RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0799-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

A.F.,[1]

Defendant-Appellant.

———————————————

Argued May 3, 2023 – Decided August 10, 2023

Before Judges Accurso, Vernoia and Natali.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 18-05-0735.

Joseph M. Mazraani argued the cause for appellant (Mazraani & Liguori LLP, attorneys; Joseph M.

[1] We use initials and pseudonyms to identify defendant and the alleged victims of the crimes with which he is charged to protect the victims' privacy and because the names of victims or alleged victims of sexual offenses are excluded from public access under Rule 1:38-3(c)(12).

Mazraani and Jeffrey S. Farmer, of counsel and on the brief).

Nancy A. Hulett, Assistant Prosecutor, argued the cause for respondent (Yolanda Ciccone, Middlesex County Prosecutor, attorney; Nancy A. Hulett, of counsel and on the brief).

PER CURIAM

By leave granted, defendant A.F. appeals from an October 5, 2022 Law Division order denying his motion to sever certain counts of an indictment charging him with sexually abusing three minor sisters, K.A. (Karen), B.P. (Betty), and S.P. (Sydney), over the course of approximately ten years while he shared various homes with their family. Defendant raises the following point for our consideration:

> THE COURT BELOW ABUSED ITS DISCRETION IN DENYING DEFENDANT'S MOTION TO SEVER COUNTS OF THE INDICTMENT FOR SEPARATE TRIALS.

We have carefully considered the parties' arguments against the applicable law, and particularly our recent published opinion in State v. Smith, 471 N.J. Super. 548 (App. Div. 2022), and conclude the court abused its discretion in denying defendant's application. We accordingly reverse.

I.

We discern the following facts from the grand jury proceedings and victim statements, mindful that this matter has not yet been tried and defendant is presumed innocent. For approximately ten years, the alleged victims lived with defendant in various two-bedroom residences in New Brunswick. The victims lived with their mother in one room, defendant occupied the second room with his wife and son, and the two families shared the common areas. This arrangement ended in May 2014, when the victims and their mother moved to Pennsylvania. The victims did not disclose the alleged sexual abuse until 2017, when they confided in each other and, approximately one month later, their mother.

As part of its subsequent investigation, New Brunswick police interviewed all three girls. Sydney was eleven years old at the time of the interview. Although she was unable to provide specific dates, Sydney described multiple instances of sexual abuse, the last of which occurred when she was in second grade. Sydney specifically recounted occasions in which defendant ran his hands over her body, including over her undergarments, put his face into her genitals, penetrated her vaginally, kissed her on the lips, and forced her hand onto his genitals. According to Sydney, much of the abuse

occurred when she was either home alone with defendant or isolated from the residence's other occupants.

Betty, who was thirteen years old at the time of the interview, was similarly unable to provide specific dates or recount when the abuse first began but nevertheless described multiple instances of sexual abuse, the last of which occurred when she was in fourth grade. Betty specifically recalled defendant taking her to his room, directing her to take off her clothes, forcing her onto the bed, attempting to kiss her against her will, exposing himself to her, and ignoring her demands to stop. She stated this happened on multiple occasions and while the other adults were out of the house. Betty also described one instance in which defendant pulled down her pants and rubbed his genitals against hers. According to Betty, defendant told her never to tell her mom about the abuse.

According to Karen, who was seventeen years old at the time of the interview, defendant often forced himself into her room, carried her to his room, and had vaginal and anal sex with her when her mother and defendant's wife left the residence. She claimed defendant abused her for the first time when she was five or six years old. On that occasion, she was alone with

defendant in his room when he pulled off her pants and penetrated her vaginally.

Karen also described an incident when she was in third or fourth grade in which defendant isolated her from her sisters, took her to an empty room in the house, penetrated her vaginally, and licked her genitals. Additionally, she recounted defendant touching her inappropriately when he found her alone in the house, including digitally penetrating her vagina, and claimed this happened on multiple occasions.

Karen also recalled an incident when their house lost power during Hurricane Irene and defendant rubbed his hands over her body and kissed her chest while other people were in the same room because nobody could see them in the dark. Karen initially claimed the last time defendant abused her was when she was twelve or thirteen years old, but later indicated the abuse continued until they moved.

