SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2381-22T4
INDICTMENT NO. 19-06-00537-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of
v.	:	New Jersey, Law Division, Cumberland County.
NAKIRA M. GRINER,	:	
Defendant-Appellant.	:	Sat Below:
	:	Hon. Robert Malestein, J.S.C. Hon. George H. Gangloff, Jr., J.S.C.,
	:	and a Jury

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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2T: 1/21/20 hearing
3T: 1/27/20 hearing
4T: 2/7/20 hearing
5T: 2/18/20 hearing
6T: 2/21/20 hearing
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36T: 11/30/22 vol. 1
37T: 11/30/22 vol. 2
38T: 12/2/22
39T: 12/12/22
40T: 12/14/22 trial
41T: 12/16/22 trial
42T: 12/19/22 trial
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44T: 12/23/22 trial
45T: 1/4/23 trial
46T: 2/21/23 sentencing

PRELIMINARY STATEMENT

Nakira Griner was convicted and sentenced to life imprisonment without parole for the murder of her young son, [redacted], whose burned remains were found in her backyard. At trial, the defense conceded that Ms. Griner had attempted to destroy and dispose of [redacted] body, but argued that she did so in a state of panic after he had already died from injuries sustained when he accidentally fell down a staircase.

The State had no theory of how Ms. Griner killed [redacted]., or her motive. The State's case depended on testimony from two expert witnesses who opined that extensive damage to [redacted] bones, which was inconsistent with an accidental fall, had been the cause of his death. The State used this testimony to directly undermine the defense claim that these bone fractures were not the cause of his death, but the result of Ms. Griner's destruction of his remains following an accidental death.

The trial court erred in admitting, over defense objection, the testimony of these two experts on the most intensely contested issue before the jury. The court allowed Dr. Mazari, the medical examiner, to repeatedly opine that manner of death was a homicide, even though he admitted that he had not reached that conclusion by using his scientific expertise at conducting autopsies. Instead, he based his opinion on other evidence before the jury

about the circumstances in which the remains were found "desecrated" and "outside of a house," which he viewed as "highly suspicious." His conclusion that the destruction of human remains is suggestive of foul play was neither within the realm of his medical expertise nor beyond the ken of the jury. The jury should have been left to draw its own conclusions about this evidence, rather than urged to ratify the conclusions of a scientific expert.

The trial court also erred in admitting expert testimony by Evan Bird, a forensic scientist, claiming that the injuries to [redacted] bones were "perimortem" – that is, inflicted at or around the time of death. At the Frye hearing, the State presented no evidence establishing that forensic analysis of bone is accepted by the scientific community as a reliable method for determining the timing of injuries. Scientific literature confirms that bone analysis is not viewed as reliable at distinguishing between injuries inflicted immediately before death or some period thereafter. Bird's unreliable testimony misled the jury into believing that science established that the damage to [redacted] bones was the cause of his death.

The dispute over whether the extensive bone injuries were the cause of [redacted] death or the result of Ms. Griner's decision to destroy his body after his accidental death was the only disputed issue at trial. The erroneous

admission of two experts' testimony on this pivotal question deprived Ms. Griner of a fair trial and compels reversal of her murder conviction.

PROCEDURAL HISTORY

Cumberland County Indictment 19-06-00537-I charged Nakira M. Griner with first-degree murder, N.J.S.A. 2C:11-3a(1) and 3a(2) (count one); second-degree desecration of human remains, N.J.S.A. 2C:22-1a(2) (count two); fourth-degree tampering with physical evidences, N.J.S.A. 2C:28-6(1) (count three); second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a(2) (count four); and second-degree false public alarm, N.J.S.A. 2C:33-3a(1) (count five). (Da 1-3)

On various dates between January 10, 2020 and March 6, 2020, the Honorable Robert Malestein, J.S.C., held a testimonial hearing on Griner's motion to suppress her statement to police. (1T-7T) Judge Malestein granted the motion in a written order on June 3, 2020, holding that it could not be used in the State's case-in-chief. (Da 4) Judge Malestein ruled, however, that the statement was voluntary and could be used to cross-examine Ms. Griner if she testified at trial. (Da 4)

Prior to trial, Ms. Griner moved to preclude Evan Bird from testifying as an expert in forensic anthropology at trial and to limit the testimony of medical examiner Dr. Peter Mazari to prevent him from opining that the "manner of

death" was homicide. On July 12, 2021, Judge Malestein denied the motion to preclude Bird's testimony. (Da 5; 10T:34-14 to 42-23) On September 28, 2022, the Honorable George H. Gangloff, Jr., J.S.C., denied the motion to limit Dr. Mazari's testimony. (Da 6-7; 15T:113-20 to 128-2)

Ms. Griner sought to plead open to counts two through four, admit to causing a false public alarm and destroying [redacted] remains, and proceed to trial solely on the murder count, but Judge Gangloff held she could not do so. (18T:9-15 to 16-13) Beginning on December 12, 2022, Judge Gangloff presided over a jury trial on all counts (18T:9-15 to 16-13) On January 4, 2023, the jury found Ms. Griner guilty of all counts and made additional findings related to the murder count pursuant to 2C:11-3b(4)(k). (Da 8-14)

On February 21, 2023, Judge Gangloff sentenced Ms. Griner to life imprisonment without eligibility for parole pursuant to 2C:11-3b(4)(k). (46T:27-21 to 42-17; Da 15-18) Ms. Griner filed a notice of appeal on April 12, 2023. (Da 19-23)

STATEMENT OF FACTS

Around 6:30 on February 8, 2019, patrolman David Ringer of the Bridgeton Police Department went to the intersection of Giles and New Street in response to a call. (39T:128-10 to 22; 132-18 to 134-12) There, he met Nakira Griner, who was carrying her infant son Jace in her arms and crying out

for police assistance. (39T:133-25 to 135-12) Ms. Griner told Ringer that she had been walking down the street when assailants had pushed her from behind and took the baby stroller carrying her other son, [redacted], who was nearly two years old. (39T:134-24 to 135-3; 138-7 to 139-8; 40T:95-8 to 12)

Ringer and other officers searched the area for the stroller, which they found laid on its side on Devonshire Place next to a pair of shoes. (39T:140-16 to 142-14; 145-14 to 21) Ringer called a K-9 handler, who brought a bloodhound to the scene to track the scent from the stroller. (39T:141-16 to 143-20) Ringer also contacted State Police to request a helicopter with a heat-seeking camera to aid in the search. (29T:141-16 to 142-4)

Detective Veronica Cappoli spoke to Ms. Griner, who was with her eight-month-old son Jace. (41T:81-13 to 85-10) Ms. Griner told Cappoli that she was attacked while walking to Walgreens to get fluids for her children because they were not drinking their milk. (41T:99-17 to 100-2) Ms. Griner said she could not provide any description of the attackers. (41T:87-7 to 21) Ms. Griner gave Cappoli a photograph of [redacted]. to help the police search for him. (41T:90-18 to 91-17) Jace was examined by EMT Britton Everly, who observed that "he was acting age appropriately" and had no injuries. (41T:46-23 to 51-5)

Detective Mark Yoshioka searched for surveillance cameras in the nearby area, and, with the consent of the owners, reviewed footage from cameras located 82 Lincoln Street, 84 Lincoln Street, and 11 Devonshire Place that captured Ms. Griner walking with the stroller. (40T:50-2 to 64-1) Yoshioka testified that the footage from 84 Lincoln Street showed the front of Ms. Griner's stroller had "nothing in it." (40T:54-15 to 55-5)

Sergeant Michael Pastirko and Detective Richie Morris went to Ms. Griner's home because, in their experience, abducted children sometimes escape and return home. (39T:152-25 to 153-16) Pastirko walked around the house and found a window open, which he found odd because the temperature outside was "blistering cold." (39T:153-17 to 154-5) When no one responded to knocking on the front door, Morris climbed in through the window and unlocked the door for Pastirko to enter. (39T:155-22 to 156-10) The house was clean, but "smell[ed] funny." (39T:157-21 to 158-12) Pastirko estimated that around 50 people from the fire and police departments participated in an "extensive search" for the missing child. (39T:166-9 to 24)

Pastirko found a purse that weighed around 10-15 pounds in a shallow hole in the backyard by a shed. (39T:167-17 to 168-18; 172-3 to 14) When he opened it, he saw several layers of white plastic bags inside. (39T:171-16 to 172-14) Another officer cut through the interior bags, revealing what he

thought looked like a piece of cooked meat. (39T:172-3 to 173-5; 175-8 to 11) Believing the contents were not relevant to the search, the officers put the purse back on the ground. (39T:172-19 to 173-5)

Around midnight that evening, Detective Sergeant Kenneth Leyman looked more closely at the bag and believed it might contain human bones. (40T:105-5 to 106-25) Patrolman Brent Bodine "flipped [the bag] over" onto the sidewalk on the ground in the backyard. (40T:161-11 to 21) Bodine "spread the remains open from the middle," and a piece "easily snapped off." (40T:176-20 to 177-11) The contents were later identified as the remains of [redacted]. (39T:114-12 to 19)

Leyman and other officers comprehensively searched the home for clues as to how [redacted] had died. (40T:132-12 to 133-9) The officers did not observe any blood in the home or recover any instruments that appeared to have caused the death. (40T:114-20 to 115-25; 132-12 to 133-9) The home did not appear to have been recently cleaned because dust was visible on surfaces throughout. (40T:115-5 to 21; 133-6 to 12) Leyman noticed a "chemical smell" that was strongest in the kitchen and saw a sheet of cookies in the oven and grease splatter on the oven door. (40T:109-4 to 110-18; 135-6 to 136-14) The bottom of the oven looked like it had been cleaned and bleach wipes were found in the nearby trash. (40T:109-23 to 110-18; 135-6 to 136-14)

Ms. Griner's husband, Dan Griner, Sr., worked at Inspira Medical Center. (40T:83-24 to 84-7) His timeclock records and surveillance footage showed that he arrived at work at 6:46 a.m. and left work at 7:19 p.m. on February 8. (40T:83-24 to 85-10) Mr. Griner did not testify at trial.

Ms. Griner consented to a search of her iPhone. (42T:226-8 to 14) Lieutenant Ryan Breslin extracted data from the phone using Cellebrite software, which generated a readable report of the phone's call logs, chats, and web history. (42T:227-9 to 230-5) There was an eight-day gap in the web history found on the phone between January 31, 2019 at 4:19 p.m. and February 8, 2019 at 2:33 a.m. (42T:234-11 to 23) There was a gap in the call log on the phone between January 16, 2019 at 3:09 p.m. and February 8, 2019 at 6:43 a.m. (42T:239-18 to 24) The Cellebrite software results reflected that files on the phone had been "modified" on February 7, 2019. (42T:239-25 to 241-12) During the day on February 8, the web history showed that the phone was used to track a package on Amazon and to access shopping sites for purses and shoes. (42T:236-3 to 16) The web history also showed a search at 7:24 a.m. on February 8 for results relating to cold symptoms in children. (42T:236-18 to 237-2)

The State introduced audio of jail calls between Ms. Griner and her sister LaShae Trussell. (43T:21-25 to 22-24) [1] Ms. Griner explained that, the night before he died, [redacted] had fallen down the stairs while reaching for a doll that had fallen. (Da 45-46) Although his lip was bleeding, he had "got right up" and behaved normally afterwards, walking, climbing on the couch, and generally acting like "himself." (Da 46) She noticed his "breathing sounded a little weird," but appeared to return to normal after he sat down on the couch. (Da 46)

Ms. Griner said [redacted] seemed tired at 7:20 pm that night, even though he typically did not go to bed until 8 pm. (Da 48) She put [redacted] to bed and he threw up, but she thought it was due to eating and drinking a lot in the period right before bedtime. (Da 47) The next morning, when she went to his bed, he was "gone." (Da 48) She tried CPR, but it did not revive him. (Da 51) She then Googled his symptoms and recognized that he may have died from internal bleeding after falling down the stairs. (Da 38)

Ms. Griner explained she panicked and thought she needed to cover up the death because [redacted]. had "bruises on him" from events earlier in the

[1] Many of these calls were transcribed as inaudible in the trial transcripts. The appendix to this brief contains transcripts of the calls that were provided to the jury as listening aides. Accordingly, when referencing the content of the calls, this brief will cite to the listening aides rather than the trial transcripts.

week, in which Daniel, Sr. had "discipline[d]" him with physical punishment at her direction. (Da 34; Da 49) She thought police would have "assumed that it wasn't an accident" because of the bruises and "thought that we beat him" to death, which would have resulted in them both being arrested and losing custody of Jayce. (Da 49) She told her sister, "[W]hen I saw baby Dan like that in his bed, I immediately left. All of, all rationality, all common sense, all everything left." (Da 51)

