANT'S GUILT AND CREDIBILITY. (Not Raised Below)

After Grant's first trial, this Court reversed his convictions and remanded for the redaction from his police interrogation video of several improper lay opinions by Detective Maldonado, which opined that Grant was lying about his alibi and was guilty of Tucker's murder. On remand, although other redactions were made, the trial court failed to fully comply with this Court's order. As a result, the jury again heard Maldonado repeatedly accuse Grant of lying and of killing Tucker. For the same reasons as already articulated by this Court, those opinions were highly improper and deprived Grant of a fair trial, requiring reversal. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10; R. 2:10-2.

Under N.J.R.E. 701, lay witnesses are absolutely barred from opining on the ultimate issues of a defendant's "truthfulness [or] guilt" because those issues are exclusively reserved for the jury. State v. C.W.H., 465 N.J. Super. 574, 593-94 (App. Div. 2021) (citing, e.g., State v. McLean, 205 N.J. 438, 461 (2011)). Such opinions by police officers are "particularly prejudicial because [a] jury

may be inclined to accord special respect to such a witness" and give such testimony "almost determinative significance." Id. at 593. Thus, this Court has held that improper police opinions on a defendant's guilt or credibility are reversible error. See, e.g., id. at 589-98 (finding plain error where detective opined that defendant was being deceptive during his interrogation because it "impermissibly colored the jury's assessment of defendant's credibility"); State v. Tung, 460 N.J. Super. 75, 102-04 (App. Div. 2019) (reversing murder conviction in part because detectives opined that defendant was lying during his interrogation). As our Supreme Court has directed,

> [w]e go to extraordinary lengths in ordinary criminal cases to preserve the integrity and neutrality of jury deliberations, to avoid inadvertently encouraging a jury prematurely to think of a defendant as guilty, to assure the complete opportunity of the jury alone to determine guilt, to prevent the court or the State from expressing an opinion of defendant's guilt, and to require the jury to determine under proper charges no matter how obvious guilt may be. A failure to abide by and honor these strictures fatally weakens the role of the jury, depriving a defendant of the right to trial by jury.
>
> [State v. Frisby, 174 N.J. 583, 594 (2002) (citation omitted) (emphasis added).]

Here, applying the above strictures, this Court reversed Grant's prior convictions and remanded for a new trial, at which the video recording of his police interrogation was to be redacted to omit all of Maldonado's improper opinions on Grant's "credibility and guilt." (Da 21-35) Among other things, the

Court held that it was error to permit the jury to hear Maldonado's opinions that "he knew defendant was lying" about his alibi and that "video recordings from the area contradicted defendant's story." (Da 21) For example, at the first trial, the State admitted Maldonado's opinions that Grant was not telling the truth about turning onto Governor Street and that he instead kept walking "past Governor Street" and "past Lafayette Street" toward the scene of the crime. (Da 23-24) Maldonado made clear that his opinions were based on his view of the surveillance videos, and he repeatedly referred to "all that evidence . . . in front of you" and "all that evidence they have." (Da 27-28) Finally, Maldonado directly accused Grant of the shooting, stating, "That's the whole thing is why? Not if you killed him. But why did you kill him?" (Da 28)

This Court unequivocally held that "Maldonado's disputed statements should have been redacted" because "[t]hey constituted improper lay opinions that invaded the jury's sole responsibility to decide the facts and guilt and improperly suggested that defendant had an obligation to explain himself." (Da 31) That was so because Maldonado's opinions communicated to the jury his belief that Grant "was lying" and "was guilty of fatally shooting Tucker," and Maldonado's references to the evidence against Grant further "suggested that [Maldonado] had some superior knowledge of what occurred." (Da 33-34) Even though the defense had not objected at the first trial, the Court found plain error

"[b]ecause the evidence against defendant was not overwhelming and hinged on Robinson's credibility, which was subject to attack, and the poor quality of the surveillance videos" and because of "the lack of any limiting instruction on the use of Maldonado's statements." (Da 21, 34-35)

On remand, the trial court -- the same judge who presided over the first trial -- did not ensure that the redacted interrogation video complied with the Court's remand order. Instead, the court left it to the parties to negotiate the redactions, which occurred off the record. (See 2T 46-19 to 50-19) Just before the interrogation was played for the jury, the parties briefly placed on the record their agreement that the redactions satisfied this Court's order. (2T 46-19 to 50-19) The court did not inquire about the extent of the redactions, view the video in camera before the jury saw it, or issue any ruling on whether the redactions satisfied this Court's order.

Although the State's interrogation video was significantly redacted, the video again showed Maldonado repeatedly opine on both Grant's guilt and credibility. (2T 66-5 to 17; Da 67, 17:21 to 20:39) The interrogation began with standard questions about Grant's relationship with Tucker and their interactions on the night in question; however, Maldonado eventually began to assert his belief that Grant's alibi about turning onto Governor was not true:

> MALDONADO: You sure you didn't walk past Governor with him?

> GRANT: I walked to -- (indiscernible).
>
> MALDONADO: You walked up -- you didn't go past Governor?
>
> GRANT: No.
>
> MALDONADO: One hundred percent sure?
>
> GRANT: Yeah.
>
> MALDONADO: A hundred percent?
>
> GRANT: Uh-huh.
>
> MALDONADO: Or you just don't remember?
>
> GRANT: I remember I walked up Governor.
>
> MALDONADO: What if I told you, you walked past Governor.
>
> [Da 67, 17:21 to 17:40 (emphasis added).]

Maldonado then announced, "I'll get straight to the point," and proceeded to directly assert that Grant's alibi was not true and that he killed Tucker:

> MALDONADO: So what happened when you go past Lafayette Street?
>
> GRANT: I wasn't on Lafayette Street.
>
> MALDONADO: You were not there?
>
> GRANT: Uh-uh.
>
> MALDONADO: Well you were -- (indiscernible) Lafayette goes this way -- you passed -- you were still

on East 16th, but you passed Lafayette Street.

MALDONADO: What happened to Blaze? I'm not saying there's a reason that happened days, before months before. It could have been something right there. Something he told you.

. . . .

MALDONADO: I don't think it's easy to admit you killed somebody.

GRANT: I didn't kill anybody.

MALDONADO: Yeah. It's tough. Taking a life ain't easy to do. I'll tell you right now. Taking a life ain't easy.

GRANT: I don't kill nobody.

MALDONADO: You guys -- (indiscernible) buddies like that. But I'm not saying you guys are buddies, and you guys -- you just told me you said you hustle on the same block. But you guys were f***ing drinking coffee together and hanging out.

. . . .

MALDONADO: What did you tell me?

GRANT: I told you I went up Governor Street.

MALDONADO: You're gonna stick with that? You sure you want to stick with that story?

GRANT: That's all I have.

MALDONADO: Okay. So (indiscernible) all that evidence (indiscernible) in front of you (indiscernible). Like what caused you to do it? Did he flash some

> money? Disrespect you?
>
> GRANT: No. Never.
>
> MALDONADO: No? So what did he do? Why did you shoot him?
>
> GRANT: I didn't shoot him.
>
> MALDONADO: Why did you shoot him?
>
> GRANT: I didn't shoot him.
>
> MALDONADO: That's the whole point. Everybody's going to want to know. (Indiscernible) something that he should have done another way. (Indiscernible). F***. It is what it is, you know. Is that the reason why you killed him?
>
> GRANT: I didn't kill him.
>
> [Da 67, 18:40 to 20:39 (emphasis added).]

Although the defense did not object, the court did not sua sponte issue any curative instruction even after the jury heard Maldonado directly and repeatedly opine that Grant was guilty.

The redacted interrogation video -- which still showed one of the lead homicide detectives opine that Grant's alibi was a lie and that he was the shooter -- plainly did not comply with this Court's remand order to redact all opinions on Grant's "credibility and guilt." (Da 10, 21-22, 31-33, 35) The redacted video contained many of the very same flaws that this Court already held were improper. First, the video again showed Maldonado assert his belief that Grant

did not turn onto Governor, as he had claimed, but that he instead kept walking "past Governor" and "past Lafayette" -- even though this Court's prior opinion specifically quoted those assertions as improper. (Da 23-24) And the video again showed Maldonado further opine that Grant was lying about his alibi, stating, "You're gonna stick with that? You sure you want to stick with that story?" Second, although direct references to the surveillance videos were removed, Maldonado still implied that Grant's alibi was contradicted by "all that evidence" -- another phrase that this Court's prior opinion expressly quoted, and which further implied that Maldonado had "superior knowledge" of Grant's guilt. (Da 27-28, 34) Third, and most harmfully, the video again showed Maldonado repeatedly assert that Grant killed Tucker, asking him over and over why he did so despite his denials -- direct opinions on Grant's guilt that this Court unequivocally held were improper. (Da 28, 31, 33-34)

Although other offending opinions were properly redacted, the numerous improper opinions that remained again went directly to Grant's guilt and credibility and thus resulted in the same harm that this Court's prior decision went to great lengths to prevent: They "denied defendant a fair trial by invading the province of the jury to determine credibility and decide guilt, and improperly suggested that defendant had an obligation to explain himself to the jury." (Da 35) And just as in the first trial, although the defense did not object, the errors

amount to plain error because, as this Court already held, the evidence against Grant was "not overwhelming." (Da 35) See State v. Blakney, 189 N.J. 88, 97 (2006) ("Substantial trial errors are more likely to tip the scales and affect the outcome in a close case . . . ."). Specifically, this Court explained that the State's case "hinged on Robinson's credibility, which was subject to attack" (most notably, because he was a twelve-time convicted felon who informed on Grant only after assurances of help from the police); and the surveillance videos were of "poor quality" (they did not clearly show the shooter's face, and no one identified Grant in the post-Governor videos). (Da 35)

Indeed, the State's case on retrial was even less compelling than before because at the first trial, Robinson claimed that Grant had actually confessed to the murder by threatening that he would kill Robinson "like he had killed Blaze." (Da 23) However, at the retrial, Robinson did not mention any threat or confession, and he struggled to remember almost any details about his prior claims. (2T 111-22 to 116-15) And whereas Maldonado testified at the first trial and was subject to cross-examination, (Da 12-14); on retrial, he did not testify, so his opinions this time were admitted without any ability for Grant to challenge them, depriving Grant of his right to confrontation, see State v. Cabbell, 207 N.J. 311, 330-39 (2011). The trial court also again failed to provide any curative instruction to warn the jurors to disregard Maldonado's opinions -- a factor this

Court previously found "[a]dd[ed] to the risk that Maldonado's statements led the jury to return[] a verdict it may not have otherwise reached." (Da 34-35) See State v. Reddish, 181 N.J. 553, 610 (2004) ("[T]he error in admitting this evidence was compounded by the lack of a proper limiting instruction.").

Finally, although the defense was involved in negotiating redactions, the court's hands-off approach and failure to ensure full compliance with this Court's remand order requires reversal. The court had an independent duty to comply with this Court's clear remand order -- particularly after the reversal of a murder conviction for legal errors raised in the first instance as plain error. See Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 306 (App. Div. 2010) ("It is the peremptory duty of the trial court, on remand, to obey the mandate of the appellate tribunal precisely as it is written."). But the court here failed to so much as inquire about the parties' proposed redactions or to preview the redacted video before admitting it and playing it for the jury. Our courts cannot insulate themselves from judicial review by leaving justice up to whoever has the better attorney. See Application of VV Pub. Corp., 120 N.J. 508, 517 (1990) ("[T]he judiciary's overarching constitutional responsibility . . . imposes an independent obligation [on] the court to take all appropriate measures to ensure the fair and proper administration of a criminal trial."). Similarly, the prosecutor -- as proponent of the evidence and whose "overriding duty is to do

justice," State v. Garcia, 245 N.J. 412, 418 (2021) -- likewise bore responsibility for the contents of his own interrogation video, especially after this Court provided a detailed roadmap of Maldonado's improper opinions. Therefore, permitting the jury to again hear Maldonado call Grant guilty and unbelievable violated this Court's remand order and deprived Grant of a fair trial.

POINT II

MULTIPLE INSTANCES OF PROSECUTORIAL MISCONDUCT DENIED DEFENDANT A FAIR TRIAL. (Not Raised Below)

The prosecutor violated numerous prohibitions on prosecutorial argument. He essentially testified to new facts in summation, both about the surveillance videos and about Robinson's plea deal. He misrepresented the evidence to bolster Robinson's claims. He personally vouched for Robinson's credibility and for the thoroughness of the police investigation. And he unnecessarily injected emotion into the trial, including by comparing Grant to the notorious mobsters in the hit film "Goodfellas." Individually and collectively, those improper comments denied Grant a fair trial and require reversal. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10; R. 2:10-2.

A prosecutor's duty is "to seek justice, not merely to convict." Garcia, 245 N.J. at 435 (citation omitted). "Because prosecutors hold a position of great prestige with jurors, [t]heir statements . . . have a tendency to be given great

weight by jurors." State v. Greene, 242 N.J. 530, 553 (2020) (citation omitted). Therefore, "[i]t is as much [the prosecutor's] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (second alteration in original) (citation omitted). Thus, even where the defense does not object, appellate courts "must" reverse where a prosecutor's conduct deprives the defendant of his "fundamental right to have the jury fairly evaluate the merits of his defense." Garcia, 245 N.J. at 436-37.

A. The Prosecutor Essentially Testified in Summation About Several Previously Unexplored Portions of the Surveillance Videos, Depriving Defendant of His Right to Cross-Examine Those Claims.

One well-established limit on summation argument is the prohibition against commenting beyond the trial evidence, or essentially testifying to new facts. State v. Williams, 244 N.J. 592, 613 (2021) ("[P]rosecutors are obliged to confine their comments to the evidence admitted at trial and reasonable inferences drawn therefrom. The failure to do so may imply that facts or circumstances exist beyond what has been presented to the jury and encroach upon a defendant's right to a fair trial."); e.g., State v. Feaster, 156 N.J. 1, 62 (1998) (holding argument "highly improper" where prosecutor claimed, based on speculation but not evidence, that defendant loaded and cocked shotgun on the way to murder scene); State v. Atwater, 400 N.J. Super. 319, 335-37 (App.

Div. 2008) (reversing where prosecutor improperly claimed, based on speculation but not evidence, that defendant was "drunk" and "blotto" and implied that he struck the victims with his car intentionally).

That rule is particularly important where the State's case involves video evidence, as the Supreme Court recently recognized in State v. Watson, 254 N.J. 558, 600 (2023). In Watson, the Court rejected a defendant's wholesale challenge to video narration testimony and instead upheld various categories of permissible testimony about a video's contents. Id. at 599-605. The Court approved factual testimony about "confusing, complex, or unclear videos that may otherwise be difficult to grasp" and in situations where "jurors might miss a small or nuanced detail" but where an investigator "can draw a jury's attention to particular spots." Id. at 601-04. Similarly, the Court reaffirmed the use of "[s]creenshots, stills, composite videos, and other demonstrative aids" to "help focus on details that casual observers might miss." Id. at 602. And the Court provided examples of proper testimony, such as "draw[ing] attention to a distinctive shirt or a particular style of car that appear in different frames." Id. at 604. Central to the Court's reasoning was its concern that if prosecutors themselves were to "pinpoint particular spots in a video during closing argument" without first introducing them through testimony, it could "invite objections that counsel is essentially testifying without being subject to cross-

examination." Id. at 600 (emphasis added); accord State v. Williams, 471 N.J. Super. 34, 47-48 (App. Div. 2022) (reversing where prosecutor commented in summation on previously unpublished portions of video admitted into evidence because "video-recorded evidence often is unclear and needs narration to place the scene in context" and permitting new commentary at the end of the trial would "prevent[] defendant from any opportunity to rebut the 'evidence.'"); cf. McNeil-Thomas, 238 N.J. at 274-81 (upholding argument about surveillance video based on several extraneous items of evidence, including police photos, defendant's admissions, and witness testimony about the specific car at issue).

Here, the precise error cautioned against in Watson occurred. During Detective Petrazzuolo's testimony, the State admitted all the surveillance videos and asked him to explain the accuracy of the various timestamps, point out each camera location, and name the intersecting streets. For the key video from the Alto Rango bar and the related still-shots, the State further prompted Petrazzuolo to identify Tucker and Grant (based on Grant's self-identification in his police interrogation). (3T 44-13 to 54-19) Similarly, the defense admitted still-shots from the Beef Town and electric company videos and asked Detective Adams to point out important features such as which street the shooter turned down after the shooting and how many people were shown walking before and after the truck near the intersection of East 16th and Governor. (2T 91-15 to

100-15) The defense also drew attention to the still-shot in which Grant identified himself, which counsel described for the record as a person wearing "a blue jacket and black pants" -- a description similar to Grant's own during his interrogation. (3T 119-19 to 121-15; Da 67 at 6:40 to 9:50) Neither during redirect, nor at any other point during the testimony, did the State rebut either of the defense's critical points: that Grant was wearing dark clothing (unlike the shooter) and that the electric company video suggested that only one person (Tucker) continued walking along East 16th just after Governor. Nor did the State introduce testimony about any of the following: alleged gestures by Grant at Alto Rango, the clothing worn by Grant in any other videos, Grant's "style of walk" in the pre-Governor videos, a second person in the electric company video shown walking just past Governor, or flashes of light in the Beef Town video.

However, in summation, after the defense had already summed up, the prosecutor began making new and critical factual claims for the first time at trial. In an effort to rebut the defense's arguments about the dark color of Grant's clothing -- which had been properly introduced during the testimony -- the State displayed the car wash still-shots, identified Grant for the first time in them, and claimed that Grant was wearing light-colored clothing, just like the shooter in the Beef Town video. (5T 95-22 to 98-11) Although the car wash still-shots themselves had been shown during the evidence, no witness identified Grant in

them or opined on the color of his clothing, and the prosecutor further conceded that they were "a little blurry." (5T 96-12) Similarly, the State did not call any lay or expert witness to opine on the pace or manner of Grant's walking, but the prosecutor repeatedly claimed during summation that the jury could tell Grant was the shooter from the "style of walk" of the person the State alleged was Grant in the pre- and post-Governor videos. (5T 92-3 to 24, 101-2 to 4, 104-10 to 17) And even though the State had not asked Petrazzuolo to point out any unusual gestures in the Alto Rango video, the prosecutor claimed for the first time that the video showed a "crucial moment" where, according to the prosecutor, the jury would see "Grant look in Mr. Tucker's direction and then do something."[3] (5T 88-8 to 18) The prosecutor then argued that that gesture evinced Grant's "intent" to kill Tucker and that "[i]t was planned all along." (5T 89-14 to 90-3) Most significantly, although during the evidence the prosecutor had not rebutted the defense's exhibits showing only one person reappear from behind the truck near the intersection of East 16th and Governor, in summation the prosecutor replayed the electric company video and claimed for the first time that one angle showed "movement . . . . a second person" after Governor, who the prosecutor claimed was Grant. (5T 98-22 to 104-3) Based on that claim, the

[3] At sentencing, the prosecutor claimed that the video showed Grant gesture toward Tucker in "a motion of an individual shooting a weapon at someone's head." (9T 19-4 to 25)

prosecutor argued that Grant was "completely lying" about having turned onto Governor and that he was "Tucker's killer." (5T 93-1 to 9)

All of those new factual claims by the prosecutor went beyond the trial evidence and denied Grant his right to confrontation. Just as the Watson Court cautioned against, even though the videos themselves were admitted, the prosecutor "pinpoint[ed] particular spots in [the] video[s] during closing argument" without first introducing them through testimony subject to cross-examination. 254 N.J. at 600. Those surprise claims in summation were entirely unnecessary because, as Watson and earlier case law made clear, Petrazzuolo could have easily isolated the relevant video clips and directed the jury's attention to the "distinctive" clothing one person was wearing; the manner of a person's walk in the various clips; a particularly unusual gesture in the bar; and whether the electric company video showed one or two people. Id. at 604. Even without opining on any disputed issues, Petrazzuolo could have "draw[n] attention to [those] key details that might be missed." Id. at 602-04 (contrasting, for example, permissible testimony about a "distinctive shirt or a particular style of car," with impermissible testimony claiming, "that's the same blue car" or "that's the defendant" (emphasis added)).