Each of the three girls described the circumstances surrounding their belated disclosure. After an unrelated argument with their mother, Betty divulged to Sydney and Karen that defendant had abused her. Both Sydney and Karen also disclosed defendant's abuse, but the girls agreed not to confide

in their mother because they were worried about her mental health, specifically her depression.

Approximately one month later, during a study session, which they regularly participated in as Jehovah's Witnesses, Betty asked their mother several questions about the process for paying a lawyer and pressing charges against someone. Later that night, according to Betty, she "couldn't hold it back anymore" and approached Karen and Sydney about disclosing defendant's abuse to their mother. After the girls confided in their mother, she alerted their local police and then New Brunswick police.

At the grand jury proceedings, Officer Elfi Martinez of the New Brunswick Police Department summarized each of the alleged victims' interviews as well as a statement provided by defendant. According to Officer Martinez, defendant specifically denied any acts of penetration but "indicate[d] in his statement that . . . each of the three girls would jump on him in play, and, that his hand, or, his penis may have touched them in a way that they misunderstood[.]"

The grand jury returned a ten-count indictment. Counts one through three of the indictment relate to Sydney and charge: first-degree aggravated sexual assault of a victim less than thirteen-years-old, N.J.S.A. 2C:14-2(a)(1);

second-degree sexual assault of a victim less than thirteen-years-old by an actor at least four years older than the victim, N.J.S.A. 2C:14-2(b); and second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(1).

Counts four and five relate to Betty and allege: second-degree sexual assault of a victim less than thirteen-years-old by an actor at least four years older than the victim; and second-degree endangering the welfare of a child.

Counts six through ten relate to Karen and include charges for: first-degree aggravated sexual assault of a victim less than thirteen-years-old; second-degree sexual assault of a victim less than thirteen-years-old by an actor at least four years older than the victim; first-degree aggravated assault of a victim between the ages of thirteen and sixteen by a resource family parent, a guardian, or someone who stands in loco parentis within the household, N.J.S.A. 2C:14-2(a)(2)(c); third-degree aggravated criminal sexual contact of a victim between the ages of thirteen and sixteen by a resource family parent, a guardian, or someone who stands in loco parentis within the household, N.J.S.A. 2C:14-3(a); and second-degree endangering the welfare of a child.

Defendant moved to sever the counts as they relate to each alleged victim, respectively. The court denied defendant's motion in a written opinion,

and also denied his subsequent reconsideration application. We denied defendant's subsequent motion for leave to appeal, State v. A.F., No. AM-0517-19 (App. Div. June 5, 2020), as did our Supreme Court, State v. A.F., 244 N.J. 153 (2020).

In light of our decision in Smith, 471 N.J. Super. at 584, defendant renewed his severance motion. At the motion hearing, defendant's counsel asserted that defendant denied all of the accusations and specifically contended none of the alleged acts ever took place. Relying on Smith, he argued as neither defendant's intent nor absence of mistake were genuinely disputed, evidence of defendant's alleged assaults against each of the three girls respectively would be inadmissible under N.J.R.E. 404(b).

Defense counsel specifically explained, "we are not alleging that there was . . . a mistake in touching. We're not advancing that argument as a . . . defense argument. We're not saying [defendant] didn't have the intent to do this. We're saying he didn't do it." Additionally, defendant argued that if the court denied his application, the State would be permitted to impermissibly bolster each alleged victim's testimony, which he asserted would be particularly damaging in light of the lack of proofs against him aside from their testimony.

After considering the parties' submissions and oral arguments, the court denied defendant's motion in an October 5, 2022 order. In its accompanying written opinion, the court explained "[i]n determining whether or not to try certain charges jointly or separately, the court must consider 'whether, assuming the charges were tried separately, evidence of the offenses sought to be severed would be admissible under [404(b)] in the trial of the remaining charges.'" (alteration in original) (quoting State v. Pitts, 116 N.J. 580, 601-02 (1989)).

