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June 27, 2025

Honorable Marc C. Lemieux, A.J.S.C.
Monmouth County Courthouse
71 Monument Park, 3rd Floor
Freehold, NJ 07728

Re: State v. Paul Caneiro
Case No. 18-004915 / Indictment No. 19-02-283-I

Defense Response Brief to State's Motion to Admit Certain Evidence

Dear Judge Lemieux:

Please accept this letter brief in response to the State's Motion to Admit Certain Evidence.

RELEVANT FACTS / PROCEDURAL HISTORY

On October 2, 2020, the State filed a 13-page "Notice of Intent to Offer Certain Evidence." Therein, the State noticed the defense (and the Court) that it intended to offer the following evidence at trial: (1) Paul Caneiro's text messages, emails, and phone calls made in the months, days, and hours preceding the murders; (2) text and email exchanges between Paul and Keith –

some of which were exchanged over 2.5 years prior to the murder; (3) A variety of hearsay statements made by Keith, including statements pertaining to a variety of topics; (4) Wyze Video footage (in particular, footage that captured Keith's side of 3 phone calls); and (5) a variety of 404b evidence, specifically: (a) insurance fraud; (b) Paul's alleged record falsification, (c) Paul's prior arguments with Keith, (d) Paul's extramarital affair (e) Paul's 'cache of weapons' collection, and (f) a prior residential fire at Paul's house.

In February 2025, the State provided the defense with a 2-hour streamlined video compilation composited from a variety of Wyze camera video clips. These clips contained 20+ one-sided phone calls captured on video over a 4-hour time period (3:37 PM to 7:35 PM).

On April 21, 2025, the defense contacted the State (via email) seeking clarification as to whether the State was intending to only admit the 3 calls originally cited in its 2020 Letter of Intent, or, whether the State was intending to admit the entire 2-hour video compilation of calls. Of note, the 3 calls listed in the 2020 Letter were (1) a call between Keith and Susan; (2) a call between Keith and Paul; and (3) a call between Keith and Corey.

On April 29, 2025, the State responded (via email) and informed that it was intending to admit 'all' of the calls contained in the 2-hour Wyze video compilation.

On May 7, 2025, the defense filed a 27-page opposition to the aforementioned. In short, the defense objected to most of this evidence on NJRE 401, 403, 802, and 404b grounds. The defense also took the position that the following evidence should require a formal motion by the state: (1) the Wyze camera footage; (2) the additional recorded hearsay statements contained in the Canada Life phone calls (corresponding with a 70-page transcript) and the CitiBank calls (no transcript provided); and (3) the various items of 404b evidence.

On May 8, 2025, the Court held a status conference on the record, at which time the Court noted that it was in receipt of the defense's 5/7/25 response to the State's 2020 Letter of Intent, which contained objections to the evidence sought to be admitted by the State. The Court noted that it had also received a Motion to Admit Motive Evidence from the State, filed 5/7/25, which discusses the 2020 Letter of Intent. The Court further noted that the Letter 'has several motions within one letter' and as such, the Court had 'some concerns' about the way in which the State was asking the Court to decide the 'substantial number of issues' laid out in that letter. The Court therefore requested that the State "breakdown these motions to address these issues in a more thorough fashion and also to update the caselaw considering that the [letter] was drafted in 2020[.]" The Court stated that the State's 'more comprehensive brief' was due June 13, 2025 (and the defense's response was due June 27, 2025).

On June 13, 2025, the State filed a Motion in Limine to Admit Certain Motive Evidence, which addressed two of the issues contained in its original 2020 Letter of Intent: (1) the alleged [REDACTED] fraud; and (2) various communications between Keith and Paul and three one-sided phone calls captured on the Wyze camera. Of note, the 3 calls sought to be admitted in the instant Motion include two calls between Keith and Paul and one call between Keith and Susan. (The State did not include the phone call between Keith and Corey that was contained in their original 2020 Letter of Intent).