Indeed, that is precisely what the defense did during the presentation of evidence with the still-shots from Alto Rango and the electric company, on

which the defense properly based its summation argument. However, the State chose not to rebut that testimony and instead waited until summation to spring not just argument but new and critical facts that, it alleged, disproved Grant's alibi and proved his guilt and premeditation. Strategically waiting until summation to raise any factual basis for those critical points created the precise harm that Watson and Williams cautioned against: The prosecutor was "essentially testifying without being subject to cross-examination," which "prevented defendant from any opportunity to rebut the 'evidence.'" Watson, 254 N.J. at 600; Williams, 471 N.J. Super. at 48 (citation omitted); accord id. at (holding such surprise tactics are "blatantly unfair trial strategy" and "improper gamesmanship" (citations omitted)). The prosecutor's belated factual claims about multiple critical points -- which Grant had no chance to rebut -- denied Grant his rights to due process and confrontation and thus were "clearly capable of producing an unjust result." R. 2:10-2. Therefore, reversal is required.

B. The Prosecutor Essentially Testified in Summation About the Plea-Agreement Process, Bolstering the State's Theory that the Police Informant Received No Benefit from Testifying Against Defendant.

The two pillars of the State's case against Grant were its interpretation of the surveillance videos and its police informant, Robinson, who claimed that he saw Grant after the shooting with the same brand of gun used in the shooting. In response, the defense attempted to impeach Robinson by exposing that he

approached the detectives while arrested for a gun offense and implicated Grant only after being promised that the detectives would "try to help [him] out in any way [they] can." (2T 103-23 to 105-8) Robinson was then released on bail after just one day and later pleaded guilty to the gun offense with the prosecutor recommending the minimum sentence, despite his numerous prior convictions. (2T 120-15 to 135-4) On recross-examination, Robinson said his plea agreement did not include any promise to testify against Grant. (2T 133-1 to 25) The State did not call any lay or expert witness to opine on the plea-agreement process.

Based on that testimony, the defense argued in summation that Robinson was an unbelievable, incentivized witness. (5T 76-25 to 79-3) To counter that perception, the prosecutor resorted to making new factual claims about the plea process based not on the evidence but on his own personal experience:

> [Robinson's] plea agreement when he got charged with his own gun crime. Look at that agreement in the back. The agreement is like a contract if anyone's familiar with a contract, the four corners of the agreement. Everything in there -- we do this every day in this courthouse, all types of cases. Anytime anyone enters a plea on the record, four corners of the contract. Everything in there is exactly what's agreed upon, including promises. And you go through all the pages. It's a standard form from the judiciary. It's in evidence, check it out, see if there's any mention in there for Demetrius Robinson, you have to come and testify, you have to provide truthful testimony, you have to do anything. Nope. All that plea agreement says is he agrees to plead guilty and gets five years in New Jersey State Prison or 42 months before parole. . . . He never

> tried to leverage any information he had to help himself. . . . But nowhere in that plea does it say anything about anything in this case. Not once did he try to do any of that at all to help him.
>
> [5T 109-16 to 110-19 (emphasis added).]

Not only did the prosecutor assert new facts about the plea-agreement process without any basis in the evidence, but he made clear that those assertions were based on his own personal experience, stating, "[W]e do this every day in this courthouse." That was textbook attorney testimony. See Feaster, 156 at 59 ("A prosecutor is guilty of misconduct if he implies to the jury that he possesses knowledge beyond that contained in the evidence presented, or if he reveals that knowledge to the jury."). And those assertions were not trivial but went directly to Robinson's motive for testifying against Grant -- a critical aspect of Grant's defense. Moreover, the prosecutor's assertions about a plea being limited to the four corners of the form, while generally true of promises at sentencing, unfairly deprived the defense of the chance to counter that informant testimony can be an implicit, unwritten expectation of such a plea; astute prosecutors may omit putting express promises in the plea forms to avoid the very impeaching implication sought here; and even without a formal promise, prosecutors have other ways of ensuring the future testimony of an informant who has already given a sworn statement, such as subpoenas, contempt of court, and the threat

of prosecution for perjury.[4] See R. 1:9-1; R. 1:9-5; N.J.S.A. 2C:28-1. But here, the prosecutor's last-minute assertions, based solely on his personal experience, prevented the defense from rebutting or contextualizing any of his claims.

In addition, even apart from the improper testifying, the prosecutor directly contradicted the evidence by twice asserting that Robinson "never tried to leverage any information he had to help himself" and "Not once did he try to do any of that at all to help him" -- even though Detective Adams testified that he did just that. Adams testified that Robinson approached the detectives seeking to trade information implicating Grant in Tucker's killing in exchange for the police to "help [him] out in any way [they] can." (2T 103-23 to 105-8) Whether Robinson's short jail stint or lenient sentence were the result of his informing against Grant was reasonably disputed at trial, but what was not in dispute was that Robinson did try to receive a benefit for doing so. The prosecutor thus

[4] Informing Injustice: The Disturbing Use of Jailhouse Informants, Innocence Project (Mar. 6, 2019), https://innocenceproject.org/informing-injustice-the-disturbing-use-of-jailhouse-informants (reporting that incentivized informants played a role in nearly one in five convictions overturned by DNA evidence and "[i]n many wrongful convictions, defendants were not given key information related to the credibility of the jailhouse informants who testified against them including the benefits they received" (emphasis added)); Unreliable and Unregulated Informants, Innocence Project, https://innocenceproject.org/unreliable-and-unregulated-informants (last visited Dec. 18, 2023) (explaining jailhouse informants "are explicitly or implicitly incentivized to do so in exchange for some type of benefit" and "[t]hese incentives are often not disclosed or tracked" (emphasis added)).

improperly "ma[de] inaccurate factual assertions to the jury" and "press[ed] an argument that [wa]s untrue." Garcia, 245 N.J. at 435; State v. Jenewicz, 193 N.J. 440, 472 (2008) (explaining prosecutorial misconduct includes "statements clearly contrary to evidence that was either included or excluded at trial"). Both errors unfairly bolstered Robinson's credibility in a trial that in large part hinged on it. Therefore, reversal is required.

C. The Prosecutor's Summation Unfairly Bolstered the Credibility of the State's Police Informant -- Its Key Fact Witness.

"A prosecutor may not express a personal belief or opinion as to the truthfulness of his or her witness's testimony." State v. Staples, 263 N.J. Super. 602, 605 (App. Div. 1993) (citing State v. Marshall, 123 N.J. 1, 154, 156 (1991)); accord State v. Bradshaw, 195 N.J. 493, 510 (2008) (holding vouching improper and directing on remand that "the prosecutor should neither argue facts that are not in the record, nor expressly or implicitly vouch for the credibility of [the witness]" (emphasis added)).

Here, the prosecutor's misconduct in Point II.B -- testifying about facts not in evidence and misrepresenting the evidence to bolster Robinson's credibility -- led directly to improper vouching for Robinson's truthfulness. In that same portion of his summation, the prosecutor repeatedly asserted a personal belief that Robinson was telling the truth:

> [Robinson] was very truthful here, especially when Mr.

> Patullo asked about his convictions. He didn't hold anything back. He knows the system. He tells you about it. He was educating you. He said, oh, you never take the first deal, you always take the second one, things improve. He knows what's going on . . . . Not once did he try to do any of that at all to help him. Why? Because he told you, he was best friends with Isaac Tucker. He told the truth and he told the truth about what he saw because it bothered him so much because that was his best friend and also told the truth about Charles Grant defiling that shrine, and he told the truth about Charles Grant brandishing that Glock. That happened. That's the truth and Demetrius Robinson told you exactly what happened.
>
> [5T 110-8 to 111-1 (emphasis added).]

The prosecutor's repeated proclamations that Robinson was telling the truth were not fair comments on the evidence but instead were unqualified assertions of a personal belief in the State's key witness. That vouching was particularly harmful because it was inextricably tied to the prosecutor's newly raised claims about the plea process and false statements that Robinson never sought to leverage his information to benefit himself. Together, all three had the effect of unfairly bolstering Robinson's credibility and invading the jury's exclusive responsibility to determine credibility. See State v. Farrell, 61 N.J. 99, 105 (1972) (explaining a prosecutor's role carries a level of prestige with jurors and thus "improper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none"). Accordingly, reversal is required.

D. The Prosecutor's Opening and Closing Arguments Unfairly Vouched for the Thoroughness and Competence of the Police Investigation.

Another critical part of the defense was to impeach the thoroughness of the police investigation. The defense argued that homing in on Grant was a rush to judgment and that the police failed to follow other leads. (5T 71-13 to 73-20) For example, even though Officer Klein tracked a fleeing suspect to near a residence on 22nd Street, and the police found suspected blood there, they never questioned any of the residents. (2T 90-18 to 91-11) Nor did anyone dust the shell casings found at the scene for fingerprints. (1T 120-7 to 126-23) In addition, the police never questioned other people shown in the Alto Rango video -- one whose clothes appeared gray like the shooter's. (2T 73-23 to 74-1; 3T 121-22 to 122-6) And the defense further cast doubt on the validity of the forensic testing of the suspected blood, which first tested presumptively positive for blood but then tested negative for human DNA. (5T 73-21 to 74-17)

In response, the prosecutor in summation again resorted to improper vouching for the thoroughness and competence of the investigation:

> [T]he Paterson police in this case did a thorough investigation. They went where the evidence led them. They didn't have any preconceived notions on what that would be. They followed every lead possible and did everything they could in this case and at the end of the day, the evidence points in one direction and one direction only, that beyond a reasonable doubt that Charles Grant is the man that did this to Isaac Tucker.

> Paterson police so thorough. . . . They went and they lost sight of that individual and they went there [to the 22nd Street residence] and they did a thorough investigation. They took crime scene photos and they swabbed for any DNA evidence long before the investigation was complete because they wanted no stone unturned. It's where the evidence leads, no preconceived notions.
>
> [5T 84-23 to 86-1 (emphasis added).]

Then the prosecutor personally vouched for the competence of the DNA analyst:

> You heard from Christine [Bless], all the accreditations from New Jersey State Police Lab. This isn't some back woods place run out of a basement. This is nationally accredited institution by the New Jersey State Police Office of Forensic Scientists. Judge the credibility. She knows what she's talking about? She knows a heck of a lot more about DNA than I do. I think she does and she's an expert in the field.
>
> [5T 106-12 to 20 (emphasis added).]

Those personal assurances by the prosecutor were not based on the evidence and in fact directly contradicted much of the evidence. The prosecutor did not ask any of the police witnesses during trial whether they held preconceived notions about the investigation, but without any factual basis, the prosecutor repeatedly asserted that none of them did. And the prosecutor's assertions that the police followed "every lead" was not true. See Garcia, 245 N.J. at 435 (prohibiting "making inaccurate factual assertions to the jury"). The evidence showed that the police in fact failed to pursue critical leads, including

the gray-clothed man from the bar whose clothes looked like the shooter's and the residents of 283 East 22nd Street, near where the fleeing suspect disappeared. The prosecutor was not permitted to bolster the credibility of the police to fill in the "missing pieces" of his case. Feaster, 156 N.J. at 56; State v. Frost, 158 N.J. 76, 85 (1999) ("Our courts have consistently held that such statements by a prosecutor about a police officer's credibility are wholly inappropriate."). The prosecutor's personal vouching for the police investigation in this case further denied Grant a fair trial and requires reversal.

E. The Prosecutor's Unnecessarily Graphic Opening and Closing Arguments -- Including Comparison to the Mobsters in "Goodfellas" -- Improperly Urged the Jury to Convict Based on Emotion, Rather than the Evidence.

Although prosecutors are permitted to sum up forcefully, they "may not make 'inflammatory and highly emotional' appeals which have the capacity to defer the jury from a fair consideration of the evidence of guilt" -- especially not "emotional appeals by the prosecutor calculated to arouse sympathy for the victim." State v. W.L., 292 N.J. Super. 100, 110-11 (App. Div. 1996) (quoting State v. Marshall, 123 N.J. 1, 161 (1991)); accord State v. Blakney, 189 N.J. 88, 96 (2006) (holding prosecutors may not "play on the passions of the jury or trigger emotional flashpoints, deflecting attention from the hard facts on which the State's case must rise or fall").

Here, the prosecutor in both opening and closing repeatedly appealed to

emotion and sympathy for Tucker by emphasizing facts that had no relevance to the only disputed issue -- who killed Tucker -- and served only to prejudice the jury against Grant. The prosecutor began in opening:

> At a certain point while the two of them are walking down the street and Isaac Tucker thinks he's walking with someone he's known for ten years, the evidence will show Charles Grant turned to him, pulled out a handgun at close range and shot him in the face. He shot him in the eye with the projectile exiting his neck, and when Isaac Tucker's body fell on the cold streets of Paterson on February 23rd, 2015 the evidence will show Charles Grant continued firing that handgun at his lifeless body on the ground to make sure the job was done, and then you will be presented evidence, after this occurred, he almost calmly strolls away. It's a slight little jog and he just strolls away like nothing happened.
>
> . . . .
>
> So you'll hear from the first officer who responded that night to a call, shots fired, multiple shots fired, in this location, 296 East 16th Street. And what he's going tell you is that Charles Grant left Isaac Tucker there like a pile of garbage, because that officer, when he arrived on the scene, thought that Isaac Tucker's body at first was a bag of trash because he was wearing all black. That's how Charles Grant, who knew this man for ten years, left his friend, dying, dead, on the streets of Paterson.
>
> [1T 77-22 to 79-9 (emphasis added).]

Then, toward the end of his summation, the prosecutor invoked a quote from the popular 1990 mobster film "Goodfellas" and compared the callous murders depicted in that film to what the prosecutor alleged Grant did:

> Now, ladies and gentlemen, I want to conclude with a quote for you. It's from a movie, it's a fictional movie, but sometimes movies have some variance of truth, so in this case it's from a title move -- an academy award winning film and I think this quote spot on to what happened in this case. The quote goes something like this.
>
> Not like the movies, there's not a lot of yelling and screaming before it happens. Your murderers comes [sic] with smiles, they come as your friends, they come as people you've known your entire life and trusted and they come at a time when you least expect it.
>
> [5T 112-2 to 14 (emphasis added).][5]

The prosecutor then continued his appeal to emotion:

> Ladies and gentlemen, that is what this evidence has shown beyond a reasonable doubt, that on that cold frigid night in the City of Paterson, Isaac Tucker thought he was walking with a friend, but he was being led to his execution by his executioner and he didn't know it. In his last moments he thought he was with a friend until he makes that sudden realization on those

[5] The actual "Goodfellas" quote is as follows:

> If you're part of a crew, nobody ever tells you that they're going to kill you, doesn't happen that way. There weren't any arguments or curses like in the movies. See, your murderers come with smiles, they come as your friends, the people who've cared for you all of your life. And they always seem to come at a time that you're at your weakest and most in need of their help.
>
> [Goodfellas (1990) Ray Liotta: Henry Hill, IMDB, https://www.imdb.com/title/tt0099685/characters/nm0000501 (last visited Dec. 18, 2023).]

> street[s] when Charles Grant produced that Glock handgun two inches from his face that his life was over and his time on this planet had come to an abrupt end and that's how Isaac Tucker left this world. He left this world alone on the streets of Paterson on a frigid night in a pool of his own blood where he looked like a pile of garbage literally, as Detective Kelly described when he was driving down the street and had to stop because he thought it was a garbage bag. That's how Isaac Tucker left this world thanks to his quote/unquote friend, Charles Grant . . . .
>
> [5T 112-15 to 113-7 (emphasis added).]

None of those inflammatory remarks had anything to do with the disputed issue in this case: who killed Tucker. Rather, all of it was designed solely to turn the jury against Grant based on emotion and sympathy rather than the evidence. As the Supreme Court put it, the prosecutor "play[ed] on the passions of the jury . . . [and] deflect[ed] attention from the hard facts on which the State's case must rise or fall." Blakney, 189 N.J. at 96.

Perhaps most harmful was the prosecutor's explicit comparison between Grant and the infamous mobsters of "Goodfellas," who are notoriously reviled as cold-blooded murderers. Indeed, the Supreme Court recently reversed a conviction for the prosecutor's attempt to "draw a parallel between defendant's conduct and that of a horror-movie villain." Williams, 244 N.J. at 615. In Williams, the prosecutor during summation included a PowerPoint photo of Jack Nicholson's ax-wielding character from "The Shining" and displayed that

character's notorious but seemingly innocuous catch phrase ("Here's Johnny"), from which the prosecutor drew a comparison to the defendant's own implicitly threatening conduct. Id. at 602-03. The Court condemned the prosecutor's "references to the violent and frightening movie scene and use of an inflammatory photograph" as "far beyond" the scope of the evidence. Id. at 615.

Here, the prosecutor's invocation of notorious gangsters was even more prejudicial because whereas in Williams the prosecutor was at least attempting to make a relevant point (about implied threats), here, the "Goodfellas" quote added nothing to the State's case except to conjure the societal hatred for callous mobsters and direct that at Grant. Because the prosecutor urged the jury to convict based on emotion rather than evidence, reversal is required.

Finally, adding to the compounding prejudice, after the prosecutor's summation but just before the jury charge, the trial judge sua sponte -- in the presence of the jury -- began commending counsel for their closing remarks. (5T 115-5 to 17) The judge further told the jury that after closing arguments, he brings counsel into chambers and "shake[s] hands" with them for the "only time" during trial for performing their summation "responsibility." (5T 115-11 to 17) Although the judge's statements were undoubtedly well-intended, they had the clear capacity to further prejudice Grant by effectively endorsing the prosecutor's summation as not only lawful but commendable. Such validation

by the court only heightened the risk that jurors relied on the prosecutor's improper arguments instead of their own view of the evidence -- particularly given the State's thin case against Grant. See Greene, 242 N.J. at 553; Farrell, 61 N.J. at 105. For all those reasons, Grant's convictions must be reversed.