Applying the four-factor test set forth by our Supreme Court in State v. Cofield, 127 N.J. 328, 338 (1992), the court concluded evidence relating to defendant's alleged sexual abuse of each of the three alleged victims would be admissible in severed trials. With respect to the first Cofield prong, the court reasoned each victim's allegations were "relevant to a material issue to each other," as "the sexual assaults occurred by . . . defendant living with the family of the victims and abusing the children following a common plan with overlap in opportunity, motive, time, and location" and there was a "continuation of conduct as to all of the acts."

The court further determined defendant's "actions as to all three victims establish knowledge and purposeful behavior, as all the acts were for his sexual gratification[,]" as well as "the opportunity . . . the defendant had to

abuse the children in a 'busy' household, that is his ability and opportunity to isolate each victim." The court similarly stated, "defendant's opportunity to abuse the victims in a [two]-bedroom home that was shared by [seven] people . . . is materially relevant." The court also "recognize[d] the possible defense . . . that each instance was only innocent or playful touching," but concluded "until defendant projects this as a defense, no weight can be attributed to inadvertent contact."

As to the second Cofield factor, the court found "these acts are the same type (sexual abuse and touching), with a similarity in the experiences of the children, [and] all the acts are connected by virtue of the continuousness of the sexual abuse through the same opportunity." It also observed, "at one point in time, the sexual abuse occurred simultaneously" and "the circumstances enabling that sexual abuse [we]re the same."

The court also found the evidence of abuse against each victim was clear and convincing. On this point, it noted there was "very little motive for all three of them to lie" and "no evidence of any kind of hostility against" defendant. The court also determined "[t]he fact that the three children describe[d] similar experiences within the same time frame only increases the veracity of their claims."

The court acknowledged "there is a risk of prejudice insofar as the jury could use these individual acts for propensity towards the other," but concluded "the probative value of motive and opportunity outweighs the apparent prejudice of propensity." Finally, the court distinguished Smith because the allegations presented a "clear and strong" connection between the acts. We again granted defendant's motion for leave to appeal.

II.

Before us defendant reprises his arguments made before the motion court and contends "[t]he court abused its discretion in denying [his] motion to sever counts of the indictment for separate trials" because the State failed to establish, under Cofield's first prong, that evidence of his alleged abuse against each of the alleged victims respectively would be relevant to any genuinely disputed issue at severed trials. Specifically, defendant asserts "[t]here is no 'mistake' defense" because he "has always maintained a total denial of the charges," the court did not explain how his "motive" was at issue, and "details of each alleged victims' account of the abuse" is not "necessary to show 'opportunity.'" Defendant also maintains the court's denial of his severance motion is contrary to Smith, which he asserts "similarly involved allegations of sexual assault by a father against two girls with whom he lived."

Further, according to defendant, "[e]ven if the other[-]crimes evidence is relevant to prove some legitimate trial issue," its probative value is outweighed by its prejudicial effect and therefore fails to satisfy the fourth Cofield factor. Relying on State v. Orlando, 101 N.J. Super. 390, 394 (App. Div. 1968), defendant asserts the court's denial of his severance motion impermissibly "give[s] the State three witnesses for each allegation instead of one, with no legitimate Cofield purpose."

The State maintains "[d]efendant's opportunity to engage in the alleged sexual acts of abuse against the three sisters in the household he shared with them" is genuinely disputed. Additionally, the State argues "a general denial of guilt undoubtedly includes attacking the credibility of the three accusers in this case," which "includes attacking the delay in their disclosures of the alleged abuse." According to the State, the court properly distinguished Smith based on "the logical connection between the charged offenses" and because "the alleged acts of sexual abuse against the three sisters over the course of ten years involved substantially similar acts and went to the issue of opportunity."

III.

Well-established principles guide our review. Rule 3:7-6 allows for two or more offenses to be charged together in the same indictment "if the offenses

charged are of the same or similar character or are based on the same act or transaction or on [two] or more acts or transactions connected together or constituting parts of a common scheme or plan." Rule 3:15-2(b), however, provides that if for any reason "it appears that a defendant or the State is prejudiced by a permissible or mandatory joinder of offenses . . . in an indictment . . . the court may order an election or separate trials of counts . . . ."