The State also introduced a call between Ms. Griner and Daniel, Sr., in which she said she was hurt that he had not contacted her after her arrest. (Da 31-32) Griner said she needed him to know she did not kill [redacted] or do anything to hurt him. (Da 32) Griner explained that she destroyed [redacted] remains because did not want Daniel, Sr. to get "in trouble" for "what we were doing to [redacted] [that] left marks all over his little butt and all over his legs." (Da 42) Griner said she "couldn't let anybody see him like that." (Da 32)

The main dispute at trial centered on the timing of fractures to [redacted] bone tissue, which the State claimed contradicted Ms. Griner's statements that [redacted] had died from an accidental fall down the stairs. Medical Examiner Dr. Peter Mazari, who conducted the autopsy, testified that many of the bone fractures he saw were not consistent with an accidental fall. (42T:188-8 to 20) The defense posited that those fractures were not Daniel,

Jr.'s cause of death, but instead the result of actions Ms. Griner took after his death during the destruction of his body. (41T:89-5 to 18; 43T:122-21 to 123-15)

Dr. Mazari acknowledged that he could not conclusively determine whether the bone injuries occurred before or after [redacted] death because the "gold standard" for evaluating the timing of an injury is "soft tissue." (42T:176-12 to 177-4) The soft tissue in this case was so "severely altered" by thermal damage that Dr. Mazari could not determine the timing of the injuries. (42T:176-12 to 177-4; 204-6 to 205-24) Dr. Mazari asked Evan Bird, a forensic anthropologist who worked in the Northern Regional Office of the Medical Examiner, to review the fractures to "determine the timing" of the injuries between antemortem (prior to death), perimortem (around the time of death), and postmortem (after death). (41T:135-2 to 136-21; 42T:176-12 to 177-17; 186-3 to 19)

Bird concluded many of the injuries appeared to be perimortem, but acknowledged that injuries to bone can appear to be perimortem even when they occur up to 12-18 hours following death. (42T:89-5 to 90-19; 120-4 to 121-17) Bird opined that it was not "likely" that the injuries could have been caused just by [redacted] falling down the stairs. (42T:121-22 to 122-24) Bird admitted, however, that could not rule out that the bone injuries may have been

the result of damage done to [redacted] if his body was damaged prior to being placed in heat. (42T:89-5 to 21) Bird noted that there was no indication of any injury to [redacted] bones that could be classified as antemortem, as in occurring far enough in advance of his death for bone healing to have begun to occur. (42T:84-20 to 85-1)

After receiving Bird's report, Dr. Mazari declared the manner of death to be "homicide." (42T:186-20 to 191-2) Dr. Mazari explained that he had relied heavily on the "circumstances of the case" in reaching this conclusion, namely that the "remains were severely altered and severely damaged" and "sort of placed outside of the home," which he viewed as "highly suspicious." (42T:187-2 to 22) Given the lack of certainty around the precise timing of the injuries to the bone, Dr. Mazari said he had not "predominantly" relied on Bird's report in reaching his opinion regarding manner of death. (42T:206-23 to 207-12) Instead, Dr. Mazari explained, "to be honest, I think the circumstances played a very large role . . . the ruling of homicide." (42T:206-23 to 207-12)

LEGAL ARGUMENT

POINT I

THE COURT ERRED IN ADMITTING DR. MAZARI'S CONCLUSION THAT THE MANNER OF DEATH WAS "HOMICIDE" WHERE THAT CONCLUSION WAS NOT BASED ON HIS MEDICAL EXPERTISE BUT DEPENDED ENTIRELY ON EVIDENCE DIRECTLY WITHIN THE JURY'S KEN. (15T:102-19 to 128-2; Da 6-7)

Ms. Griner admitted to destroying and disposing her son's body, but maintained that she did not cause his death. The ultimate question for the jury was therefore whether the evidence established beyond a reasonable doubt that [redacted] death was in fact a homicide and not an accident. Prior to trial, the defense sought to bar Dr. Mazari, the medical examiner, from testifying on the ultimate question that the death was a homicide. The in limine hearing established that Dr. Mazari's conclusion was not based on his autopsy of [redacted] Instead, his conclusion was based entirely on other evidence before the jury, principally the "circumstances" in which the remains were found "desecrated" and "outside of a house." (15T:83-6 to 86-25) Dr. Mazari's opinion that the decision to destroy a body suggests that the death was a homicide was not "beyond the ken of the average juror," nor was it based on his expertise in medical examination, as required by N.J.R.E. 702. See State v. J.L.G., 234 N.J. 265, 280 (2018). Therefore, his opinion as to cause and

manner of death should have been excluded. Its admission "intruded into the jury's exclusive role as finder of fact," depriving Ms. Griner of a fair trial and compelling reversal of her murder conviction. State v. Cain, 224 N.J. 410, 413 (2016); U.S. Const. amend. V, VI, and XIV; N.J. Const. art. I, ¶ 10.

"N.J.R.E. 702 governs the admission of expert testimony." J.L.G., 234 N.J. at 279. "To satisfy the rule, the proponent of expert evidence must establish three things: (1) the subject matter of the testimony must be 'beyond the ken of the average juror'; (2) the field of inquiry 'must be at a state of the art such that an expert's testimony could be sufficiently reliable'; and (3) 'the witness must have sufficient expertise to offer the' testimony." Id. at 280 (quoting State v. Kelly, 97 N.J. 178, 208 (1984)).

N.J.R.E. 702's requirement that an expert only testify to matters "beyond the ken of the average juror" seeks to preserve the jury's singular role as the finder of fact. "[E]xpert testimony is not appropriate to explain what a jury can understand by itself." Id. at 305. The say-so of an expert should not be used to "as a substitute for jurors performing their traditional function of sorting through all of the evidence and using their common sense to make simple logical deductions." Cain, 224 N.J. at 427. Indeed, our system of justice in built on the principle that "[t]he jury brings a breadth of collective experience, knowledge, and wisdom to the task." Ibid.

N.J.R.E. 702's requirement that a witness may testify as an expert only on matters about which they "have sufficient expertise" similarly seeks to prevent undue interference with the jury's factfinding. An expert is "in no better position" to make conclusions about matters beyond their expertise "than the jurors themselves." State v. Jamerson, 153 N.J. 318, 341 (1998). Therefore, "[a]n expert witness should distinguish between what he knows as an expert and what he may believe as a layman." Id. at 340 (quoting In re Hyett, 61 N.J. 518, 531 (1972)). "His role is to contribute the insight of his specialty." Ibid. Testimony by an expert who lacks "sufficient expertise" to opine on the subject matter at issue can "mislead the jury into thinking that he knows something that they do not know," encroaching on their domain as factfinder. Ibid. (quotations and citation omitted).

Applying these principles, our Supreme Court in Jamerson held that a medical examiner qualified as an expert in forensic pathology "should not have been permitted to testify that [a car accident] was a reckless homicide rather than an accidental killing." Id. at 340. "[T]hat question was ultimately for the jury to decide." Ibid. This was especially true because there were "no wounds" for the medical examiner to analyze and he instead based his conclusion on "circumstances leading up to the accident that were within the understanding of the average juror." Ibid. The jury was "as competent as" the medical

examiner to analyze these facts and reach a conclusion as to the ultimate issue in the case. Id. at 340-41. The Jamerson Court rejected the state's argument that the standard instruction informing the jury that it was up to them to assess the value of the expert's testimony was "sufficient to overcome the prejudicial effect of [the doctor]'s statements." Id. at 342. With respect to such instruction, the Jamerson Court explained: "By definition, a jury cannot give the 'proper' amount of weight to an expert's opinion when they labor under the erroneous assumption that the expert is testifying to an area within his expertise." Ibid.

Courts throughout the country have followed Jamerson to prohibit medical examiners from opining that the victim died as the result of a "homicide" where that opinion is based on information within the jury's ken, rather than the witness's medical expertise. The Arizona Court of Appeals held that "testimony that the victim died as the result of a 'homicide'" should have been prohibited because it "went to the key issue in the case: Did defendant intentionally, knowingly or recklessly cause the victim's death by a criminal act or was the victim's death the result of a non-criminal accident?" State v. Sosnowicz, 270 P.3d 917, 922 (Ct. App. Ariz. 2012). There, as here, the medical examiner acknowledged on cross-examination "that he based his conclusion that the death was a homicide on the circumstances reported to him by the police." Ibid. This left him "in no better position to determine the

manner of death than was the jury who heard the actual trial testimony of witnesses and had the opportunity to evaluate their credibility." Id. at 922-23; see also Bond v. Commonwealth, 311 S.E.2d 769, 772 (Va. 1984) (concluding that the medical examiner's testimony was inadmissible: "The ultimate question was whether the decedent jumped intentionally, fell accidentally, or was thrown to her death. The facts and circumstances shown by the testimony of lay witnesses were sufficient to enable a jury to decide that question. The expert's opinion was based largely, if not entirely, upon the same facts and circumstances."); People v. Eberle, 265 A.D.2d 881, 882 (4th Dep't N.Y. 1999) (concluding medical examiner's testimony that infant died of "homicidal suffocation" was based on information learned from police rather than examiner's professional or medical knowledge and therefore "intruded on the province of the jury to draw inferences and conclusions" from trial evidence).

In an instructive recent case applying these principles, the Supreme Court of Iowa held that a medical examiner's opinions on the cause and manner of a baby's death should not have been introduced at trial, as they "were not sufficiently based on scientific, technical, or other specialized knowledge so as to assist the jury." State v. Tyler, 867 N.W.2d 136, 163 (Iowa 2015). The question for the jury was whether a baby that drowned in a bathtub "was born alive" and killed by the defendant or "was stillborn or died

immediately after birth such that defendant could not have drowned him." Id. at 163. The medical examiner was unable to determine the cause and manner of death following an autopsy, but, after reviewing the defendant's statements, concluded that "the cause of death was bathtub drowning and the manner of death was homicide." Ibid. The medical examiner acknowledged on cross-examination that "there were several other possible causes of death he could not rule out based on the autopsy," including the possibility that the baby died "in utero or immediately after birth." Id. at 164. The record revealed that the medical examiner's final conclusion that the death was a homicide was "based primarily, if not exclusively, on Tyler's inconsistent and uncorroborated statements to police." Id. at 163. The Court explained that, because the medical examiner's review of these statements was not the type of "objective medical findings" that fell within his expertise, they "did not assist the trier of fact and were therefore inadmissible" under Iowa's equivalent of N.J.R.E. 702. Ibid.

Dr. Mazari's testimony demonstrated that his conclusion about the manner of death being a homicide was not based on his expertise, but instead on facts that fell within the jury's province. Like the medical examiner in Tyler, Dr. Mazari was not able to determine a cause of death through the use of his expertise in conducting a medical examination. Following an autopsy, he initially listed the cause and manner of death as undetermined, only later

reaching the conclusion that the death was a homicide "based primarily, if not exclusively," see ibid., on evidence within the jury's ken, particularly the manner in which [redacted] body was found.

The in limine hearing made clear that this other evidence – and not Dr. Mazari's scientific expertise – was essential to his conclusion that the manner of death was homicide. Dr. Mazari admitted that he was not able to determine the manner of death based on the use of his own expertise in performing an autopsy. (15T:46-13 to 47-2) Dr. Mazari asked Evan Bird, a forensic anthropologist, to examine the bones because the soft tissue, which is the "gold standard" for assessing the timing of injuries, "was so severely altered and damaged" that he was not able to draw his own conclusions as to the timing of the injuries. (15T:49-2 to 25) Dr. Mazari explained that he ultimately reached his conclusion that the death was a homicide later based on: 1) the "circumstances" in which the remains were discovered "severely desecrated . . . in a bag . . . put outside of a house"; 2) Bird's conclusion that the injuries to certain bones were "perimortem"; and 3) the fact that "the type of fracture that was found on the right side of the skull is not consistent with typical accidental trauma." (15T:84-7 to 85-10)

Dr. Mazari acknowledged, however, that "perimortem" injuries could have "occur[ed] within a day or two prior to death or within several days after

death." (15T:81-18 to 82-3) Dr. Mazari admitted that the length of the perimortem window meant that Bird could not determine whether the blunt force fractures on the skull actually caused the death or occurred during the attempted destruction of the body within the "several days" after the death. (15T:81-18 to 82-3; 84-7 to 85-16) Given this uncertainty about whether the trauma occurred prior to or after death, Dr. Mazari repeatedly made clear that his conclusion that the death was a homicide was driven primarily by the how the remains were found, stating "the circumstances alone would be enough to give the opinion that the case was most likely a homicide." (15T:90-25 to 92-1 (emphasis added)) Dr. Mazari admitted that he would have to change his opinion if the "injuries were definitely postmortem" conceding that, due to the length of the perimortem window, "a lot" of his opinion regarding manner of death was "based on the circumstances of the case" rather than Bird's conclusions. (15T:82-4 to 18) Dr. Mazari also explained that, even without Bird's report he would have reached the same conclusion regarding manner of death based "only on [the] circumstances" in which the remains were found. (15T:86-4 to 25) Dr. Mazari described "the circumstances" as including the manner in which "the remains were found," which he described as "very, very unlikely" for "natural or accidental deaths." (15T:91-15 to 92-1)