POINT III

THE TRIAL COURT DEPRIVED DEFENDANT OF HIS RIGHT TO BE PRESENT AND TO HAVE COUNSEL AT A CRITICAL STAGE OF THE TRIAL JUST BEFORE JURY DELIBERATIONS BEGAN, RESULTING IN THE COURT FAILING TO PROVIDE THE JURY WITH A CRITICAL DEFENSE EXHIBIT. (Not Raised Below)

Before the jury was sent to begin deliberations -- but outside the presence of Grant and his attorney -- the trial court submitted the trial exhibits to the jury and provided additional jury instruction. However, the court evidently failed to submit to the jury a key defense exhibit that memorialized the lenient sentence Robinson received after informing against Grant. The court's ex parte actions denied Grant his rights to be present and to have counsel, and its exclusion of the defense exhibit denied him a fair trial. Therefore, his convictions must be reversed. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10; R. 2:10-2.

Both the Federal and State Constitutions guarantee a criminal defendant the right to be present at his trial and to have counsel at "critical stage[s]." State v. Dangcil, 248 N.J. 114, 135 (2021) (citing U.S. Const. amends. VI; N.J. Const.

art. I, ¶ 10); accord R. 3:16(b) ("The defendant shall be present at every stage of the trial . . . ."). Thus, "[t]he presence of a defendant at trial is a condition of due process to assure a fair and just hearing," and "[v]indication of that right requires a defendant to be present at every stage of the proceedings, whenever . . . presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge." State v. A.R., 213 N.J. 542, 557-58 (2013) (citation omitted). In addition, "critical stages" are those where "substantial rights of the accused may be affected." Dangcil, 248 N.J. at 135.

Relevant here, a criminal defendant and his counsel have a right to be present for supplemental jury instructions. Rogers v. United States, 422 U.S. 35, 39-40 (1975); Shields v. United States, 273 U.S. 583, 587-89 (1927); accord, e.g., French v. Jones, 332 F.3d 430, 436-39 (6th Cir. 2003); United States v. Rosales-Rodriguez, 289 F.3d 1106, 1110 (9th Cir. 2002); Curtis v. Duval, 124 F.3d 1, 4-5 (1st Cir.1997); Commonwealth v. Johnson, 828 A.2d 1009, 1014-16 (Pa. 2003). Similarly, New Jersey law prohibits a judge from making ex parte communications to a deliberating jury. State v. Basit, 378 N.J. Super. 125, 131-34 (App. Div. 2005) (collecting cases). One obvious danger of such ex parte communications is that "[u]nexpected questions or comments can generate unintended and misleading impressions of the judge's subjective personal views which have no place in his instructions to the jury -- all the more so when counsel

are not present to challenge the statements." Id. at 134 (quoting United States v. U.S. Gypsum Co., 438 U.S. 422, 460-61 (1978)).

Finally, this Court has held that the improper submission of exhibits to a deliberating jury may be reversible error, particularly outside the presence of counsel. See Palestroni v. Jacobs, 10 N.J. Super. 266, 271-76 (App. Div. 1950) (opinion of Brennan, J.A.D.). In Palestroni, the trial judge, at the jury's request, supplied it with a dictionary not admitted into evidence, without notice to the defense. Id. at 269. The Court reversed, ruling, "However small the part played by the specification in the entire verdict, the whole of the verdict is infected by the taint of illegal and extraneous evidence having the capacity to influence the determination." Id. at 271. The Court further condemned the judge's failure to inform the defendant or her counsel, which denied "prior opportunity of defendant or her counsel to be heard on its propriety." Id. at 272; accord State v. Anderson, 251 N.J. Super. 327, 329-34 (App. Div. 1991) (reversing where trial judge improperly permitted jury to consider previously unknown jewelry tag found during deliberations inside another exhibit); R. 1:8-8(a) (providing for the jury to "take into the jury room the exhibits received in evidence").

Here, the trial court violated Grant's right to presence and counsel and, at the same time, deprived the jury of a critical defense exhibit during deliberations. On the sixth day of trial -- after summations and the final jury

charge had been given the prior trial day but before the jury had begun deliberating -- the judge opened court by noting that all of the jurors were present but that the "attorneys are not here, the defendant is not here." (6T 3-1 to 21) The judge at first stated that "nothing else" was going to happen and that he was trying to "streamline this one" while the attorneys attended other business. (6T 4-1 to 7) However, the judge then announced that he was going to "give you all of the evidence" for deliberations and began reading off the exhibit numbers. (6T 4-8 to 5-24) The judge read all of the relevant State exhibits (except for previously agreed-upon exhibits that were excluded due to biohazardous material) and most of the defense exhibits; however, the judge omitted D-11, though he read D-1 through D-10, and D-12 and D-13. (6T 5-6 to 24) D-11 was a court document memorializing Robinson's conviction for unlawful possession of a weapon and his five-year sentence, which was admitted into evidence by the defense during his cross-examination. (2T 120-6 to 122-15) After reading the exhibits, the judge administered a few additional instructions to the jury -- still outside the presence of Grant and his counsel. (6T 6-1 to 8-10) For example, the judge provided supplemental instructions regarding how to submit jury questions and the verdict sheet, which the court reiterated, "[Y]ou all unanimously would have to agree on"; the judge also gave instructions to the non-deliberating jurors. (6T 6-1 to 8-4) Finally, the judge

dismissed the jury to begin deliberations. (6T 8-11 to 21)

The court's submission of evidence and additional jury instructions -- both outside Grant and his counsel's presence -- was extremely improper and denied him a fair trial. D-11, which the court evidently failed to submit to the jury, was a critical part of Grant's defense because it showed in black and white the favorable outcome Robinson received -- the lowest possible sentence -- after he informed against Grant. But because the court submitted the exhibits to the jury without Grant or his counsel present, Grant was unable to raise an objection to the missing exhibit. The apparent exclusion of that critical exhibit may have led the jury to unfairly de-emphasize that defense argument and improperly credit Robinson's claims more than they otherwise might have. Cf. State v. Burr, 195 N.J. 119, 134 (2008) (prohibiting juries from playing video statements in the deliberation room because "[t]he danger posed is that the jury may unfairly emphasize [the victim's] videotaped statements over other testimony presented at trial"). In addition, the court's ex-parte instructions prevented Grant and his counsel from evaluating in real time whether their tone and tenor had the potential to "generate unintended and misleading impressions of the judge's subjective personal views." Basit, 378 N.J. Super. at 134 (quoting U.S. Gypsum Co., 438 U.S. at 460-61). In sum, the court's submission of evidence and supplemental jury instructions were both stages at which Grant's substantial

rights "may" have been affected and which were substantially related to his defense, and therefore they required his presence and the assistance of counsel. Dangcil, 248 N.J. at 135; A.R., 213 N.J. at 557-58. Because he suffered actual prejudice from the missing defense exhibit, reversal is required.

POINT IV

THE CUMULATIVE EFFECT OF THE NUMEROUS TRIAL ERRORS DENIED DEFENDANT A FAIR TRIAL. (Not Raised Below)

Even if the above errors do not individually warrant reversal, reversal is required under the cumulative-error doctrine because they collectively denied Grant a fair trial. N.J. Const. art. I, ¶ 1; State v. Weaver, 219 N.J. 131, 155 (2014).

POINT V

ALTERNATIVELY, DEFENDANT'S LIFE SENTENCE IS EXCESSIVE AND REQUIRES A RESENTENCING. (9T 36-15 to 56-20; Da 59-62)

At sentencing, the court merged count two (possession of a weapon) into count one (murder) and sentenced Grant to life in prison with sixty-three years and nine months without parole pursuant to NERA. (9T 36-15 to 56-20; Da 59-62) The court found four aggravating factors -- factors one (nature and circumstances of the offense), three (risk of reoffense), six (extent of criminal history), and nine (need for deterrence) -- and no mitigating factors. (9T 39-15

to 53-4; Da 61) Grant's life sentence -- the maximum sentence for murder -- was based on a number of errors and is excessive under the circumstances. Therefore, should this Court disagree with Points I through IV, a resentencing is required.

First, the court effectively double-counted the elements of the offense by finding aggravating factor one, "[t]he nature and circumstances of the offense, and the role of the actor in committing the offense, including whether or not it was committed in an especially heinous, cruel, or depraved manner." N.J.S.A. 2C:44-1(a)(1). "When [a court] assesses whether a defendant's conduct was especially 'heinous, cruel, or depraved,' a sentencing court must scrupulously avoid 'double-counting' facts that establish the elements of the relevant offense." State v. Fuentes, 217 N.J. 57, 74-75 (2014). Because "the Legislature ha[s] already considered the elements of an offense in the gradation of a crime," double-counting the elements of an offense in support of an aggravating factor "erod[es] the basis for the gradation of offenses and the distinction between elements and aggravating circumstances." Ibid. (citation omitted).

Here, the court found aggravating factor one, and gave it medium to heavy weight, based on the facts that Tucker was "unarmed" and "innocent"; the shooting occurred in an "isolated area"; Grant "use[d] a weapon, a firearm, not once at close range, but even when the body was on the ground to fire multiple shots"; and based on "the senseless nature without any explanation." (9T 39-15

to 40-9)[6] However, all of those circumstances were already accounted for within the commission of the crime itself and did not amount to "an especially heinous, cruel, or depraved manner." By definition, the victim of a murder is innocent and is almost always unarmed. Similarly, most murders are not committed in broad daylight where the perpetrator will be easily caught but in an isolated area.

Nor was the use of a firearm particularly unusual. In some circumstances, the firing of multiple shots might be especially heinous -- for example, where such shots are gratuitous and more than the number necessary to accomplish the killing. Cf. State v. O'Donnell, 117 N.J. 210, 217 (1989) (upholding aggravating factor one where "defendant selected a method of beating that would increase the victim's pain"). But here, the medical examiner specifically testified that the cause of death was "multiple gun shot wounds," and even when the prosecutor asked whether "any one gun shot wound in particular" could have alone caused the death, the examiner maintained that the cause was "[m]ultiple gun shot wounds." (4T 55-19 to 22) Therefore, the multiple shots used here were all part of accomplishing the statutory offense: causing Tucker's death. See N.J.S.A. 2C:11-3(a)(1)-(2) (defining murder in this circumstance as "caus[ing] death," either "purposely" or "knowingly"). Finally, the court's reference to the

[6] The court repeatedly referred to Grant "taking" Tucker away from the bar, but no evidence supported that Grant coerced or otherwise forced Tucker to leave the bar with him. (9T 39-20 to 22)

"senseless" nature of Tucker's death "without any explanation," while obviously tragic, was not "especially" heinous, as nearly all murders are senseless acts of violence. Moreover, punishing Grant for not providing an "explanation" amounted to punishing him for exercising his right to silence and effectively shifted the burden to him to justify Tucker's death. See Mitchell v. United States, 526 U.S. 314, 327-30 (1999). The State's failure to prove a motive at trial should not have been used to further aggravate Grant's sentence. In sum, because all of the circumstances cited by the court already comprised the offense, the court improperly double-counted them to find aggravating factor one. Therefore, resentencing is required.

Second, the court improperly rejected the defense's request for mitigating factor eleven, "[t]he imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents." N.J.S.A. 2C:44-1(b)(11). "Hardship to children may be a significant mitigating sentencing factor." State v. Mirakaj, 268 N.J. Super. 48, 51 (App. Div. 1993). The evidence overwhelmingly supported the defense's request. Grant's cousin wrote in a character letter that Grant "has minor children that need him in their lives as a provider and as someone to mentor and guide them." (Da 47) Grant's fiancé wrote in an email, which defense counsel read into the record, that Grant is a "great father and stepfather" to "two older teens" and that he has "been in their

lives since they were born." (9T 14-20 to 15-9) Grant's son also wrote an email attesting that Grant was a "good man"; that the son, his sister, and their mother all miss Grant; and that the son wants to be able to ride bikes together again. (9T 16-6 to 23) The presentence report indicated that Grant has two children, one nineteen years old and one of an unreported age, and the report further indicated that Grant claimed two "[d]ependents" and paid support. (PSR 13, 19) Finally, Grant completed a number of institutional courses with perfect attendance, including "Family Reunification and Transition" and "Helping Offenders Parent Effectively." (Da 50-51, 53-54)

Despite those letters, emails, and programs -- and despite the court's own finding that Grant "must [have been] supporting these children while he was out" -- the court entirely rejected mitigating factor eleven based on its findings that imprisonment would entail a hardship but not an "excessive" hardship with "a uniqueness"; that Grant has no "minor dependants" or "any dependants"; and that Grant can maintain a relationship with his children "[t]hrough the prison system." (9T 50-17 to 52-18)

The court's findings were not supported by credible evidence. Its finding that Grant had no minor dependents or "any" dependents was directly contradicted by the presentence report in which he claimed two dependents and by his cousin's letter in which she attested that he "has minor children."

Moreover, under the court's rigid interpretation requiring an unspecified level of "uniqueness," no defendant could ever meet the test for mitigating factor eleven. That was not the Legislature's intent. Grant submitted uncontradicted evidence that he loved and supported at least two children, one of whom was nineteen and another who, according to his cousin, was a "minor." In addition to the obvious loss of one parent's income, social science has demonstrated that children with incarcerated parents have significantly worse outcomes in education, behavioral development, and physical and mental health.[7] That is particularly true here where Grant received the maximum sentence of life imprisonment. Therefore, mitigating factor eleven was "amply based in the record," and the court was required to apply it. State v. Case, 220 N.J. 49, 64 (2014). Its failure to do so requires a resentencing.

Finally, the court gave medium to heavy weight to aggravating factor three and "somewhat heavy" weight to aggravating factor six, but it should have given minimal weight, if any, to those factors because Grant's criminal history was mostly remote, largely drug-related third-degree offenses, and he had no violent homicides or assaults in his past. (9T 40-10 to 44-20; PSR 5-12) In sum, the

[7] See, e.g., Joseph Murray et al., Campbell Collab., Effects of Parental Imprisonment on Child Antisocial Behaviour and Mental Health: A Systematic Review 8 (2009), https://www.ojp.gov/pdffiles1/nij/grants/229378.pdf; Leila Morsy & Richard Rothstein, Econ. Pol'y Inst., Mass Incarceration and Children's Outcomes 9-12 (2016), https://files.epi.org/pdf/118615.pdf.

court erroneously weighed the aggravating and mitigating factors, and those factors did not justify the imposition of the maximum sentence, life with sixty-three years without parole -- which in real terms is over twice as long as the thirty-year sentence that Grant could have received. Therefore, this Court should vacate Grant's life sentence and remand for resentencing.

CONCLUSION

For the reasons stated in Points I through IV, Grant's convictions must be reversed and his case remanded for a new trial. Alternatively, for the reasons stated in Point V, Grant's sentence is excessive and requires a resentencing.

Respectfully submitted,

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BY: 
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Assistant Deputy Public Defender
Attorney ID: 390232021

Dated: December 29, 2023

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1459-22

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff-Respondent,	:	**On Appeal from a Judgment of Conviction, Superior Court of**
v.	:	**Law Division, Passaic County**
CHARLES M. GRANT,	:	**Indictment No. 15-12-1007-1**
Defendant-Appellant	:	**Sat Below**
	:	**Hon. Sohail Mohammed, P.J. Cr. and a Jury.**

SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANT-APPELLANT

CHARLES M. GRANT, III
PRO SE, ON THE BRIEF
NEW JERSEY STATE PRISON
TRENTON, NEW JERSY 08625

Date: January 30, 2024

DEFENDANT IS CONFINED

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POINT III

THE TRIAL COURT SHOULD HAVE ENTERED A JUDGMENT OF AQUITTAL NOTWITHSTANDING THE VERDICT OR FOR A NEW TRIAL ON BEHALF OF DEFENDANT AS NO REASONABLE JURY COULD HAVE FOUND DEFENDANT GUILTY
(Not Raised Below).....

POINT IV

THE TRIAL JUDGE ERROR FOR NOT INSTRUCTING JURY ON ADVERSE INFERENCE, BECAUSE PATERSON POLICE, AND STATE FAILURE TO RECOVER, ENHANCE VIDEO OF SHOOTING, WEAPON, LICENSE PLATE IDENTIFICATION (BLACK CAR) VIDEO, TWO MALES (ALTO RANGO) INDENTIFICATION, FOOT PRINTS OF FLEEING SUSPECT, CLOTHING OF DEFENDANT AND VICTIM TO CHECK FOR GUNPOWDER RESIDUE MATCH.
(Not raised Below)

TABLE OF AUTHORITIES

Cases

State v. Kluber, 130 N.J. Super. 336, 342, 327 A.2d 232 (1974), *certif. denied,* 67 N.J. 72, 335 A.2d 25 (1975)
State v. Reyes, 50 N.J. 454, 458-59, 236 A.2d 385 (1967)
State v. Mitchell, 126 N.J. 565, 587, 601 A.2d 198 (1992)
State v. Sims, 65 N.J. 359, 373-374 (1974)

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R. 3:13-3.4.
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PROCEDURAL HISTORY

On December 21, 2015, defendant Charles M. Grant was charged in Passaic County Indictment No. 15-12-1007-1 with first-degree murder, N.J.S.A. 2C: 11-3(a)(1) and (2), second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a); second degree unlawful possession of a firearm, N.J.S.A. 2C:39-5(b); and second-degree certain person not permitted to possess a firearm, N.J.S.A. 2C39-7(b). (Da 1-4)

Between September 20 and October 1, 2018, a jury trial was held before the Hon. Sohail Mohammed, P.J.Cr., after which Grant was convicted of counts one through three; count four was dismissed. (Da 5-8) However, on February 15, 2022, this Court reversed Grant's conviction and remanded for a new trial. (Da9-45) Among other errors, this Court found that Grant was denied a fair trial by the trial Court's failure to redact from grant's video-recorded police statement several inadmissible lay opinions offered by the interviewing detective, which opined on Grant's guilt and credibility. (Da 21-35) In particular, this Court held that it was error to permit the jury to hear the detective's opinion that (1) Grant was guilty of the shooting death of the victim and had an obligation to explain himself; (2) grant was lying about his alibi; and (3) surveillance video contradicted Grant's alibi. (Da 21-35)

Between September 15 and 27, 2022 a second jury trial was held again before Judge Mohammed, after which the jury found grant guilty of counts one and two. (1T to 7T; 7T 7-1 to 23; Da 46) The jury acquitted of count three, and count four

was dismissed. (7T 7-24 to 8-1; Da 46, 62) On October 27, 2022, Judge Mohammed heard and denied defendant's motion for a judgment of acquittal or a new trial. (8T)

On December 15, 2022, Judge Mohammed merged count two into count one and sentence Grant on count one to life in prison with a period of parole ineligibility of sixty-three years and nine months pursuant to the No Early release Act (NERA), N.J.S.A. 2C 43-7.2. (9T 36-15 to 56-20; Da 59-62)

On January 18, 2023 Grant filed a timely notice of appeal. (Da 63-66)

STATEMENT OF FACTS

The State alleged that Grant was the person who cause the shooting death of Issac "Blaze" Tucker based primarily on a series of surveillance videos from a bar/liquor store and various scattered properties leading up to the location of the shooting. (5T 83-5 to 112-1) Grant presented a mistaken-identity defense: He acknowledge that he been with Tucker at the bar/liquor store earlier in the evening, but grant maintained that they split up on the way home when he turned down a side street and that he was not the man depicted in later videos closer to the shooting location. (5T 70-11 to 82-20) No witness identified Grant in the later video or contradicted his alibi, none of the later videos clearly sowed the suspect's face, and no one saw the shooting. (da68) No Gun, DNA, or fingerprints were recovered. And no motive evidence was presented.

