

SUPREME COURT OF NEW JERSEY
DOCKET NO. 088970
APP. DIV. DKT. NO. A-0437-21

STATE OF NEW JERSEY, : CRIMINAL ACTION
Plaintiff-Respondent, : On Certification Granted from a Final
v. : Judgement of the Superior Court of
 : New Jersey, Appellate Division.
SHAQUAN K. KNIGHT, : Sat Below:
Defendant-Petitioner. : Hon. Jack M. Sabatino, P.J.A.D.
 : Hon. Joseph L. Marczyk, J.A.D.
 : Hon. Mark K. Chase, J.A.D.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-PETITIONER

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TABLE OF CONTENTS

PAGE NOS.

PRELIMINARY STATEMENT.....1
PROCEDURAL HISTORY3
STATEMENT OF FACTS.....3
LEGAL ARGUMENT.....8

POINT I

SLOW-MOTION VERSIONS OF THE SURVEILLANCE VIDEO SHOULD NOT HAVE BEEN PLAYED IN SUMMATION OR REVIEWED BY THE JURY DURING DELIBERATIONS WHERE NO WITNESS TESTIFIED REGARDING THE RELIABILITY OF THE ALTERATION PROCESS AT TRIAL.8

POINT II

GIVEN RESEARCH DEMONSTRATING THAT SLOW-MOTION REPLAY INCREASES VIEWER PERCEPTION OF INTENT, THE REPLAY OF THE SURVEILLANCE VIDEO IN SLOW MOTION TWELVE TIMES DURING DELIBERATIONS WAS PREJUDICIAL, ESPECIALLY WHERE THE JURY WAS NOT CAUTIONED ABOUT THIS PROVEN BIAS.....18

A. Social Science Research Shows That Slow-Motion Replay Increases Viewers’ Perception That Actions Are Intentional.20

B. Trial Courts Considering Whether Slow-Motion Video Is Admissible Under N.J.R.E. 403 Should Weigh Its Risk of Misleading the Jury Regarding Intent.25

TABLE OF CONTENTS (Cont'd.)

PAGE NOS.

C. Where Slow-Motion Video Is Admitted, the Jury Should Be Cautioned Regarding the Proven Systematic Bias of Slow-Motion Replay on Perceptions of Intent and, Where Replay Is Requested, Instructed to Consider the Video in the Context of All Evidence at Trial.....	30
D. The Twelve Slow-Motion Replays Without a Curative Instruction or Offsetting Regular Speed Replay Prejudiced Shaquan Knight in the Context of the Overall Case and the Protracted Jury Deliberations.	35
CONCLUSION	43

INDEX TO APPENDIX

PAGE NOS.

Appellate Division Opinion Dsa 1-59
Order Granting Petition for Certification..... Dsa 60-61

TABLE OF AUTHORITIES

PAGE NOS.

CASES

Balian v. Gen. Motors, 121 N.J. Super. 118 (App. Div. 1972)35

Brown v. State, 411 S.E.2d 366 (Ga. App. 1991).....26

Burkhart v. Commonwealth, 125 S.W.3d 848 (Ky. 2003).....26

Com. v. Hindi, 631 A.2d 1341 (Pa. Super. Ct. 1993)26

Com. v. Jordan, 65 A.3d 318 (Pa. 2013) 26, 29

Commonwealth v. Cash, 137 A.3d 1262 (Pa. 2016)26

Commonwealth v. Robertson, 181 N.E.3d 1065 (Mass. 2022) 14, 16

Compare State v. Bunting, 187 N.J. Super. 506 (App. Div. 1983)10

Jenkins v. Rainer, 69 N.J. 50, 350 A.2d 473 (1976)9

Nooner v. State, 907 S.W.2d 677 (Ark. 1995).....13

Rodd v. Raritan Radiologic Assocs., P.A., 373 N.J. Super. 154
(App. Div. 2004)..... Passim

State v. A.R., 213 N.J. 542 (2013)33

State v. Brewington, 471 S.E.2d 398 (N.C. 1996).....26

State v. Chen, 208 N.J. 307 (2011)8, 18

State v. Garcia, 245 N.J. 412 (2021).....8

State v. Hedgespeth, 249 N.J. 234 (2021)37

State v. Henderson, 208 N.J. 208 (2011)..... 19, 31, 32

State v. Miller, 205 N.J. 109 (2011) 34, 35

TABLE OF AUTHORITIES (Cont'd.)

PAGE NOS.

CASES (Cont'd.)

State v. Romero, 191 N.J. 59 (2007)31

State v. Swinton, 847 A.2d 921 (Conn. 2004) 13, 15

State v. Watson, 254 N.J. 558 (2023) 8, 11, 12, 16

State v. Williams, 244 N.J. 592 (2021)41

Suarez v. Egeland, 330 N.J. Super. 190 (App. Div. 2000).....9, 28

United States v. Wade, 388 U.S. 218 (1967)4, 6

RULES OF EVIDENCE

N.J.R.E. 403 Passim

CONSTITUTIONAL PROVISIONS

N.J. Const., art. I, ¶ 19, 19

U.S. Const. amend. V9, 19

U.S. Const. amend. VI9, 19

OTHER AUTHORITIES

Caruso, Eugene et al., The Problem With Slow Motion, N.Y. TIMES
(Aug. 5, 2016)20

Eugene M. Caruso et al., Slow Motion Increases Perceived Intent,
113 Proceedings of the Nat’l Acad. of Scis. 9250 (2016) Passim

TABLE OF AUTHORITIES (Cont'd.)

PAGE NOS.

OTHER AUTHORITIES (Cont'd.)

Jochim Spitz et al., The Impact of Video Speed on the Decision-making Process of Sports Officials, 3 Cogn. Research 16 (2018)..... 19, 23

Norman Hüttner et al., Slow Motion Bias: Exploring the Relation Between Time Overestimation and Increased Perceived Intentionality, 52 Perception 77 (2022)..... 19, 23, 40

Scientific Working Group on Forensic Evidence, Best Practices for Digital Forensic Evidence (Version 18-V-001-1.1, Revised 2024-3-22).....16

TABLE OF ABBREVIATIONS

The transcript volumes correspond to the following dates:

- 1T – October 22, 2019 (Wade hearing)
- 2T – October 23, 2019 (Wade hearing decision)
- 3T – October 24, 2019 (jury selection)
- 4T – October 31, 2019 (jury selection)
- 5T – November 7, 2019 Vol. I (jury selection)
- 6T – November 7, 2019 Vol. II (jury selection)
- 7T – November 13, 2019 (trial)
- 8T – November 18, 2019 (trial)
- 9T – November 19, 2019 Vol. I (trial)
- 10T – November 19, 2019 Vol. II (trial)
- 11T – November 20, 2019 (trial)
- 12T – November 21, 2019 (trial)
- 13T – December 3, 2019 Vol. I (trial)
- 14T – December 3, 2019 Vol. II (trial)
- 15T – December 4, 2019 Vol. I (trial)
- 16T – December 4, 2019 Vol. II (trial)
- 17T – December 5, 2019 (trial)
- 18T – December 6, 2019 (trial and verdict)
- 19T – February 18, 2020 (sentencing)

PRELIMINARY STATEMENT

Video replay technology allows viewers to rewatch recorded events as many times as they want and to manipulate many details with the click of a button, including the speed, size, or coloration of the video's original contents. This is particularly problematic in the context of a criminal trial, where courts must act as gatekeepers to make sure that all video evidence admitted is reliable and does not pose a risk of undue prejudice or misleading the jury. Therefore, parties should not be allowed to introduce altered forms of video evidence for the first time in summation, and the jury should not be permitted to tinker with video evidence during its deliberations.