Notwithstanding the fact that Dr. Mazari's conclusion was based on his inferences about the other evidence rather than his medical expertise, the court ruled that Dr. Mazari could opine on cause of death over defense objection. Dr. Mazari's testimony at trial, bolstered by the persistent invocation of his expertise as a medical examiner, played a significant role in the State's case. In front of the jury, Dr. Mazari characterized determinations of "cause and manner of death" as "part of the Medical Examiner's duties." (42T:71-1 to 11) Dr. Mazari explained that manner of death can fall into one of five categories: natural death, accident, suicide, homicide, or something undetermined. (42T:143-8 to 13) The State asked Dr. Mazari to explain the qualification "you draw on when you render – when you give opinions as to cause and manner of death?," and Dr. Mazari responded with a lengthy discussion of his educational history, medical residency, board certifications, and work for the State Medical Examiner's Office. (42T:143-18 to 145-4)

After eliciting that Dr. Mazari had determined the manner of death to be homicide, the State asked him to "tell us why." (42T:186-20 to 187-22) Dr. Mazari replied:

> So the -- several things go into determining manner of death. One of the primary things is looking at the circumstances of the case. In this case, the -- [redacted] remains were severely altered and severely damaged. And sort of placed outside of the home. So that alone is highly suspicious. Almost probably enough to say that this is not a typical natural death or something like that. The -- then we have the

> evaluation itself which found multiple areas of bone fractures, some of which were determined to be perimortem. And so the perimortem places them in the right window to have possibly been a cause of death. So we have perimortem injuries in a suspicious circumstance, and we have injuries that are potentially fatal or life threatening injuries as well. The stellate skull fracture is a potentially fatal injury. So when you -- we have all those three things together, that would be enough to rule the manner homicide.
>
> [(42T:187-2 to 23 (emphasis added))]

When defense counsel asked Dr. Mazari on cross examination whether he based his opinion "predominantly on the findings of Mr. Bird," he replied that he would not say predominantly, explaining "to be honest, I think the circumstances played a very large role . . . the ruling of homicide." (42T:206-23 to 207-12) Dr. Mazari agreed with defense counsel's summary that the circumstances he relied on were the remains being "burned and hidden" in a purse in the backyard of a home. (42T:207-1 to 22)

Therefore, in his testimony at both the in limine hearing and at trial, Dr. Mazari made clear that his conclusion regarding the cause of death depended principally, if not entirely, on the circumstances in which [redacted] body was disposed. These circumstances and what conclusions could be drawn from them were well within the jury's understanding. They did not require – nor were they based upon – Dr. Mazari's medical judgment or expertise. The jury was "as competent as" Dr. Mazari to analyze these facts and reach a conclusion as to the ultimate issue in the case. Jamerson, 153 N.J. at 340-41.

The jury should have been empowered to determine the significance of the manner in which the body was disposed by "sorting through all of the evidence and using their common sense to make simple logical deductions." Cain, 224 N.J. at 427. Instead, the erroneous admission of Dr. Mazari's manner of death opinion improperly usurped the jury's function.

This case is indistinguishable from Tyler, where "the medical examiner performed an autopsy, was unable to render an opinion on cause or manner of death, and then after review of witness statements or information obtained through police investigation, rendered an opinion based largely on that information." Tyler, 867 N.W.2d at 164. As in Tyler, the medical examiner's conclusion about the manner of death was not based on his expertise, but on his view of other evidence before the jury. Dr. Mazari concluded that it was unlikely that [redacted] body would have been burned and disposed in this manner if his death been an accident. But whether the manner in which Ms. Griner disposed of the body proved that the death was intentional rather than accidental was not a matter of science or medicine. It was a factual question that should have been resolved by "the sound judgment of jurors, who rely on their life experiences, common sense, and collective reasoning in rendering a verdict." Cain, 224 N.J. at 414. Instead, the jury was repeatedly told that Dr. Mazari, who they were told should be viewed as a medical expert, had reached

the conclusion that the death was homicide based on how the body was disposed.

Compounding the harm of its erroneous admission, the State repeatedly elicited testimony from Dr. Mazari that cast his opinion on the manner of death in the language of medical certainty. On direct examination, the State asked Dr. Mazari whether his opinions on cause and manner of death were stated "with a reasonable degree of medical certainty," leading him to respond in the affirmative. (42T:190-19 to 191-2) On redirect examination, the State again asked Dr. Mazari to put his opinion in such terms, asking simply, "A reasonable degree of medical certainty, homicidal or accidental?" In response, Dr. Mazari again stated his belief that the manner of death was homicide. (42T:209-15 to 17)

In closing, the State touted Dr. Mazari's expertise as "an expert in forensic pathology" and encouraged the jury to ratify his conclusion regarding the manner of death:

> [Dr. Mazari] deemed the cause of death blunt force trauma and he deemed the matter of death homicide.
>
> Now, the way he explained he came upon the decision of the matter of death of homicide was not just based on the fractures he observed, but he looked at the circumstances surrounding the death of [redacted] He looked at what happened to he remains, how they were treated, how they were located. He takes all those circumstances into consideration when determining whether or not it was a homicide in conjunction with the medical data. And that's

> important because that's exactly what I'm going to be asking you to do as well when you're analyzing the evidence in this case.
>
> (42T:150-5 to 17)

By the prosecution's own characterization, Dr. Mazari used the imprimatur of his expertise to testify to much more than merely his scientific conclusions. He bolstered the State's case by putting all the pieces of trial evidence regarding the "circumstances" of the case together to suit the narrative advanced by the prosecution.

The jury heard extensive testimony about the "circumstances" in which the remains were discovered. Determining whether those circumstances proved that the death was not accidental was directly within the jury's ken. Dr. Mazari's determination was nothing more than his opinion that the decision to destroy remains often suggests the decedent died an intentional rather than accidental death. Cloaking this opinion in the guise of scientific expertise misled the jury by suggesting it was a question of expert judgment and not their own. The jury was deprived of the ability to exercise its own independent judgment because they "labor[ed] under the erroneous assumption that," when he opined on the manner of death, Dr. Mazari was "testifying to an area within his expertise." Jamerson, 153 N.J. at 142.

The dispute over whether the injuries were the cause of [redacted] death or the result of Ms. Griner's admitted decision to destroy his body to

cover up his accidental death was the only disputed issue at trial. The State's case was circumstantial. The State presented no evidence that Ms. Griner had a motive to kill [redacted] Police did not recover any presumed murder weapon during an exhaustive search of the home and the State did not advance any theory about how the murder was committed. Ms. Griner's defense was consistent with her statements in recorded jail calls with her sister and husband, in which Ms. Griner explained that she destroyed and disposed of [redacted] body because she panicked after discovering that he had died following an accidental fall down a staircase.

The jury should have been left to independently assess the trial evidence without the improper intrusion of "expert" testimony asserting that the death was a homicide. Because Dr. Mazari's testimony, improperly admitted over defense objection, played an overwhelming role in the State's case at trial, Ms. Griner's murder conviction must be reversed. Jamerson, 153 N.J. at 340-42.

POINT II

THE COURT ERRED IN ADMITTING UNRELIABLE EXPERT TESTIMONY REGARDING THE TIMING OF THE SKELETAL INJURIES WHERE THE COURT DID NOT FIND – AND THE STATE PRESENTED NO EVIDENCE ESTABLISHING – THAT SUCH TESTIMONY WAS GENERALLY ACCEPTED AS RELIABLE UNDER FRYE. (10T:34-16 to 42-6; Da 5)

Prior to trial, defense counsel moved to exclude expert testimony by Evan Bird, who works as a forensic anthropologist for the State of New Jersey. The trial court erroneously denied this motion without holding the State to its burden to show that forensic analysis of bone is sufficiently reliable to support the conclusions drawn by Bird regarding the timing of [redacted] injuries. See J.L.G., 234 N.J. at 308-09. Instead, the court surmised that Bird's testimony "seems reliable" because "I don't have anything before me to show me that this type of methodology that he used is not the proper way that forensic anthropologists work." (10T:39-17 to 22) Critically, a defense attorney has no burden to show that the State's expert's methodology is "not proper"; instead, the proponent of the evidence – the State – bears the burden to demonstrate the reliability of scientific evidence it seeks to admit. In admitting Bird's testimony, the trial court failed to apply the "general acceptance" standard that governed admission of scientific evidence and improperly inverted the burden of proof.[2] The erroneous admission of this

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[2] This year, our Supreme Court moved from the Frye standard in place at the time of this trial to the standard drawn from Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993). State v. Olenowski, 253 N.J. 133 (2023). Under Olenowski, trial courts must assess new factors to determine whether a scientific theory is sufficiently reliable to be admitted. Olenowski, 253 N.J. at 147 (the factors are (1) whether the scientific theory can be or has been tested; (2) whether it has been subjected to peer review and publication; (3) the known and potential rate of error as well as the existence of standards governing the operation of the particular scientific technique; and (4) general

unreliable but compelling evidence deprived Ms. Griner of her rights to due process and a fair trial. U.S. Const. amend. XIV; N.J. Const. art. I, ¶¶ 1, 9, and 10. Her convictions must be reversed.

Trial judges serve as "gatekeepers" to "ensure that proceedings are fair to both the accused and the victim. In that role, they must assess whether expert testimony is sufficiently reliable before it can be presented to a jury." J.L.G., 234 N.J. at 308-09. "For an opinion to be admissible under N.J.R.E. 702, the expert must utilize a technique or analysis with 'a sufficient scientific basis to produce uniform and reasonably reliable results so as to contribute materially to the ascertainment of the truth.'" State v. J.R., 227 N.J. 393, 409 (2017) (emphasis added) (quoting Kelly, 97 N.J. at 210). "[O]ne of the criteria under N.J.R.E. 702 for the admissibility of expert testimony is that the testimony be based on reasonably reliable scientific premises." State v. Raso, 321 N.J. Super. 5, 17 (App. Div. 1999) (internal quotation marks omitted).

At the time of trial, New Jersey courts assessed the admissibility of evidence under the Frye standard, which placed the burden on the proponent of the evidence to clearly establish that the theory or technique has "gained general acceptance in the particular field in which if belongs." J.L.G., 234 N.J.

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acceptance in the scientific community). Under both standards, the proponent bears the burden of demonstrating the reliability of the scientific testimony it is seeking to admit. Id. at 144-45.

at 280 (citing Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)). Under this standard, the proponent of scientific evidence bears the burden to "clearly establish" that the evidence has a "sufficient scientific basis to produce uniform and reasonably reliable results and will contribute materially to the ascertainment of the truth." State v. Chun, 194 N.J. 54, 91-92 (2008) (quoting State v. Hurd, 86 N.J. 525, 536 (1981)). Although "complete agreement is not required for evidence to be admitted," courts must consider whether there is "wide support within the relevant scientific community." J.L.G., 234 N.J. at 281. "Proving general acceptance 'entails the strict application of the scientific method, which requires an extraordinarily high level of proof based on prolonged, controlled, consistent, and validated experience.'" State v. Harvey, 151 N.J. 117, 171, (1997) (quoting Rubanick v. Witco Chemical Corp., 125 N.J. 421, 436 (1991)).

The reliability of a field of research may be established by the proponent of the evidence in three ways: (1) "the testimony of knowledgeable experts"; (2) "authoritative scientific literature can be used to establish professional acceptance"; or (3) "persuasive judicial decisions that acknowledge such general acceptance of expert testimony can be followed." State v. Torres, 183 N.J. 554, 568 (2005) (emphasis added). It is 'unusual for an appellate court to

rely exclusively on judicial notice.'" State v. Doriguzzi, 334 N.J. Super. 530, 539 (App. Div. 2000)

This Court reviews a trial court's admission of scientific evidence de novo. State v. Rochat, 470 N.J. Super. 392, 436 (App. Div. 2022). In considering whether the evidence is sufficiently reliable, appellate courts have "discretion to survey relevant decisions from other jurisdictions as well as pertinent, scientific and legal writings." Doriguzzi, 334 N.J. Super. at 539. An "appellate court need not be as deferential to the trial court's ruling on the admissibility of expert scientific evidence as it should be with the admissibility of other forms of evidence." State v. Torres, 183 N.J. 554, 567 (2005).