On February 23, 2015, Paterson Police discovered Tucker's body in the road at 296 East 16th Street following an alert at 2:15 a.m. from their ShotSpotter system, which detects gunshots. (3T 8-16 to 36-20; 4T 80-25 to 83-21) Tucker had been killed by multiple gunshots wounds to the face, shoulder, and back. (4T 49-12 to 55-22) Upon receiving the call, Officer Robert Klein was patrolling Madison Avenue about two blocks away when he saw a person run from the area of East 16th across Madison Avenue toward East 22nd street. (2T 9-10 to 16-19) As Klein pursued the suspect, they made; direct eye contact," and Klein briefly saw the suspect's face, but the suspect kept running, and Klein eventually lost him. (2T 11-11 to 14-25) Klein and other officers responded to 282 east 22nd Street, where they found in a backyard and alleyway footprints in the snow and suspected blood; however, two sample of suspected blood later tested negative for human DNA. (2T 13-6 to 16-19; 3T 123-14 to 127-2; 4T 17-2 20-17) The police never question the residents of 283 East 22nd

Street. (2T 90-18 to 91-11) Though Klein had seen the suspect's face, he never identified Grant.

Near Tucker's body, the police recovered a tequila bottle, five shell casing, and one projectile; four more projectiles and projectile fragment were found during the autopsy. (1T 99-2 to 126-13; 4T 58-14 to 19) The police did not attempt to dust the spent casing for fingerprints; one detective said such attempt to prove fruitless in his past experience. (1T 120-7 to 126-23) The state's ballistics expert, detective Sergeant Robert Sloma, said the markings on four shell casing and three projectiles indicated that they were all fired from a Glock 9-milimeter pistol. (4t 152-2 to 162-12) Sloma admitted that Glock is one of the most popular firearms brands, being used by about 70% of U.S. police departments and the U.S. military, and he estimated that there are at least five million Glocks in circulation in the United States. (4T154-16 to 166-2)

Police obtained several surveillance videos from nearby properties, which were admitted through the testimony of detective Anthony Petrazzuolo. (Da68) Video from a meat shop called beef Town depicted the shooting from a distance – though it did not clearly show the shooter's face – and it showed that the shooter fled the scene by turning onto Putman Street, toward the direction of where Klein encountered the fleeing suspect. (3t 22-5 to 41-24, 123-1 to 129-14; da 68) At trial no witness identified the suspect in the beef town video, Video was also recovered from a bar/liquor store called Alto Rango, located several blocks to the south on 12th Avenue, which eventually turns into East 16th. (2t 75-3 to 17; 3T 42-13 to 45-9) the video from Alto Rango showed Tucker with others inside between about 1:54 and 1:58 a.m. (2T 41-4 to 21; 3T 42-13 to 54-5; da 68). The police question some of the people shown in the video; however at least two people seen near Tucker were never identified. (2T 41-4 to 42-6, 73-23 to 74-1; 3T 120-13 to 122-6)

Detective Audrey Adams claimed that Grant became a person of interest after his name "c[a]me up" in the investigation. (2T 42-7 to 14) Adams and Detective Maldonado (who did not testify) conducted a video-recorded interrogation of Grant, a redacted version of which was played for the jury. (2T 42-15 to 67-4; Da 67) without having been shown any surveillance videos, grant freely admitted that he knew Tucker; they both attended Alto Rango earlier that night; and they left together, walking along East 16th street. (2T 100-22 to 101-7; Da 67 at 4:08 to 8:12) However, Grant explained that they split up at the intersection of East 16th and Governor Street and that he turned left onto Governor

Indeed, detective Audrey Adams testified that based on Klein's report, she believed that the shooter fled east on Putman and kept heading east, crossed over Madison, and perhaps encountered Klein on 22nd. (2T 81-6 to 82-18)

Where he lived, while Tucker stayed on East 16th and was talking to some people in a Black car. (2T 67-5 to 77-22; Da 76 at 7:58 to 8:43) Grant thought he had been wearing blue pants, a black hoodie, and a black jacket, and he later identified himself in a video still-shot from the Alto Rango bar wearing a blue coat, a black hoodie, and black pants. (2T 70-16 to 72-19; 3T 120-13 to 121-18; Da at 6:40 to 9:50) despite other redactions, the interrogation video still showed Maldonado assert that Grant was lying about his alibi and repeatedly ask why he killed Tucker. (Da 67 at 17:34 to 20:39)

In support of Grant's alibi, the defense admitted a series of video still-shots from electric company at 445 east 16th, which depicted the intersection of east 16th and Governor and showed two people walking along East 16th toward a truck, then neither person present, and then only one person reappeared from behind truck. (2T 95-17 to 100-15; #t 84-8 to 13) In addition to the video from beef Town, Alto Rango, and the electric company, the State admitted videos (mostly without testimony as to what they depicted, aside from the streets) from a car wash and pizzeria, both on 12th Avenue near alto Rango; a moving company on east 16th near its intersection with Lafayette Street, corner of East 16th and Lafayette; a car dealership further north along East 16th; and a day under 100 yards from 296 east 16th. (3T 54-20 to 116-14; Da 68)

Finally, Dimitrius Robinson, a friend of Tucker, testified as an informant. (2T 110-17 to 135-14) On March 6, 2015, Robinson was arrested for possessing a handgun and was being detained at the Paterson Police Department when he requested to speak with Adams and Maldonado, claiming he had information about Tucker's death. (2T 101-8 to 102-12, 120-15 to 121-8) Before Robinson divulged his information, they discussed Robinson's bail amount, and Maldonado promised Robinson that they would "try to help [him] out in any way [they] can" in exchange for his information. (2T 103-23 to 105-8) Robinson proceeded to claim that he encountered grant the day before at a shrine for Tucker and that, while there, he saw grant spitting and brandishing a gun. (2T 111-22 to 115-23) Robinson claimed that he brought his own gun the next day to protect himself and that he happened to recall the details of what occurred at the shrine, including what type of gun grant had; however, after being shown a transcript of his prior testimony, Robinson said he previously testified that Grant had a Glock. (2t 111-22 to 116-15) although Robinson

recalled "plenty" of people at the shrine that day, no one else corroborated his account, and he also admitted that he had been previously convicted of twelve felonies in New Jersey. (2T 113-9 to 13, 129-7 to 130-12) After informing against grant and being held for just one day, Robinson was release on $75,000 bail, and he ultimately pleaded guilty to second-degree unlawful possession of a gun and was sentenced to the minimum, five years with forty-two months of parole ineligibility. (2T 120-15 to 135-4) Robinson maintained that his actual testimony against Grant was not a condition of his plea. (2T 133-1 to 25)

In summation, the defense argue that the surveillance videos corroborated Grant's alibi--that he turn off of east 16th onto Governor and went home--because the beef town video showed the suspect wearing light–color clothing, but the Alto Rango video showed grant wearing dark-colored clothing. (5T 70-11 to 79-21) The prosecutor argued, based on still-shots from the car wash video, that Grant was wearing light-color clothing consistent with the suspect's. (5t 95-22 t0 98-11) For the first time at trial, the prosecutor also claimed that the Alto Rango video showed grant look towards Tucker and do "something," which the prosecutor argued was evidence of premeditation; that the beef Town video showed flashes of light indicative of gunfire; that the electric company video contradicted grant's alibi because it showed a second person walking just after Governor; and that the second person in the post-Governor video was grant because that person had the same height and "style of walk" as grant in the pre-governor videos, (5T 88-8 to 105-9) Notably, the prosecutor did not argue that the suspect's face was visible in any of the surveillance videos or that jury could compare the suspect's face to grant's.

LEGAL ARGUMENT

POINT I

GRANT WAS DENIED THE RIGHT TO A FAIR TRIAL, BY THE PATERSON POLICE INADEQUATE INVESTIGATION. WHEN EVIDENCE SHOULD HAVE TAYLOR THE INVESTIGATION TOWARDS OTHER POSSIBLE SUSPECTS. THE OTHER TWO SUSPECTS INSIDE ALTO RANGO, AND THE FLEEING SUSPECT. AS WELL AS THE VEHICLE MURDER VICTIM STOP TO COMMUNICATE WITH AT GOVERNOR STREET AND 16TH STREET.

Paterson Police Officer Klein and others officers, encountered [the] fleeing suspect. (3T 22-5 to 41-24, 123-1 to 129-14; Da68) Officer Klein should have testified to distinctive characteristic of fleeing suspect to, compare to defendants. Officer Klein had direct visual of suspect. The similarities of fleeing suspect and defendant grant was [never] testified to by Officer Klein who seen fleeing suspect. The state avoided (dodge) this pertinent issue concerning another person KILLED Mr. Tucker, should have been explored. Paterson Police Detective had enormous evidence to examine other suspects. But decided because Mr. Grant refuse to identify the two other customers inside Alto Rango, who Grant did not know, gave reason to place blame on Grant. Society views the conviction of an innocent person as perhaps the [most] grievous mistake our judicial system can commit. When police investigators, Prosecutor investigators, and society cannot positively identify the "killer" in sufficient video. Grant should be free to support himself and his family.

The State had numerous evidence that should have eliminate Grant from this case. **First,** the state "Star witness did not see Grant shot Tucker. **Second,** the video proves Grant clothing on the night of the murder was [entirely] dissimilar from shooter. The color, length of coat, and tightness of Grant's pants prove there was another person that committed this murder. **Third**, State present No DNA evidence, eyewitnesses, physical evidence, nor a testimony from anyone saying at the shrine Grant committed this murder. **Fourth,** the state produce a witness (Robinson) that received a great deal to lie, so his pending charges would be downgraded for his testimony. Robinson had a proclivity to lie, because of the **twelve felonies convictions**, which he would be facing extended term of prison if convicted. (2T 101-8-102-12, 120-15 to 121-8) Mr. Robinson before divulging any information Officers Adams and Maldonado discussed helping Dimitrius Robinson with Bail and any way [they] can in exchange for his information. (2T 103-23 to 105-8) Defendant seeks [reversal] of the State decision based on Due Process violations, including: **(1)** the investigating officers performed an **Inadequate Investigation; (2)** the State, allowed the two crime scene officers to submit a half reports concerning, evidence at crime scene, suspect fleeing, and Officer Klein description of fleeing suspect to match Grants at time of murder **(3)** the State did not allow Grant to call witnesses and/or state's many informants to look at video to prove the person (MURDER) was not him and Officers Klein falsified his reports,

by not concluding area investigation and taking pictures and prints (mold) of footprints in snow; **(4)** there was sufficient evidence from crime-scene to acquit Grant ; and **(5)** the state could have solved this murder if they would have just did a proper investigation and their [swore] duty (JOB), defendant Grant would be home supporting his children...

There are 11 key steps to be taken at crime scene

1. Secure crime scene.

2. Decide whether it is necessary to obtain a search warrant before the crime scene search team may begin its work.

3. Set up a command post.

4. Senior Officer should command post at all times to coordinate the investigation.

5. Crime scene search team assembled and directed to perform search. 2-crime scene **(1) Murder site, (2) Suspect fleeing**

6. Separate all witnesses, instructed witness not to discuss the matter with others. Assign at [least] one Officer to interview each such person.

7. Separate and interview all witnesses who went to hospital to view victim.

8. Have first officers at scene return to command post so that these officers can brief officers at command post as to what they observed upon arrival at crime scene.

9. Assign officers to interview neighbors near both crime scene.

10. Do not request Medical Examiner to come to scene until Leader of crime scene search team states that search team is almost finish with its work.

11. All officers after having completed an assigned task should report to command post and brief officers at command post regarding findings, and obtain next assignment.

In order to conduct a successful investigation, it is essential that officers know, in advance, the steps to be taken in the investigation. The collection of physical evidence is the **Most** important phase of the investigation. A successful prosecution depends on this phase of the investigation being done right. Only officers having the **patience** and the **interest** to perform such minute, detailed work should be assigned to the crime scene search team. Officer Klein and others fail the victim, State, and cause Mr. Grant his liberty. The Paterson Police and Passaic County Prosecutor's Office did not perform a proper investigation. A minute examination should be made to locate hairs, fibers, glass, wood, metal, and other material which appears to be foreign to the environment. The suspect ran in a yard, NO investigator collect any foreign material from the backyard. The fleeing suspect had to touch something, i.e. fence, door, widow, or house panels. This fleeing suspect did not vanish from backyard without touching anything inside backyard. The suspect left enough evidence to continue the investigation, until all investigation avenue's was absolute, charging defendant was premature. Defendant

Grant has no magician skills, like, Harry Houdini, so it is obvious the suspect in the backyard was not defendant Grant. Officer Klein performance the night of the murder, "**OBSTRUCTIONIST**" Officer Klein deliberately obstruct progress. Policemen are **trained** to remember faces and characteristic of suspects. Why, this case Officer Klein cannot describe or give a description of fleeing suspect when he looked him right in the face. Jurist, must examine the flaws and imperfections (faulty) of this murder investigation. There are too many miscalculations, too many errors, too many deviations from accuracy towards Grant's innocence. This "**INADEQUATE INVESTIGATION**" has cause defendant one decade of his life.

For purposes of the due process clause of the United States Constitution's Fourteenth Amendment, in a criminal prosecution the presence or absence of bad faith on the part of the police with regard to the loss or destruction of possibly exculpatory evidence must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it is lost or destroyed. Under the due process clause of the United States Constitution's Fourteenth Amendment, the good or bad faith of the state is irrelevant when the state fails to disclose material exculpatory evidence to the defendant in a criminal prosecution. Unless a criminal defendant can show bad faith on the part of the police, the state's failure to preserve potentially useful evidence-of which no more can be said then that it could have been subjected to tests, the results of which might have exonerated. The defendant-

does not constitute a violation of the due process clause of the United States Constitution's Fourteenth Amendment, since requiring a defendant to show bad faith on the part of the police both limits the extent of police obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, that is, those cases in which the police themselves by their conduct indicate that the evidence could form a basis for **exonerating** the defendant; accordingly, **(1)** the failure of the police to preserve clothing worn by the defendant at the time of the murder and containing Gunpowder residue or to perform timely tests on victim's clothing, DNA and/or Gunpowder residue samples taken from the victim's clothing- any expert testimony would demonstrate that timely performance of tests with properly preserved clothing samples could have produced results that might have completely exonerated the defendant-can at worst be described as negligent, **(2)** none of this information is visible for the defendant at trial, and **(3)** the evidence-such as it is-is made available to the State expert, who declines to perform any tests on the samples.

(A) For purposes of the Due Process clause of the United States Constitution's Fourteenth Amendment, in a criminal prosecution the presence or absence of bad faith on the part of the police with regard to the loss or destruction of possibly exculpatory evidence must necessarily turn on the police's knowledge

of the exculpatory value of the evidence at the time it is lost or destroyed. **(B)** Under the due process clause of the United States Constitution's Fourteenth Amendment, the good or bad faith of the state is irrelevant when the state fails to disclose material exculpatory evidence to the defendant in a criminal prosecution. **(C)** In a criminal prosecution, the due process clause of the United States Constitution's Fourteenth Amendment is not violated by the failure of the police to use a particular investigatory tool; accordingly, in a prosecution for a heinous murder in which the victim was shot multiple times, the due process clause is violated by the state's failure to conduct any type of scientific test on clothing samples taken from the defendant or victim. See **Arizona v. Youngblood,**

POINT II

REVERSAL IS REQUIRED BECAUSE THE STATE PERPETRATED "FUNDAMENTAL MISCARRIAGE OF JUSTICE" GRANT CREDIBLE SHOWING OF ACTUAL INNOCENCE, PROVES THE STATE PRODUCE NO EVIDENCE INCRIMINATING GRANT. THE STATE HAD DESCRIPTION OF THE KILLER IN VIDEO AND OFFICER KLEIN SEEN KILLER. THE CLOTHING IN VIDEO WERE ABSOLUTELY DISSIMILAR FROM MR. GRANT'S.

The specifics of this case cannot be ignored, the uncontested facts in this case, like, the other suspects, people in black car, and Robinson irrational testimony. It is obvious as it is tragic that mistaken convictions have disastrous

effects for the unjustly accused. That is particularly true where-as here-Grant received a life sentence. But wrongful convictions are not the only consequence of our continued failure to incorporate the teaching of **scientific research** into judicial proceedings. Wrongful Convictions "also erode public confidence in the Criminal Justice system as a whole." In addition, when someone is wrongfully convicted, the real perpetrator remains free to victimize again. Thus, this an issue of far-reaching importance to the Defense, Prosecutors, Police Departments, as well as to Judges: All have an interest in minimizing the possibility of erroneous convictions.

Before defendant begin my discussion of the science as applied to this case, defendant want to emphasize that my points here is not to cast aspersions on the motives of the Police or Prosecutor involved in this investigation or insinuate that they intentionally used Robinson with **twelve** felonies prior convictions and squandered the evidence. The State has all the cache (power) to retrieve scientific evidence to prove their case. But failed, because the state was well aware of people in the Black car, foot prints in the snow, blood in backyard, and videos that NO one (informants) identified Grant. The State refuse to make (mold) of foot prints and take pictures to compare to those in snow, which is normal procedures with foot prints. This process will determine later if any footwear of defendant's match shooter's. They (State) must have took pictures and realize defendant had little

feet, and the foot prints were very enormous, evidently was not defendant's. **"Paterson Police never check license plates of Black car and/or check video for plate's identification".**

Additionally, the State have held that *"Rule* 3:22-5's bar to review of a prior claim litigated on the merits 'is not an inflexible command'" and must yield to a fundamental injustice.9 *Nash*, 212 {248 N.J. 179} N.J. at 547, 58 A.3d 705 (quoting ***State v. Franklin,*** 184 N.J. 516, 528, 878 A.2d 757 (2005)). A fundamental injustice occurs "when the judicial system has denied a 'defendant with fair proceedings leading to a just outcome' or when 'inadvertent errors mistakenly impacted a determination of guilt or otherwise wrought a miscarriage of justice.'" *Id.* 212 N.J. at 546, 58 A.3d 705 (quoting ***State v. Mitchell,*** 126 N.J. 565, 587, 601 A.2d 198 (1992)). To demonstrate a fundamental injustice, a defendant must show "that an error or violation 'played a role in the determination of guilt.'" *Id.* 212 N.J. at 547, 58 A.3d 705 (quoting *Mitchell*, 126 N.J. at 587, 601 A.2d 198). **The biggest error are "Inadequate Investigation".**

The State is not concerned with the worth, nature, or extent (beyond a scintilla) of the evidence in this case. Just the credibility of an **twelve** time convicted felon, who generated a story to be relieve of possible extended term or

heavy plea offer. Robinson became the state "star" witness after he got caught with a loaded gun. Robinson did not come forth on his own, after being caught carrying a loaded gun, now he's a star witness (informant) and an up standing citizens of New Jersey. The state had **No** other suspect until Robinson got caught carrying the loaded gun. Jury verdict as against the weight of the evidence. One witness that change his testimony, and the other 15 plus people at the SHRINE did not parrot Mr. Robinson made-up story. This brief raise substantial [questions] concerning strength of the State case. Passaic County indictment No. a-1459-22, Grand Jury received deceitful information from State. Passaic County Prosecutor's Office legalized false testimonies during hearings. But fail to notify Grand Jurors concerning Officer Klein seen fleeing suspect, occupants in Black Car, and informant (state's "Star" witness) looking for favors to testify. See; **Dolson v. Anastasia**, 55 N.J. 2, 6-8 (1969) (jury verdict was against the weight of the evidence) witness credibility, R. 2:10-1, **State v. Sims,** 65 N.J. 359, 373-374 (1974), **State v. Johnson,** 203 N.J. super. 127 (App. Div.), certif. den. 102 N.J. 312 (1985) "Manifest denial of justice under the Law"...