In this case, the State played a slowed-down form of critical surveillance footage for the first time in summation. The jury then watched the video in slow motion, at varying speeds and with intermittent pauses, twelve times during its deliberations. Nothing in the record established that these slowed-down versions of the video still reliably depicted events as they occurred. Additionally, the court failed to consider whether the altered video was unduly prejudicial in light of research demonstrating that slowing down the speed of video playback systematically increases viewers' perceptions of the intentionality of actions shown. The biasing effect introduced by slow-motion replay could have played a critical role in the jury's deliberations regarding

defendant Shaquan Knight's criminal culpability for actions taken by his father and brother.

This Court should set forth a framework for the introduction of slow-motion video evidence during a trial. First, any altered version of a surveillance video must be introduced during the case itself by a witness who can lay a foundation for the methods used to alter the video and be cross-examined about the effect of the changes on the reliability of the video. Second, courts should consider whether the altered video is admissible under N.J.R.E. 403 or if it poses a risk of misleading the jury on a critical issue. Third, if slow-motion video is admitted, jurors should be told of scientific research establishing that slow motion can increase perceptions of intent in the viewer and, to counteract this bias, be shown the video at regular speed once for every time the video is played in slow motion. Finally, whenever jurors seek a replay of surveillance video evidence during deliberations, they should be cautioned about the potential limitations of video evidence and instructed not to sacrifice their own perception of the video evidence for that of their fellow jurors.

The trial court in this case neither ensured the reliability of the altered video nor guided the jury about how to evaluate the altered video during the course of its close deliberations. Under these circumstances, the jury's intense

focus on the slow-motion video during its deliberations deprived Shaquan Knight of a fair trial and compels reversal of his convictions.

PROCEDURAL HISTORY

Knight continues to rely on the Procedural History contained in his Appellate Division brief, as supplemented herein. On December 21, 2023, the Appellate Division affirmed his convictions and remanded for resentencing. (Dsa 1-59)

Knight filed a petition for certification on January 31, 2024. In an order filed on May 10, 2024, this Court granted the petition for certification, “limited to defendant’s challenge to the trial court’s determination to permit the jury to view the surveillance video multiple times in slow motion.” (Dsa 60-61)¹

STATEMENT OF FACTS

Defendant incorporates the Statement of Facts from his brief before the Appellate Division, emphasizing the following facts that are most pertinent to the issue on which this Court has granted certification:

Around noon on October 11, 2018, Thaddeus Osborne called police to report that he had been robbed of about \$500 outside of Poppie’s Deli in East Orange by men wielding a gun and a knife. (13T:198-15 to 200-25; 15T:60-14

¹Defendant’s supplemental appendix.

to 61-24; 77-16 to 22)² Osborne said he did not know the perpetrators, but often saw them in the area. (13T:199-1 to 200-25)

At the Wade³ hearing, Osborne identified defendant Shaquan Knight and testified that, prior to being robbed, he had agreed to buy weed from Shaquan inside Poppie's. (15T:65-5 to 66-1) Shaquan asked Osborne to go outside behind the store because too many police were present. (15T:65-12 to 66-1) After the men left the store, a man, who Osborne later identified as Kyler Knight, grabbed Osborne from behind and pushed him toward the parking lot behind Poppie's while holding a knife to his neck. (15T:68-2 to 69-23) A second person, who Osborne identified as Fuquan Knight, put a gun in Osborne's face. (15T:71-10 to 72-9)⁴ Osborne testified that, while this happened, Shaquan did not say anything but patted Osborne's pockets. (15T:130-2 to 9)

Osborne did not tell the Prosecutor's Office until the day before the Wade hearing that he had agreed to buy weed from Shaquan before he was

² Osborne died prior to trial from unrelated causes. Over defense objection, Osborne's 911 call to police and testimony from a pre-trial hearing regarding his identification of defendants, conducted pursuant to United States v. Wade, 388 U.S. 218 (1967), were both played at trial.

³ United States v. Wade, 388 U.S. 218 (1967).

⁴ For the sake of clarity, this brief will refer to the individuals sharing the last name Knight by their first names. Kyler is defendant's father and Fuquan is defendant's brother.

robbed. (15T:115-8 to 116-12) Osborne said that he did not want to tell police that he had arranged to buy weed from Shaquan inside Poppie's because he thought it was "irrelevant." (15T:134-10 to 19) Osborne claimed that he had told this detail to "one guy" at the police station while talking to him "for, like, two seconds" prior to his recorded statement. (15T:111-11 to 112-11) Osborne acknowledged the person he told was not a detective involved in his case. (15T:112-12 to 22) No other evidence documented this conversation.

During trial, the State introduced a surveillance video recorded from inside Poppie's that shows a back storeroom with a door leading to the rear parking lot. (7T:128-13 to 130-4) The door is partially made of glass through which the outside is visible. During around five seconds of the video, a group of men are visible as they walk past the door.

The State contended that this video showed the robbery in progress, with Kyler holding a knife to Osborne's neck and Fuquan carrying a gun. Although the video was not played in slow motion during the State's case-in-chief, the prosecutor showed the video in slow-motion during summation. The person Osborne identified as Shaquan does not carry a weapon or take any action directed toward Osborne in the video. Nonetheless, the prosecutor argued that the slow-motion video showed this person was "following up" behind Kyler and Fuquan and was aware of the plan to rob Osborne. (16T:238-13 to 240-6)

On its first day of deliberations, the jury asked to review several items of evidence, including three surveillance videos. (17T:112-17 to 113-2) When the court sought to clarify which videos the jury requested, the jury narrowed its request to only “the video of the back door of Poppie’s, the video of the inside pointing towards the door.” The jury asked the court to “replay it at least three times, slowly and pause.” (17T:124-8 to 12) The court directed the jury to designate a juror to be a “pauser.” (17T:128-7 to 13)

Counsel for Fuquan Knight objected to the jury viewing videos in slow motion, presenting the court with a study concluding that jurors viewing slow motion videos substantially increased the likelihood of a conviction. (17T:134-22 to 136-7 (citing Eugene M. Caruso et al., Slow Motion Increases Perceived Intent, 113 Proceedings of the Nat’l Acad. of Scis. 9250 (2016)). The trial court overruled the objection, concluding that no existing law prohibited playing jurors slow motion video during deliberations. (17T:137-1 to 9)

The jury viewed the video at normal speed three times, interrupted by pauses made at the direction of juror twelve, the assigned pauser. (17T:137-17 to 149-21) Juror twelve then asked for the video to be played in slow motion seven times, with pauses throughout. (17T:150-13 to 156-6)

