SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3369-13T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHIQUAN D. BELLAMY,

Defendant-Appellant.

Argued January 10, 2017 – Decided April 18, 2017

Before Judges Fisher, Ostrer and Leone.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 11-03-0348.

Stephen W. Kirsch, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Mr. Kirsch, of counsel and on the brief).

Erin M. Campbell, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Ms. Campbell, on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Defendant was convicted by a jury — and later sentenced to two consecutive life terms — of the first-degree murders of Michael Muchioki and Nia Haqq in Jersey City in the early morning hours of April 4, 2010. In appealing, defendant argues his constitutional rights were violated (1) by the admission of a letter written by defendant that referred to others having "snitched" on him, and (2) by an officer's conclusory testimony that the police investigation eliminated two individuals as suspects. In addition, defendant contends (3) the trial judge erred in failing to conduct a hearing about a relationship between a detective, who testified for the State, and defense counsel, who conceded they began dating no later than nine days after the jury verdict. The first two issues, which are assessed through application of the plain-error standard of review, were not clearly capable of producing an unjust result. As for the third, we reject the argument that the judge should have sua sponte conducted an evidentiary hearing and otherwise leave the matter for further examination by way of a future post-conviction relief petition.

I

Defendant was indicted, as were Latonia Bellamy and Darmelia Lawrence, with multiple counts of first-degree murder, felony murder, carjacking, robbery, and weapons offenses. Defendant was

tried alone. After a jury was unable to render a verdict in his first trial, defendant was tried again, over the course of six days, in September 2013.

At trial, the jury heard testimony from Amanda Muchioki that, on April 4, 2010, at approximately 2:30 a.m., she heard a car pull up in front of the Randolph Avenue home in which both she and her brother Michael Muchioki, and Michael's fiancée, Nia Haqq, lived.[1] Amanda heard a male voice say "get out of the car" that was followed by "a loud bang." She looked from the window but could not identify the "two people standing at the car"; indeed, she could not ascertain their gender. As Amanda ran to another room to obtain her cellphone to call 9-1-1, she heard "three more shots." She estimated these other shots — described as three "smaller explosion[s]" — occurred approximately "ten, 15 seconds" after the first "big bang." After calling 9-1-1 and reporting the circumstances, Amanda remained out of sight for fear that someone would enter the home. When police arrived approximately five minutes later, Amanda exited the home and saw Michael and Nia on the ground outside Nia's black SUV; the police directed Amanda back inside.

[1] Their father owned this residence. Amanda lived in the first-floor apartment, and Michael and Nia in the second-floor apartment.

Another Randolph Avenue resident testified that, at the same time, she heard a "loud boom" and ran to her second-floor window to see three individuals, whom she described as consisting of one male and two female African-Americans, get into a black SUV. She described the male as wearing a "fitted hat" and a "camouflage jacket." The witness went back to bed but then heard three other "pops" which she knew were "gunshots"; this caused her to reach for a telephone to call police. She looked out the window again to see the three individuals get out of the vehicle and run toward Union Avenue.

In addition, the jury heard testimony from Wahjira Rush and Darmelia Lawrence. The former testified she was with defendant, Darmelia, Latonia Bellamy, and Latonia's boyfriend, Jamaine Chambers, in an apartment leased to Charmaine Piniero (Cee-Cee) on Ocean Avenue in Jersey City on the evening of April 4, 2010. According to Wahjira, eventually "guns were taken out" by defendant, who also resided in this apartment. These weapons were described by Wahjira as a shotgun and a pistol. They were retrieved by defendant from a closet in which he also hung his clothes; an "army fatigue camouflage jacket" hung there as well. Wahjira testified that defendant, Jamaine, and Latonia left the apartment but later returned. A "little after" 2:30 a.m., defendant, Darmelia, and Latonia left the apartment. Wahjira testified

defendant was in possession of a shotgun, which he carried on the inside of his camouflage jacket.

Wahjira remained in the Ocean Avenue apartment with Jamaine after defendant, Darmelia, and Latonia departed. Wahjira testified at trial that defendant returned a short time after 3:00 a.m. Upon arrival, defendant was "out of breath" and, along with the shotgun, had in his possession some credit and identification cards and a ring, which he "threw . . . on the dresser."