Consequently, the witness (INFORMANT), Officer Klein, fleeing suspect, two people inside Alto Rango, and occupiers in Black car. These strong nature of criminal case give reason to explore thoroughgoing investigation, and strength of

the State's case. *** **First**, before listening to a twelve time convicted felon to send an innocent man to prison for life. The State in its zeal to close this case, brought the Grand Jury a Ham sandwich to receive a True Bill.***Second, the Supreme Courts and Great Legal minds have wrote numerous Briefs outlining cases like this one, little evidence or no evidence. How similar cases place innocent Black men in prison for decades, and very little evidence to warrant a guilty verdict. Jurist, must ask the obvious question, this is February 2015, not February 1960 the State with all their resources and assets should have made a copy of the foot prints in snow to compare to defendant Grant's, and search for **additional** blood dropping in area where suspect escape. The video was [never] compared to Mr. Grant description by the public or State many informants. Because the shooter does not look like defendant. What we have here is an over-zealous "Police Investigation and Prosecutor" to close a case with no evidence directed at defendant. There is no motive, John Doe murder has no evidence of motive or suspects. Mr. Robinson, did not care for or like defendant Grant, this was well known throughout the Paterson community. Mr. Robinson was upset concerning John Doe's murder so he had a personal dispute with defendant. But the favor Robinson received from Police and State tip Robinson feelings and judgment to **LIE** for a deal! The many people at the gathering (shrine), no one heard Robinson statements against defendant or defendant's Grant statement against Tucker. If the

State is allowed to convict without evidence, i.e. DNA, Gun, Scientific evidence (Criminological), and Eye witness. Just one witness who was a friend of Tucker and received favors from State. There is a serious problem with our Justice system. The State's first trial was reverse, second retrial must vacate defendant's convictions, and allow Grant's attorney to move to dismiss indictment. Defendant is an innocent man being victimized by horrible investigation. This is a circumstantial case that's very pathetic and no concrete evidence. The state should not be able to cause continuance harm to innocent citizen.

POINT III

THE TRIAL COURT SHOULD HAVE ENTERED A JUDGMENT OF AQUITTAL NOTWITHSTANDING THE VERDICT OR FOR A NEW TRIAL ON BEHALF OF DEFENDANT AS NO REASONABLE JURY COULD HAVE FOUND DEFENDANT GUILTY

Defendant argues that his motion for a judgment of acquittal pursuant to *R.* 3:18-2 should have been granted or, alternatively, his motion for a new trial should have been granted pursuant to *R.* 3:20-1.{841 A.2d 509} In deciding a motion for a judgment of acquittal, the trial judge must determine "whether the evidence . . . is sufficient to warrant a conviction." ***State v. Reyes***, 50 N.J. 454, 458-59, 236 A.2d 385 (1967); ***State v. Kluber,*** 130 N.J. Super. 336, 342, 327 A.2d

232 (1974), *certif. denied,* 67 N.J. 72, 335 A.2d 25 (1975). "More specifically, the trial judge must determine whether the evidence, viewed in its entirety . . . giving the State the benefit of all of its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, is sufficient to enable a jury to find that the State's charge has been established beyond a reasonable doubt." *Kluber*, *supra*, 130 N.J. Super. at 341-42, 327 A.2d 232. The trial judge must consider only the existence of such evidence, not its "worth, nature, or extent." *Id.* at 342, 327 A.2d 232.

Defendant argues that there were too many factual inconsistencies to support the verdict. **First**, defendant's claims that the informant's testimony was unreliable because he was an admitted **"twelve time convicted felon"** and had acknowledged that he was an informant for the police to "work off" his pending charges. **Second,** Robinson received a great bail deal the same day of his arrest to inform on an innocent man.

Defendant argues that the police lacked evidence or justification to target him for the crime because he was "unknown to the police as a Murder suspect or otherwise." Just a person walking with Tucker before turning on Governor Street to go home. After having a drink with defendant at Alto Rango on 12th Avenue. Rather, defendant claims he was chosen on an "ad hoc" basis, i.e., he was in the area on the night the victim were present and the Black car and other individuals.

Defendant further contends that him as the suspect was completely created by both the police and the informant. He maintains that the informant, a drug dealer, assaulter, robber, gun carrying, and twelve time convicted felon working for the State and police, was told by the police to say defendant (Charlie Wu) made statements against Tucker at shrine.

The trial judge's obligation on a motion for a new trial because the verdict is said to be against the *weight* of the evidence is quite a different and more difficult one. It is clear that such a motion may be properly granted although the state of the evidence would not justify the direction of a verdict. ***Franklin Discount Co. v. Ford,*** *supra* (27 *N.J.*, at 490). A process of evidence evaluation, -- "weighing" --, is involved, which is hard indeed to express in words. This is not a *pro forma* exercise, but calls for a high degree of conscientious effort and diligent scrutiny. The object is to correct **clear error** or **mistake** by the jury. Of course, the judge may not substitute his judgment for that of the jury merely because he would have reached the opposite conclusion; he is not a thirteenth and decisive juror. It was said in ***Kulbacki,*** "[w]hat the trial judge must do is canvass the record, not to balance the persuasiveness of the evidence on one side as against the other, but to determine whether reasonable minds might accept the evidence as adequate to support the jury verdict * * *." 38 *N.J.*, at 445. This does not mean that the test is the same as on a motion for judgment. Rather what was meant was that in ruling on a motion for a

new trial, the trial judge takes into account, not only tangible factors relative to the proofs as shown by the record, but also appropriate matters of credibility, generally peculiarly within the jury's domain, so-called "demeanor evidence", and the intangible "feel of the case" which he has gained by presiding over the trial. The whole process is well summed up in the dissenting opinion in *Kulbacki*: "the question is whether the result strikes the judicial mind as a "**Miscarriage of Justice**", * * *", 38 *N.J.*, at 459. This is the standard intended to be conveyed by *R.* 4:49-1(a), although expressed negatively and somewhat redundantly: "The trial judge shall not, however, set aside the verdict of a jury as against the weight of the evidence unless, having given due regard to {55 N.J. 7} the opportunity of the jury to pass upon the credibility of the witness (Robinson), it clearly and convincingly appears that there was a manifest denial of justice under the law." The rule might be more precisely stated as "the trial judge shall grant the motion, if, having given due regard to the opportunity of the jury to pass upon the credibility of the witness, it clearly appears that there was a Miscarriage of Justice under the Law." See; **Dolson v. Anastasia,** 55, N.J. 2:258 a2d 706, (1969)

POINT IV

THE TRIAL JUDGE ERROR FOR NOT INSTRUCTING JURY ON ADVERSE INFERENCE, BECAUSE PATERSON POLICE, AND STATE FAILURE TO RECOVER, ENHANCE VIDEO OF SHOOTING, WEAPON, LICENSE PLATE IDENTIFICATION (BLACK CAR) VIDEO, TWO MALES (ALTO RANGO) INDENTIFICATION, FOOT PRINTS OF

FLEEING SUSPECT, CLOTHING OF DEFENDANT AND VICTIM TO CHECK FOR GUNPOWDER RESIDUE MATCH.

Paterson Police missed a magnificent opportunity by not following videos route of the Black car. The occupants inside car and/or owner of said vehicle could have provided strong clues to Tucker's Murder. R. 3:13-3.4. **Lost or Destroyed Evidence**, The State had every opportunity to contact the proper authorities (Federal Government) to have the video enhance to prove the identification of shooter that wore dissimilar clothing then defendant the night of Murder. The State and/or Paterson Police Department refuse to retrieve defendant's clothing. Because they Paterson Police and Prosecutor Office were well aware those clothing the night of the murder did not match Grant's. This was by means of strategy to pressure innocent defendant (GRANT) to inform on the two males inside Alto Rango, and the occupants inside Black car [whom] Grant **did not** know. The State had the knowledge of foot prints the night of the murder but decline to extract a mold and/or take pictures to compare to defendants'. This behavior is inexcusable for a murder investigation.

R. 4:6-2.10 **Spoliation of Records (Evidence)** - Petitioner requested and ask for all "Documents and Evidence" before trial. It obvious the State concealed and omitted exculpatory evidence. Legal Officials given the impression that the State had in there proprietorship [pictures] of foot prints that will exonerate defendant of all charges. The State refuse to submit these pictures, License plate videos, and any

evidence in favor of defendant's incorruptibility (guilt). The Paterson Police Department is a part of the State team, they should have known about all exculpatory evidence favorable to defense. The deliberate withholding of evidence is against **Brady v. Maryland.** The defense cannot put on an appropriate defense under these circumstances.

In Addition, **Arizona v. Youngblood,** the State of New Jersey honor the language in this great case. **(1)** although the defendant was denied the opportunity to present a full defense by what may have been nothing more than police ineptitude, that ineptitude deprived the defendant of his right to Due Process of Law, since **(a)** police actions taken in bad faith are not the only species of police conduct that can result in a violation of Due Process, **(b)** where no comparable evidence is likely to be available to a defendant, the police must preserve physical evidence and forensic evidence of any type that they reasonably should know has the potential, if tested, to reveal immutable characteristics of the criminal, and hence to exculpate a defendant charged with the crime, and **(c)** under the standard set forth in **(d)**, the failure of the prosecution to preserve the gunpowder residue on defendant's clothing deprived the defendant of a fair trial, and (2) even under the standard articulated by the majority in **"Youngblood"**, the case should have been remanded for consideration of whether the police did act in good faith.

Petitioner is ignorant of the Law and the Court's procedural requirements. Therefore, petitioner humbly requests and prays to this Court to relax the rules and not hold him to the same stringent standards as that of practicing attorney with regards to the construction of his Pro Se pleadings, especially for not citing legal authority, poor sentence construction, grammar errors, and any error not specifically stated herein. See Hines v. Kerner, 44 U.S. 519 (1972); Estell v. Gamble, 429 U.S. 97, 106 (1976).

Conclusion

For the reason stated in Points I through IV, Grant's convictions must be reversed and his convictions vacated, and Attorney permitted to file motion to dismiss indictment. Alternatively, for the reason stated in Point I, Point II, Point III, and Point IV that proves the Weight of Evidence is not sufficient to warrant a conviction, and Miscarriage of Justice has saturated this case.

Respectfully submitted

By: Charles M. Grant, III

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001459-22

STATE OF NEW JERSEY,	:	Criminal Action
	:	
Plaintiff-Respondent,	:	
	:	ON APPEAL FROM A
	:	JUDGMENT OF CONVICTION IN
	:	THE SUPERIOR COURT OF NEW
v.	:	JERSEY, CRIMINAL PART,
	:	PASSAIC COUNTY
CHARLES M. GRANT	:	
	:	
	:	
Defendant-Appellant.	:	
	:	

Sat Below: Honorable Sohail Mohammed, P.J. Cr. and a Jury.

BRIEF FOR PLAINTIFF-RESPONDENT

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Submitted: May 24, 2024

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PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

At approximately 1:54 a.m. on February 23, 2015, Charles M. Grant ("Defendant") and Isaac Tucker were present at the Alto Rango bar/liquor store in Paterson. (3T:52-8 to 16; Da67 at 4:08 to 8:12; 3T:46-13 to 48-18)[2]. Defendant and Tucker left Alto Rango together and walked down East 12th Street, which eventually turns into East 16th Street. (Da 67 at 4:08 to 8:12). Later that night, at approximately 2:15 a.m., the Paterson Police Department ("PPD") was alerted to the sound of gunfire by one of the "ShotSpotter" devices used to detect gunfire throughout the city of Paterson. (3T:54-5 to 8 and 16-17 to 25). PPD Patrol Officer John Kelly was dispatched to East 16th Street and Warren Street to check the ShotSpotter activation.

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[1] Because of their interrelated nature and for the ease of the reader, these sections have been combined.

[2] References are as follows:

Da: Defendant's Appendix
Db: Defendant's Brief
Pb: Defendant's Pro Se Brief submitted February 28, 2024
PSR: Defendant's Presentence Report dated December 12, 2022
1T: September 15, 2022 Trial Transcript
2T: September 19, 2022 Trial Transcript
3T: September 20, 2022 Trial Transcript
4T: September 21, 2022 Trial Transcript
5T: September 22, 2022 Trial Transcript
6T: September 26, 2022 Trial Transcript
7T: September 27, 2022 Trial Transcript
8T: October 27, 2022 Motion for New Trial Transcript
9T: December 15, 2022 Sentencing Transcript
10T: September 20, 2018 Previous Trial Transcript

(4T:81-17 to 82-5). While driving down East 16th Street, Ptl. Kelly observed what he believed to be a garbage bag lying in the middle of the snow-covered road before realizing that it was a body, later identified as Tucker's. (4T:82-12 to 18; see 3T:9-13 to 10-3). An autopsy revealed that the cause of Tucker's death was multiple gunshot wounds. (4T:55-19 to 22) Tucker was first shot within inches of his face, then once in his chest, and finally twice in his back. (4T:49-21 to 54-8). Unable to render aid, Ptl. Kelly called for a unit to assist in setting up a roadblock then immediately searched the vicinity for "any kind of shell casings or camera surveillance." (4T:83-20 to 83-16).

PPD Officer Robert Klein also responded to the report of shots fired by driving his patrol vehicle around the area surrounding East 16th Street "in case the suspect was . . . fleeing." (2T:10-13 to 18). While driving on Madison Avenue, which was about two blocks away from East 16th Street, Officer Klein saw an individual running across Madison Avenue from the area of East 16th Street. (2T:10-11 to 13-9). The individual made momentary eye contact with Officer Klein before continuing to run towards East 22nd Street. (Id.). As Officer Klein knew he was in a "high drug [/] crime area," he was not certain that the individual was involved in the shooting but reported him to dispatch regardless. (2T:105-24 to 106-2 and 10-11 to 13-9). Officer Klein and other PPD officers continued down East 22nd Street to 283 East 22nd Street, where they located footprints in the snow and suspected blood in a

rear sidewalk alleyway, as well as suspected blood on the rear step of a banister. (2T:13-6 to 16-19; 3T:123-14 to 127-2; see 4T:17-10 to 20-24). The officers collected samples of the suspected blood for DNA testing, but both tests were inconclusive. (4T:17-10 to 20-24).

PPD Detective Anthony Petrazzuolo testified that when he responded to the scene, he located shell casings and a shattered bottle of Patron tequila near Tucker's body. (3T:10-1 to 13). The State's ballistics expert later opined that the shell casings possessed unique markings that indicated they were fired from a Glock semi-automatic pistol. (See 3T:152-7 to 164-21). Det. Petrazzuolo and the other officers believed the tequila bottle indicated Tucker had purchased the alcohol from a nearby liquor store shortly before his death. (3T:11-12 to 13-1). The officers chose to investigate the Alto Rango bar/liquor store due to its proximity to East 16th Street and the fact that it not affected by a local ordinance requiring liquor stores to close by midnight. (Id.). PPD Detective Audrey Adams testified that she located and questioned the individuals inside Alto Rango and that defendant's name came up in the course of one or more of these conversations. (2T:41-19 to 43-9).

On March 5, 2015, Demetrius Robinson, who considered Tucker his best friend, visited a shrine created for Tucker. (2T:110-25 to 112-5). Defendant spat on the shrine in Robinson's presence. (2T:114-22 to 116-15). When Robinson confronted defendant, defendant brandished a Glock pistol. (2T:115-16 to 117-3).

Robinson confirmed that, in the previous trial, he testified that defendant then said something to him, but Robinson repeatedly asserted that he felt unsafe testifying about it and other aspects of his confrontation with defendant. (2T:112-25 to 117-16; see Da15).

On March 6, 2015, Robinson procured a firearm to protect himself and was arrested for unlawful possession of a handgun. (2T:122-20 to 123-20). While detained, Robinson approached and spoke with PPD Detectives Maldonado and Adams regarding his interaction with defendant at Tucker's shrine. (2T: 101-8 to 102-12 and 120-15 to 121-8). Robinson later accepted a plea offer for his unlawful conviction charge wherein he would serve five years in New Jersey State Prison with a forty-two-month period of parole ineligibility. (2T:133-1 to 18 and 126-12 to 19). Robinson maintained that his plea agreement for the unlawful possession charge was not contingent on his testifying in the trial at bar; he testified only to "save [his] life and save others" and credited his favorable plea agreement to the skills of his attorney. (Id.). Robinson was forthcoming about the fact that he had twelve previous criminal convictions, most of which related to CDS offenses. (2T:129-17 to 130-3).

With the aid of United States Marshals, Det. Adams located defendant in Maryland. (2T:42-15 to 43-12). Defendant was arrested on April 14, 2015 and transported back to Paterson. (Id.; Da5). Afterwards, PPD Detectives James Maldonado and Adams read defendant his Miranda rights, which he waived, and

proceeded to interview defendant regarding his involvement with Tucker's death. (Miranda v. Arizona, 384 U.S. 436 (1966); 2T:43-22 to 44-21; see generally Da67). Defendant admitted that he knew Tucker for ten years and was somewhat close with him, that he saw Tucker at Alto Rango shortly before his death, and that the two men left the store together, though defendant claimed that he parted ways with Tucker when the former turned onto Governor Street and the latter continued walking on East 16th Street. (Da67 at 4:08 to 8:43).

In addition to the surveillance footage from Alto Rango, PPD officers obtained surveillance footage from several locations on East 16th Street, 12th Avenue, and Lafayette Street, including a city camera monitored by the PPD. (3T: 99-4 to 101-22 and 102-6 to 22). Det. Petrazuollo testified that, although he would check to see if relevant city camera footage were available in any case, it was "common" for many of the city cameras to malfunction. (3T:129-21 to 25 and 135-7 to 25).

On December 21, 2015, a Passaic County Grand Jury returned Indictment 15-12-1007-I charging defendant with Murder, a crime of the first degree, contra N.J.S.A. 2C:11-3a(1) and 11-3a(2); Possession of a Firearms For an Unlawful Purpose, a second-degree crime, contra N.J.S.A. 2C:39-4a; Unlawful Possession of a Handgun, a second-degree crime, contra N.J.S.A. 2C: 39-5b; and being a Certain Person Not To Have Weapons, a second-degree crime, contra N.J.S.A. 2C:3-7b. (Da1 to 4).

On November 2, 2018, Defendant was convicted of Murder, Possession of a Firearm For an Unlawful Purpose, and Unlawful Possession of a Handgun. (Da5).

At the sentencing hearing, the Honorable Sohail Mohammed, P.J. Cr. ("Judge Mohammed") found aggravating factors 1, 3, 6, and 9. (Da7). Judge Mohammed did not find any mitigating factors. (Id.). Judge Mohammed thus found that the aggravating factors outweighed the mitigating factors. (Id.).