On the second day of deliberations, following a requested playback of Osborne’s Wade hearing testimony, the jury asked to view the video of the

rear of Poppie’s three additional times in slow motion. (18T:89-21 to 90-2)
The jury asked the court to “[p]lease zoom in closely.” (18T:90-1 to 2) The
prosecutor told the court it did not believe that the video should be played
zoomed-in because zooming would “be the equivalent of . . . modifying or
altering the evidence.” (18T:93-8 to 17) The court agreed. (18T:94-21 to 23)
Altogether, on the second day of deliberations, the jury viewed the video five
additional times in slow motion. (18T:98-6 to 101-5)

After this second round of replays, at about 3:08 p.m., the jury sent a
note that they were at a “standstill” on one of the charges, asking, “What
happens if we cannot come to a decision on that charge?” (18T:102-2 to 6)
Defense counsel for Fuquan and Shaquan both asked the court to take a partial
verdict because the jury had been told the trial would end that day and a juror
had a flight scheduled that evening. (18T:102-23 to 103-11) The court
disagreed, instead instructing the jury to continue deliberations at 3:33 p.m.
(18T 105-10 to 106-24) Twenty minutes later, at 3:56 p.m., the jury sent a note
that they had reached a verdict, convicting Shaquan Knight on all charged
counts. (18T 107-17 to 20)

LEGAL ARGUMENT

POINT I

SLOW-MOTION VERSIONS OF THE SURVEILLANCE VIDEO SHOULD NOT HAVE BEEN PLAYED IN SUMMATION OR REVIEWED BY THE JURY DURING DELIBERATIONS WHERE NO WITNESS TESTIFIED REGARDING THE RELIABILITY OF THE ALTERATION PROCESS AT TRIAL.

“The power of a video of contemporaneously recorded events at the crime scene can hardly be disputed.” State v. Garcia, 245 N.J. 412, 431 (2021). It is not surprising that, in a close case, the jury might seek to watch surveillance video many times during its deliberations. Such replays should be permitted, subject to appropriate safeguards, where the video evidence was introduced and properly authenticated at trial. But trial courts must continue to act in a “gatekeeping role to ensure that unreliable, misleading evidence is not admitted.” State v. Chen, 208 N.J. 307, 318 (2011). A foundational witness should testify about any alterations made to surveillance video during trial. See State v. Watson, 254 N.J. 558, 606 (2023). Video evidence should not be manipulated or played at an altered speed for the first time in summation or during jury deliberations, as happened here, where the jury then reviewed the slow-motion video, with intermittent pauses, twelve times during its deliberations. The jury’s intense focus on a manipulated form of the video for

which a foundation was never laid during trial deprived Shaquan Knight of a fair trial and requires reversal of his convictions. U.S. Const. amends. V, VI; N.J. Const., art. I, ¶ 1; Chen, 208 N.J. at 318-19.

Video that appears to be an objective depiction of events as they happened, when technologically altered, can mislead the jury. Nearly fifty years ago, this Court recognized that “[t]he camera itself may be an instrument of deception, capable of being misused with respect to distances, lighting, camera angles, speed, editing and splicing, and chronology.” Jenkins v. Rainer, 69 N.J. 50, 57 (1976); accord Suanez v. Egeland, 330 N.J. Super. 190, 196 (App. Div. 2000). This warning holds even more true today, now that video-playing technology allows the original content of a recording to be manipulated by any viewer with ease.

No witness testified during trial to lay a foundation for the slow-motion versions of the video shown to the jury during summation and replayed twelve times during the course of their deliberations. The video was admitted only at

its original speed when played at trial.⁵ In summation, for the first time, the prosecutor played the video in slow motion. While playing the slowed-down video, the prosecutor argued that it demonstrated Shaquan’s involvement in the robbery because, during the two seconds he appears in the video, Shaquan “doesn’t look scared, doesn’t look surprised. This is part of the plan.”

(16T:238-13 to 240-6)

During its deliberations, the jury in this case requested both that the Poppie’s surveillance video be played slowly and that the trial court “zoom in closely.” (17T:125-12 to 18; 18T:89-21 to 90-2) The prosecutor and court agreed that zooming would not be appropriate because it would be the equivalent of “altering the evidence.” (18T:93-2 to 94-23) But the trial court overruled the defense objection that the video should not be slowed down and should only be replayed “the exact same way it was played during the trial.”

⁵ Defense counsel vigorously objected that Detective Dan Parker’s testimony failed to lay a foundation for whether the copy of the original surveillance video was “an accurate depiction of the video,” but the court overruled the objection. (7T:130-5 to 135-3) Detective Parker, who extracted the video from Poppie’s surveillance system, did not testify about the operation of the cameras or Poppie’s surveillance system. Compare State v. Bunting, 187 N.J. Super. 506, 509 (App. Div. 1983). Detective Parker admitted he did not review the video on the Poppie’s system, but simply “pulled the video,” downloaded it to a flash drive, then transferred it onto a DVD, without making any comparison between the original video and the DVD version. (7T:129-21 to 130-4; 146-24 to 148-4) In preparation for trial, Detective Parker opened the footage on the DVD for “a second or two” to “make sure that it plays” and that the disc was not scratched. (7T:146-24 to 148-4)

(17T:125-19 to 22) The record indicates the video was played in slow motion twelve times during the jury deliberations, at varying slowed-down speeds. The record does not reveal what video player was used to create the slow speed versions of the video the jury viewed.⁶

The prosecutor and trial court were correct that the video evidence should not have been enlarged for the first time during deliberations, but they were wrong to conclude that slow-motion should be treated differently than zoom. No alterations to video or photographic evidence should be made for the first time in summation or during jury deliberations because there must first be a foundational witness to testify regarding the reliability of the alteration process used.

This Court's recent decision in Watson contemplated that a witness would testify to lay a foundation whenever a video is played at an altered speed or enlarged for the jury. The Court explained that, while an expert witness is required to testify to "more elaborate forensic techniques that track an individual across a video" or "enhance the quality of" a video, "[s]pecialized knowledge would not ordinarily be required for other types of adjustments, like adjusting the speed of a video or creating a straightforward

⁶ The video was in the AVI (audio video interleave) file format, which can be played using many varieties of video player software.

composite video, a screenshot, or an enlarged photo from a video.” 254 N.J. at 606. However, this Court did not sanction the admission of such alterations without any foundational testimony, instead providing that, absent a stipulation, “a lay witness” should “testify about those basic techniques” through which the video had been altered. Ibid. This Court acknowledged that “[a]s video technology advances, [forensic video] expertise may become more prevalent.” Ibid.