As trial, the State depended on Bird's review of injuries to [redacted] bones to establish that the blunt force trauma caused his death rather and did not occur afterward during the destruction of his remains, as the defense contended. Dr. Mazari, the medical examiner, admitted that he was not able to determine the timing of the injuries on his own because "the gold standard for determining the timing of injuries is to examine hemorrhage" and in this case the soft tissue was "so severely altered and damaged, it was not possible to make that kind of identification." (15T:49-2 to 25) Therefore, Bird's testimony was essential for the State's attempt to show that the blunt force trauma was the cause of [redacted] death and not merely the effects of the postmortem

destruction of his body. Bird claimed perimortem injuries "in a forensic context, usually [] mean[] it's got something to do with the death event." (41T:136-10 to 21) Nonetheless, Bird also conceded that injuries to bone may appear as perimortem even if they occurred within days following a death. (42T:89-5 to 21)

As an initial matter, the trial court's decision admitting Bird's testimony cannot stand because it failed to hold the State to its burden to establish reliability under Frye. The trial court never found that methods used by Bird to determine the timing of the injuries were "generally accepted" as reliable in the relevant scientific community. Instead, the court noted Bird's resume, including his internships, the selectiveness of the NYU Master's program he enrolled in, and the fact it was "not his first rodeo." (10T:35-10 to 37-3) The court described Bird's method of cleaning, identifying, and reassembling bones. (10T:37-4 to 38-22) The court surmised that Bird's testimony "seems reliable" because "I don't have anything before me to show me that this type of methodology that he used is not the proper way that forensic anthropologists work. I mean, this is what he does for a living. It's the only thing that he does." (10T:39-17 to 40-11) The standard for admission of expert testimony does not turn on whether the purported expert does his work "for a living." Instead, it requires that the proponent establish that the methodology used is

generally accepted as reliable in the relevant scientific community. J.L.G., 234 N.J. at 281.

The court's decision failed to hold the State to this burden, improperly shifting the burden to the defense to establish unreliability. The State did not introduce testimony of experts, scientific literature, or persuasive judicial decisions to establish that forensic bone analysis was generally accepted as reliable in establishing the timing of injuries. On the contrary, the only testimony regarding the scientific community's view of the reliability of bone analysis to determine the timing of injuries was Dr. Mazari's testimony, which admitted that bone analysis was considered less reliable than the "gold standard" of soft tissue analysis for determining the timing of injuries. (15T:49-2 to 25; 82-10 to 18) Nonetheless, the court admitted the testimony based on an absence of evidence of unreliability. The trial court failed to perform its gatekeeping function under Rule 702. Properly applied, this standard is intended to be a high hurdle for the proponent to meet, because proof of general acceptance "can be elusive" and "entails the strict application of the scientific method, which requires an extraordinarily high level of proof based on prolonged, controlled, consistent, and validated experience." Rochat, 470 N.J. Super. at 435 (quoting Harvey, 151 N.J. at 171).

Because the trial court failed to apply the proper standard in admitting Bird's critical testimony, its decision cannot stand. This Court should survey pertinent scientific writings as part of its de novo review of the admissibility of the expert testimony. Doriguzzi, 334 N.J. Super. at 539. As suggested by Dr. Mazari's own admission that analysis of soft tissue is the "gold standard" for determining the timing of injuries and Bird's concession that injuries can appear perimortem even where they occurred days after death, scientific literature recognizes that the forensic analysis of bones is not able to reliably establish whether injuries occurred before or after death. As a 2014 article surmised, "[t]he difficulty in evaluating perimortem blunt force trauma (BFT) has been already highlighted and documented by several authors." Cappella A et al., The Difficult Task of Assessing Perimortem and Postmortem Fractures on the Skeleton: a Blind Text on 210 Fractures of Known Origin, 59 J. Forensic Sci. 1598, 1600 (2014) (Da 55) (citing other four studies). "The distinction between lesions which occurred immediately prior to or around death and those after death still represents a difficult task." Id. at 1598 (Da 53). Blind tests have demonstrated "the relative unreliability of the commonly used morphological criteria in the correct diagnosis of perimortem and postmortem fractures." Id. at 1601 (emphasis added) (Da 56).

While some guidelines exist to "facilitate the distinction of bone damage that occurred long after death from perimortem trauma, the differentiation of fractures inflicted shortly before death or soon after death may be difficult or even impossible." Moraitis K, Spiliopoulou C, Identification and Differential Diagnosis of Perimortem Blunt Force Trauma in Tubular Long Bones, 2 Forensic Sci Med Pathol. 221, 227 (2006) (Da 70). As recently as 2020, one study found that the "[t]iming of cranial trauma is challenging in forensic cases and literature on the subject is scarce," and "there is not any specific perimortem reported pattern for timing these types of fractures." Ribeiro P, et al., Distinction Between Perimortem and Postmortem Fractures in Human Cranial Bone, 134 Int. J. Legal Med. 1765, 1765-66 (2020) (Da 73-74). That study concluded that "[f]urther research is required to increase confidence during cranial trauma evaluation, primarily to reconstruct the contextual information of the injury." Id. at 1766. (Da 74)

The weight of recent scientific literature therefore demonstrates that forensic bone analysis has not "passe[d] from the experimental to the demonstrable stage," as is required to satisfy the "extraordinarily high level of proof" necessary to constitute general acceptance. Harvey, 151 N.J. at 171. The unreliable nature of bone analysis in determining the timing of injuries increases the risk that cognitive biases or scientifically irrelevant information

may have affected Bird's conclusions and Dr. Mazari's ensuing determination of [redacted] cause of death. See Itiel Dror et al., Cognitive Bias in Forensic Pathology Decisions, 66 J. Forensic Sci. 1751 (2021) (Da 57) (concluding, after an experimental study of 133 Board-certified Medical Examiners' responses to prompts, that "forensic pathologists were more likely to rule 'homicide' rather than 'accident' for deaths of Black children relative to White children").

Because the State failed to satisfy its burden of establishing the reliability of Bird's methodology, the trial court should have excluded the evidence. Bird's expert testimony claiming to show that [redacted] injuries were perimortem was central to the State's case, which depended on proving beyond a reasonable doubt that the injuries caused his death and were not inflicted afterward during the destruction of his body. The erroneous admission of Bird's unreliable testimony deprived Ms. Griner of a fair trial and compels reversal of her murder conviction. See Rochat, 470 N.J. Super. at 442.

POINT III

THE COURT VIOLATED MS. GRINER'S JURY TRIAL RIGHTS BY DISQUALIFYING JUROR 115 BASED ON A 21-YEAR-OLD CONVICTION FOR A "CDS CHARGE" WITHOUT DETERMINING IF THAT CONVICTION ACTUALLY DISQUALIFIED HIM FROM SERVING OR IF IT HAD BEEN EXPUNGED. (29T:21-1 TO 27-6)

During jury selection, the court disqualified Juror 115 after he disclosed that he had an unspecified 21-year-old conviction for a "CDS charge." Before the court excused Juror 115, defense counsel asked court to "ask him if it was expunged because if it was expunged I think--," before the court cut her off and stated, "I don't want to get into expungements." (29T:22-24 to 23-23) But the court needed to know if Juror 115's conviction was expunged before it could determine if he was actually disqualified from service. Expungement "permit[s] defendants to regain various civil privileges like serving on a jury and voting." In re D.J.B., 216 N.J. 433, 441 (2014) (citing In re T.P.D., 314 N.J. Super. 643, 648 (Law. Div. 1997)). By disqualifying Juror 115 without determining whether his prior conviction actually barred him from service, the court violated Ms. Griner's right to an impartial jury. N.J. Const. art. I, para. 5; U.S. Const. amend. VI. The violation of Ms. Griner's constitutional rights

compels reversal of her convictions. State v. Andujar, 247 N.J. 275, 315 (2021).

Jury selection plays a "critical role . . . in the administration of justice." Id. at 284. "The criminal justice system rests on having cases decided by impartial jurors, who are drawn from a representative cross-section of the community and selected free from discrimination." Id. at 316. In recognition of the importance of jury selection, "federal and state law have changed substantially in recent decades to try to remove discrimination from the jury selection process." Id. at 285. Defendants in a criminal trial are entitled to "the opportunity to have the jury drawn from venires representative of the community." United States v. Salamone, 800 F.2d 1216, 1218 (3d Cir. 1986) (quoting Taylor v. Louisiana, 419 U.S. 522, 537 (1975)).

A trial court violates a defendant's jury trial rights when it disqualifies a juror on the basis of a particular trait without establishing that the trait renders them unfit to serve. In Salamone, the Third Circuit held that the "disqualification by the district judge of all jurors with NRA affiliations constitute[d] an abuse of discretion and [wa]s not in accord with the 'essential demands of fairness,'" compelling reversal of the defendant's convictions. Id. at 1226–27. Although jurors could not be excluded for cause unless their affiliation would "prevent or substantially impair" their impartiality, the court

excluded all the jurors without questioning them "as to their ability to faithfully and impartially apply the law." Id. at 1226. The Third Circuit explained that the trial court's "factual determination" that the disqualified jurors could not serve was "totally devoid of any foundation, leav[ing] us with the single conclusion that the voir dire was inadequate to preserve and protect the rights of the accused." Ibid. "Failure to make the necessary inquiry" into the condition that would render jurors unfit to serve "deprives the trial court of the benefit of the factual predicate that justifies an exclusion for cause." Ibid.

Applying Salamone, the Third Circuit later held that a trial court had erred in removing for cause all jurors who answered yes to a jury form question asking if they knew any of the defendants. United States v. Calabrese, 942 F.2d 218, 221 (3d Cir. 1991). The trial court disqualified the jurors without asking about the nature of their acquaintances with the defendants, even though "[a] juror who merely had a passing acquaintance with one of the defendants would not, on the basis of acquaintance alone, be rendered incompetent to serve in this case." Id. at 224. The Third Circuit explained that such automatic removal of all those acquainted with a defendant "could facilitate racial, religious, economic, and ethnic discrimination," by excluding members of defendant's "race, class, and social status," in the same way that

the "key man" system that Congress abolished had skewed jury pools in favor of privileged or well-connected individuals in the community. Id. at 229-230.

As in Salamone and Calabrese, the trial court disqualified Juror 115 from service without making the "necessary inquiry" into his fitness to serve. Salamone, 800 F.2d at 1226. New Jersey law prohibits those "convicted of any indictable offense under the laws of this State, another state, or the United States" from jury service, 2B:20-1, but allows individuals with expunged convictions to serve on juries. D.J.B., 216 N.J. at 441. Once a conviction has been expunged, "the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the [person] may answer any questions related to their occurrence accordingly." N.J.S.A. 2C:52-57. Our Legislature has repeatedly broadened eligibility for expungement in recognition of the overwhelming public interest in "afford[ing] a second chance to one-time offenders convicted of less serious offenses, who have led law-abiding lives since conviction." In re Kollman, 210 N.J. 557, 562 (2012).

The trial court failed to ensure that jurors with expunged convictions were not wrongfully disqualified from service at Ms. Griner's trial. The court asked jurors whether they had "been convicted of any indictable offense in any state or federal court." (29T:21-23 to 22-6) In framing the question, the court failed to explain that jurors whose only prior convictions had been expunged

should answer that they had no such convictions. When Juror 115 answered that he had a 21-year-old conviction, the court rebuffed defense counsel's request that the court clarify whether Juror 115's conviction had since been expunged. (29T:22-24 to 23-25)

Given that Juror 115's only conviction was from decades prior, there was a strong chance that it had been expunged and he was not in fact disqualified from service. See N.J.S.A. 2C:52-2 (providing that individuals can move to expunge an indictable conviction 5 years after the completion of sentence); N.J.S.A. 2C:52-5.3 (allowing individuals to seek "clean slate" expungement of entire criminal record 10 years after completion of most recent sentence). The likelihood the conviction was expunged was increased by Juror 115's disclosure that his offense was CDS related because, in July 2021, 362,000 marijuana and hashish convictions were automatically expunged under the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMMA), L. 2021, c. 16, which "signifies that such prior marijuana offenses must be deemed not to have occurred and directs, by operation of law, their automatic expungement from an offender's criminal record." See State v. Gomes, 253 N.J. 6, 11 (2023).

The law provides that, once a conviction is expunged, "the arrest, conviction and any proceedings related thereto shall be deemed not to have

occurred, and the [person] may answer any questions related to their occurrence accordingly." N.J.S.A. 2C:52-57. But individuals with expunged convictions may be unaware of this provision or, when called to answer a judge's questions on the subject in court, may hesitate to omit information that seems directly responsive to the court's inquiry.[3] Therefore, it is imperative that courts pose questions relating to prior convictions clearly in a manner that will not disenfranchise legally qualified jurors from serving. Courts should not ask jurors to disclose whether they have ever "been convicted of any indictable offense" without making explicit that jurors should answer in the negative if they were only convicted of an offense that was subsequently expunged.