On the murder charge, Judge Mohammed imposed a sentence of life in prison, subject to the No Early Release Act, to be followed by five years of parole supervision. (Da5). Defendant was also ordered to pay restitution in the amount of $5,000 to Tuckers of Crime Compensation Office. (Da5). The charge of Possession of a Firearm For an Unlawful Purpose was merged into the Murder conviction. (Da5). On the third charge, Unlawful Possession of a Handgun, Defendant was sentenced to a concurrent term of 10 years with five years parole ineligibility. (Id.). The Certain Persons charge was dismissed. (Id.). Defendant was given jail credit in the amount of 1,298 days. (Da7).

On February 15, 2022, the Appellate Division reversed Defendant's convictions and remanded for a new trial. (See Da9 to 45). The reversal was based on the admission of certain statements made by the interrogating detective that were admitted through the interrogation video. Specifically, the Appellate Division found that the interrogating detective offered lay opinion testimony that infringed upon the

jury's duty to decide credibility and guilt by saying (1) he knew defendant was lying; (2) video recordings from the area contradicted defendant's story; (3) defendant had a gun on him just before the shooting; and (4) a jury would not believe his story and would want to know why he killed Tucker. (Da21, 29, and 30). The Appellate Division held that the disputed statements should have been redacted. (Da31). The Appellate Division also found that the interrogating detective gave improper lay opinions interpreting the evidence, including when he stated that defendant could be seen in the videos carrying a gun and that the image of the shooter matched the image of defendant. (Da32). The Appellate decision pointed out that the interrogating detective's statements were particularly troublesome because they interpreted what was depicted on the videos as undeniable proof that defendant had a gun and was guilty of fatally shooting Tucker. (Da33 to Da34). The interrogating detective also made highly inflammatory statements including that he was "100 percent sure" defendant killed Tucker, that he could tell defendant was lying, and that defendant was a "stone cold killer." (Da34). Further, the interrogating detective's statements suggested he had superior knowledge of what occurred. (Id.). That error was compounded by the prosecutor's summation, which asserted that the interrogating detective knew that defendant was lying based on the evidence he saw. (Id.). The trial court provided no guidance on the interrogating detective's lay opinions, particularly his claims that he knew defendant had a gun and shot Tucker. (Da35).

The Appellate Division reversed Defendant's convictions and remanded to the trial court for a new trial. (Da45).

The new trial began on September 15, 2022. (See 1T). Therein, the State successfully moved to admit the redacted interrogation video into evidence without objection. (2T:45-23 to 46-4).

Prior to playing the video, the trial prosecutor requested a conference outside of the presence of the jury. (2T:46-19 to 20). During a conference in chambers, the trial prosecutor advised that the interrogation video was the subject of the Appellate Division decision reversing the earlier jury verdict. (2T:47-14 to 18). The prosecutor advised that the version of the interrogation video that he was seeking to introduce "ha[d] been heavily redacted from the original played at last trial." The trial prosecutor continued:

> Redactions have gone through many states. I have shared them with (defense counsel). I will let him speak, Judge but we have had agreements about what would be redacted in accordance with the appellate division opinion. We've made different rounds of redactions. The State believes that the redactions satisfy the appellate division. I just want the record to reflect that this has – this has been shown to (defense counsel). His client actually viewed the video too. With additional suggestions for redactions, which have since been made…I believe all parties are in agreement what is about to be played. There's agreement that it satisfies the appellate division's concerns from last trial.
>
> (2T47:20-48:11).

Defense counsel advised that "the moment the appellate decision came down" he and the trial prosecutor "began the process of redactions." (2T:48-14 to 16). Defense counsel advised that "there were large swaths of it that were … immediately agreed upon" and that "(w)e then sort of continued the edits after that." (2T:48-16 to 19). Defense counsel advised that, just four days prior, he and the defendant had reviewed the video and made suggestions for additional redactions which were "largely agreed to by the State and myself, and Mr. Grant." (2T:48-19 to 49-3). Defense counsel advised that, after watching the interrogation video again, they "made some even further edits, and this is the final version." (2T:49-3 to 4). Defense counsel concluded by saying that, "(t)o my knowledge this video has no issues and is – is squarely in line with the appellate division opinion. (2T:49-7 to 10). The duration of the interrogation video was reduced to about 21 minutes. (2T:54-5 to 9).

During the playback of the interrogation video in front of the jury, a portion was played that both parties had agreed to redact. (2T:56-17 to 57-24). Defense counsel immediately asked to be heard. 2T56:17-18. At that point, the video was stopped and a conference was held in chambers outside the presence of the jury. (2T:56-18 to 21). Defense counsel advised the trial court that there was "one line" included in the video that the parties had agreed to edit out. (2T:57-24). Defense counsel explained that the line contained discussion about, "who got shot, who got stabbed, and you're an OG out there." (2T:56-17 to 57:7). The prosecutor was

surprised to see that portion was left in the video, and attributed its inclusion to an error in editing. (2T:57-8 to 17). The prosecutor then suggested that the jury be given their lunch break, and the trial judge suggested that he tell the jurors that they are working out a technical issue. (2T:58-19 to 59-3). Both attorneys agreed to this approach. (2T:59-4 to 5). Defense counsel suggested that, once the video was properly edited, they could restart it from the beginning and "blame it on the audio." (2T:59-6 to 21). Consistent with the agreement of the parties, the trial court advised the jurors that there was a technical issue and sent them to lunch. (2T:60-4 to 13).

Defense counsel and the trial prosecutor remained in the courtroom over lunch and worked to resolve the issue with the interrogation video. (2T:62-3 to 7). Both attorneys advised that the video had been fixed and could be played for the jurors. (2T:62-11 to 15). Defense counsel advised that the video now appeared "to be in conformity with – with our agreement." (2T:62-15 to 16).

The jurors returned to the courtroom and the State played the redacted interrogation video in its entirety. (2T:66-5 to 17). Defense counsel did not object to any portion of the video or its admission into evidence. (2T:66-5 to 17 and 45-23 to 46-4).

On September 27, 2022, the jury found Defendant guilty of Murder and Possession of a Weapon for an Unlawful Purpose. (Da46). The jury acquitted Defendant of the charge of Unlawful Possession of a Handgun. (Id.).

On January 4, 2022, Judge Mohammed conducted a sentencing hearing. Judge Mohammed found aggravating factors 1, 3, 6, and 9 and no mitigating factors. (Da57). As such, Judge Mohammed found that the aggravating factors outweighed the mitigating factors. (Id.).

As to the murder charge, Judge Mohammed imposed a sentence of life in prison, subject to the No Early Release Act, to be followed by five years of parole supervision. (Da55). Defendant was not ordered to pay restitution – Judge Mohammed found that he did not have the ability to pay. (Da58). The charge of Possession of a Firearm For an Unlawful Purpose was merged into the Murder conviction. (Da5). Defendant was given jail credit in the amount of 2,802 days. (Id.).

Judge Mohammed entered an amended Judgment of Conviction on January 25, 2023 modifying the jail and prior service credit. (Da60). Judge Mohammed granted Defendant 1,600 days of jail credit and 1,202 days of prior service credit. (Da61).

On January 18, 2023, Defendant filed a Notice of Appeal. (Da63 to 66).

LEGAL ARGUMENT

POINT I

REVERSAL IS NOT WARRANTED WHERE THE TRIAL COURT COMPLIED WITH THE APPELLATE DIVISION'S PRIOR REMAND ORDER.

Despite its extensive redactions, defendant argues that the trial court erred by admitting defendant's redacted interrogation video. As defense counsel did not object to the admission of the redacted interrogation video, and in fact referred to it as "squarely in line with" the prior remand order after reviewing it with the defendant himself, its admission is reviewed for plain error. (State v. Trinidad, 241 N.J. 425, 445 (2020)(stating that evidential errors not objected to at trial are reviewed for plain error); 2T:48-13 to 50-16; see also 8T:6-13 to 16). Pursuant to R. 2:10-2, plain error only occurs if the admitted evidence was "clearly capable of producing an unjust result." "The possibility of an unjust result must be sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached." (State v. Clark, 251 N.J. 266, 287 (2022)(quoting State v. Melvin, 65 N.J. 1, 18-19 (1974)). The alleged error must be evaluated "in light of the overall strength of the State's case." (State v. Galicia, 210 N.J. 364, 388 (2012)).

If not testifying as an expert, a witness' testimony consisting of opinions or inferences may be admitted if it "is rationally based on the witness'

perception" and "will assist in understanding the witness' testimony or in determining a fact in issue." (N.J.R.E. 701). An officer may provide fact testimony, meaning what he "perceived through one or more senses," but cannot convey information about what he "'believed, 'thought,' or 'suspected.'" (State v. McLean, 205 N.J. 438, 460 (2011)(citing State v. Nesbitt, 185 N.J. 504, 514-15 (2006); see also State v. Patton, 362 N.J. Super. 16, 31-36 (App. Div. 2003)(holding that an interrogating detective's statements must comply with the rules of evidence)).

The trial court, the prosecutor, and defense counsel properly complied with the Appellate Division's Order by redacting portions of the interrogation video that contained Det. Maldonado's beliefs, thoughts, or suspicions that defendant killed Tucker. (See generally Da22 to 35). The entirety of the approximately forty-five-minute interrogation video was played during defendant's first trial. (10T:28-2 to 8; see 10T:26-22 to 88-25). During the trial at bar, the redacted interrogation video was played and lasted for approximately twenty-one minutes. (2T:66-5 to 17). Defendant acknowledges trial counsels' extensive redactions as "significant," and rightfully so, given that they halved the video's duration. (Db12). Despite this significant reduction, and the State's ready acquiescence to defendant's requests for further redactions, defendant maintains that the redacted interrogation video "plainly did not comply with

this Court's remand order to redact all opinions on [defendant's] 'credibility and guilt.'" (Db15; see 2T:48-13 to 50-6). The Appellate Division did not hold that the interrogation should have been barred from trial – only that "Maldonado's disputed statements should have been redacted" because he had stated with complete certainty based on the surveillance footage that defendant killed Tucker. (Da25 to 29, 31, and 33 to 34). Nowhere in the redacted video does Maldonado state that he knew defendant killed Tucker, that he knew defendant was lying, that he had evidence demonstrating with certainty that defendant killed Tucker, or that a jury would convict him.

The excerpts of the redacted video disputed on appeal are not comparable to the "highly inflammatory" statements highlighted in the remand order. (Da34). The emphasized portions of the disputed statements demonstrate only that Det. Maldonado did not immediately accept a potential suspect's statements at face value. The first excerpt, including the comment "What if I told you, you walked past Governor [Street]," is clearly distinguishable from the comments cited on pages Da23 and Da24 of the remand order; the comments in the remand order attack defendant's innocence and credibility by accusing him with certainty based on the relevant surveillance footage, whereas the comment in the redacted interrogation video is less clear, and can be interpreted as challenging defendant's statement or clarifying whether he walked "up," or

"past" Governor Street. (Db13). The second excerpt similarly appears to reflect Maldonado's attempts to clarify where defendant traveled in relation to Maldonado's understanding of Paterson's layout. (Db13 to 14). Maldonado's question "[w]hat happened to Blaze?[3]" did not imply his opinion as to defendant's guilt or a reference to evidence. (Db14). In the third and fourth excerpts, Maldonado states that "taking a life [isn't] easy," asks whether defendant would "stick with [his] story," and states that "everybody's going to want to know." (Db14 to 15). These comments demonstrate Maldonado challenging and confirming the statements made by a potential suspect. Maldonado's offhand comment as to "evidence" does not indicate what evidence Maldonado was referring to, how it related to defendant, or how that purported evidence should have been interpreted. (Db14).

Assuming arguendo that the disputed statements from the interrogation video were improperly admitted, their admission was not "clearly capable of producing an unjust result" mandating reversal. (R. 2:10-2; see Trinidad, 241 N.J. at 445). As he did not mention the surveillance videos or other specific pieces of evidence, Maldonado's comments in the redacted video did not infringe upon the jury's responsibility to fairly interpret that evidence. (See Da34 to 35). Even if the jury initially agreed with Maldonado's alleged opining on defendant's guilt, they

[3] "Blaze" was Tucker's nickname. (2T:70-9 to 15 and 111-8 to 9).

repeatedly heard defendant's arguments regarding the credibility of State's star witness, the quality of the surveillance footage, the differences between the clothing worn by defendant and the shooter, and the purported incompetent investigation conducted by the PPD. (See 5T:72-4 to 81-11). As these arguments were based directly on the evidence presented, they diminished the possibility that the jury would lend Maldonado's improper comments undue credence. Further, after the prosecutor's summation, the trial court instructed the jury to independently assess the credibility of all witnesses and evidence presented. (5T:120-18 to 125-20).

As the trial court complied with the Appellate Division's remand order, defendant's convictions should be upheld.

POINT II

THE TRIAL PROSECUTOR DID NOT ENGAGE IN MISCONDUCT.

Defendant argues that the prosecutor engaged in misconduct during his opening argument and summation. The record demonstrates that the prosecutor did not engage in misconduct, but assuming arguendo that he did, same did not deprive defendant of a fair trial, particularly because defendant did not object to any of the statements disputed on appeal.

A conviction based on prosecutorial misconduct will not be reversed unless it was "so egregious that it deprived the defendant of a fair trial." (State

v. Smith, 167 N.J. 158, 181 (2001)). "Prosecutors are afforded considerable leeway in closing arguments as long as their comments are reasonably related to the scope of the evidence presented. Indeed, prosecutors in criminal cases are expected to make vigorous and forceful closing arguments to juries." (State v. Mahoney, 188 N.J. 359, 376 (2006)(quoting State v. Frost, 158 N.J. 76, 82 (1999); see also State v. Williams, 244 N.J. 592, 610 (2021)(stating that prosecutors must limit summation to the evidence presented "and the reasonable inferences to be drawn therefrom.")).

Defense counsel did not object to any of the prosecutor's allegedly improper statements. (See generally Db19 to 39). If a defendant fails to object to improper remarks at trial, those remarks will generally not be deemed prejudicial, as the lack of an objection implies that defense counsel did not believe the remarks were prejudicial at the time they were made, and the lack of an objection deprives the trial court of an opportunity to take curative action. (Frost, 158 N.J. at 83-84). When reviewing the State's summation, appellate courts must "not only weigh the impact of the prosecutor's remarks, but . . . also take into account defense counsel's opening salvo" to determine whether the prosecutor responded substantially to counsel's claims "in order to 'right the scale.'" (State v. Engel, 249 N.J. Super. 336, 379 (App. Div. 1991)(quoting United States v. Young, 470 U.S. 1, 12 (1985)).

A. The Prosecutor Did Not Testify as to Previously Unexplored Portions of the Surveillance Video.

Defendant argues that the trial prosecutor engaged in misconduct by effectively testifying as to certain aspects of the surveillance footage during summation in contravention of State v. Watson, 254 N.J. 558, 600 (2023). The holding in Watson is prospective and therefore not applicable to the trial at bar, which concluded on September 27, 2022. (See generally 7T).

Regardless, the prosecutor's comments on the surveillance footage during summation constituted his "encourage[ment] [to] the jury to draw reasonable inferences from the evidence" and did not demonstrate a "strateg[y]" to wait until summation to "spring . . . new and critical facts." (State v. R.B. 183 N.J. 308, 330 (2005); Db26). Further, defendant did not object to a single portion of the prosecutor's summation, indicating that he did not initially believe the disputed statements were prejudicial. (Frost, 158 N.J. at 83-84).

Assuming arguendo this Court determines the comments constituted prosecutorial misconduct, they were not "so egregious that [they] deprived the defendant of a fair trial." (Smith, 167 N.J. at 181). Before playing any surveillance footage for the jury, the prosecutor emphatically stated that "My perception, [defense counsel's] perception, respectfully [the trial court's] perception, the evidence doesn't matter. It's your perception that controls both individually and as a group." (5T:87-12 to 15). The prosecutor reminded the jurors of their position as

the sole arbiter of the facts eleven times thereafter. (5T:89-16 to 17, 96-5 to 8, 97-24 to 25, 99-13 to 15, 101-2 to 13, 103-1 to 2 and 20-21, and 104-10 to 11.). In light of these reminders, as well as defense counsel's arguments in summation concerning the differences between the shooter's and defendants clothes on the available surveillance footage, the impact of the prosecutor's allegedly improper statements was minimal and defendant's right to "have a jury fairly evaluate the merits of his defense" was not substantially prejudiced. (Smith, 167 N.J. at 181-82 (quoting State v. Timmendequas, 161 N.J. 515, 575 (1999)).

B. The Prosecutor did not Testify or Directly Contradict the Evidence During Summation.

Defendant argues that the prosecutor improperly testified as to the plea agreement process during summation and directly contradicted the evidence by asserting that Robinson did not leverage information about defendant for his own benefit. (Db28 to 29; see 5T:76-25 to 79-3 and 109-11 to 111-1).

First, the prosecutor did not engage in misconduct because his comments on the plea agreement process were in direct response to defense counsel's attack of Robinson's credibility. (See 5T:77-3 to 79-3). During summation, counsel referred to Robinson as "not an honest person," called his statement against defendant a "self-serving" method to "get . . . out of jail," and further characterized his statement as a "tall tale." (Id.). Defense counsel had previously implied on cross that because Robinson received the minimum sentence for his unlawful possession of a handgun

conviction despite having twelve prior criminal convictions, he only testified against defendant to secure a favorable plea deal for the unlawful possession charge. (See generally 2T:125-10 to 132-20; Db27). The State responded accordingly to "right to scale," and made a reasonable inference from the plea agreement in evidence by stating that it did not require Robinson to testify against defendant and that plea agreements are limited to the "four corners of the contract." (5T:109-16 to 110-4; see Engel, 249 N.J. Super. at 379). Further, this remark did not unduly prejudice defendant where, at the conclusion of summation, the trial court reminded jurors that any comments by counsel were "not controlling" and that "summations . . . are not evidence and must not be treated as evidence." (5T:121-1 to 14).

Assuming arguendo this Court finds that the prosecutor engaged in misconduct by commenting on plea agreements generally, those comments were not "so egregious [they] deprived the defendant of a fair trial." (Smith, 167 N.J. at 181). This matter is directly comparable to the matter of State v. Wilson, 128 N.J. 233, 241 (1992), wherein the prosecutor stated during summation that he would "never make a deal with" Dyson, one of the witnesses, to secure favorable testimony against the defendant because "Dyson 'was part of' the murder" at issue. As no witness had testified in support of that assertion, the New Jersey Supreme Court found that it constituted prosecutorial misconduct. (Id.). However, the Court held that it did not rise to the level of reversible error where

defendant did not object, and where Dyson testified that he was "trying to help [himself]" by testifying, which "obviously contested [Dyson's credibility] to an extent sufficient to minimize the impact of the prosecutor's infraction." (Id. at 243 (quoting State v. Marshall, 123 N.J. 1, 157 (1991)). Defense counsel in this matter consistently attacked Robinson's credibility to an extent that the impact of the prosecutor's comments was sufficiently minimized and reversal is therefore unnecessary. (See generally 2T:125-10 to 132-20 and 5T:77-3 to 79-3).