Watson’s expectation that a witness will testify at trial whenever video or photographic evidence is presented in an altered form aligns both with prior Appellate Division precedent and other jurisdictions that have considered the issue. In Rodd v. Raritan Radiologic Assocs., P.A., the Appellate Division held that a plaintiff should not be permitted to introduce “super-magnified images” of her mammogram in a medical malpractice action without “testimony from a witness who possesses sufficient knowledge of the technology used to create the exhibits.” 373 N.J. Super. 154, 168–70 (App. Div. 2004). The defendant had “not received notice” of the magnified images “in discovery and only first learned of their existence at a pre-trial conference, too late to adequately test the process by which the images were created.” Id. at 161. Under these circumstances, it was error for the magnifications to be introduced by a witness who “neither created nor directed either the underlying

x-ray or the computer projection,” was not present when either was made, and could not explain “the circumstances surrounding the computer images’ creation” or “the actual level of magnification involved in the computer enlargement.” Id. at 169.

The Rodd decision drew on a number of out-of-state decisions to reach this conclusion. In Nooner v. State, the Arkansas Supreme Court approved the admission into evidence of a slowed-down version of videotape where “state witnesses . . . meticulously described their role in the enhancement process.” 907 S.W.2d 677, 686 (Ark. 1995). The court noted that it was critical that the alteration process had been explained to the jury during trial, cautioning that “[r]eliability must be the watchword in determining the admissibility of enhanced videotape and photographs, whether by computer or otherwise.” Ibid.

Likewise, in State v. Swinton, the Connecticut Supreme Court considered the use of computer software to enhance bite mark photographs. 847 A.2d 921, 938 (Conn. 2004). The court noted it was unclear from the record whether the photos merely had been enlarged to “mak[e] the details of an image larger” or enhanced to reveal “parts of an image that previously were unviewable.” Id. at 937. The court acknowledged that it could not “anticipate what forms” computer-altered evidence would take in the future, which could

mean that “the line between one type of computer generated evidence and another will not always be obvious.” Id. at 938. Therefore, the court “let caution guide [its] decision,” holding that to introduce computer-altered photographic evidence, “there must be testimony by a person with some degree of computer expertise, who has sufficient knowledge to be examined and cross-examined about the functioning of the computer.” Id. at 941. “What must be established is the reliability of the procedures involved, as defense counsel must have the opportunity to cross-examine the witness as to the methods used.” Id. at 942; see also Commonwealth v. Robertson, 181 N.E.3d 1065, 1077 (Mass. 2022) (adopting Swinton’s holding that, when an enhanced image is introduced at trial, a witness must testify to the alteration process).

Use of technology to reduce the speed of surveillance video should be treated consistently with these precedents regarding the alteration of video or photographic evidence. Courts should not accept technology that slows down, enlarges, brightens, or otherwise alters a video unless a witness is available to lay a foundation about the computer process used. Such alterations may be probative to show the jury something they would not otherwise be able to see clearly in the original video: for instance, a person’s face, its expression, or an object they are holding in their hands. But these alterations are only probative if they reliably reflect reality.

Courts should proceed with caution because the difference between “presenting evidence and creating evidence” will not always be self-evident. Swinton, 847 A.2d at 938. If the process of slowing or enlarging the original changes its contents, the appearance of the alteration will mislead rather than inform the jury. For instance, if slow-motion playback or pausing causes discrete frames of video to overlap or blur, someone who is moving their hand may appear to be holding an object in that hand even when they are not. Similarly, brightening or altering the contrast in a video could change the appearance of a suspect’s skin color or other facial features.

A proper foundation in evidence must be laid for any changes made to the appearance of video evidence to establish that the altered evidence remains reliable. A record should be made of any alterations to preserve a copy of the evidence as it was presented to the jury in order to enable replication and review, as recommended by the Scientific Working Group on Digital Evidence (“SWGDE”), a group consisting of law enforcement, academic, and commercial organizations involved in digital forensics that develops guidelines and best practices for the use of forensic evidence. The most recent SWGDE guidelines advise that “[a]ny processing performed on the video files should be completed on the working copy and sufficiently documented so that the methods can be reproduced and independently evaluated. This documentation

should include the order and settings in which the processes were applied to ensure the integrity and the reproducibility of the results.” Scientific Working Group on Forensic Evidence, Best Practices for Digital Forensic Evidence (Version 18-V-001-1.1, Revised 2024-3-22), available at <https://www.swgde.org/18-v-001/>.

To facilitate this process, parties should disclose in advance of trial information about videos they intend to enlarge, play at altered speed, screenshot, or otherwise alter so that any potential disagreements about the fidelity or reliability of the altered video can be resolved before the jury views the altered video at trial. This Court took a similar step in the context of video narration in Watson, holding that “[t]o avoid missteps before the jury, prosecutors must provide a written summary of proposed narration testimony to defense counsel, and vice versa, before trial.” Watson, 254 N.J. at 605. As this Court proposed in Watson, pre-trial disclosure would allow the parties to narrow the areas of disagreement regarding video alterations and to resolve outstanding issues through a Rule 104 hearing prior to trial.

Introduction of altered videos during the case itself rather than summation or deliberations will ensure that questions about how the alteration may have affected the reliability of the evidence can be explored through cross-examination. In Robertson, the prosecution introduced through a

witness's testimony enhanced versions of photographs that the witness had enlarged and "used computer software to lighten and sharpen shadowed areas," but did not otherwise "alter the photograph's pixels." Robertson, 181 N.E.3d at 1077. Defense counsel was able to cross-examine the witness to elicit "the differences between the enhanced photographs and the original photographs taken at the club, including with regard to the defendant's skin color," and to argue "the enhancements resulted from subconscious bias because the witness attempted to match the club photographs to a known image of the defendant when performing the enhancements." Ibid.

When an altered video or image is shown for the first time in summation or during deliberations, defense counsel is deprived of the ability to explore the reliability of the alteration or to make arguments about the effect of the alteration on critical questions before the jury. In this case, had the slow-motion video been introduced at trial, defense counsel could have asked the foundational witness about their knowledge of the technology used to play the video in slow motion and whether that technology may have changed the appearance of pixels or frames in the video. Defense counsel could have also asked witnesses about the biasing effect of slow-motion footage. See, infra., Point II. Without a witness to testify to how the slow-motion video was created, the record in this case does not make clear what computer program

was used to play the slowed-down video and whether that program may have introduced unreliability into the resulting video through the slow-motion process by blurring frames or altering pixels.

The slow-motion video played a critical role in the jury's deliberative process. On both days of deliberations, the jury asked to view the video in slow-motion, ultimately watching it twelve times at varying slow speeds with intermittent pauses creating the equivalent of "screenshots." No foundation was laid at trial to establish that this altered form of the video remained a reliable depiction of events as they occurred. Because the jury's close focus during deliberations on an altered video for which no foundation was laid was clearly capable of producing an unjust result, this Court should reverse Shaquan Knight's convictions. See Chen, 208 N.J. at 318-19.

POINT II

GIVEN RESEARCH DEMONSTRATING THAT SLOW-MOTION REPLAY INCREASES VIEWER PERCEPTION OF INTENT, THE REPLAY OF THE SURVEILLANCE VIDEO IN SLOW MOTION TWELVE TIMES DURING DELIBERATIONS WAS PREJUDICIAL, ESPECIALLY WHERE THE JURY WAS NOT CAUTIONED ABOUT THIS PROVEN BIAS.