The test to determine whether joinder is prejudicial to a defendant is whether, if the crimes were tried separately, evidence of the severed offenses would be admissible under N.J.R.E. 404(b) in a trial of the remaining charges. State v. Chenique-Puey, 145 N.J. 334, 341 (1996); State v. Oliver, 133 N.J. 141, 150-51 (1993). N.J.R.E. 404(b) provides, in pertinent part:

> [E]vidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to show that such person acted in conformity therewith. Such evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident when such matters are relevant to a material issue in dispute.
>
> [N.J.R.E. 404(b).]

Evidence proffered under N.J.R.E. 404(b) must pass the "rigorous" four-part Cofield test. Smith, 471 N.J. Super. at 568. To be admissible under that standard:

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

"The first prong requires that 'the evidence of the prior bad act, crime, or wrong . . . be relevant to a material issue that is genuinely disputed.'" State v. Willis, 225 N.J. 85, 98 (2016) (alteration in original) (quoting State v. Covell, 157 N.J. 554, 564-65 (1999)). Stated differently, "[t]o avoid prejudicial joinder, the court must conclude . . . 'the evidence of other crimes or bad acts [is] relevant to prove a fact genuinely in dispute and the evidence is necessary as proof of the disputed issue.'" Smith, 471 N.J. Super. at 567 (third alteration in original) (quoting State v. Sterling, 215 N.J. 65, 73 (2013)).

The fourth prong of the Cofield test "is generally the most difficult part of the test," and requires careful consideration. State v. Barden, 195 N.J. 375, 389 (2008). That prong "requires an inquiry distinct from the familiar balancing required under N.J.R.E. 403: the trial court must determine only

whether the probative value of such evidence is outweighed by its potential for undue prejudice . . . not whether it is substantially outweighed by that potential . . . ." State v. Green, 236 N.J. 71, 83-84 (2018) (internal citation omitted). In performing that analysis, a court must consider whether the other-crimes evidence is necessary to prove the fact in dispute or whether other, less prejudicial evidence could be used to prove the same fact. Barden, 195 N.J. at 389.

"All four factors must support the admission of the evidence in question." State v. J.M., 438 N.J. Super. 215, 221 (App. Div. 2014). Additionally, "[t]he party seeking to admit other-crimes evidence bears the burden of establishing that the probative value of the evidence is not outweighed by its apparent prejudice." State v. J.M., 225 N.J. 146, 158 (2016) (quoting State v. Reddish, 181 N.J. 553, 608-09 (2004)). We review a trial court's decision to try a defendant on multiple counts simultaneously or to sever counts for an abuse of discretion. Sterling, 215 N.J. at 73.

Against this legal backdrop, we are not persuaded evidence of the alleged sexual abuse against one victim is necessary to prove any genuinely disputed issues related to the alleged sexual abuse against the other victims. Even were we to determine the other-crimes evidence was probative to a fact

genuinely in dispute to satisfy Cofield's first prong, see Smith, 471 N.J. Super. at 567, we are satisfied the State has failed to establish less prejudicial evidence is not available to prove any disputed fact, see Barden, 195 N.J. at 389, particularly in light of the extraordinary prejudice defendant would face should the charges against him be joined.

First, although defendant lived with the alleged victims in a crowded home, he has not advanced, nor does the record from the grand jury proceeding provide, any defense which would suggest his opportunity to commit the alleged acts is a genuinely disputed issue, cf. Oliver, 133 N.J. at 153; State v. Krivacska, 341 N.J. Super. 1, 41 (App. Div. 2001), or that the other-crimes evidence is necessary to establish the circumstances that created an opportunity for defendant to perpetrate sexual abuse, see Barden, 195 N.J. at 389. Additionally, on the current record, each alleged victims' respective allegations, even if true, do not establish with specificity a motive to sexually assault the other two victims, but rather the separate allegations establish only a propensity for sexual abuse. See J.M., 438 N.J. Super. at 223; cf. State v. Marrero, 148 N.J. 469, 489 (1997); State v. Baker, 400 N.J. Super. 28, 49-50 (App. Div. 2008).