Second, the prosecutor did not engage in misconduct by presenting a reasonable inference from the record, namely that Robinson did not try to leverage information about defendant for his own benefit. (See Db29; 2T:103-23 to 105-8). Detective Adams did not testify that Robinson approached her "seeking to trade information implicating [defendant] in Tucker's killing in exchange for" aid from the police. (Id.). The testimony only states that Robinson and the Officers discussed bail and Detective Maldonado stated that he would "try to help [defendant] in any way" the officers could; the record is silent as to whether Robinson requested or received aid in exchange for his information. (2T:104-9 to 105-8). Robinson credited his favorable plea to the skills of his attorney. (2T:126-15 to 22). The prosecutor's statements did not unfairly bolster Robinson's credibility because they were not "clearly contrary" to the evidence adduced at trial. (Db30; See State v. Jenewicz, 193 N.J. 440 (2008)).

C. The Prosecutor Did Not Improperly Bolster the Credibility of its Key Witness During Summation.

Defendant argues that the prosecutor improperly bolstered Robinson's testimony by commenting on the truthfulness of his statements. (Db30 to 31; 5T;110-8 to 111-1). As argued above, these statements were made in response to defense counsel's sustained attacks on Robinson's credibility during trial and summation and were therefore harmless. (See 2T:125-10 to 132-20 and 5T:77-3 to 79-3; Engel, 249 N.J. Super. at 379; see also State v. Di Paglia, 64 N.J. 288, 297 (1974)(finding that a prosecutor's comments may be harmless if they are only a response to remarks by opposing counsel)). Any potential prejudice to defendant was minimized by the trial court's post-summation instruction that comments by counsel were "not controlling" and "summations . . . are not evidence and must not be treated as evidence." (5T:121-1 to 14). Further, the prosecutor properly encouraged the jury to "[j]udge [Robinson's] credibility" for themselves by considering his attitude and potential motivations for testifying. (5T:109-11 to 14).

D. The Prosecutor Did Not Improperly Vouch for the Thoroughness and Completeness of the Police Investigation.

Defendant contends that the prosecutor improperly vouched for the thoroughness and completion of the police investigation by asserting that the police did not possess preconceived notions as to the evidence, followed every lead

possible, and that the State's forensic expert "[knew] what she [was] talking about." (Db32 to 34).

The prosecutor's assertion that the police "followed every lead" and "didn't have any preconceived notions" constituted reasonable inferences drawn from the evidence presented at trial. (See Mahoney, 188 N.J. at 376). Defendant's opinion that police did not pursue every single possible lead, no matter how practicable, does not mean that the prosecutor's comment was improper where prosecutors are "entitled in summation to encourage the jury to draw reasonable inferences from the evidence." (State v. R.B. 183 N.J. 308, 330 (2005)). It is ultimately the jury's decision whether to draw the inferences urged by the prosecutor. (Id. (quoting State v. Carter, 91 N.J. 86, 125 (1982)). Similarly, the prosecutor urged the jury to consider the State's expert witness, forensic scientist Christine Bless, credible based on her extensive credentials that were elicited during her direct examination, including her seventeen years of employment with the New Jersey State Police Office of Forensic Sciences and her involvement with over 2,500 cases concerning DNA analysis. (See 4T:6-11 to 10-6).

Defendant argues that, because the evidence demonstrated that the police failed to investigate certain leads, the prosecutor improperly bolstered the credibility of the police and "filled in the missing pieces" of their investigation by indicating that they pursued every lead. (Db33 to 34). The cases defendant presents in support of this

argument are distinguishable from the case at bar. In State v. Frost, the New Jersey Supreme Court specifically condemned the prosecutor's suggestion that police had no reason to lie or would face punishment for lying as "wholly inappropriate." (158 N.J. 76, 85 (1999)). In State v. Feaster, the New Jersey Supreme Court found that the prosecutor impermissibly provided the "missing pieces" of the police investigation during summation by asserting facts not in evidence, namely that the defendant "took the shotgun and loaded it with a slug" as his "first act of purpose, preplanned, premeditated, intent to kill." (156 N.J. 1, 56 (1998)). Neither situation occurred here, where the prosecutor merely encouraged the jury to adopt the inferences he suggested based on the evidence. Further, the prosecutor made such a suggestion in response to defense counsel's "opening salvo" discrediting the police investigation. (See Engel, 249 N.J. Super at 379; 5T:72-20 to 75-14).

E. **The Prosecutor's Opening and Closing Statements, Including the Goodfellas Quote, Lacked Any Inflammatory or Highly Emotional Appeals.**

Defendant argues that the prosecutor engaged in misconduct by utilizing "inflammatory and highly emotional appeals" in his opening statement and summation, which served "only to prejudice the jury against [defendant]." (Db34 to 37; State v. W.L., 292 N.J. Super. 100, 110-11 (App. Div. 1996)(internal citations omitted); see also State v. Blakney, 189 N.J. 88, 96 (2006)). A prosecutor may not make excessive remarks "plainly designed to impassion the jury," particularly in

"close and sensitive cases." (W.L., 292 N.J. Super. at 111). Similarly, a prosecutor cannot make "highly emotional and personalized remarks" during summation, and by expressing moral outrage at the harm inflicted upon a victim, a prosecutor improperly "inject[s] into the case his own personal views" rather than presenting the objective evidence necessary for a jury to discern a defendant's culpability. (Blakney, 189 N.J. at 95).

The remarks highlighted by defendant as "appeal[ing] to emotion and sympathy" were reasonably related to the scope of the evidence presented at trial and were well within the "leeway" afforded to prosecutors to make vigorous and forceful closing arguments. (Mahoney, 188 N.J. at 376). Comments regarding the "cold" or "frigid" streets of Paterson were inferred from Detective Petrazzuolo's description of the crime scene being covered in snow. (3T:9-13 to 10-3). Comments comparing Tucker's body to a "garbage bag" were lifted directly from Officer Kelly's initial impression of Tucker's body lying in the middle of the road (4T:82-14 to 18). Comments regarding defendant's continued firing at Tucker's body were directly taken from Dr. Falzon's testimony regarding Tucker's autopsy. (See generally 4T:49-21 to 55-22). Finally, comments relating to the relationship between defendant and Tucker were inferred from defendant's own admission that he knew Tucker for ten years and was somewhat close with him. (See Da67 at 4:08 to 4:33). The prosecutor's alleged "inflammatory" comments are distinguishable from the

actual emotional appeals conducted by the prosecutor in W.L., who during summation referenced the defendant's "lack of humanity" and "heinous . . . almost unworldly" behavior" which the prosecutor described as "so unlike what we like to think of as being real and human." (W.L., 292 N.J. Super. at 107 to 108). Similarly, the prosecutor's comments here are distinguishable from those in Blakney, where that prosecutor repeatedly expressed moral outrage towards the defendant during summation with comments such as "Why the hell would you do that to a child?" and "You [the jury] don't have the luxury of looking at these photographs and feeling the sorrow and anger and rage that I feel when I look at them." (Blakney, 189 N.J. at 95).

Defendant also argues that the prosecutor's use of a quote from Goodfellas urged the jury to "convict based on emotion rather than evidence." (Db37 to 38). Defendant inaccurately characterizes the Goodfellas quote as one the prosecutor used to "conjure the societal hatred for callous mobsters and direct that at [defendant]." (Db38). Regardless of the fact that audiences will often root for the villainous protagonists depicted in mob movies and television shows, the prosecutor did not disclose that the quote was from Goodfellas and the quote does not reveal its source or even allude to the mob. (5T:112-2 to 14; see Db36 n.5). It is entirely possible that the jury, particularly younger jurors, did not attribute the quote to a mob movie released in 1990. (Id.). The use of the Goodfellas quote is entirely

distinguishable from the egregious misconduct present in State v. Williams, 244 N.J. 592, 615 (2021), where even a juror unfamiliar with The Shining could understand that the State's summation presentation of a picture depicting that movie's protagonist violently wielding an axe was intended to "draw a parallel between [the] defendant's conduct and that of a horror-movie villain." Instead, the Goodfellas quote was used to emphasize the friendship between defendant and Tucker, which was presented to the jury via defendant's interrogation video. (See Da67 at 4:08 to 4:33). The use of the Goodfellas quote was therefore reasonably related to scope of the evidence presented and fell within the "considerable leeway" that prosecutors are afforded to make "vigorous and forceful closing arguments." (Mahoney, 188 N.J. at 376).

Defendant finally argues that the trial court "add[ed] to the compounding prejudice" against defendant by "commending counsel for their closing remarks" in the presence of the jury after the prosecutor concluded his summation. (Db38). However, the court complimented the professionalism of both attorneys throughout the entirety of the trial, not the merit of their respective summations:

> Members of the jury, the evidence in this case has been presented and the attorneys have completed their closing arguments . . . . We now arrive at a time when you, as jurors, have to perform your final function in this case. . . . . I would like to commend both counsel for the professional manner in which they have presented their respective cases and for their courtesy to the court and jury during the course of this trial. Usually it's my standard practice, you don't see this, but I b[r]ing both counsels . . . after closings . . . into

> Chambers and I shake hands with them. It's the only time I shake hands with my counsels . . . because, you know, it's a responsibility that they both have and it's a function that attorneys perform in our courts.
>
> (5T:114-24 to 115-17 (emphasis added)).

It is unlikely that the jury interpreted the trial court's appreciation of the parties' courtesy as an endorsement of the prosecutor's summation and any alleged misconduct therein. Had this been the case, defendant cannot show he was unduly prejudiced when the court would have therefore endorsed his closing as well, which strenuously attacked the credibility State's witnesses, the police investigation, and the surveillance footage depicting the shooter. (See 5T:72-4 to 81-11). Ultimately, however, the trial court dispelled any notion that the jurors should rely solely on prosecutor's arguments in summation by stating that comments by counsel were "not controlling," that "summations . . . are not evidence and must not be treated as evidence," and that "[a]lthough the attorneys may point out what they think important in this case, [the jury] must rely solely upon [their] understanding and recollection of the evidence that was admitted during the trial." (5T:121-1 to 11).

Accordingly, defendant has not demonstrated that the trial prosecutor engaged in misconduct and defendant's convictions should therefore be affirmed.

POINT III

THE TRIAL COURT DID NOT DEPRIVE DEFENDANT OF HIS RIGHT TO BE PRESENT AND ALL EXHIBITS WERE PROPERLY PRESENTED TO THE JURY.

Defendant argues his convictions must be reversed due to the trial court's improper ex parte communications with the jury, its deprivation of defendant's right to be present at the "critical stage" prior to deliberations, and its alleged failure to submit defense exhibit D-11 to the jury prior to deliberations. (Db39).

First, the ex parte communications between the trial court and the jury prior to deliberations did not prejudice defendant where the communications primarily concerned the practical aspects of the jury's deliberation process. Ex parte communications between a trial judge and jury are improper, and a trial court should not attempt to communicate with the jury outside the presence of counsel. (State v. Morgan, 217 N.J. 1, 11 (2013)(citing State v. Basit, 378 N.J. Super. 125, 131 (App. Div. 2005)). However, the existence of an ex parte communication does not automatically require reversal of a defendant's conviction. (Morgan, 217 N.J. at 11 (citing State v. Brown, 275 N.J. Super. 329, 332 (App. Div. 1994)). An adequate record of the ex parte conduct may dispel a presumption of prejudice against the defendant if the record affirmatively discloses that the communication had "no tendency to influence the verdict." (Id. (quoting State v. Auld, 2 N.J. 426, 432 (1949)). In such cases, the outcome of the trial should be upheld. (Id.). In State v.

Morgan, the New Jersey Supreme Court affirmed the defendant's convictions where the ex parte communication at issue "related only to ministerial scheduling matters." (Id. at 15).

The record in this matter affirmatively indicates that the trial court's ex parte communication with the jury did not prejudice defendant. (See generally 6T:3-2 to 8-20). As in Morgan, the trial court's communications in this matter concerned the only ministerial matters, specifically practical aspects of the jury's deliberations, including the presence of the sheriff's officer, the presence of the verdict and question sheets, the doorbell used to indicate that the jurors required attention, the use of easels, and the non-deliberating jurors' freedom to return to jury assembly. (Morgan, supra.). Further, nothing in the trial court's communications before, during, or after the communication indicates that the judge's "tone and tenor . . . generated unintended and misleading impressions of [his] subjective personal views." (Db43; see Basit, 378 N.J. Super. at 131 (internal citations omitted)). As the record affirmatively discloses that the communication lacked the tendency to influence the jury's verdict, defendant's conviction should not be disturbed. (Morgan, 217 N.J. at 12).

Second, the trial court's practical instructions to the jury did not constitute a "critical stage" of trial for purposes of defendant's right to be present. A criminal defendant is guaranteed the right to be present at his trial by both the Sixth

Amendment of the United States Constitution and Article I of the New Jersey Constitution. (U.S. Const. amend. VI; N.J. Const. art. I, ¶ 10; see State v. Dangcil, 248 N.J. 114, 135 (2021)). However, a defendant's right to be present is not absolute, and his right to counsel is limited to "critical stages of the prosecution . . . in which the substantial rights of the accused may be affected." (Dangcil, 248 N.J. at 135 (quoting State v. A.O., 198 N.J. 69, 82 (2009)). Here, the trial court's communication regarding the practical aspects of the jury's deliberation was not a "critical stage" of the trial, unlike the reading of the final jury instructions, which defendant was present for and did not object to. (See 5T:114-18 to 166-3). Defense counsel also did not object when the trial court informed both attorneys that it had conducted a jury roll call and read the exhibit list into the record. (6T:9-11 to 13). Further, defendant cannot demonstrate that he was unduly prejudiced by his absence at this stage because all defense exhibits were distributed to the jury prior to deliberations.

Third, defendant was not prejudiced by the alleged missing exhibit because the record reflects that the jury received exhibit D-11[4] during its deliberations. (See 7T:12-11 to 16-9; Db42). After the jury delivered its verdict and was dismissed, the trial court went on the record to confirm that it had returned to counsel the exhibits previously submitted to the jurors. (7T:12-21 to 13-6). Defense counsel responded

[4] D-11 was the court document containing Robinson's guilty plea, conviction, and sentence for the crime of unlawful possession of a handgun. (2T:120-6 to 121-22).

that he "[had] Defense Exhibit 12 [and] 11" and possessed all exhibits that were admitted into evidence. (7T:13-10 to 11 and 16-6 to 9). The record further reflects that, during their deliberations, jurors "mixed together the Defense and State exhibits," including D-11. (7T:15-4 to 16-5). The trial court's inadvertent failure to list D-11 as a Defense Exhibit prior to deliberations therefore did not actually prejudice defendant at all. (See 6T:5-22 to 24).

Assuming arguendo that exhibit D-11 was not submitted to the jury prior to deliberations, defendant cannot demonstrate that the exclusion of D-11 constituted reversible error where the jury possessed D-10[5] during deliberations, were shown both D-10 and D-11 during the trial, and heard defense counsel's arguments that Robinson possessed a motivation to fabricate his statement implicating defendant. (6T:5-6 to 24; 2T:125-10 to 126-19 and 130-9 to 133-25). Defense counsel also displayed D-11 on a projector so that Robinson and the jurors could read it. (2T:122-16 to 22). D-10 reflected Robinson's maximum sentence exposure of ten years as well as the State's recommendation of five years with forty-two months' parole ineligibility. (2T:125-5 to 126-18). The jury would have been able to consider the "favorable outcome Robinson received . . . after he informed against Grant" without possessing D-11 during deliberations. (Db43).

[5] D-10 was the plea form dated November 5, 2015 memorializing Robinson's guilty plea to the final charge of unlawful possession of a handgun. (2T:124-6 to 126-25).

The cases offered in support of defendant's argument are distinguishable from the case at bar. (See Db41). Unlike the trial court in Palestroni v. Jacobs, which supplied the jury with an item not admitted into evidence and without notice to the defense, the trial court here allegedly failed to submit an exhibit that had been previously presented to the jury. (10 N.J. Super. 266, 271-76 (App. Div. 1950)). Further, the whole of the trial court's verdict was not affected where the jury possessed other exhibits which purportedly demonstrated defendant's theory that Robinson received an unusually favorable sentence in light of his twelve prior convictions because he testified against defendant. (See Id. at 269; 6T:5-6 to 24; 2T:125-10 to 126-19 and 130-9 to 133-25). The trial court here did not allow the jury to consider a previously unknown exhibit during deliberations, unlike the court in State v. Anderson, 251 N.J. Super. 327, 329-34 (App. Div. 1991)).

As defendant cannot demonstrate that he was denied a fair trial because of the trial court's communication, the deprivation of his right to be present, or an alleged failure of the court to submit D-11 to the jury, defendant's convictions should be affirmed.

POINT IV

AS NO ERROR EXISTS, THERE CAN BE NO ARGUMENT THAT CUMULATIVE ERRORS REQUIRE REVERSAL

Reversal is not warranted under the cumulative error doctrine because defendant has not demonstrated that any errors occurred at the trial level. (See Pellicer v. Saint Barnabas Hosp., 200 N.J. 22, 53 (2009)). Accordingly, defendant received a fair trial and his appeal should be denied.

POINT V

DEFENDANT RECEVIED A LEGAL SENTENCE BECAUSE THE TRIAL COURT'S FINDING OF AGGRAVATING FACTORS ONE, THREE, AND SIX, AS WELL AS ITS REFUSAL TO FIND MITIGATING FACTOR ELEVEN, WAS BASED ON CREDIBLE EVIDENCE IN THE RECORD.

Defendant argues he received an excessive sentence due to the court's improper finding of aggravating factors one and six as well as the court's refusal to find mitigating factor eleven. (See Db44 to 50). A sentence is reviewed for abuse of discretion. (State v. Trinidad, 241 N.J. 425, 453 (2020)). Appellate courts afford deference to the trial court's sentence and do not substitute their judgment for that of the sentencing court's. (See State v. Fuentes, 217 N.J. 57, 70 (2014); State v. Case, 220 N.J. 49, 65 (2014)). The trial court's sentence will be affirmed unless: (1) the trial court violated the sentencing guidelines; (2) the trial court did not base its findings of aggravating and mitigating factors on competent and credible evidence

in the record, or; (3) "the application of the guidelines to the facts of [the] case makes the sentence clearly unreasonable so as to shock the judicial conscience." (State v. Roth, 95 N.J. 334, 364-65 (1984)).

First, the trial court's finding of aggravating factor one did not constitute double-counting. Aggravating factor one applies to offenses "committed in an especially heinous, cruel, or depraved manner." (N.J.S.A. 2C:44-1(a)(1)). A trial court double-counts when it considers the "established elements of a crime for which a defendant is being sentenced . . . as aggravating circumstances in determining that sentence." (State v. Kromphold, 162 N.J. 345, 353 (2000)). However, a court may apply aggravating factor one without double-counting by "referenc[ing] . . . the extraordinary brutality involved in an offense." (Fuentes, 217 N.J. at 74-75; see State v. Morente-Dubon, 474 N.J. Super. 197, 210 (App. Div. 2022)).