"Bringing together a diverse group of jurors with different life experiences and insights not only preserves 'the right to trial by a jury drawn from a representative cross-section of the community' but also helps achieve impartiality." Andujar, 247 N.J. at 296–97. Individuals with prior expunged convictions are not disqualified from jury service and bring a unique and valuable perspective to such service. The wholesale exclusion of such

[3] Indeed, after the court excused Juror 115, he asked the court if it had access to "expunge reports." (29T:26-12 to 25) Given the court's refusal to inquire about expungement with Juror 115, the meaning of this inquiry is ambiguous. One obvious interpretation is that Juror 115 believed his conviction was expunged, but hesitated to bring that information to the court's attention until he could confirm the court maintained a record confirming that expungement.

individuals based on improper voir dire questioning "unacceptably skew[s]" juries. Mason v. United States, 170 A.3d 182, 190 (D.C. App. 2017) (holding that improper disqualification of juror who believed criminal justice system was systematically unfair to Black people compelled reversal). Just like the Third Circuit explained in Salamone, even though a defendant has no right to a jury that includes a certain number of individuals with expunged convictions, "he is entitled to a jury from which none of those, or any other group, has been summarily excluded without regard to their ability to serve as jurors in the particular case." 800 F.2d at 1229.

New Jersey already has one of the most stringent prohibitions on jury service by individuals with prior convictions in the nation. Jackson-Gleich, G., "Rigging the Jury: How Each State Reduces Jury Diversity by Excluding People with Criminal Records," Prison Policy Initiative (2021), available at: https://www.prisonpolicy.org/reports/juryexclusion.html. Unlike many States that only disqualify individuals with felony convictions from jury service for the duration of their sentence or for a set number of years thereafter, New Jersey disqualifies all individuals with prior felony convictions from jury service for the rest of their lives. Studies have shown that laws excluding individuals with prior convictions from service "reduce jury diversity by disproportionately excluding Black and Latinx people, and actually cause

juries to deliberate less effectively." Ibid. Last year, as part of its effort to remedy issues with "discrimination in the jury selection process," Andujar, 247 N.J. at 318, the Supreme Court approved the recommendation of the Committee of the Judicial Conference on Jury Selection to "explore options for an individual who has completed their sentence (including any term of supervision) to be restored to eligibility to serve as a juror," referring it "for consideration by the Legislature." New Jersey Supreme Court, "Notice to the Bar and Public," 7/12/22 (Da 99). Although the recommendation has not yet been enacted, courts must not misread existing prohibitions on jury service to exclude eligible jurors with expunged convictions, as such exclusion is directly contrary to both existing law and the Court's call for allowing more formerly convicted individuals to participate in jury service.

The trial court erred in excluding Juror 115 without determining if he was in fact ineligible for service. Given the critical significance of the constitutional right to an impartial jury, the error is "not subject to harmless error analysis." Andujar, 247 N.J. at 315; see also State v. Wagner, 180 N.J. Super. 564, 567 (App. Div. 1981) (explaining that "[w]hen the integrity of the process is at stake, prejudice is not a precondition to successfully asserting impairment of the fundamental right of proper jury selection"). Ms. Griner's

convictions must be reversed, and she must be retried by a jury that has not been wrongfully purged of jurors with expunged convictions.

CONCLUSION

For the reasons set forth in Points I and II, Ms. Griner's murder conviction must be reversed. For the reasons set forth in Point III, all of Ms. Griner's convictions should be reversed.

Respectfully submitted,

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Docket No. A-2381-22T4

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

	: SUPERIOR COURT OF NEW JERSEY
	: CUMBERLAND COUNTY
STATE OF NEW JERSEY,	: APPELLATE DIVISION
	:
Respondent,	: ON APPEAL FROM: LAW
	: DIVISION, CRIMINAL PART,
	: CUMBERLAND
	: COUNTY VICINAGE
	:
	: INDICTMENT NO. 19-06-00537
v.	:
NAKIRA GRINER,	: SAT BELOW:
	: HON. ROBERT G. MALESTEIN, J.S.C
Appellant.	: HON. GEORGE H. GANGLOFF, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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Defendant is confined.

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PROCEDURAL HISTORY

Cumberland County Indictment 19-06-00537-I charged Nakira M. Griner with first-degree murder, N.J.S.A. 2C:11-3a(1) and 3a(2) (count one); second-degree desecration of human remains, N.J.S.A. 2C:22-1a(2) (count two); fourth-degree tampering with physical evidences, N.J.S.A. 2C:28-6(1) (count three); second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a(2) (count four); and second-degree false public alarm, N.J.S.A. 2C:33-3a(1) (count five) based upon allegations that the defendant had purposely or knowingly caused the death of her son, D[redacted] J[redacted], desecrated his remains in her attempt to cover up the murder, and caused a false public alarm in her attempts to hide the crime and deceive law enforcement. (Da 1-3).

On various dates between January 10, 2020 and March 6, 2020, the Honorable Robert Malestein, J.S.C., held a testimonial hearing on Griner's motion to suppress her statement to police. (1T-7T). Judge Malestein granted the motion in a written order on June 3, 2020, holding that it could not be used in the State's case-in-chief. (Da 4). Judge Malestein ruled, however, that the statement was voluntary and could be used to cross-examine Ms. Griner if she testified at trial. (Da 4)

Prior to trial, Ms. Griner moved to preclude Evan Bird from testifying as an expert in forensic anthropology and to limit the testimony of medical examiner Dr. Peter Mazari to prevent him from opining that the "manner of death" was homicide.

On July 12, 2021, Judge Malestein denied the motion to preclude Bird's testimony. (Da 5; 10T:34-14 to 42-23). On September 28, 2022, after a Rule 104 hearing, the Honorable George H. Gangloff, Jr., J.S.C., denied the motion to limit Dr. Mazari's testimony. (Da 6-7; 15T:113-20 to 128-2).

Beginning on December 12, 2022, Judge Gangloff presided over a jury trial on all counts (18T:9-15 to 16-13). On January 4, 2023, the jury found Ms. Griner guilty of all counts and made additional findings related to the murder count pursuant to 2C:11-3b(4)(k). (Da 8-14).

On February 21, 2023, Judge Gangloff sentenced Ms. Griner to life imprisonment without eligibility for parole pursuant to 2C:11-3b(4)(k). (46T:27-21 to 42-17; Da 15-18). Ms. Griner was also sentenced to a seven year consecutive and a five year concurrent sentences for her conviction on the remaining counts. Ms. Griner filed a notice of appeal on April 12, 2023. (Da 19-23).

STATEMENT OF FACTS

Around 6:30PM on February 8, 2019, Patrolman David Ringer of the Bridgeton Police Department went to the intersection of Giles and New Street in response to a call. (39T:128-10 to 22; 132-18 to 134-12). There, he met Nakira Griner, who was carrying her infant son Jace in her arms and crying out for police assistance. (39T:133-25 to 135-12). At that time, Ms. Griner told Ringer that she had

been walking down the street when assailants had pushed her from behind and took the baby stroller carrying her other son, D[redacted] G[redacted], who was nearly two years old. (39T:134-24 to 135-3; 138-7 to 139-8; 40T:95-8 to 12).

Ringer and other officers searched the area for the stroller, which they found laid on its side on Devonshire Place next to a pair of shoes. (39T:140-16 to 142-14; 145-14 to 21). Ringer called a K-9 handler, who brought a bloodhound to the scene to track the scent from the stroller. (39T:141-16 to 143-20). Ringer also contacted State Police to request a helicopter with a heat-seeking camera to aid in the search. (29T:141-16 to 142-4).

Detective Veronica Cappoli spoke to Ms. Griner, who was with her eight-month-old son J[redacted]. (41T:81-13 to 85-10). Ms. Griner told Cappoli that she was attacked while walking to Walgreens to get fluids for her children because they were not drinking their milk. (41T:99-17 to 100-2). Ms. Griner said she could not provide any description of the attackers. (41T:87-7 to 21). Ms. Griner gave Cappoli a photograph of D[redacted] to help the police search for him. (41T:90-18 to 91-17).

Detective Mark Yoshioka searched for surveillance cameras in the nearby area, and, with the consent of the owners, reviewed footage from cameras located 82 Lincoln Street, 84 Lincoln Street, and 11 Devonshire Place that captured Ms. Griner walking with the stroller. (40T:50-2 to 64-1). Yoshioka testified that the

footage from 84 Lincoln Street showed the front of Ms. Griner's stroller had "nothing in it" at the time she alleged she was walking with her children. (40T:54-15 to 55-5).

Sergeant Michael Pastirko and Detective Richard Morris went to Ms. Griner's home because, in their experience, abducted children sometimes escape and return home. (39T:152-25 to 153-16). Sergeant Pastirko walked around the house and found a window open, which he found odd because the temperature outside was "blistering cold." (39T:153-17 to 154-5). When no one responded to knocking on the front door, Morris climbed in through the window and unlocked the door for Pastirko to enter. (39T:155-22 to 156-10). The house was clean, but "smell[ed] funny." (39T:157-21 to 158-12). Pastirko estimated that around 50 people from the fire and police departments participated in an "extensive search" for the missing child. (39T:166-9 to 24).

Sergeant Pastirko found a purse that weighed around 10-15 pounds in a shallow hole in the backyard by a shed. (39T:167-17 to 168-18; 172-3 to 14). When he opened it, he saw several layers of white plastic bags inside. (39T:171-16 to 172-14). Another officer cut through the interior bags, revealing what he thought looked like a piece of cooked meat. (39T:172-3 to 173-5; 175-8 to 11). Believing the contents were not relevant to the search, the officers put the purse back on the ground. (39T:172-19 to 173-5).

Around midnight that evening, Detective Sergeant Kenneth Leyman looked more closely at the bag and believed it might contain human bones. (40T:105-5 to 106-25). Patrolman Brent Bodine "flipped [the bag] over" onto the sidewalk on the ground in the backyard. (40T:161-11 to 21). Bodine "spread the remains open from the middle," and a piece "easily snapped off." (40T:176-20 to 177-11). The contents were later identified as the remains of D[redacted] G[redacted], Jr. (39T:114-12 to 19).

Leyman and other officers comprehensively searched the home for clues as to how D[redacted] had died. (40T:132-12 to 133-9). The officers did not observe any blood in the home or recover any instruments that appeared to have caused the death. (40T:114-20 to 115-25; 132-12 to 133-9). The home did not appear to have been recently cleaned because dust was visible on surfaces throughout. (40T:115-5 to 21; 133-6 to 12). Leyman noticed a "chemical smell" that was strongest in the kitchen and saw a sheet of cookies in the oven and grease splatter on the oven door. (40T:109-4 to 110-18; 135-6 to 136-14). The bottom of the oven looked like it had been cleaned and bleach wipes were found in the nearby trash. (40T:109-23 to 110-18; 135-6 to 136-14).

Ms. Griner's husband, D[redacted] G[redacted], Sr., worked at Inspira Medical Center. (40T:83-24 to 84-7). His timeclock records and surveillance footage showed that he arrived at work at 6:46 a.m. and left work at 7:19 p.m. on February 8. (40T:83-24 to 85-10). Mr. Griner did not testify at trial.

Ms. Griner consented to a search of her iPhone. (42T:226-8 to 14) Sergeant Ryan Breslin extracted data from the phone using Cellebrite software, which generated a readable report of the phone's call logs, chats, and web history. (42T:227-9 to 230-5). There was an eight-day gap in the web history found on the phone between January 31, 2019 at 4:19 p.m. and February 8, 2019 at 2:33 a.m. (42T:234-11 to 23). Also, there was a gap in the call log on the phone between January 16, 2019 at 3:09 p.m. and February 8, 2019 at 6:43 a.m. (42T:239-18 to 24). The Cellebrite software results reflected that files on the phone had been "modified" on February 7, 2019. (42T:239-25 to 241-12). During the day on February 8, the web history showed that the phone was used to track a package on Amazon and to access shopping sites for purses and shoes. (42T:236-3 to 16). The web history also showed a search at 7:24 a.m. on February 8, after D[redacted]'s death, for results relating to cold symptoms in children. (42T:236- 18 to 237-2).

The State introduced audio of recorded calls between Ms. Griner and her sister LaShae Trussell. (43T:21-25 to 22-24). Ms. Griner told her sister that, the night before he died, D[redacted] had fallen down the stairs while reaching for a doll that had fallen. (Da 45-46). Although his lip was bleeding, he had "got right up" and behaved normally afterwards, walking, climbing on the couch, and generally acting like "himself." (Da 46). She noticed his "breathing sounded a little weird," but appeared to return to normal after he sat down on the couch. (Da 46).

Ms. Griner said Daniel, Jr. seemed tired at 7:20 pm that night, even though he typically did not go to bed until 8 pm. (Da 48). She put Daniel, Jr. to bed and he threw up, but she thought it was due to eating and drinking a lot in the period right before bedtime. (Da 47). The next morning, when she went to his bed, he was "gone." (Da 48). She tried CPR, but it did not revive him. (Da 51). She then Googled his symptoms and believed that he may have died from internal bleeding after falling down the stairs. (Da 38).