On June 25, 2025, the matter was conferenced, at which time the State advised that it had reconsidered its intention to admit the entire 2-hour video, and instead, was seeking only to admit the 3 calls identified in its most recent Motion. Relying on that representation, the defense submits the following opposition/ objections to the State's Motion.

POINT I**THE [REDACTED] ISSUE**

The defense contests that Paul Caneiro was receiving a “salary” while on [REDACTED] With that stated, the defense does not contest that he was on [REDACTED] receiving [REDACTED] payments, and that he and his family were simultaneously receiving money/ income from the businesses. The defense also concedes that the [REDACTED] policy prevented Paul from otherwise seeking employment and that Susan Caneiro was not working during this time.

On June 26, 2025, the parties conferred and agreed to resolve this issue in a fashion that permits the State to elicit the information it seeks to admit while sanitizing the information in line with the defense’s position.¹ This Point, therefore, simply serves to memorialize the defense’s position and inform the Court that this issue has been resolved by the parties.

POINT II²

NOT ALL COMMUNICATIONS SOUGHT TO BE ADMITTED BY THE STATE FALL WITHIN A HEARSAY EXCEPTION AND THEREFORE, ARE INADMISSIBLE. ADDITIONALLY, EVEN IF A HEARSAY EXCEPTION DOES APPLY, AT LEAST SOME OF THESE COMMUNICATIONS ARE NOT ADMISSIBLE UNDER A N.J.R.E 403 ANALYSIS.

The state-of-mind hearsay exception in N.J.R.E. 803(c)(3) permits the admission, if relevant, of a "statement made in good faith of the declarant's then existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed." (Emphasis added).

¹ The State and defense also both agree that this agreement pertains to this trial only and would not pertain to any trial related to the pending separate indictment.

² The defense incorporates/ also relies on the arguments/ caselaw contained in its 5/7/25 brief.

Hearsay declarations of a homicide victim's state of mind are generally not admissible because the victim's state of mind is not relevant to prove any matter at issue in a typical homicide trial, where the principal question is whether the defendant killed with the requisite state of mind. The victim's state of mind is irrelevant to that inquiry, and can also be highly prejudicial if it raises in the jurors' minds the specter of a defendant worthy of the decedent's fear or other bad feeling. See State v. Machado, 111 N.J. 480, 489 (1988); State v. Benedetto, 120 N.J. 250, 260-261 (1990); State v. Downey, 206 N.J. Super. 382, 391 (App. Div. 1986); State v. Prudden, 212 N.J. Super. 608, 613 (App. Div. 1986). Indeed, the first question in any case involving N.J.R.E. 803(c)(3) is whether the state of mind of the declarant is even properly probative of an issue in the case. State v. McLaughlin, 205 N.J. 185, 198-212 (2011); State v. Calleia, 206 N.J. 296-297 (2011).

Thus, New Jersey criminal-law decisions in applying this hearsay exception to a statement by a non-defendant are fairly predictable. None of the decedents' states of mind in Benedetto, Downey, Prudden or Machado were deemed relevant to the issues in those cases, because they expressed fear of the defendant -- an irrelevant matter -- and hence those statements were deemed inadmissible hearsay. Similarly, in McLaughlin, when a declarant coconspirator told his girlfriend that he and defendant were planning a robbery, that hearsay statement was deemed inadmissible because the declarant was not on trial; the defendant was, and the declarant's state of mind could not be imputed to the defendant and, thus, was irrelevant. 205 N.J. at 198-212.

In contrast, in Calleia the Court held the homicide victim's hearsay statements regarding her intent to file for divorce were admissible because that state of mind was relevant: it demonstrated her likely future conduct, i.e., that she would file for divorce, which, if known to the defendant (and there was proof that he knew) would provide the defendant with a motive to murder her. 206 N.J. at 296-297. In Calleia, the proffered evidence of someone else's state of mind (the

alleged victim's intent to file for divorce) shed light on the defendant's motive -- because the declarant's intent provided defendant with an alleged motive for murder. Id.