Defendant argues that aggravating factor one is not applicable because the cited circumstances of Tucker's death constituted the established elements of murder and were not "particularly unusual." (Db46; see N.J.S.A. 2C:11-3(a)(1)-(2)). Defendant's subjective belief that the circumstances of Tucker's death were not "unusual" does not diminish the excessive pain and fear that Tucker experienced when he was shot in the face by an individual he had been conversing with only moments prior. Defendant discharged his firearm within "a few inches" of Tucker's face, rupturing Tucker's eye and exiting through the left side of his neck. (4T:49-21

to 50-5 and 50-25 to 51-7). This injury would have caused a "tremendous amount of bleeding." (4T:51-24 to 52-1). Unsatisfied, defendant discharged the firearm again, sending a bullet into Tucker's chest below his left clavicle. (4T:52-5 to 23). Defendant thereafter fired two final shots into Tucker's back, one of which passed through Tucker's aorta and caused "a significant [amount] of bleeding in the [victim's] . . . chest cavities," which the State's expert opined would lead to an "exsanguination[,] where a person would bleed out." (4T:53-2 to 54-8).

Defendant's choice to shoot Tucker in his face at an extremely close range was especially cruel and instilled fear and confusion in Tucker before his sudden death. Defendant caused Tucker to experience more pain by firing three additional bullets into his body, despite the fact that the initial gunshot wound caused a "tremendous amount of bleeding." (4T:51-24 to 52-1). As the State's expert opined that the cause of death was "multiple gunshot wounds," not any particular gunshot wound, it is reasonable to infer that Tucker felt the pain of the additional gunshot wounds before succumbing to his injuries. (4T:55-15 to 22).

Defendant further argues that the trial court "punished" him for "not providing an explanation" for killing Tucker. (Db46 to 47). However, the trial court only emphasized the senseless brutality of Tucker's death, as he appeared to be cordially interacting with defendant only minutes before he was suddenly shot and left to die

in the middle of a snow-covered street. (9T:39-5 to 40-9; see 3T:9-13 to 10-3). The trial court did not comment on defendant's refusal to provide a motive.

Second, defendant argues the trial court improperly rejected his request to find mitigating factor eleven at sentencing. (Db47; N.J.S.A. 2C:44-1(b)(11)). Defendant asserts that the letters from his cousin and fiancé establish his role as a provider and mentor to his two dependent children, that his presentence report ("PSR") indicates that he financially supports his children, that a letter from his nineteen-year-old son demonstrates their close relationship, and that his completion of multiple institutional courses demonstrates his commitment to his family. (Db47 to 48).

Mitigating factor eleven applies to matters in which a defendant's imprisonment would entail "excessive hardship to the defendant or [his] dependents." (N.J.S.A. 2C:44-1(b)(11). A trial court cannot apply mitigating factor eleven solely because a defendant has children. (State v. Dalziel, 182 N.J. 494, 505 (2005)). Instead, a defendant must demonstrate that his children are dependents who will suffer "excessive hardship" due to adverse circumstances "different in nature than the suffering unfortunately inflicted upon all young children whose parents are incarcerated." (State v. Locane, 454 N.J. Super. 98, 129 (App. Div. 2018)).

The trial court correctly determined that defendant did not establish his imprisonment would cause excessive hardship "different in nature" from that implicitly inflicted on the young children of incarcerated parents. (9T:50-17 to 52-

7). Defendant did not demonstrate that he had two minor dependents at the time of sentencing aside from his own assertion in his PSR. (See PSR at pp. 13 and 19). Though defendant's cousin refers to defendant's children as "minor[s]," the mother of defendant's nineteen-year-old son indicated that defendant was the father of "two older teens." (Compare Da47 with 9T:15-7 to 8; see PSR at p. 19 (indicating that defendant's son was nineteen years old as of 2022)). Defendant refused to divulge any information about his other child. (PSR at p. 19). Further, the PSR indicates that there was no "pertinent information" about this child in the New Jersey Automated Case Tracking System or the NJKiDS child support system. (Id.). The trial court therefore did not err in finding that defendant had no minor dependents. (9T:52-1 to 7). Assuming arguendo that defendant did have minor dependents, the trial court still correctly concluded that he did not financially or emotionally support them to the extent that his absence would cause them excessive hardship. (9T:52-2 to 7).

Defendant indicated that he was not the primary caregiver of his dependents. (PSR at p. 13). Defendant disclosed that he was last employed as a sanitation worker from 2006 to 2007 and was "incarcerated most of the time after 2007." (PSR at pp. 17 to 18). The trial court accepted defendant's proffer that he wished to maintain a relationship with his children and that he financially supported them when he was not incarcerated, but correctly found that defendant was "in and out of the system" so frequently as to deny his son a healthy relationship with his father. (9T:51-5 to

22). Defendant's regular incarceration and lack of significant income demonstrate that his children would not suffer excessive hardship due to his imprisonment.

Defendant's argument that the trial court's application of mitigating factor eleven was impossibly "rigid" is contrary to established case law requiring a finding of unique excessive hardship. (Db49; Locane, 454 N.J. Super. at 129). Though a parent's incarceration undoubtedly impacts his child's development, applying mitigating factor eleven based solely on this common hardship would permit a defendant to unfairly benefit from the mere existence of his children. (See Dalziel, 182 N.J. at 505).

Third, defendant asserts that the trial court erred by finding aggravating factors three and six because his criminal history was "mostly remote, largely drug-related third-degree offenses, and [defendant] had no violent homicides or assaults in his past." (Db49). Aggravating factor three is applicable where the trial court determines there is a "risk that the defendant will commit another offense." (N.J.S.A. 2C:44-1(a)(3)). A defendant's repeated history of criminality can support the trial court's conclusion that aggravating factor three is applicable. (State v. Rivera, 249 N.J. 285, 300 (2021); see also Dalziel, 182 N.J. at 502 (finding that a defendant's "uninterrupted history of criminality" justified the finding of aggravating factor three)). Aggravating factor six concerns the "extent of the defendant's prior criminal record and the seriousness of the offenses of which [he] has been convicted."

(N.J.S.A. 2C:44-1(a)(6)). Provided that they are not given the weight of a criminal conviction, a trial court may consider defendant's history of arrests and juvenile offenses so that it may possess "the fullest information possible concerning the defendant's life and characteristics." (State v. Marzolf, 79 N.J. 167, 176-77 (1979)(quoting Williams v. New York, 337 U.S. 241, 247 (1949)).

The court properly found that aggravating factors three and six applied based on defendant's extensive history of offenses, namely: his seven felony convictions from ages eighteen to twenty-nine, one of which was for the unlawful possession of a handgun and carried a three-year term without parole; six disorderly persons convictions; three State Prison terms; a violation of probation leading to termination in 2018; a record of an escape, and; a record of a parole violation. (See 9T:40-17 to 44-20). The sheer extent of defendant's criminal convictions and failure to abide by the rules of probation or imprisonment show that the trial court did not err by finding aggravating factor three. Though defendant argues that his criminal history consisted of "mostly remote, largely drug-related third-degree offenses," his repeated failures to lead a law-abiding life demonstrate that he poses a risk of committing another offense if released. (See Db49). Aggravating factor six is also applicable based on defendant's history of felony and disorderly persons convictions, as well as his failure to abide by the terms of his probation or sentence.

For the foregoing reasons, the trial court's findings of aggravating factors one, three, and six and no mitigating factors were supported by credible evidence in the record, and the trial court's sentence of life for count one, first-degree murder, was not "so unreasonable as to shock the judicial conscience" and should be upheld. (Roth, 95 N.J. at 364-65; see State v. Fuentes, 217 N.J. 57, 72 (2014)(internal citations omitted)(finding that generally,when aggravating factors preponderate over mitigating factors, sentences will tend toward the higher end of the sentencing range)).

POINT VI

DEFENDANT RECEIVED A FAIR TRIAL AND FAILS TO DEMONSTRATE THE VIOLATION OF HIS RIGHT TO DUE PROCESS. (raised in Defendant's pro se submission)

In his pro se brief, defendant argues his due process rights were infringed because: (1) the Paterson Police department conducted an incomplete investigation due in part to Officer Klein's obstruction; (2) the evidence presented in the case, namely the surveillance footage depicting defendant's clothing on the night of the murder, exonerated defendant; (3) the State failed to produce additional evidence exonerating defendant, such as DNA evidence or eyewitnesses; (4) Robinson had a "proclivity to lie" and implicated defendant in exchange for PPD officers' assistance with his bail, and; (5) the State prevented defendant from calling any witnesses or putting witnesses on the stand who

would testify that Paterson Police Officers falsified their reports and conducted an incomplete investigation. (Pb10 to 11).

Defendant effectively argues that the jury erred by returning a guilty verdict based on the evidence presented. Jurors are judges of fact who "determine the credibility of witnesses [and] the weight to attach to the testimony of each witness." (State v. Mahoney, 444 N.J. Super. 253, 259 (2016)). "It is the jury's sworn duty to arrive at a just conclusion after considering all the evidence presented during the course of the trial," which must be accomplished by "weighing the evidence calmly, without passion, prejudice, or sympathy." (Id. at 259-60). A jury's verdict should not be disturbed if, based on the entirety of the evidence and after giving the State the benefit of all its favorable testimony and all favorable inferences drawn thereof, a reasonable jury could find guilt beyond a reasonable doubt. (State v. Williams, 218 N.J. 576, 594)). A verdict should not be set aside unless it is "clearly and convincingly shown there was a miscarriage of justice." (State v. Johnson, 203 N.J. Super. 127, 134 (App. Div. 1985)).

Defendant offers no evidence to support his assertion that the evidence presented at trial so clearly established his innocence as to render the jury's verdict a miscarriage of justice. Defense counsel challenged Robinson's credibility on cross and during summation. (See generally 2T:125-10 to 132-20

and 5T:77-3 to 79-3). Defense counsel additionally disputed that the surveillance footage depicted defendant, noted the lack of DNA evidence connecting defendant to the crime, and noted that the State did not produce any individuals who were present when Robinson saw defendant brandish a Glock pistol at Tucker's shrine. (See 5T:70-17 to 71-8, 73-21 to 74-17, and 77-3 to 12). However, in denying defendant's motion for a new trial, the trial court properly concluded that reasonable jurors could review the evidence, such as footage depicting defendant and Tucker leaving the bar together and later depicting an individual close to Tucker shooting him and fleeing, and reasonably find defendant guilty. (8T:23-9 to 24-4). Defendant fails to demonstrate that the jury was prejudiced or mistaken in their assessment of Robinson's credibility. (See State v. Haines, 20 N.J. 438, 446-47 (1956)(finding that a reviewing court may not disturb a jury's verdict grounded on its assessment of witness credibility absent "clear evidence on the face of the record that the jury was mistaken or prejudiced.")).

Without evidentiary support, defendant argues that the State prevented him from calling witnesses and intentionally refused to call witnesses who could potentially exonerate defendant. (Pb10 to 11; see State v. Garcia, 195 N.J. 192, 202 (2008)(internal citations omitted)(finding a criminal defendant's right to present witnesses is a fundamental element of due process of law); see also U.S.

Const. amend. VI; N.J. Const. art. I, ¶ 10). Defendant does not disclose who he intended to call and how the State interfered with his ability to call those individuals. Though criminal defendants have the right to the "government's assistance in compelling the attendance of favorable witnesses at trial," defendant does not offer any legal support for his assertion that the State was required to independently call witnesses for his benefit. (State v. Garcia, 195 N.J. 192, 202 (2008)(quoting Taylor v. Illinois, 484 U.S. 400, 408 (1988)).

Defendant similarly argues that the State possessed exculpatory evidence or otherwise refused to perform tests which would exonerate defendant. (Pb14 to 15; see Brady v. Maryland, 373 U.S. 83, 87 (1963)(holding that a prosecutor's withholding of material evidence favorable to a defendant violates due process). A criminal defendant is entitled to relief due to the State's failure to disclose or preserve exculpatory evidence if he demonstrates that: "(1) the prosecutor failed to disclose the evidence; (2) the evidence was of a favorable character to the defendant, and (3) the evidence was material." (State v. Parsons, 341 N.J. Super. 448, 454-55 (App. Div. 2001)). Evidence is material if there exists a reasonable probability that, had it been disclosed, the "result of the proceeding would have been different." (State v. Mustaro, 411 N.J. Super. 91, 101 (App. Div. 2009)(quoting United States v. Bagley, 473 U.S. 667, 682 (1985)). If the evidence is no longer available, a defendant may still obtain relief by

demonstrating that it had "exculpatory value that was apparent before it was destroyed"; if a defendant can only establish potential exculpatory value, he must demonstrate that the evidence was destroyed in bad faith. (Id. at 102-103).

Defendant fails to establish that the State did not disclose exculpatory evidence or otherwise destroyed evidence in bad faith. Though defendant argues that the State should have conducted more thorough tests of certain portions of the crime scene, such as potential footprints or hairs, he fails to establish that the evidence purportedly available at the crime scene was apparently exculpatory or that the State acted in bad faith to destroy it. (See Pb11 to 12). The sole assertion that potentially exculpatory evidence may have existed is insufficient to establish that defendant's right to due process was violated.

Finally, defendant cannot establish that the Paterson Police acted in bad faith to destroy or otherwise obstruct the investigation. Defendant's reliance on Arizona v. Youngblood is misplaced. (Arizona v. Youngblood, 488 U.S. 51 (1988); Pb15). In Youngblood, the United States Supreme Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (Id. at 58). Defendant provides only self-serving arguments that Paterson Police Officers did not fully investigate the scene of the underlying crime and that Officer Klein intentionally obstructed the investigation. (see

Pb11 to 14; contra 3T:10-21 to 22-24 and 4T:17-2 to 22-18). Here, as in Youngblood, the State disclosed all evidence to defendant and defense counsel, including the inconclusive DNA test and the lack of tests conducted on the shell casings. (Youngblood, 488 U.S. at 58 (1988); 4T:84-3 to 86-1). The record contains no evidence supporting defendant's blanket assertion of bad faith on the part of Paterson Police Officers; further, defense counsel raised the issue of the State's alleged poor investigation to the jury, who ultimately returned a guilty verdict after considering defendant's argument in light of the evidence presented. (5T:75-1 to 14; See Da46).

For the foregoing reasons, defendant cannot demonstrate that he did not receive a fair trial and his convictions should be affirmed.

POINT VII

REVERSAL IS NOT WARRANTED WHERE DEFENDANT HAS NOT ESTABLISHED THAT THE JURY'S VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE. (raised in Defendant's pro se submission)

Defendant argues that the jury's verdict was clearly against the weight of the evidence and should therefore be set aside. (See Pb18 to 19). For reasons argued above, the jury's conclusion was not "clearly and convincingly" deficient to constitute a miscarriage of justice, as noted by the trial court in its decision denying defendant's motion for a new trial. (State v. Johnson, 203 N.J. Super. 127, 134

(App. Div. 1985); see 8T:23-9 to 24-4). Defendant also argues that the jury's verdict should be set aside due to the purported untruthfulness of Robinson's testimony and the allegedly incompetent police investigation. (Pb16 to 19). These bare arguments do not establish that the jury's verdict was a miscarriage of justice, particularly where defense counsel attacked Robinson's credibility, emphasized the lack of witnesses or implicating DNA evidence, and noted the lack of an established motivation in the presence of the jury. (See Johnson, 203 N.J. Super. at 134).

Defendant's argument that the State unlawfully withheld exculpatory information from the grand jury is inaccurate and irrelevant to the issue at bar. (See Pb18 to 19). The fact that Officer Klein could not definitively identify a fleeing suspect, as well as the presence of other individuals near the scene, did not constitute evidence so "credible, material, and . . . clearly exculpatory as to induce a rational grand juror to conclude that the State [did] not [make] out a prima facie case against the accused." (State v. Hogan, 144 N.J. 216, 237 (1996)). A grand jury's role is to "investigate potential defendants and decide whether a proceeding should be commenced," and a prosecutor's failure to present exculpatory evidence to the grand jury rarely constitutes grounds for challenging an indictment. (Id. at 239). The defendant's unsupported assertion that his indictment was based on racial prejudice is insufficient to establish that the State erred in its presentation to the grand jury.

POINT VIII

THE JURY'S GUILTY VERDICT DID NOT CONSTITUTE A MISCARRIAGE OF JUSTICE AND SHOULD THEREFORE BE UPHELD. (raised in Defendant's pro se submission)

Defendant argues his motion for acquittal should have been granted or, in the alternative, his motion for a new trial should have been granted. (See Pb20 to 21).

In reviewing a motion for acquittal, a trial court must determine whether, after giving the State the benefit of all favorable testimony and favorable inferences reasonably drawn therefrom, a reasonable jury could have found guilt of the charge at issue beyond a reasonable doubt. (State v. Reyes, 50 N.J. 454, 458-59 (1967); see also R. 3:18-1).

Defendant argues he was unjustifiably "target[ed]" by the Paterson Police, who fabricated their suspicion in tandem with Robinson. (Pb21). Defendant provides no evidentiary support for this claim. Further, Det. Audrey Adams testified that they sought out defendant after questioning all individuals observed on the Alto Rango Bar's surveillance cameras. (2T:41-4 to 42-14). Defendant reiterates his arguments as to Robinson's credibility in support of his assertion that there "were too many factual inconsistencies to support the verdict." (Pb21). For reasons argued above, the trial court considered all the evidence and properly concluded that a reasonable jury could have found guilt beyond a reasonable doubt regarding both the motion for acquittal and the motion for a new trial. (4T:95-6 to 97-20; 8T:23-9 to 24-10).

POINT IX

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REFRAINING FROM ISSUING AN ADVERSE INFERENCE CHARGE AGAINST THE STATE. (raised in Defendant's pro se submission)

Defendant argues that the trial court erred by failing to issue an adverse inference charge against the State for purportedly failing to disclose "enhanced" surveillance video of the shooting as well as other allegedly exonerating evidence. (Pb23). Defendant offers no legal or factual support for this claim.

Because defendant did not request an adverse inference charge, the trial court's decision to refrain from issuing same is reviewed for plain error and must be disregarded unless "it is of such a nature as to have been clearly capable of producing an unjust result." (R. 2:10-2). A defendant is not entitled to an adverse inference instruction when he fails to request one prior to the issuance of final jury instructions and does not raise the issue before filing a motion for a new trial. (State v. W.B., 205 N.J. 588, 609 (2011)). Though a trial court may consider an adverse inference charge to "balance the scales of justice" when the State withholds exculpatory evidence, defendant has offered no evidence that the State was in possession of such evidence aside from an "impression" from unnamed "Legal Officials." (Pb24; State v. Dabas, 215 N.J. 114, 140 (2013)). Further, defense counsel attacked Robinson's credibility and implied that the

lack of additional evidence tying defendant to the crime scene indicated his innocence. (5T:72-18 to 75-14). A lack of an adverse inference charge under these circumstances was not "clearly capable of producing an unjust result" warranting the reversal of defendant's conviction. (R. 2:10-2).

Defendant again argues that the State withheld exculpatory evidence. (Pb24). For reasons argued above, defendant has not demonstrated that the purported exonerating evidence was in the State's possession, that the State acted in bad faith by failing to preserve same, or that the outcome of the trial would have differed if the evidence was disclosed. (State v. Mustaro, 411 N.J. Super. 91, 101 (App. Div. 2009)(quoting United States v. Bagley, 473 U.S. 667, 682 (1985); see also Youngblood, 488 U.S. at 58 (1988)).

CONCLUSION

For the above-stated reasons, the State respectfully requests that this Court affirm Defendant's convictions and sentence.

Respectfully submitted,

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