Ms. Griner explained she panicked and thought she needed to cover up the death because Daniel, Jr. had "bruises on him" from the beatings she forced her husband to inflict on the child. (Da 34; Da 49). She explained that the reason for her cover up of her son's death was to avoid any suspicion that she or her husband killed the child. She thought police would have "assumed that it wasn't an accident" because of the bruises and "thought that we beat him" to death, which would have resulted in them both being arrested and losing custody of Jayce. (Da 49). She told her sister, "[W]hen I saw baby Dan like that in his bed, I immediately left. All of, all rationality, all common sense, all everything left." (Da 51).

The State also introduced a call between Ms. Griner and Daniel, Sr., in which she said she was hurt that he had not contacted her after her arrest. (Da 31-32). Griner said she needed him to know she did not kill Daniel, Jr. or do anything to hurt him. (Da 32). Griner explained that she destroyed Daniel, Jr.'s remains because she did

not want Daniel, Sr. to get "in trouble" for "what we were doing to D[redacted] [that] left marks all over his little butt and all over his legs." (Da 42). Griner said she "couldn't let anybody see him like that." (Da 32). She stated that she was hurt that she received "letters from men all over," but that her husband apparently did not support or believe her. (Da31).

In dispute at trial was the timing of fractures to D[redacted]'s bone tissue, which the State claimed contradicted Ms. Griner's statements that D[redacted] had died from an accidental fall down the stairs. Medical Examiner Dr. Peter Mazari, who conducted the autopsy, testified that many of the bone fractures he saw were not consistent with an accidental fall. (42T:188-8 to 20). The defense posited that those fractures were not Daniel, Jr.'s cause of death, but instead the result of actions Ms. Griner took after his death during the destruction of his body. (41T:89-5 to 18; 43T:122-21 to 123- 15).

Dr, Mazari testified that the manner of death was homicide. Because Ms. Griner had burned away the soft tissue that was the most reliable evidence in determining the timing of the injuries, he relied, in part, on a report prepared by Evan Bird, a forensic anthropologist who worked in the Northern Regional Office of the Medical Examiner. (42T:176-12 to 177-4).

Bird concluded many of the injuries appeared to be perimortem, but acknowledged that injuries to bone can appear to be perimortem even when they occur up to 12-18 hours following death. (42T:89-5 to 90-19; 120-4 to 121-17). Perimortem injuries are those that occur at or near the time of death, as opposed to antemortem injuries which occur prior to death. Bird opined that it was not "likely" that the injuries could have been caused just by D[redacted], Jr. falling down the stairs. (42T:121-22 to 122-24). Bird noted that there was no indication of any injury to D[redacted], Jr.'s bones that could be classified as antemortem, as in occurring far enough in advance of his death for bone healing to have begun to occur. (42T:84-20 to 85-1).

After receiving Bird's report, Dr. Mazari declared the manner of death to be "homicide." (42T:186-20 to 191-2). Dr. Mazari explained that he had relied heavily on the "circumstances of the case" in reaching this conclusion, namely that the "remains were severely altered and severely damaged" and "sort of placed outside of the home," which he viewed as "highly suspicious." (42T:187-2 to 22). Given the lack of certainty around the precise timing of the injuries to the bone, Dr. Mazari said he had not "predominantly" relied on Bird's report in reaching his opinion regarding manner of death. (42T:206-23 to 207-12). Instead, Dr. Mazari explained, "to be honest, I think the circumstances played a very large role . . . the ruling of homicide." (42T:206- 23 to 207-12).

Ultimately, a jury found that Ms. Griner was guilty of all counts, including the murder of D[redacted], Jr.

LEGAL ARGUMENT

POINT I

DR. MAZARI'S TESTIMONY THAT THE MANNER OF DEATH WAS "HOMICIDE" WAS APPROPRIATE EXPERT TESTIMONY WITHIN THE SCOPE OF HIS EXPERTISE AS MEDICAL EXAMINER AND RELIED ON HIS MEDICAL EXPERTISE AND WAS NOT EVIDENCE DIRECTLY WITHIN THE KEN OF THE JURY.

The trial court was not only permitted to allow Dr. Mazari, the medical examiner, to testify as to the cause of D[redacted] Jr.'s death. This was precisely the manner of testimony that is wholly appropriate from precisely this kind of expert witness. The legislature has specifically delineated the responsibility to determine cause of death (and specifically including homicide as one potential cause) to a duly appointed medical examiner.

In her brief, the defendant voices concern about the role of expert testimony and the potential for usurpation of the jury's role as the ultimate finder of fact in a criminal proceeding. She makes an argument regarding the potential dangers of an expert witness testifying to an opinion formed from bases outside their field of expertise and the effect testimony regarding an ultimate issue can have to influence

a jury tasked with determining the truth or falsehood of claims. In particular, here, the defendant is concerned with Dr. Mazari, the medical examiner called as a witness for the State, and specifically his testimony that, in his professional opinion, the cause of Daniel Jr.'s death was homicide.

Dr. Mazari was qualified as an expert witness in the field of medical examination under the then-controlling Frye standard and R. 702. Prior to trial, counsel for the defense sought to bar Dr. Mazari from testifying on the cause of death. (Db13). The defendant, in her brief, claims that "[t]he in limine hearing established that Dr. Mazari's conclusion [that the death was caused by homicide] was not based on his autopsy of D[redacted]" (Db13). However, this misstates Dr. Mazari's actual testimony that he relied on "[t]he condition that the remains were found in – the fact that they were so severely altered. And also the fact that the – the type of fracture that was found on the right side of the skull is not consistent with typical accidental trauma. Is – all those things combined were enough to – to render an opinion." (15T:84-9 to 14). Dr. Mazari stated in no uncertain terms that his opinion was based on a totality of circumstances and scientific evidence he examined, including the anthropology report prepared by Forensic Scientist Bird, in his professional role as medical examiner.

Under N.J. Admin. Code §8:70-1.8, "'Proper forensic practice' consists of those procedures which are required to perform the mandated role of medical

examiner, which is to determine the cause and manner of death within a reasonable degree of medical probability [and] to identify and analyze evidence in criminal matters[…].” The legislature, in defining the role of the medical examiner, placed an emphasis on his or her role in determining cause of death and specifically envisioned the identification and analysis of evidence in coming to this conclusion. To keep a qualified medical examiner who has carefully studied the remains of D[redacted], and who has had access to the evidence as it relates to the circumstances in which his remains were found, from determining whether his death was caused by homicide would be to ignore the very role the legislature envisioned for the office of the medical examiner.

The case at issue is fundamentally different from State v. Jamerson, 153 N.J. 318 (1998), which the defendant relies on in her brief to support a claim that Dr. Mazari, the medical examiner, should not have been able to testify that the cause of D[redacted]'s death was homicide. The decision in that case rested on whether or not a medical examiner could testify that the defendant had committed reckless homicide based on the facts of an automobile accident as he understood them. In Jamerson, the medical examiner testified as to whether he believed the victim had stopped at a stop sign and whether the defendant had the necessary state of mind (recklessness) to be found guilty of the crime charged. The Court found that “his testimony should have been limited to describing the physical properties of the

implement that caused the [victim's] deaths, narrating the physiological status of the bodies at the time of death, and ruling out the possibility that the injuries were self-inflicted or sustained as a result of mere inadvertence." This is precisely what Dr. Mazari did in his testimony: reach an expert opinion on the cause and manner of Daniel Jr.'s death based on the condition of his remains as they were found. Dr. Mazari determined that the state of Daniel Jr.'s remains were consistent with homicide, but he never stated a belief about the identity of the killer or her state of mind as did the expert in Jamerson.

Clearly, if the medical examiner in Jamerson had testified that the cause of death was being run over by an automobile, there would have been no objection. Similarly, here, where Dr. Mazari has testified about the cause of the death (and not the identity of a killer or that killer's state of mind), his expert opinion is similarly unobjectionable.

The defendant also cites State v. Sosnowicz, 270 P.3d 917 (2012), an Arizona case, in support of his claim that an expert medical examiner cannot testify as to whether or not a death was caused by homicide. However, like Jamerson, Sosnowicz concerned a vehicular homicide. In both Jamerson and Sosnowicz, there was no question as to the actual cause of the death (in Jamerson, two elderly motorists were killed when the defendant's car drove into theirs and in Sosnowicz the victim was killed when he was run over by the defendant). In both of these cases, testimony that

the deaths were homicides were actually statements as to the state of mind of the defendant; the physical cause of death was never in dispute, only whether it was an accident or whether the defendants had the reckless or intentional mens rea that would turn the killing into a homicide. In the present case, Dr. Mazari's claim that D[redacted]'s death was caused by homicide clearly served the purpose of distinguishing the likelihood of the death being caused by blunt force trauma as opposed to from an accidental fall down a flight of stairs.

Defendant pointed out that Jamerson held that "a medical examiner qualified as an expert in forensic pathology 'should not have been permitted to testify that [a car accident] was a **reckless** homicide rather than an **accidental** killing." (Db15 citing Jamerson, emphasis added). At issue in Jamerson was whether or not a medical examiner should have been able to comment on the mental state of the defendant, not whether they were qualified to comment on the cause of death – which they undoubtedly were. Here, similarly, Dr. Mazari sought to express his belief, as a forensic pathologist, that D[redacted]'s death was caused by blunt force trauma and not a fall. This is precisely what a medical examiner is supposed to determine.

Jamerson cites to numerous cases from across the country and the defendant herself cites Sosnowicz from Arizona's Supreme Court, but ignores Georgia's Medlock v. State, 263 Ga. 246 (1993) which is cited in the Jamerson opinion. Unlike Jamerson and Sosnowicz which deal with medical examiners opining as to whether

motor vehicle deaths were accidents or not, Medlock specifically considered whether a medical examiner could refer to a baby's death as 'homicide' in his expert opinion that the victim's death was caused by shaking and not the result of an accident.

> Prior to stating his opinion, the medical examiner testified at length about the injuries to the victim's head which he had discovered in his examination of the victim's head and skull. He testified that his findings were consistent with injuries found in shaken infants. This testimony is clearly "beyond the ken of the average layman." Here, the expert's conclusion that the infant's death resulting from shaking could only be homicide merely reiterated and underscored his opinion that death in this case resulted from shaking, rather than by accident or by intentional causes. We note Medlock did not contend that he *accidentally* shook the baby to death. Rather, his defense was that the baby fell and struck his head on the floor. Under these circumstances, the expert's testimony did not improperly invade the province of the jury.
>
> Medlock at 248-249.

Here, since the defendant is not alleging that she *accidentally* caused blunt force trauma to D[redacted] until he died, Dr. Mazari's opinion that the cause of death was homicide by blunt force trauma did not usurp the jury's opportunity to determine whether the defendant had the necessary state of mind to be guilty of murder. Instead, he merely used his expertise to determine the manner of death as he was required to do in his professional capacity.

In her brief, the defendant claims that this case is "indistinguishable from Tyler, where 'the medical examiner performed an autopsy, was unable to render an opinion on cause or manner of death, and then after review of witness statements or

information obtained through police investigation, rendered an opinion based largely on that information.'" (Db23, quoting State v. Tyler, 867 N.W.2d 136 (2015)). Tyler, however, concerned a medical examiner whose conclusion about the cause of the death of a newborn was based "entirely on [the medical examiner's] belief of [the defendant's] statements". Tyler at 150. In that case, "since the autopsy didn't disprove [the defendant's] statements, [the medical examiner] believe[d] her statement" and the medical examiner stated that he came to his conclusion that the child was born alive and then drowned because "[t]here's nothing inconsistent between what she said and what I saw in the autopsy." Tyler at 150. The medical examiner in Tyler went on to state that "without the [defendant's] witness statements, I could not have diagnosed drowning in this case." Tyler at 151.

The error in Tyler was wholly concerned with the fact that the medical examiner relied on statements of the defendant relayed to him and the veracity of which was challenged at trial. By basing his conclusions on disputed statements before the jury, he erroneously made a judgement about the credibility of these statements which should have been determined by the jury alone. In the present case, Dr. Mazari did not rely on disputed facts to make his determination that the cause of D[redacted]'s death was homicide. He based his findings solely on objective evidence including his medical examination and the state and location in which the remains were discovered. "Tyler's defense was that her statements to police were not credible

and the product of coercion," (Tyler at 151), where, in contrast, the circumstances related to the location of D[redacted]'s body are uncontested in this case and the information Dr. Mazari relied upon in that regard were objectively true and not relegated to the fact-finding to be conducted by the jury. These cases have only a surface-level similarity and the Tyler decision is not a proper guidepost in the present case.