Even if a sufficient foundation had been laid for the video at trial, it should not have been replayed twelve times in slow motion during deliberations. The trial court should have first considered whether the slow-

motion version of the video was admissible under N.J.R.E. 403 or risked misleading the jury given scientific studies establishing that slow-motion replay biases viewer perception of the actions depicted by making them appear to be more intentional. Eugene M. Caruso et al., Slow Motion Increases Perceived Intent, 113 Proceedings of the Nat'l Acad. of Scis. 9250 (2016); Jochim Spitz et al., The Impact of Video Speed on the Decision-making Process of Sports Officials, 3 Cogn. Research 16 (2018); Norman Hüttner et al., Slow Motion Bias: Exploring the Relation Between Time Overestimation and Increased Perceived Intentionality, 52 Perception 77 (2022). If the court found the video admissible, it should have informed the jury about the biasing effect of slow-motion replay and played the video at regular speed for each time it was played in slow-motion. Given the jury's intense focus on the slowed-down video during its deliberations, the many slow-motion replays without a curative instruction deprived Shaquan Knight of a fair trial. U.S. Const. amends. V, VI; N.J. Const., art. I, ¶ 1; see State v. Henderson, 208 N.J. 208, 297 (explaining that trial courts have obligation to “ensure a fair trial” through instructions that “help jurors evaluate evidence critically and objectively”).

A. Social Science Research Shows That Slow-Motion Replay Increases Viewers' Perception That Actions Are Intentional.

Video evidence can be slowed down, “provid[ing] the ostensible benefit of giving people ‘a better look’ at real-time events that happened quickly or in a chaotic environment.” Eugene M. Caruso et al., Slow Motion Increases Perceived Intent, 113 Proceedings of the Nat’l Acad. of Scis. 9250 (2016). But courts must weigh this appealing feature against research showing “that slow motion replay, compared with regular speed replay, produces systematic differences in judgments of intent” in viewers. Ibid.

Studies from the last decade have shown that slow motion distorts viewers' perception of events shown by making an individual's actions appear more intentional. In 2016, a widely reported study (“the Caruso Study”) demonstrated that “slow motion replay can systematically increase judgments of intent because it gives viewers the false impression that the actor had more time to premeditate before acting.” Caruso, 113 Proceedings of the Nat’l Acad. of Scis. at 9250. As the authors of that study later summarized in a New York Times editorial, “[i]t is important to keep in mind that video evidence can distort human judgment as well as sharpen it.” Caruso, Eugene et al., The Problem With Slow Motion, N.Y. TIMES (Aug. 5, 2016), available at <https://www.nytimes.com/2016/08/07/opinion/sunday/the-problem-with-slow-motion.html>.

In the Caruso Study, researchers conducted four experiments to test their hypothesis “that slowing a video would cause people to perceive that the events in question unfolded over more time, making people more likely to infer that the actor had formulated and carried out an intentional action.” Caruso, 113 Proceedings of the Nat’l Acad. of Scis. at 9250. Three of the experiments asked jurors to imagine themselves as jurors in a criminal trial reviewing five seconds of surveillance video that ended with the defendant shooting a store clerk. Id. at 9251. The other experiment asked jurors to review video of an NFL player making a tackle. Ibid.

Participants in the first experiment using surveillance footage were randomly assigned to either watch the clip at regular speed or slow motion that was 2.25 slower than regular speed. Ibid. Those who viewed the video in slow motion were, by a statistically significant margin, “more likely to conclude that the person with the gun shot with the intention to kill.” Ibid. Although the participants did not deliberate with one another, the researchers used their responses to simulate 1,000 twelve-person juries. Juries composed entirely of participants who saw the video in slow-motion were over four times more likely to “begin the deliberation phase ready to convict” than juries composed entirely of participants who watched the video at regular speed. Ibid.

The finding that “[p]articipants felt that the action was more intentional if they saw it in slow motion than if they saw it at regular speed” was replicated when researchers conducted a second study in which participants watched an NFL player execute a tackle and were asked if the player had intentionally struck the opposing players helmet with his own. Ibid.

The third study tested whether the intentionality bias caused by reviewing actions in slow motion could be “debiased.” Id. at 9252. In one experiment, certain participants viewing the surveillance video of the shooting were assigned to a “time nonsalient” group that was able to see the clock time on screen while the video was played, but did not have that feature called to its attention; other participants were assigned to a “time salient” group that was repeatedly reminded of how much time actually elapsed during the video. Ibid. Researchers found that “reminding viewers of the actual elapsed time was not sufficient [] to prevent them from feeling that the actor had more time to act, and hence inferring that his action was more intentional and more deserving of a first-degree murder conviction.” Id. at 9253.

The fourth study also used the surveillance video, this time adding a “‘both speeds’ condition in which participants first saw the regular speed version, followed by the slow speed version.” Id. at 9252. This study yielded mixed results, leading the researchers to conclude that “showing the action at

both regular speed and in slow motion was somewhat, albeit not completely, effective in reducing the impact of slow motion on first-degree murder convictions.” Id. at 9253.

The Caruso Study’s conclusion that actions are perceived as more intentional or blameworthy when videos are presented in slow motion has been replicated in two subsequently published studies by other groups of researchers. Jochim Spitz et al., The Impact of Video Speed on the Decision-making Process of Sports Officials, 3 Cogn. Research 16 (2018) (“the Spitz Study”); Norman Hüttner et al., Slow Motion Bias: Exploring the Relation Between Time Overestimation and Increased Perceived Intentionality, 52 Perception 77 (2022) (“the Hüttner Study”).

The Spitz Study focused on the context of soccer refereeing, asking elite referees from five different countries to evaluate 60 different foul-play situations. 3 Cogn. Research 16. “Half of the participants – randomly selected – evaluated 30 situations in real time and 30 situations in slow motion.” Id. at 19. The other half of the participants viewed the same situations but at a different speed condition. Ibid. After each video clip, the referees were asked to determine if a foul occurred and then to make a disciplinary decision as to whether that foul warranted no penalty, a “yellow card” for reckless conduct

that warranted a warning, or a more severe “red card” for excessive force that warranted the player being removed from a game. Ibid.

The results of the study showed that use of slow motion did not result in significantly more “accurate” decisions by the referees as to whether a foul had or had not occurred. Id. at 23. However, the study “revealed that referees penalized situations more severely in slow motion compared to real time” when making the more subjective determination of what penalty was warranted. Id. at 16. The Spitz study therefore replicated the findings of the Caruso Study that “the temporal modulation of the dynamics creates the perception that the offender has much more time to contemplate his action than he actually does,” resulting in viewers perceiving “physical contacts and violent actions . . . more intentionally and seriously.” Id. at 23.

The Hüttner study asked participants to watch four different video clips showing a foul play during a basketball match, presented at three different speeds: regular speed, .5 speed, and .25 speed. 52 Perception at 81.