Darmelia, who was also indicted, testified pursuant to her plea agreement with the State.[2] She made an in-court identification of defendant and testified she was at the Ocean Avenue apartment on the evening and early morning hours of April 3-4, 2010, when defendant and Latonia spoke about wanting to "rob people." When they departed in the early morning hours of April 4, defendant wore a camouflaged army fatigue jacket, which concealed a shotgun in its sleeve, and Latonia was in possession of a nine-millimeter handgun in her coat pocket. Darmelia, who was unarmed, went along with defendant and Latonia. She testified they walked from Ocean Avenue to Union Avenue and then onto Randolph Avenue. Darmelia described how a black SUV drove up and parked slightly beyond the

[2] Pursuant to her agreement with the State, Darmelia pleaded guilty to two counts of robbery with an expectation of a sentence that would take into consideration her cooperation in the prosecution.

intersection of Union and Randolph; a woman stepped out from the driver's side and a man stepped out from the passenger side. According to Darmelia, both Latonia and defendant stepped out in front of the SUV. Defendant said "give me the fucking keys" and, with that, his shotgun came out from within the sleeve of his camouflaged jacket. She then described what thereafter occurred:

> Q. What did the two people who got out of that black car do or say?
>
> A. The lady gave him the keys, then [defendant] ordered her on the ground. He ordered both of them on the ground.
>
> Q. What happened next?
>
> A. Then I heard the shotgun. He shot the man first. I heard the shotgun blast, then the lady screamed, then I heard three more shots.
>
> . . . .
>
> Q. Who had the handgun at this time?
>
> A. Latonia.
>
> Q. Did you see her shoot the woman?
>
> A. No, but she had the nine millimeter and I heard three shots.

Darmelia then described how defendant told her and Latonia to get in the black SUV, but they quickly found it wouldn't start. Consequently, defendant told Latonia and Darmelia to get out of the car and they "started walking up Union."

Although she described in her testimony that she went along with defendant and Latonia because she was just "being young, not thinking at the time," Darmelia also testified during cross-examination that she did nothing to assist law enforcement in the days that followed until police came to her, having found her fingerprint inside the victims' black SUV. As demonstrated at length during cross-examination, Darmelia denied involvement or knowledge of what occurred during a police interview until confronted with the fact that her fingerprint was found.

The jury also heard testimony from law enforcement officers and forensic experts through which the State further tied defendant to these heinous crimes.

An autopsy of Michael Muchioki's body demonstrated he sustained a near contact shotgun wound[3] to his head and a gunshot

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[3] When describing what was meant by "near contact shotgun wound," the medical examiner explained:

> Anytime there's a gunshot or shotgun wound, there's a range of fire that can occur with that, that shotgun wound. When a shotgun releases its projectiles, in this case, it is a series of pellets, it is also going to release some gunpowder as well. That gunpowder can be either burnt or unburnt gunpowder. Burnt gunpowder is soot like you would find in your furnace or your fireplace, that black chalk type [com]position. Unburnt gunpowder would come out of the barrel of the weapon fast and cause a scrape on the skin that you

wound to his buttocks, both of which brought about his demise. An autopsy of Nia's body revealed gunshot wounds to her head and left thigh, both of which caused her death.

Examination of the victims' vehicle demonstrated that a locking device prevented its operation at the time of the events in question. No car or house keys were found at the scene. Fingerprints lifted from the vehicle matched Darmelia.

The police interrogation of Darmelia led to information not only about Latonia's involvement, but also about Cee-Cee's Ocean Avenue apartment. When police arrived at this apartment, Cee-Cee directed officers to a bedroom defendant used. Police found an army fatigue jacket, containing what appeared to be bloodstains, in that bedroom's closet; a shotgun shell was found in the dresser. An expert testified at trial that the jacket contained the victims' blood. At trial, Darmelia also identified the jacket as that which was worn by defendant on the night in question.

> couldn't rub off. . . . Depending on whether or not you see either one of those materials on or inside the wound or on the skin, can give you an idea of range of fire. A close contact suggest that it is not a complete contact against the skin but maybe about anywhere from a quarter of an inch to an inch away from the skin when the firearm is discharged. In this case, a shotgun is discharged against his head.

In further searching the Ocean Avenue apartment, police uncovered a sawed-off shotgun, loaded with two unspent rounds, in the attic crawl space. Darmelia identified this weapon as that which defendant used to kill Michael on April 4, 2010. DNA evidence obtained from the shotgun's muzzle was positively linked to Michael Muchioki. The nine-millimeter handgun was never found.