Indeed, in reaching their decision in the decision in the Tyler case, the court examined the role of a medical examiner and opined that "state law requires medical examiners to investigate the cause and manner of death, conduct an autopsy, and prepare a written report on their findings" and that they are often required to "conduct a preliminary investigation of the cause and manner of death." Tyler at 154. The court's opinion provides the definition of "cause of death" as it applies as "the disease or injury which sets in motion the chain of events which eventually result in the death of a person," and goes on to define "manner of death" as "circumstances under which the death occurred," noting that "the manner of death may be specified as … natural, accident, suicide, homicide, undetermined, or pending." Tyler at 155, internal citations omitted. Not only does this case that the defendant relies on clearly state that it is a part of the medical examiner's duty to determine whether or not a death was caused by homicide, precisely the language challenged at present, but the decision notes that "in making these determinations, medical examiners routinely

rely on the circumstances that surround the death, as revealed by independent investigation, police investigation, and eyewitness accounts." Tyler at 155, internal citations omitted.

The discretion of the trial court to act as a gatekeeper in rejecting expert testimony should be used with great caution in light of the strong policy exhibited by N.J.R.E. 402 in favor of the admission of all relevant evidence. See Germann v. Matriss, 55 N.J. 193 (1970) and State v. Briley, 53 N.J. 498 (1969). A jury should be trusted to weigh any deficiencies in the qualifications of experts, as it is the jury's province "to determine the credibility, weight and probative value" of their testimony. Rubanick v. Witco Chemical Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), mod. on other grounds 125 N.J. 421 (1991); Higgins v. Owens-Corning Fiberglas, 282 N.J. Super. 600, 614 (App. Div. 1995). Any deficiencies in the qualifications of an expert or in the testimony offered are subject to testing by cross-examination. State v. Jenewicz, 193 N.J. 440, 455 (2008); State v. Frost, 242 N.J. Super. 601, 615 (App. Div. 1990), certify y. Den. 127 N.J. 321 (1992).

In general, the trial court's decision to admit expert testimony is entitled to deference and reviewed for an abuse of discretion. The trial court's decision as to whether an expert is qualified to testify is entitled to "considerable latitude" by an appellate court, which reviews for an abuse of discretion. State v. Kuropchak, 221 N.J. 368, 385 (2015). Accord, Carey v. Lovett, 132 N.J. 44, 64 (1993); Koseoglu v.

Wry, 431 N.J. Super. At 159; State v. McGuire, 419 N.J. Super. 88, 123 (App. Div.), certify. den. 208 N.J. 335 (2011); State v. Frost, 242 N.J. Super. 601, 615 (App. Div. 1990), certify. den. 127 N.J. 321 (1992); Foley Machinery Co. v. Amland Contractors, Inc., 209 N.J. Super. 70, 77 (App. Div. 1986); Windmere, Inc. v. International Ins. Co., 208 N.J. Super. 697, 713 (App. Div. 1986), aff'd 105 N.J. 373 (1987). Stated alternatively, the decision should only be disturbed on appeal if necessary to prevent "manifest error or injustice." State v. Jenewicz, 193 N.J. 440, 455 (2008); State v. Moore, 122 N.J. 420, 459 (1991); State v. Ravenall, 43 N.J. 171, 182 (1964).

POINT II

THE EXPERT TESTIMONY OF FORENSIC ANTHROPOLOGIST BIRD REGARDING THE TIMING OF SKELETAL INJURIES WAS PROPERLY QUALIFIED BY THE TRIAL COURT AS GENERALLY RELIABLE UNDER THE FRYE STANDARD AND WAS PROPERLY ADMITTED AT TRIAL.

The appellant argues that Evan Bird, a forensic anthropologist and medicolegal death investigator for the Office of the Chief State Medical Examiner, who examined the remains of D[redacted]s body and rendered an expert opinion regarding the time at which the child sustained injuries, was not properly qualified by the trial court. The record below, however, clearly provides adequate evidence

that the trial court carefully considered Mr. Bird's qualifications and the techniques he relied on in rendering his expert opinion.

At the time this case was tried, admission of expert testimony was controlled by the Frye standard, which placed the burden on the proponent of the evidence to clearly establish that the theory or technique has "gained general acceptance in the particular field in which it belongs." State v. J.L.G., 234 N.J. 265, 280 (2018) (citing Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)).

As the gatekeeper, the trial judge is obligated to make the preliminary determination that proffered expert testimony meets the general requirements that the subject matter is beyond the ken of the average juror, the testimony and underlying foundation are reliable, and the witness has sufficient expertise. Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923), State v. J.L.G., 234 N.J. 235, 301 (2018); State v. J.Q., 252 N.J. Super. 11, 26 (App. Div. 1991), aff'd 130 N.J. 554 (1993); State v. Torres, 183 N.J. 554, 567 (2005). The determination is within the discretion of the judge, as is the necessity of holding a Rule 104 hearing to make such determination. State ex rel. C.D., 354 N.J. Super. 457, 466 (App. Div. 2002). And see the dicta in State v. Griffin, 120 N.J. Super. 13, 20 (App. Div.) certify. den. 62 N.J. 73 (1972), to the effect that the "necessity for expert testimony to enhance the knowledge and understanding of jurors with respect to other testimony of a special nature normally outside of the usual lay sphere, and the qualification of the

proffered expert, ordinarily are matters resting within the sound discretion of the trial judge."

Evan Bird testified that he is "the Office of the Chief State Medical Examiner's forensic anthropologist, as well as a medicolegal death investigator." (41T:122-4 to 6). Mr. Bird testified that he is the forensic anthropologist and medicolegal death investigator for the Office of the Chief State Medical Examiner, a statutorily constructed position. He also testified that he studied biological anthropology at Rutgers University, where he graduated Summa Cum Laude, and received a Master's Degree in Human Skeletal Biology from New York University. (41T:125-20 to 127-12). Bird also testified that he had taught, for five or six years, the Introduction to Forensic Anthropology course at Rutgers and other schools. (41T130-8 to 16). He further testified that he held a diplomat of the American Board of Medicolegal Death Investigators. (41T:131-21).

The legislature of the State of New Jersey has seen fit to create an Office of the State Medical Examiner, to task it with responsibility for investigating and determining the cause of death of those that perish in the state, and have defined "proper forensic practice" in N.J. Admin. Code §8:70-1.8. Mr. Bird was able to testify that he studied this subject at highly regarded educational institutions and that he developed and teaches such a program now. Given these facts, it was clearly within the trial court's power to determine that Mr. Bird had sufficient expertise and

that, because the field of forensic anthropology has been identified by the legislature, it has gained general acceptance as a methodology and that, because he is the one teaching this methodology to aspiring forensic anthropologists, his methods specifically are widely accepted within the field.

The court did not find that Mr. Bird's testimony was reliable simply because the defense did not show his methodology was unreliable as the defendant suggests. (Db31). While the judge did note that nothing before him implied that this wasn't generally accepted, he first noted that "Rule 702 dictates that an expert's opinion must be based on facts known by the expert at or previous to the hearing, and are the types of facts that are reasonably relied upon by experts in that particular field. And the net opinion requires an expert support his conclusions, or her conclusions, with factual evidence or other data." (10T:35-3 to 9). The court went on to recite in detail the methodology used by Mr. Bird and determined that "it seems pretty reliable" (10T39-17 to 18) and "in terms of Daubert analysis. […] he demonstrated the soundness. I mean – it's pretty – pretty self-evident, both in terms of its approach to reasoning and to its use of data from the perspective of others within a relevant scientific community." (10T39-24 to 40-3). The court went on, "The gatekeeper should exclude the proposed expert testimony on the basis that it's unreliable. I don't have that in front of me. I have – he very clearly described a very good, sound scientific method on what it is he does, and what the limits are of the science behind

what it is. And he discussed that at length, antemortem, perimortem, and postmortem, and how it is they draw their conclusions." (10T40-4 to 11).

The defendant has challenged the expert testimony of a highly skilled and well-regraded individual who relied on a thoroughly described and widely-accepted methodology which was weighed by the trial court and found to meet the burden set forth by Frye standard. It is clear that what the defendant objects to is not the methodology employed or the legal analysis of the trial court, but the resulting opinion that was not favorable to her case. Here, the expert testimony was arrived at by a specially trained individual employed by the State of New Jersey to render precisely this manner of opinion using precisely this manner of widely-accepted investigation techniques.

In her attempt to discredit the methodology employed by Mr. Bird in his analysis of D[redacted]'s remains, she cited The Difficult Task of Assessing Perimortem and Postmortem Fractures on the Skeleton: A Blind Text on 210 Fractures of Known Origin in order to demonstrate the challenges with identifying whether bone fractures occurred at the time of death or afterward. (Db33). While this scholarly article seeks to highlight some of the challenges in this field, it states at the very outset (in the abstract) "The distinction between perimortem and postmortem fractures is an important challenge for forensic anthropology. Such a crucial task is presently based on macro morphological criteria **widely accepted in**

the scientific community." (Da53, emphasis added). While the defendant has pointed to a work that is critical of Dr. Bird's methodology, even it admits that it is generally accepted as reliable in establishing the timing of injuries. Certainly, the criticisms raised against this common practice amongst forensic anthropologists would have made for appropriate impeachment on cross-examination, but given that the articles cited by the defendant on appeal admit that they are widely accepted, they do not make a meaningful argument against admission of this testimony.

The Court's determination that Mr. Bird's expert testimony was sufficiently reliable and accepted did not rest solely on the fact that "this is what he does for a living" as the defendant suggests. (Db31). During the hearing on the admissibility of Mr. Bird's findings, the court stated,

> We have the explanation from the anthropologist on what it is he sees. He provides those – those findings. And he was candid today. He doesn't determine the cause and manner of death. He looks at bones, he tells you based on the science – and he didn't say it out loud, but I've had other experts who say it, that this is all postmortem studies they have to have to do. [...] It's all post-mortem or it's part of the literature of emergency room doctors, pediatricians that gather data together.
>
> (10T:15-10 to 21).

The Court here demonstrated an understanding of Mr. Bird's methodology as well as a particular familiarity with this manner of forensic anthropology both as it is accepted within the field and how it is routinely accepted in the courtroom. His

reference to this being what Mr. Bird "does for a living" was not a suggestion that because he is paid to do it, it must be generally accepted, but a dismissal of any suggestion of bias.

The discretion of the trial court to act as a gatekeeper in rejecting expert testimony should be used with great caution in light of the strong policy exhibited by N.J.R.E. 402 in favor of the admission of all relevant evidence. See Germann v. Matriss, 55 N.J. 193 (1970) and State v. Briley, 53 N.J. 498 (1969). A jury should be trusted to weigh any deficiencies in the qualifications of experts, as it is the jury's province "to determine the credibility, weight and probative value" of their testimony. Rubanick v. Witco Chemical Corp., 242 N.J. Super. 36, 48 (App. Div. 1990), mod. on other grounds 125 N.J. 421 (1991); Higgins v. Owens-Corning Fiberglas, 282 N.J. Super. 600, 614 (App. Div. 1995). Any deficiencies in the qualifications of an expert or in the testimony offered are subject to testing by cross-examination. State v. Jenewicz, 193 N.J. 440, 455 (2008); State v. Frost, 242 N.J. Super. 601, 615 (App. Div. 1990), certify. Den. 127 N.J. 321 (1992).

In general, the trial court's decision to admit expert testimony is entitled to deference and reviewed for an abuse of discretion. The trial court's decision as to whether an expert is qualified to testify is entitled to "considerable latitude" by an appellate court, which reviews for an abuse of discretion. State v. Kuropchak, 221 N.J. 368, 385 (2015). Accord, Carey v. Lovett, 132 N.J. 44, 64 (1993); Koseoglu v.

Wry, 431 N.J. Super. At 159; State v. McGuire, 419 N.J. Super. 88, 123 (App. Div.), certify. den. 208 N.J. 335 (2011); State v. Frost, 242 N.J. Super. 601, 615 (App. Div. 1990), certify. den. 127 N.J. 321 (1992); Foley Machinery Co. v. Amland Contractors, Inc., 209 N.J. Super. 70, 77 (App. Div. 1986); Windmere, Inc. v. International Ins. Co., 208 N.J. Super. 697, 713 (App. Div. 1986), aff'd 105 N.J. 373 (1987). Stated alternatively, the decision should only be disturbed on appeal if necessary to prevent "manifest error or injustice." State v. Jenewicz, 193 N.J. 440, 455 (2008); State v. Moore, 122 N.J. 420, 459 (1991); State v. Ravenall, 43 N.J. 171, 182 (1964).

POINT III

THE COURT ACTED WITHIN ITS DISCRETION IN DISQUALIFYING A PROSPECTIVE JUROR BASED ON HIS CONVICTION FOR AN INDICTABLE OFFENSE AND HAD NO AFFIRMATIVE DUTY TO INVESTIGATE WHETHER OR NOT AN OLD CONVICTION HAD BEEN EXPUNGED WHERE THE JUROR MADE NO REPRESENTATION THAT HE HAD SOUGHT OR RECEIEVED AN EXPUNGEMENT.