We are also unpersuaded the other-crimes evidence is relevant, as the court determined, to establish defendant followed a "common plan with overlap in opportunity, motive, time, and location." Despite the State's theory defendant abused each of the alleged victims while babysitting them and while other adults were absent from the home, there is no claim that each alleged incident of abuse was part of an "integrated plan" or that each alleged incident of abuse facilitated subsequent abuse, at least on the current record. See State v. Stevens, 115 N.J. 289, 305-06 (1989).

Additionally, we reject the State's argument the current record before us supports the conclusion the evidence is necessary to redeem the alleged victims' credibility. Our Supreme Court has explained the reasons for admitting other-crimes evidence to bolster a victim's credibility must be "finely honed and directed at specific issues in the case" and such evidence "should not be admitted solely to bolster the credibility of a witness against a defendant." State v. P.S., 202 N.J. 232, 256, 258 (2010). Here, defendant has not advanced any argument specifically aimed at the alleged victims' credibility, such as a potential bias against him. See State v. G.V., 162 N.J. 252, 264 (2000) (explaining "when [the] defendant puts the bias of the witness

(on account of a vendetta) into issue," other-crime evidence may be relevant to establish the testimony is not the product of bias).

Finally, we disagree with the State, and the motion court, that the circumstances here warrant a different result than that in Smith because of the "logical connection" between the alleged acts of sexual abuse in this case. Although we recognize some factual distinctions exist between this case and Smith, we are not satisfied those distinctions warrant admission of the other-crimes evidence under Cofield.

In Smith, the defendant was charged in the same indictment with sexually abusing two children, his biological daughter and his girlfriend's daughter, Sara, while they lived in his home. 471 N.J. Super. at 554-55. In opposition to the defendant's severance motion, "[t]he State argued a single trial was appropriate, because defendant's assaults were against 'female children to whom . . . defendant [wa]s a father figure,' and the crimes 'occurred when the children were staying at . . . defendant's home.'" Id. at 557 (alterations in original).

During the investigation, the defendant in Smith gave a statement to police in which he "denied intentionally touching Sara in a sexual manner and claimed he only touched her to move her over on the bed" to make room for

his infant daughter. Ibid. The prosecutor overstated defendant's explanation for the alleged touching during the motion hearing, however, arguing "the defendant provided a statement to police . . . claiming that [Sara] may have been confused regarding the sexual assault . . . by . . . defendant mistakenly touching her while he was trying to move the blanket covering here." Ibid. (alterations in original). According to the prosecutor, it was therefore "abundantly clear that absence of mistake and defendant's intent [were] material issues in dispute at trial." Ibid.

In light of the State's arguments, the motion judge in Smith denied the defendant's severance motion, finding the defendant's intent was at issue. Id. at 558-59. We noted the judge seemingly "[c]onstru[ed] the State's proffer as admission[] by defendant . . . of 'inadvertently' touching Sara's vaginal area when he 'pushed' her to make room for [his daughter] on the bed." Id. at 569. Considering the defendant's testimony and statement to detectives, however, we reversed and concluded the "defendant's intent in rubbing Sara's vaginal area, or that it did not occur by mistake, was never an issue because defendant denied touching Sara's vaginal area at all, inadvertently or otherwise." Ibid.

Similarly, we noted the "[d]efendant never said he touched Sara in her vaginal area, much less that it was by accident, mistake or inadvertence," and

we therefore concluded "[a]dmission of other[-]crimes evidence to bolster [the victims'] credibility was inappropriate." Id. at 572. With respect to the prosecutor's argument at the motion hearing, we explained "contrary to the proffer made in opposition to the severance motion, it was obvious defendant never suggested in his statement that Sara was confused about his touch and never asserted he inadvertently touched or rubbed Sara's vaginal area." Id. at 577.

Here, like the defendant in Smith, defendant denied the specific allegations against him at the motion hearing and maintained he never touched the alleged victims in a sexual manner. Because defendant claimed the alleged sexual abuse never occurred—as opposed to arguing he committed the alleged acts inadvertently or with an innocent intent—he did not advance any arguments at the motion hearing that would place his state of mind at issue. See P.S., 202 N.J. at 256 ("In determining whether 404(b) evidence bears on a material issue, the [c]ourt should consider whether the matter was projected by the defense as arguable before trial, raised by the defense at trial, or was one that the defense refused to concede."); J.M., 225 N.J. at 159 ("In a case in which a defendant contends the alleged assault did not occur, intent and absence of mistake are not at issue."). Accordingly, even were we to accept

the State's argument that a stronger connection existed between the alleged assaults in this case because the abuse occurred over the course of ten years "and involved substantially similar acts," we are satisfied the State failed to establish that such a connection warrants admission under Rule 404(b). See Stevens, 115 N.J. at 305-06 (explaining more is required under Rule 404(b) than "a strong factual similarity between the 'other crimes' and the indicted offense").