Nia Haqq's credit cards and driver's license were recovered near the crime scene and turned over to the police by S.G., who lived nearby. S.G. testified that he came into possession of these items when another neighbor, L.B., dropped them off, thinking they might have belonged to S.G.'s wife or a friend of theirs. A further search of that area resulted in the discovery of credit cards and a cellphone belonging to Michael Muchioki.

II

Defendant was convicted of: two counts of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2); four counts of first-degree felony murder, N.J.S.A. 2C:11-3(a)(3); two counts of first-degree carjacking, N.J.S.A. 2C:15-2; two counts of first-degree robbery, N.J.S.A. 2C:15-1; four counts of second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); third-degree possession of a sawed-off shotgun, N.J.S.A. 2C:39-3(b); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-

5(b); and second-degree conspiracy to commit robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-2.

On January 17, 2014, defendant was sentenced to serve consecutive life terms on the two first-degree murder convictions. Other offenses were merged for sentencing purposes and concurrent prison terms imposed.

III

Defendant appeals, arguing:

> I. THE STATE IMPROPERLY PLACED INTO EVIDENCE REFERENCES TO DAMAGING INADMISSIBLE HEARSAY — AND MADE ARGUMENT TO THE JURY BASED UPON THAT EVIDENCE — IN A MANNER WHICH VIOLATED NOT ONLY THE EVIDENCE RULES, BUT ALSO VIOLATED DEFENDANT'S CONSTITUTIONAL RIGHTS TO CONFRONTATION AND DUE PROCESS, DENYING HIM A FAIR TRIAL (Not Raised Below).
>
> > A. The State Should Not Have Told The Jury, Through Witnesses And Argument, That Latonia Bellamy and Cee-Cee Piniero Gave Statements To Police That Incriminated Defendant.
> >
> > B. Detective Cook Improperly Told The Jury That, In Effect, Police Possessed Secret Evidence That Exonerated [S.G. And L.B.] As Suspects In The Case.
>
> II. WHEN PRESENTED WITH EVIDENCE THAT, WITHIN NINE DAYS OF THE JURY VERDICT, DEFENSE COUNSEL WAS DATING ONE OF THE PROSECUTOR'S DETECTIVES ASSIGNED TO THE CASE, THE JUDGE HAD AN OBLIGATION TO HOLD A HEARING REGARDING THE LIKELIHOOD THAT DEFENSE COUNSEL SUFFERED FROM A PER SE CONFLICT OF INTEREST THAT TAINTED HIS REPRESENTATION OF THE DEFENDANT.

In a pro se supplemental brief, defendant also argues in a single, two-part point, which we have renumbered, as follows:

> III. THE TRIAL COURT IMPROPERLY ADMITTED INTO EVIDENCE A DAMAGING LETTER ALLEGEDLY WRITTEN BY THE DEFENDANT WHICH VIOLATED THE REQUIREMENTS OF AUTHENTICATION OR IDENTIFICATION PURSUANT TO N.J.R.E. 901(b)(4) DENYING DUE PROCESS AND RIGHT TO A FAIR TRIAL UNDER BOTH STATE AND FEDERAL CONSTITUTION[S].
>
> > A. The Trial Judge Should Not Have Allowed The Letter To Be Placed Into Evidence As Substantially Not Being Changed From Its Original Condition.
> >
> > B. Prior To Appellant's Second Trial After The First Trial Was Declared A Hung Jury, The Prosecution Filed A Motion To Compel The Handwriting Samples Of The Appellant And Violated Its Government Constitutional Disclosure Duties By Not Disclosing The Expert's Opinion Or Producing The Expect, Which Violated Appellant's Fifth And Fourteenth Amendment[] Rights.

We find insufficient merit in Point III(B) to warrant further discussion in a written opinion. R. 2:11-3(e)(2). In rejecting the other grounds asserted by defendant, we will discuss, in the following sequence: (a) the jailhouse letter; (b) a police officer's conclusory testimony that S.G. and L.B. were ruled out as suspects; and (c) the relationship between defense counsel and a State's witness.