In her brief, the appellant argues that the trial court's disqualification of Juror 115, who admitted to the court that he had been convicted of an indictable offense and, as a result, served prison time, deprived the defendant of due process and a fair

trial. The defendant here imagines that the disqualifying conviction could have been expunged, despite the fact that the juror himself offered no indication that he had sought or received expungement for this past criminal conduct. The defendant claims the remote possibility that the conviction that disqualified this juror had been, without the juror's knowledge, removed from his record, and because the court did not take additional steps after the juror himself informed the court of his disqualifying conviction, the defendant was thereby robbed of an opportunity for a fair trial. Though the defendant argues that there may have been some possibility that the conviction referred to could had been expunged, she has offered no evidence that this ever happened and the juror made no indication that this had ever happened.

Under R. 2B:20-1(e), every person summoned as a juror, "shall not have been convicted of any indictable offense under the laws of this State, another state, or the United States." The defendant here appeals the trial court's conviction because Juror 115, who admitted to a past felony conviction in the State of New Jersey, was excluded from the jury.

After noting that Juror 115 indicated that he had been convicted of an indictable offense, the trial court asked him, "So, do you have an indictable offense conviction?" (29T22-3). Juror 115 answered, "Yes. It's an old one. Twenty years ago, but unfortunately I do." (29T:22-5). When asked about the court and jurisdiction in which he was convicted, Juror 115 said, "New Jersey" (29T:22-9) and said that it

had been in "Superior Court." (29T22-13). The court reasonably relied on Juror 115's representation that he had been convicted of an indictable offense in New Jersey and properly found that he was disqualified to serve on the jury under R. 2B:20-1(e).

It is true that counsel for the State and the defendant's trial counsel considered whether this old conviction could possibly have been expunged or that Juror 115 could have been mistaken about the nature of the offense he had been convicted of. The trial court sought clarification and asked Juror 115, "This is only to make sure that we're clear that this was an indictable offense and not something that was downgraded in any way to like a municipal offense. Do you remember what – what you were convicted of back then?" (29T:25-1 to5). Juror 115 answered, "It was a CDS charge where I had to go to prison for it." (29T:25-6 to 7). This clear indication was sufficient proof that Juror 115 was not qualified to serve on this jury and the trial court asked counsel if they had "any issues" to which both the prosecution and defense stated "No, Judge" (29T25). As a result, Juror 115 was excused.

In her brief, the defendant posits that Juror 115's conviction could possibly have been expunged and his dismissal was therefore reversible error. Juror 115 stated that he had been convicted of a felony and that he had served prison time for it. He never stated, suggested, or implied that this felony conviction had been expunged.

Certainly, if it had, he would have been right not to mention it at all or to tell the judge that it had been expunged and removed from his record. He did not.

The defendant would argue that, because it may be possible that the conviction Juror 115 referred to had been expunged, as theoretically any conviction could possibly be expunged, the trial court had an affirmative duty to investigate and disprove Juror 115's claim that he had a felony conviction. This would impose a new and arduous duty on the courts.

In her brief, the defendant cites United States v. Salamone, 800 U.S. 522, 537 (1975) to point out that defendants in a criminal trial are entitled to "the opportunity to have the jury drawn from venires representative of the community." (Db37 citing Salamone). Salamone, however, dealt with whether the exclusion of all potential jurors with NRA affiliations was properly within the trial court's discretion. The case at present, however, deals with an exclusion for a specifically disqualifying prior criminal offense. Where the judge reasonably relies on a potential juror's representation that he or she has had a disqualifying conviction, the court must disqualify that juror under R. 2B:20-1(e).

Indeed, even Salamone itself sets forth the heavy burden an appellant faces in challenging a trial court's discretion in jury selection, stating "In general, the allegation on appeal that the trial judge improperly conducted the *voir dire*

examination of prospective jurors, in the absence of plain error, will not be heard where no objection is made before the [lower] court." (Salamone quoting Fed.R.Crim.P.51,52(b). Where a trial court clearly relies upon a juror's explicit and reasonable representation that he has a disqualifying conviction, there is no abuse of discretion and, where the defendant's trial counsel did not object to the exclusion of the juror, it is not properly before the appellate court at all.

CONCLUSION

For the reasons stated above, defendant's appeal should be denied, and the conviction and sentence should be affirmed.

Respectfully,

/s Jeffrey Krachun
Jeffrey Krachun
Assistant Prosecutor

Dated: 2/15/24

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2381-22T4
INDICTMENT NO. 19-06-00537-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Cumberland County.
NAKIRA M. GRINER,	:	
		Sat Below:
Defendant-Appellant.	:	
		Hon. Robert Malestein, J.S.C.
	:	Hon. George H. Gangloff, Jr., J.S.C., and a Jury
		DEFENDANT IS CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b)

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Nakira Griner respectfully refers the Court to the Procedural History and Statement of Facts set forth in her brief previously submitted in the matter.

LEGAL ARGUMENT

Ms. Griner continues to rely on the arguments from her initial brief and adds the following.

POINT I

A MEDICAL EXAMINER CANNOT TESTIFY THAT THE MANNER OF DEATH WAS A HOMICIDE WHEN HIS OPINION ON THAT DISPUTED ISSUE IS NOT BASED ON APPLICATION OF HIS SCIENTIFIC KNOWLEDGE, BUT DEPENDS INSTEAD ON FACTS WHOSE SIGNIFICANCE IS FOR THE JURY'S ULTIMATE DETERMINATION.

Dr. Mazari performed an autopsy, which found blunt force trauma to [redacted] skeleton inconsistent with an accidental fall. But Dr. Mazari and forensic anthropologist Evan Bird both admitted that they could not determine whether this blunt force trauma was inflicted before or after [redacted] death. (15T:81-18 to 82-3; 84-7 to 85-16; 42T:89-5 to 90-19; 120-4 to 121-17) Despite this conceded inability to place the skeletal trauma prior to [redacted] death, Dr. Mazari opined that this trauma was the cause of death, telling the jury repeatedly that his manner of death was a homicide. Dr. Mazari

admitted that "a lot" of his opinion that [redacted] death was a "homicide" depended not on the results of the autopsy he performed, but instead on the "circumstances" of how the body was discovered burned and discarded outside of Ms. Griner's home. (15T:83-6 to 86-25)

The defense and the prosecution both had competing stories about why Ms. Griner had disposed of [redacted] body. Ms. Griner's defense was that she had destroyed the body in a panic following [redacted] accidental death. The State's theory was that she had committed murder and discarded the body to cover up her actions. What story deserved to be credited at trial was a question for the jury. Dr. Mazari's testimony that the destruction of the body was "highly suspicious" and was "almost probably enough to say" the death was a homicide was in no way based on science. (42T:187-2 to 22) It should not have been admitted in the guise of his medical expertise. Its admission over defense objection invaded the province of the jury and compels reversal. See State v. Jamerson, 153 N.J. 318, 340-41 (1998).

The State notes that N.J. Admin. Code §8:70-1.8 requires medical examiners to perform autopsies in cases where death has occurred under certain circumstances. (Sb 17-18)[1] But nothing about this provision automatically authorizes the admission of medical examiner's conclusions in a

[1] Sb: State's brief.

subsequent criminal prosecution, especially where the conclusion depends not on the medical examiner's scientific expertise, but on their consideration of other evidence discovered by police during the investigation.

Separate legal rules govern the admission of expert testimony in criminal cases. N.J.R.E. 702. These rules prohibit the admission of expert "opinion on matters that fall within the ken of the average juror," State v. Cain, 224 N.J. 410, 426 (2016), and limit such testimony to matters about which the expert possesses "sufficient expertise." Jamerson, 153 N.J. at 340. Our Supreme Court has recognized that "[e]xpert testimony coming from a law enforcement officer claiming to have superior knowledge and experience likely will have a profound influence on the deliberations of the jury" and "intrudes on the exclusive domain of the jury as factfinder." Cain, 224 N.J. at 427.

Therefore, regardless of what a medical examiner is authorized to do as part of an investigation, his role at a criminal trial is "is to contribute the insight of his specialty," and to not "go[] beyond what he can contribute as an expert." Jamerson, 153 N.J. at 340 (quoting In re Hyett, 61 N.J. 518, 531 (1972)). The State's brief stubbornly refuses to comprehend the difference between what the law authorizes medical examiners to do as part of the investigation process and what the law permits them to testify to at trial. For instance, the State selectively quotes from the portion of the Iowa Supreme

Court's decision in State v. Tyler that recognized that "state law requires medical examiners to investigate the cause and manner of death, conduct an autopsy, and prepare a written report on their findings" and acknowledged that "medical examiners routinely rely on the circumstances that surround the death as revealed by independent investigation, police investigation, and eyewitness accounts." (Sb 23-24 (quoting Tyler, 867 N.W.2d 136 at 154 (Iowa 2015)). But, critically, the Tyler decision went on to hold that an examiner's reliance on this information, while legally authorized, can make the resulting opinion unsuitable for introduction at trial. The Tyler decision embraced the rule of "[n]umerous jurisdictions," including New Jersey, which "have held that when a medical examiner bases his or her opinions on cause or manner of death largely on statements of lay witnesses or information obtained through police investigation, such opinions are inadmissible." Id. at 156 (citing, inter alia, Jamerson, 153 N.J. 318).

Tyler explained that its facts "closely resemble[d] cases from other jurisdictions, in which courts have excluded medical examiner testimony" where "the medical examiner performed an autopsy, was unable to render an opinion on cause or manner of death, and then after review of witness statements or information obtained through police investigation, rendered an opinion based largely on that information." Id. at 164-65. Rather than

acknowledging this consensus, the State attempts to limit each case to its unique facts. For instance, the State erroneously contends that "[t]he error in Tyler was wholly concerned with the fact that the medical examiner relied on statements of the defendant relayed to him and the veracity of which was challenged at trial." (Sb 22) But Tyler itself makes clear that it was reversible error to admit the expert's opinions on cause and manner of death because they "were not sufficiently based on scientific, technical, or other specialized knowledge so as to assist the jury." 867 N.W.2d at 163.[2]

This is equally true whether the expert's opinion was based on a defendant's statements or any other "information obtained through police investigation," id. at 164-65, such as the "circumstances" in which the body in this case was found burned and "placed outside of the home," which Dr. Mazari acknowledged "played a very large role . . . the ruling of homicide." (42T:206-23 to 207-12) The inferences that might be draw from Ms. Griner's destruction of the body "were within the understanding of the average juror," and should have been left for the jury's evaluation. Jamerson, 153 N.J. at 340.

[2] Only after first reaching this conclusion does the Tyler decision go on to "also conclude that under the unique facts of this case, Dr. Thompson's opinions were inadmissible because they amounted to an impermissible comment on Tyler's credibility." Id. at 165. This was not the sole basis of its decision or the primary focus of its extensive discussion of the errors in admitting the medical examiner's testimony.

By claiming that he could conclude from these facts that [redacted] death was a homicide "within a reasonable degree of medical certainty," Dr. Mazari went beyond his expertise and invaded the jury's province to assess facts within their direct ken. (42T:190-7 to 192-7)

The State's reliance on Medlock v. State, 430 S.E.2d 754, 755 (Ga. 1993), is misplaced because the medical examiner's opinion in that case was based entirely on his scientific knowledge. (Sb 20-21) The medical examiner performed an autopsy, which allowed him to conclude that "[t]he child died as a result of head trauma." Id. at 756. In reaching his conclusion about the manner of death, the medical examiner in Medlock did not rely on any evidence beyond his examination of "the injuries to the victim's head which he had discovered in his examination of the victim's head and skull." Ibid. Medlock is therefore a far cry from this case, where the autopsy was inconclusive as to whether the trauma occurred before or after death, and Dr. Mazari repeatedly acknowledged the critical role that his knowledge of facts about the "circumstances" of the case played in his determination of manner of death.

A medical examiner can only give an expert opinion as to what scientific knowledge shows and must stop there. The rest is for the jury. In this case, Dr. Mazari was free to testify to what he was actually able to discern from the

autopsy: that [redacted] skeleton showed signs of blunt trauma inconsistent with an accidental fall. But, because his medical expertise did not reveal whether that trauma occurred before or after death, Dr. Mazari should not have smuggled his lay opinion about what the "circumstances" of the body's disposal suggested into his purportedly scientific determination of the cause of death. This testimony "misle[]d the jury into thinking that [Dr. Mazari] knows something that they do not know," invading their province as factfinder on the ultimate issue of guilt. Jamerson, 153 N.J. at 340. The admission of this opinion on manner of death – the critical disputed issue before the jury – compels reversal of Ms. Griner's homicide conviction.

CONCLUSION

For the reasons set forth herein and in his opening brief, this Court should reverse Ms. Griner's convictions.

Respectfully submitted,

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March 1, 2024