Participants were asked to assess the “perceived intentionality” of the action on a scale from “1 (not at all) to 10 (totally intentional)” and to assess “the perceived time that participants felt the foul player had at disposition to plan his action, rated on a scale from 0 (no time at all) to 10 (plenty of time),” which researchers referred to as the “relative time rating.” Ibid. Some

participants were informed about the degree to which the video was slowed down, while others were not. Ibid.

Like the Spitz study, the Hüttner study replicated the findings of the Caruso Study that “actions are perceived as more intentional when videos are presented in slow motion.” Id. at 93. When viewed in slow motion, viewers perceived that the player had more time to plan his actions – a bias that was not reduced even among those participants who were informed about the slow motion factor. Id. at 88-89. “[F]ouls were rated as more intentional with increasing slow motion factors.” Id. at 89. Although those viewers who were given “explicit information on the video’s slow motion factor” gave lower intentionality ratings across all speed levels, those viewers still viewed actions as more intentional and actors as having more time to deliberate when shown videos in slow motion. Ibid. Therefore, information about the slow-motion factor was not able to reduce the bias “on relative time or intentionality ratings” caused by viewing videos in slow motion. Id. at 93.

B. Trial Courts Considering Whether Slow-Motion Video Is Admissible Under N.J.R.E. 403 Should Weigh Its Risk of Misleading the Jury Regarding Intent.

These studies establish that the use of slow-motion video systematically increases viewers’ perception of intent and blameworthiness. This Court should ensure that slow-motion evidence is only admitted for a proper purpose.

Although slowed-down video may appear to jurors as a convincing documentary depiction of reality as it occurred, in cases where a critical question for the jury turns on a defendant's mental state, the admission of a slow-motion video can be highly misleading and unduly prejudicial to the defendant, requiring exclusion under N.J.R.E. 403.

The Appellate Division cited to out-of-state cases that “have generally authorized the presentation of video evidence in [slow motion] within the trial court’s discretion, subject to offsetting considerations.” (Dsa 26-27 (citing State v. Brewington, 471 S.E.2d 398, 403 (N.C. 1996), Commonwealth v. Cash, 137 A.3d 1262, 1277 (Pa. 2016), Burkhart v. Commonwealth, 125 S.W.3d 848, 850 (Ky. 2003), Brown v. State, 411 S.E.2d 366, 367 (Ga. App. 1991)). These cases all predate the August 2016 publication of the Caruso Study and the subsequent studies replicating its findings that slow-motion increases viewers’ perception of an actor’s intent. But, even prior to the Caruso Study, Pennsylvania’s Supreme Court acknowledged that “all slow motion and freeze frame video distorts reality” and that “[s]uch distortion may enhance the jury’s understanding or it may do the opposite.” Com. v. Jordan, 65 A.3d 318, 329 (Pa. 2013) (quoting Com. v. Hindi, 631 A.2d 1341, 1345 (Pa. Super. Ct. 1993)). Therefore, the Pennsylvania Supreme Court instructed lower courts to consider whether “the jury’s understanding will be enhanced”

by slow-motion video and if such evidence “is more probative than prejudicial.” Ibid.

This Court should hold that, when a party seeks to admit slow-motion footage, trial courts should first consider the biasing effect of slow-motion replay and weigh whether admission of the altered video would cause “[u]ndue prejudice, confusion of issues, or misleading the jury” under N.J.R.E. 403. The results of the Caruso, Hüttner, and Spitz Studies together show that the probative value of slow-motion video to prove intent is low and often outweighed by the risk of misleading the jury. Across all three studies, viewing a video in slow-motion format was found to increase the viewers’ perception of intent relative to viewers who watch the same video at regular speed. The Spitz Study found that this occurred even when the viewers were elite, highly trained referees. That study also concluded that the use of slow-motion did not lead to significantly more “accurate” decisions, suggesting that the probative value of slow motion to prove intent is low compared to its prejudicial risk of systematically biasing the viewer. Spitz, 3 Cogn. Research at 23.

New Jersey courts have previously recognized that altering video or photographic evidence can mislead the jury on critical issues. As our Appellate Division has explained, when video evidence is admitted, “[t]here is a danger

that a jury will place inordinate weight on the moving pictures,” at the expense of other evidence. Suanez, 330 N.J. Super. at 195–96 (concluding “the extreme slow motion” used in car crash test video “gives the impression of much less movement and thus less impact than would be the case if the video was at normal speed”).

Altering photo or video evidence can be particularly deceptive when the jury is considering a defendant’s mental state at a particular moment in time. In Rodd, the Appellate Division found reversible error where jurors were presented with altered versions of visual evidence that gave a misleading impression of how the defendant doctor would have perceived x-rays he reviewed in treating the plaintiff. 373 N.J. Super. at 167-68. The question for the jury was “whether defendant deviated from the accepted standard of care when he concluded that which he viewed on the x-rays was not suspicious of cancer.” Id. at 168. The “computerized magnification” process used by the plaintiff to create the disputed exhibit “was not the mechanism used by radiologists following the standard of care recognized in the medical community.” Ibid. Therefore, the Appellate Division explained that admission of the computerized images to show that a cancerous cluster should have been “clearly visible” by defendant misled the jury by “provid[ing] the jury with testimonial evidence—independent proof—of that which could and should

have been seen by defendant.” Ibid. Without a limiting instruction, the Appellate Division concluded the magnified x-rays were “clearly capable of influencing a jury, of generating confusion over the appropriate standard of care, and thus, unduly prejudicing defendant.” Id. at 168-69.

The studies on the distorting effect of slow-motion replay reinforce Rodd’s conclusion that altering documentary evidence of what a party perceived in a critical moment can mislead the jury about that party’s mental state. Courts weighing whether to admit slow-motion video pursuant to N.J.R.E. 403 should therefore consider the purpose for which the video is being offered. Slow-motion may assist the jury in deciding issues other than intent. For instance, reliable slow-motion replay that is admitted with a foundation establishing that the alteration has not fundamentally changed frames or pixels of the original video may be useful to show objects or faces that are not visible at regular speed. But, where slow-motion video is being used primarily to make a claim about a person’s intent, it creates a systematic bias the does not aid the jury in reaching the truth. In such cases, slow-motion replay should be excluded because it creates a “distortion” that does not “enhance the jury’s understanding.” Jordan, 65 A.3d at 329.

C. Where Slow-Motion Video Is Admitted, the Jury Should Be Cautioned Regarding the Proven Systematic Bias of Slow-Motion Replay on Perceptions of Intent and, Where Replay Is Requested, Instructed to Consider the Video in the Context of All Evidence at Trial.

Even if trial courts determine that slow-motion video is admissible under N.J.R.E. 403, they should take steps to counteract the documented perceptive bias on judgments of intent. Jurors should be told that scientific research establishes slow motion can increase perceptions of intent in the viewer and, to counteract this bias, be shown the video at regular speed once for every time the video is played in slow motion. Additionally, whenever jurors seek a replay of surveillance video evidence during deliberations, they should be cautioned about the potential limitations of video evidence and instructed to evaluate the video evidence in the context of the entire trial.