A

Defendant first complains of testimony from a law enforcement officer regarding a letter sent by defendant from the Hudson County jail to Courtney Brooks. In the letter, which the officer read aloud to the jury, defendant expressed:

> I can be facing a lot of time. If these two bitches take the stand, cause they did snitch on me.
>
> . . . .
>
> And they brag, they brag and shit is, that it's my cousin NaNa and Annie.[4]
>
> . . . .
>
> I knew I should have been — I knew I should have been gave Annie a permanent happy face.[5]

A second law enforcement officer was also questioned about the letter, and he read another portion, which stated, following the reference to a "permanent happy face," that:

> [M]y fucking brother Corey stopped me. Oh, yea, that bitch Cee-Cee did 2.[6] But it is on

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[4] There is no dispute that NaNa refers to Latonia Bellamy and Annie refers to Darmelia Lawrence.

[5] The officer was permitted to explain — without objection from defense counsel — that giving someone a "permanent happy face" "means to kill someone."

[6] It is not clear whether the letter's statement that "Cee-Cee did [too]," meant that she also "stopped [him]" from giving Darmelia "a permanent happy face" or that Cee-Cee also "snitch[ed]" on defendant.

> some shit like they word against mines, and as soon as one of them fuck up, it's over.

Having failed to object at trial to the admission of this testimony about the contents of the letter itself,[7] defendant now argues in this appeal — for the first time — that the conveyance to the jury that Latonia and Darmelia, and possibly Cee-Cee, gave statements to police, and that the statements inculpated defendant, constitutes "rank hearsay of the most inadmissible kind." Because there was no objection, we apply the plain-error standard, R. 2:10-2, which precludes reversal unless it can be demonstrated that the newly-asserted error was "clearly capable of producing

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[7] Prior to trial, defense counsel partially objected to the use of the letter at trial — not on grounds now urged but because the letter revealed defendant was "lock[ed] up" and also referred to parole violations. In this regard, the judge instructed the jury in advance that the testimony would reveal

> this [d]efendant was in custody at the Hudson County Jail. This testimony is being offered only to explain how the State came into possession of a letter allegedly written by this [d]efendant to one Courtney Brooks. This evidence may not be used by you for any other purpose. You may not draw any negative inference against the [d]efendant based upon evidence of his pretrial incarceration nor may you assume that his custodial status pretrial has any bearing on his guilt or innocence on the charges here.

an unjust result." Id.; see also State v. Macon, 57 N.J. 325, 337 (1971).

To be sure, the letter had probative value and was, as a general matter, admissible. Defendant's consternation over his belief that Latonia and Darmelia, and possibly Cee-Cee, had implicated him in these crimes revealed a consciousness of his own guilt. See, e.g., State v. Carlucci, 217 N.J. 129, 142 (2014); State v. Rechtschaffer, 70 N.J. 395, 413-15 (1976). And defendant's statement was admissible pursuant to N.J.R.E. 803(b) simply because it was defendant's statement and related to the issues in the case. See State v. Covell, 157 N.J. 554, 572 (1999).[8]

But defendant now argues the testimony elicited was far more pernicious for reasons not asserted by his counsel at trial. For example, defendant now claims that one law enforcement officer was permitted to testify — without objection from defendant — as to how the jury might interpret the word "snitch" as used in defendant's correspondence:

> A. Snitch is commonly used when a person do something and if another person tell on them, excuse me, they don't want that person to tell law enforcement when they do something wrong.

[8] We also note that the judge instructed the jury that the letter had been redacted and that the jurors should "not . . . speculate about what was removed because whatever was removed is not relevant to this case."

> Q. If someone were to tell law enforcement that they saw somebody do something wrong, they would be a snitch?
>
> A. That is correct.
>
> . . . .
>
> Q. If you were to claim — if an individual were to claim in a letter that someone had told law enforcement something untrue, how would that be phrased in the letter? Would they use a word other than snitch?
>
> A. Something other than true?
>
> Q. Yeah?
>
> A. They would call him a snitch.
>
> Q. Now, if they're lying about them, would they use the terminology they're lying on me?
>
> A. Correct. They would say that person is lying on me.
>
> Q. If what they said wasn't true?
>
> A. That is correct.

In this way, the State was able to elicit not only defendant's exact words but his intentions. Through this testimony, the State was able to convey to the jury something about the content of whatever Latonia and Darmelia, and possibly Cee-Cee, said to police about defendant — not only that they implicated defendant in these crimes but defendant believed that whatever they said in implicating him was actually true. Consequently, defendant argues the admission of the testimony about the letter violated his Sixth

Amendment confrontation rights and infringed his right to a fair trial.