We acknowledge, unlike the defendant in Smith, defendant appears to have speculated to police that the alleged victims may have misunderstood contact that occurred while playing. Specifically, at the grand jury proceedings, in response to the prosecutor's question, "[a]nd, [defendant] denied any acts of penetration. But, did he indicate in his statement that, according to him, each of the three girls would jump on him in play, and, that his hand, or, his penis may have touched them in a way that they misunderstood?," Officer Martinez responded, "[c]orrect."

The State has not contended, however, before us or the motion court, that defendant's statement created a factual issue with respect to a permissible purpose for admission of other-crimes evidence under N.J.R.E. 404(b), such as defendant's intent, opportunity, or absence of mistake in completing the

alleged acts. In any event, we are satisfied defendant's statement does not change our calculus under Cofield. Defendant's speculation that the girls may have misinterpreted contact that occurred while they were playing is too attenuated to the specific allegations against him—that he intentionally isolated each of the alleged victims and sexually assaulted, penetrated, and abused them—to create any genuine dispute with respect to those allegations. Stated differently, the State need not introduce the other-crimes evidence to illuminate defendant's state of mind while purportedly playing with the alleged victims because none of the alleged incidents of sexual assault reported by the alleged victims took place in a playful setting or in a manner such that they could have been "misunderstood."

We note, however, our conclusion is based only on the record before us, which contains evidence of defendant's statement only through the prosecutor's questioning at the grand jury proceeding, and does not provide context for that statement, such as whether defendant had been informed of the specific allegations against him and to what degree he was so advised. Accordingly, we offer no opinion as to whether the other-crimes evidence may become admissible at trial in the event defendant expands on his statement or contends he committed the alleged instances of sexual abuse with an innocent intent.

Turning to the fourth Cofield prong, even were we to accept the State satisfied its burden to establish the other-crimes evidence was relevant to a material issue under Cofield's first prong, we are not persuaded the probative value of the other-crimes evidence as the court found it to be on the record presented is not "outweighed by its apparent prejudice." Cofield, 127 N.J. at 338. As the Court has explained, "[t]here is widespread agreement that other-crime evidence has a unique tendency to turn a jury against the defendant." Stevens, 115 N.J. at 302. Additionally, as was the case in Smith, the court's denial of defendant's severance motion has the effect of providing the State multiple witnesses to overcome defendant's general denial instead of one. See 471 N.J. Super. at 573; see also Orlando, 101 N.J. Super. at 394.

We also explained in Smith that trying "these two sets of allegations together before a single jury clearly implied defendant had 'a propensity to commit crimes, and, therefore, that it [wa]s more probable that he committed the crime[s] for which he [was] on trial.'" 471 N.J. Super. at 574 (alterations in original) (quoting Willis, 225 N.J. at 97). Similarly, here, we are satisfied trying the charges as they related to all three alleged victims before one single jury would clearly imply defendant had a propensity to sexually abuse the three girls.

Because we conclude the State failed to satisfy its burden under the first and fourth Cofield prongs based on the record presented, we need not address the second and third factors. See J.M., 438 N.J. Super. 221. Nothing in our opinion, including our assessment of Cofield's fourth prong, should be interpreted as suggesting evidence of defendant's alleged sexual abuse against each alleged victim cannot be introduced at severed trials should the State establish a permissible purpose for admission and relevance of that evidence under Cofield's first prong, and the court determine the evidence should be admissible based on its analysis of the four prongs of the Cofield standard based on the then-extant record. Similarly, our opinion should not be interpreted as expressing any view with respect to the outcome of the severed trials.

To the extent we have not expressly addressed any of the State's arguments, we have determined they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Reversed.