The Appellate Division's decision endorsed some of these steps. The Appellate Division suggested that the Model Criminal Jury Charge Committee should consider a model charge on replaying surveillance video that would "caution jurors to afford such evidence only appropriate and not undue weight in comparison with the other evidence at trial." (Dsa 35-36) The Appellate Division suggested that such a charge "might usefully draw to the jurors' attention the possibility that viewing such video evidence in slow motion might subconsciously increase their perceptions of an actor's intentionality."

(Dsa 36) The Appellate Division also listed “non-exclusive factors for consideration” by courts considering whether to admit video evidence or allow a jury’s request for video playback, including evaluating “undue prejudice or other factors warranting exclusion under N.J.R.E. 403.” (Dsa 35)

Consistent with the Appellate Division’s suggestion, this Court should direct the creation of a charge informing jurors of the demonstrated biasing effect of slow-motion video. “[I]t is the court’s obligation to help jurors evaluate evidence critically and objectively to ensure a fair trial.” State v. Henderson, 208 N.J. 208, 297 (2011). This Court has stood at the vanguard of incorporating scientific research into jury instructions. “Even with matters that may be considered intuitive, courts provide focused jury instructions” to assist the jury. Id. at 296.

Such instructions are even more important when scientific research reveals conclusions that cut against widespread understandings of perception. For instance, recognizing the “powerful” nature of eyewitness evidence, this Court fashioned a charge “underscor[ing], for jurors in all eyewitness identification cases, that eyewitness identification testimony requires close scrutiny and should not be accepted uncritically.” State v. Romero, 191 N.J. 59, 75 (2007). The resulting charge acknowledged the influential nature of eyewitness identification evidence, telling the jury that, “[a]lthough nothing

may appear more convincing than a witness's categorical identification of a perpetrator, you must critically analyze such testimony," and providing a list of factors and social science research to assist the jury in its consideration of an identification. Id. at 76. In Henderson, this Court outlined additional social science research and directed the Model Criminal Jury Charge Committee to further revise the charge. 208 N.J. at 298-99.

As with eyewitness identification evidence, "nothing may appear more convincing" than documentary video evidence that shows the commission of the charged crime in slow motion. Jurors are likely to believe that slow-motion replay will give them a clearer picture of reality as it occurred. To ensure that jurors are not misled, it is critical that they are informed that slow-motion replay has been demonstrated to bias the viewer in favor of perceiving the depicted actions as intentional. Jurors should be cautioned not to outsource their factfinding responsibility to the video footage and to be aware of the manner in which slow-motion video may distort their perceptions of an actor's intent.

In addition to an instruction, courts should seek to counteract the proven biasing effect of slow-motion replay by ensuring that the video is played at regular speed for every time it is played in slow motion. The Caruso Study found that pairing any slow-motion replays with an equal number of viewings

at regular speed “was somewhat, albeit not completely, effective in reducing the impact of slow motion on” skewing viewers’ perceptions of intent. Caruso, 113 Proceedings of the Nat’l Acad. of Scis. at 9253.

Whenever jurors request replay of surveillance video during deliberations, courts should also instruct juries not to place undue weight on the replayed video evidence, reminding them to consider video evidence in the context of all the evidence presented at trial. This Court has previously considered how courts should respond to jury requests for playback of witness testimony during deliberations, but it has not directly addressed playback of surveillance videos at the jury’s request. As with testimonial evidence, surveillance footage should be “replayed in open court under the direct supervision of the judge.” State v. A.R., 213 N.J. 542, 546 (2013). “[T]here is no per se rule against the replay of video recordings during jury deliberations and that the decision to replay a recording is vested in the discretion of the trial judge.” Id. at 560. Nonetheless, the jury should not have “unfettered access” to surveillance footage in the jury room; “[r]eplay in open court permits the required record of the replay to be made.” Ibid. Permitting the jury to replay surveillance footage on its own could result in the jury using video playing technology to alter the appearance of the video without sufficient foundation. See supra, Point I.

The Appellate Division’s decision below observed that in State v. Miller, 205 N.J. 109, 119-20 (2011), this Court directed trial courts to “instruct jurors to consider all of the evidence presented and not give undue weight to the testimony played back.” (Dsa 33-34) The Appellate Division suggested that replays of “non-testimonial video evidence” may not raise all the same concerns as replays of testimonial video evidence. (Dsa 33-34) Nonetheless, the Appellate Division directed the Model Criminal Jury Charge Committee to “consider creating a model charge that specifically addresses situations in which, as here, a jury requests the replaying of surveillance video evidence, and to caution jurors to afford such evidence only appropriate and not undue weight in comparison with the other evidence at trial.” (Dsa 35-36)

Although surveillance footage does not involve spoken testimony, jurors need to exercise their judgment as factfinders in reviewing video evidence just the same as when they review testimonial evidence. On its own, surveillance video may present an incomplete picture of events. Actions depicted on the footage must be explained or put into context by other evidence. For a number of reasons, the video footage may not provide a conclusive answer to the questions jurors need to resolve, even after many replays. These reasons may include contextual information that the video does not provide, the length of

the video, the quality of the footage, the angle of the camera, or objects obstructing the view of the camera.

Without guidance, jurors might allow video evidence to overshadow facts testified to by witnesses but not captured on video. See Balian v. Gen. Motors, 121 N.J. Super. 118, 128 (App. Div. 1972) (noting “danger of undue prejudice as a result of the jury’s placing inordinate weight on the moving pictures”). A juror who draws different conclusions from surveillance video than her fellow jurors may be pressured to adopt the consensus view – even if she still does not see what the other jurors see. Therefore, as this Court has held in the context of playback of testimony, “judges should instruct jurors to consider all of the evidence presented and not give undue weight” to surveillance footage during their deliberations. See Miller, 205 N.J. at 123.

D. The Twelve Slow-Motion Replays Without a Curative Instruction or Offsetting Regular Speed Replay Prejudiced Shaquan Knight in the Context of the Overall Case and the Protracted Jury Deliberations.

In this case, the jury watched the video in slow-motion with intermittent pauses twelve times during its deliberations, only watching it at regular speed three times during its first day of deliberations. The jury was never warned of the biasing effect of slow-motion replay on viewer perception of intent, which was a pivotal issue in the case. Shaquan’s defense was that he was merely present at the time of the robbery. Unlike his brother and father, who the video

shows wielding weapons, the Poppie's video does not depict Shaquan taking any action in furtherance of the robbery. Based on the jury's many requests for playback and subsequent note stating they were at a standstill on one charge, the case was close, and the jurors did not all uncritically accept the testimony of Osborne. Under these circumstances, the biasing effect of the many slow-motion replays likely affected the outcome of the trial, requiring reversal of Shaquan's convictions.