The Sixth Amendment, which applies to the states through the Fourteenth Amendment, provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI; Melendez-Diaz v. Massachusetts, 557 U.S. 305, 309, 129 S. Ct. 2527, 2531, 174 L. Ed. 2d 314, 320 (2009). The Confrontation Clause requires that hearsay[9] consisting of "[t]estimonial statements of witnesses absent from trial" will be "admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." Crawford v. Washington, 541 U.S. 36, 59, 124 S. Ct. 1354, 1369, 158 L. Ed. 2d 177, 197 (2004).

The letter, however, consisted entirely of statements made by defendant and, as we have already noted, those statements were for that reason — and barring some exception not urged here[10] —

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[9] Hearsay, of course, is an out-of-court statement made by one other than the declarant testifying at trial, "offered in evidence to prove the truth of the matter asserted." N.J.R.E. 801.

[10] In Covell, the Court observed that "as long as there are no Bruton, Miranda privilege or voluntariness problems, and subject to N.J.R.E. 104(c), the State may introduce at a criminal trial any relevant statement made by a defendant." 157 N.J. at 572 (referring to Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968) and Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)). The Court also held

admissible pursuant to N.J.R.E. 803(b). Consequently, defendant's Confrontation Clause argument is misguided.

We also reject the contention that defendant's right to a fair trial was infringed by the admission of testimony regarding his belief about what Latonia and Darmelia, and possibly Cee-Cee, told police. Defendant has not shown prejudice of a sufficient nature to warrant our conclusion that the admission of his statements was clearly capable of producing an unjust result. As we have already observed, Darmelia testified. The defense not only had the right but also the ability to cross-examine her. And, even though Latonia and Cee-Cee did not testify, the fact that Darmelia did — confirming she "snitched" on defendant — removed any sting caused through this indirect disclosure to the jury of what the others mentioned in the letter may have also told police about defendant. Perhaps the letter could have been further redacted in a way so as to avoid conveying indirectly what Latonia and Cee-Cee conveyed to police had defendant objected. But, as we have observed, defendant did not object or seek further relief concerning this letter either before or as the letter's content

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in Covell that there was "no policy reason why N.J.R.E. 403 should not be applied to N.J.R.E. 803(b)" and that "there will be some cases where the prejudicial impact of a defendant's statement will outweigh its probative value[,]" such as when "there is available less inflammatory evidence." 157 N.J. at 573-74.

was revealed to the jury. Consequently, we are not persuaded that the admission of the letter was capable of producing an unjust result not only because Darmelia's testimony confirmed in part defendant's statement but also because of the other overwhelming evidence of defendant's guilt that we outlined earlier.[11]

B

Defendant's second argument is based on the Supreme Court's holding that a police officer "may not imply to the jury that he possesses superior knowledge, outside the record, that incriminates the defendant." State v. Branch, 182 N.J. 338, 351 (2005). This concern — raised for the first time in this appeal — is based on a theory never expressed at trial.

As noted earlier, the State offered testimony from S.G. that his neighbor, L.B., provided him with found credit cards and other items belonging to the victims, and that S.G. turned these items

[11] For these same reasons, we reject defendant's newly-asserted argument that the assistant prosecutor's summation caused prejudice. Specifically, defendant complains about the assistant prosecutor's argument that when defendant wrote that Latonia and Darmelia "snitch[ed]," he meant they truthfully implicated him, otherwise defendant would have written that Latonia and Darmelia "lied on [him]." As our discussion has already revealed, these comments were fair because they were based on un-objected testimony as to the meaning of the word "snitch," and further corroborated by Darmelia's testimony. The summation, as to which there was no objection, consequently did not "over-step[] the bounds of propriety [or] create[] a real danger of prejudice to the accused." State v. Smith, 167 N.J. 158, 178 (2001).

over to police. A detective testified about those circumstances in the following way:

> Q. Did you conduct an investigation to determine whether or not [S.G.] had anything to do with the deaths of Michael Muchioki and Nia Haqq?
>
> A. Yes, I did.
>
> Q. Did you rule him out as a suspect?
>
> A. Yes, I did.
>
> . . . .
>
> Q. Did you also investigate whether or not [L.B.] had anything to do with the deaths of Michael Michioki and Nia Haqq?
>
> A. Yes, I did.
>
> Q. Did you rule him out, too?
>
> A. Yes, I did.

We agree with defendant that this type of testimony, standing alone, is contrary to the holding in Branch, supra, 182 N.J. at 351.

But, considering that, on this point, we again apply the plain-error standard of Rule 2:10-2, we are unable to conclude that the admission of this testimony was capable of producing an unjust result. First, the only purpose of this testimony was to eliminate an argument defendant never made – that S.G. or L.B., or both, were the culprits, not defendant. Second, S.G. testified

and was able to add content to the officer's unsupported statements that S.G. was exonerated; defendant was free to explore this further through cross-examination. And, to the extent the officer's conclusory testimony about S.G. and L.B. ran afoul of Branch, a timely objection would have provided the State with the opportunity to elicit further, more specific information to support the officer's conclusions. In the final analysis, we assume defendant was not prejudiced by this testimony because it did not relate to any theory he espoused, as demonstrated by defendant's decision not to object and his attorney's summation, which did not suggest that perhaps S.G. or L.B. were the true culprits.

C

In his third argument, defendant expresses concern about the undisputed fact, not otherwise explored in the trial court, that his attorney, Michael P. Rubas, Esq., entered into a dating relationship — no later than nine days after the jury verdict — with Detective Erin Burns, who testified for the State and against defendant in this matter. That this relationship created a conflict of interest for defense counsel at the moment it commenced is not disputed; indeed, the conflict is self-evident. See, e.g., Matter of Nichols, 95 N.J. 126, 131 (1984); State v. Lasane, 371 N.J. Super. 151, 163 (App. Div. 2004). The relationship required that

Rubas step aside. In fact, at some point in October 2013, after the jury verdict on September 19, 2013, but prior to sentencing on January 17, 2014, Rubas advised the Public Defender's Office of his inability to continue to represent defendant.

The record permits no greater understanding about this situation. New counsel, who advised during the sentencing proceeding that he "substituted into this case in October of 2013," seems to have done little more in exploration of the Rubas-Burns relationship than write to Rubas; there is no evidence that he contacted Burns. And the record on appeal includes only Rubas's January 14, 2014 letter to defendant's new attorney that, in pertinent part, states he advised the Deputy Public Defender for that region that his:

> first date with Ms. Erin Burns occurred on Saturday, September 28, 2013 in Spring Lake, New Jersey. I was not involved in a "dating or romantic relationship" with Ms. Burns either before or during the trial. Thus, there was no conflict of interest in my representation of [defendant].

Rubas provided no further information, or at least none that is contained in the record before us.

Three days after this letter, defendant was sentenced. At the outset of that proceeding, defendant's new attorney said only this about Rubas's relationship with Burns:

> I spoke to Mr. Rubas upon being assigned this case. I spoke to him directly. He indicated the conflict of interest did not exist at any time during the trial and he has written a letter to the [c]ourt[12] affirming that[,] and I have no evidence to assert to the contrary.

The record does not reveal whether new counsel investigated further, but the record discloses he did not seek an evidentiary hearing into the commencement or extent of Rubas's conflict of interest. Consequently, the judge neither commented upon nor made any ruling on the significance of the few scant facts about the conflict that were provided to him.

In this appeal, defendant argues the judge should have conducted an evidentiary hearing. The State claims there is no merit to defendant's contention and that, if anything, it should be left for post-conviction relief (PCR) proceedings.

We reject defendant's argument that the trial judge was required to sua sponte conduct an evidentiary hearing that defendant did not request. The few facts presented to the judge or, for that matter, to us, reveal some smoke but no fire. That is not to suggest the matter is unworthy of further inquiry. It might be that new counsel should have done more than merely accept Rubas's word for when his relationship with Burns began. At this

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[12] We assume counsel was referring to the January 14, 2014 letter quoted above, which was also sent to the trial judge and assistant prosecutor. There is no other letter in the record on appeal.

stage, however, it is not clear precisely what new counsel did about this, nor need we now suggest what an effective attorney would do in that situation.

In short, because we have insufficient factual information from which to form a belief about whether Rubas was in a conflict of interest at a point earlier than nine days after the jury verdict, or whether substituted counsel was ineffective in failing to explore the matter more zealously than the record on appeal suggests, we leave the question for later consideration by way of a PCR petition. It suffices, in disposing of defendant's Point II, that the judge did not err by failing to conduct an evidentiary hearing into the Rubas-Burns relationship that defendant never sought.

Affirmed.