Although the Appellate Division acknowledged the concerns raised by the Caruso Study, it concluded that the biasing effect of slow motion on viewers' perception of intentionality was not a problem in this case. (Dsa 29-30) The Appellate Division reasoned that the Caruso Study was distinguishable because it used videos showing "(1) a single defendant robbing and shooting a store clerk, and (2) a single football player making disallowed helmet-to-helmet contact with an opposing player." (Dsa 29) The Appellate Division surmised that the jury in this case was not using the video to determine Shaquan's intent, but was instead reviewing the video to see "(1) who were the three men walking with Osbourne behind the deli; and (2) what each person was doing during that segment." (Dsa 29) The Appellate Division conceded the video "was also evidential of the actors' displayed apparent intent to rob

Osborne,” but claimed “that was not as vital as identifying who they were and their respective actions in the footage.” (Dsa 29-30)

The Appellate Division’s attempt to divine the jury’s thought process in seeking the slow-motion replays was improper. See State v. Hedgespeth, 249 N.J. 234, 253 (2021) (cautioning appellate courts not to “intrude as the thirteenth juror” by speculating as to how jury viewed evidence against defendant). Contrary to the Appellate Division’s conclusion, intent was a critical and hotly disputed issue in this case. Shaquan was charged with two offenses for which the prosecution was required to prove his intent to commit robbery. (16T:65-16 to 83-24) The trial court instructed the jury that neither “[m]ere association, acquaintance, or family relationship with an alleged conspirator,” nor “mere awareness” of the conspiracy would be sufficient to establish that Shaquan intended to participate in the conspiracy. (16T:67-2 to 19) The trial court likewise charged the jury that “[t]he liability or responsibility of each participant for any ensuing offense is depend[e]nt on his own state of mind and not on anyone else’s.” (16T:83-21 to 24)

In summation, the State and Shaquan’s defense counsel urged the jury to draw sharply different conclusions about Shaquan’s intent from the video. Shaquan’s defense did not contest the identity of the person shown in the videos inside and behind Poppie’s, but instead argued that the videos did not

support the prosecution's claim that he was involved in the robbery. Defense counsel argued that the videos from inside Poppie's show that Osborne paid Shaquan for weed inside Poppie's and then left the store with him. When the two men stepped outside, "unbeknownst to Shaquan, some people come up from behind them." (15T:175-1 to 7) Because Shaquan was caught off guard, it took "a second or two for [Shaquan] to realize, what the heck just happened, right?" (15T:175-16 to 20) Pointing to the exact video the jury would later focus on showing "people walking behind a glass door on a surveillance video," Shaquan's attorney argued that as "the last person to walk across the door," Shaquan was not involved in the robbery and was "confused." (15T:175-20 to 176-12) Homing in on the issue of intent, defense counsel acknowledged that "it's hard to see into somebody's mind, right, see what they're thinking, what their intentions are," but urged the jury to "to look at what's going on around." (15T:176-19 to 21)

To rebut the defense argument that Shaquan was confused and had little time to react, the prosecutor played the Poppie's video in slow motion. The prosecutor argued the slowed-down video showed Shaquan's involvement in the robbery because, in his two-second-long appearance in the video, Shaquan "doesn't look scared, doesn't look surprised. This is part of the plan." (16T:238-13 to 240-6)

Therefore, the video from behind Poppie's was vital evidence on the issue of Shaquan's mental state as the robbery unfolded. The person identified as Shaquan only appears in the video for two seconds, walking several steps behind the two men wielding weapons and pushing Osborne. During the video, he does not carry a weapon himself nor take any apparent action directed at Osborne. Yet, the use of slow-motion replay stretched the time that Shaquan appeared on screen, increasing the viewers' perception that he acted intentionally in concert with the ongoing robbery. The jury's repetitive slow-motion replays prejudiced Shaquan by exaggerating the appearance of relative time he had to deliberate, making his actions appear to be more intentional.

The jury's notes signaled they viewed the case as close, required many replays of the video showing the area behind Poppie's, and – even after many replays – still anticipated that they may not be able to reach a verdict. An obvious explanation for the jury's focus on the video was that they were closely scrutinizing Shaquan's argument that he was a mere bystander to the robbery and had not entered into a conspiracy with his relatives to commit the robbery. Members of the jury may have believed slow motion would provide additional insight into Shaquan's actions or intentions during the two seconds he was visible. Yet jurors lacked critical information regarding the way in

which repeated slow motion viewings would subconsciously bias them in favor of perceiving actions as deliberate and premeditated.

Watching the video repeatedly in slow-motion conveyed the impression that Shaquan had more time to deliberate than he actually did when he was seen walking steps behind his father and brother. See Hüttner, 52 Perception at 79 (explaining that viewer of slow-motion video can see “many apparent action alternatives” that were “simply not at disposition for the actor in their perception of time”). Although the video included a clock telling the jury how much time had actually passed during the video, the Caruso and Hüttner studies both concluded that, even when viewers are told the amount of real-time depicted, they were not unable to debias their perceptions of intentionality when viewing slow-motion video. Caruso, 113 Proceedings of the Nat’l Acad. of Scis. at 9253; Hüttner, 52 Perception at 81. The Caruso study found that pairing any slow-motion replays with an equal number of viewings at regular speed, which did not occur here, “was somewhat, albeit not completely, effective in reducing the impact of slow motion on” skewing viewers’ perceptions of intent. Caruso, 113 Proceedings of the Nat’l Acad. of Scis. at 9253.

In the context of the jury’s deliberations, the many slow-motion replays without a curative instruction or offsetting regular speed replays were not

harmless. In State v. Williams, this Court considered whether the prosecutor's use of an "extra-evidentiary photograph" of Jack Nicholson in the movie The Shining "to convey the supposed threatening nature of defendant's note, conduct, and words" constituted harmless error. 244 N.J. 592, 614 (2021).

Although the State characterized the evidence that defendant had committed a second-degree robbery as "overwhelming," this Court disagreed, explaining that it was "a close call" as to the definitive question of "whether defendant purposely put [the victim] in fear of immediate bodily injury." Ibid. This Court therefore found that the prosecutor's use of the photograph was "clearly capable of having an unfair impact on the jury's deliberations, intruded upon defendant's right to a fair trial, and constituted reversible error." Id. at 616 (quotations omitted).

Likewise, whether Shaquan conspired with his brother and father to commit the robbery or was merely present while they committed the robbery was a "close call." The surveillance video did not show Shaquan wielding a weapon or taking any action in furtherance of the robbery. The victim admitted that he had withheld critical context to police by failing to tell them that he had agreed to buy weed from Shaquan moments before the robbery. The jury struggled to reach a verdict, requesting multiple sets of video replays before signaling that it was at a "standstill" on one of the charges. The jury may have

resolved the critical question of Shaquan's involvement only through its consideration of the "extra-evidentiary" slow-motion video, without a proper foundation or instruction conveying the biasing impact of slow-motion video.

The Court should therefore reverse Shaquan's convictions and remand for a new trial. If the State seeks to rely on slow-motion video at the retrial, it should first establish the reliability of the altered video through witness testimony. The trial court should only admit the slowed-down video if it determines its probative value is not substantially outweighed by its undue prejudice or risk of confusing or misleading the jury. Finally, if the slow-motion video is admitted, the trial court should caution the jury on the effect of slow-motion video on perception of intent and ensure the video is played at regular speed for each time it is played in slow motion.

CONCLUSION

For the reasons set forth in Points I and II, the Appellate Division's decision affirming Shaquan Knight's convictions should be reversed.

Respectfully submitted,

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