Here, the defense acknowledges that some of Keith's statements/ communications to Paul are likely admissible under Calleia. That is, giving the State the benefit of all reasonably alleged inferences, some of Keith's statements can arguably provide the defendant with the alleged then-present motive. However, other statements the State seeks to admit go beyond the parameters of this narrow exception, and include statements that simply highlight Keith's prior states of mind, his opinions, and even worse, subjective recitations/ recollections of Paul's alleged prior bad acts.

Calleia could be no clearer that the only evidence that was admissible was the victim's state of mind: her intent to file for divorce. This was admissible because it bore on that defendant's motive to kill the victim when he allegedly did. However, the Court made clear that the victim's hearsay recitation of bad acts by the defendant which may have caused her to want a divorce, and any extraneous evidence of other irrelevant states of mind that she may have had, were not admissible under this exception: "Even aside from not evincing fear [which would have been inadmissible as an irrelevant state of mind], the statements here do not show any actions or propensity of defendant that might prejudice his ability to be assessed fairly by a jury. They merely show that defendant was in a faltering marriage, hardly a sin in this age." 206 N.J. at 302.

Stated another way, Calleia permits the decedent victim's relevant state of mind to be admitted at trial, but such evidence must constitute a "what" and not a "why" or "how." That is, Calleia permitted the victim's statements that she was simply "unhappy with her marriage," and was intending to get a divorce (of which the defendant was aware) but did not permit any statements that explained why she felt that way (e.g. (hypothetically) she was sick and tired of defendant's bad temper, propensity for lying to her, bad gambling addiction, etc.). This distinction

is important because the difference between the “what” and the “why” is the difference between admissible relevant motive evidence and inadmissible irrelevant, extraneous, prejudicial information not permitted to go before a jury.

Here, as noted, the defense acknowledges that some of what the State seeks to admit is admissible under the 803(c)(3) / Calleia exception. To start with, for example, the three Wyze calls that the State seeks to admit pertaining to Keith’s communications with Paul (and his wife) on the eve of the murders are likely admissible. This Wyze footage captures clear statements made by the decedent victim (Keith) to Paul, which reflect Keith’s state of mind as portrayed to Paul during a relevant time frame. The defense acknowledges, from the State’s perspective, that these statements are relevant and probative of the alleged motive – that Keith was discovering the alleged theft the night before he and his family were killed.

However, in contrast, some of the other communications that the State seeks to admit do not carry the requisite probative value nor do they fall within the exception permitted by 803(c)(3) and Calleia. As a first example, the text communications that occurred between Keith and Paul on April 10th and 11th of 2018 – 7 months prior to the murders – do not fall within the exception. First, these communications are far removed from the crimes/ events in question. Moreover, they do not express any sort of state of mind, as expressed to Paul, that would then cause Paul’s to develop a motive to commit murder. That is, the hearsay statements become relevant “[w]hen a **victim’s projected conduct** permits an inference that defendant may have been motivated by that conduct to act in the manner alleged by the prosecution[.]” Calleia, 206 N.J. at 296. In Calleia, the victim’s projected conduct was the divorce – clear and simple. However, these April 10th/ 11th statements do not express any projected conduct that would give rise to any motive on behalf of Paul.

Rather, these communications are simply a conversation in the ordinary course of the

brothers' business relationship: Keith inquires about payments made to the trust, and Paul explains that those payments were inadvertently made to a different account with a similar name, offering to pay them back with interest. Whether the State wishes to speculate any further about these conversations – what they mean, what Keith's state of mind was, what Paul's perception of Keith's state of mind was – is not within the exception. Contrary to Calleia, these statements constituted extraneous evidence of other irrelevant states of mind that Keith *may* have had – though it is not explicitly clear, and at face value, they reflect nothing more than a mistake which Keith accepts. In short, these statements by Keith are clearly separated in both time and kind from the statements captured on Wyze footage; these April 2018 statements reflect a resolved issue that does not express any projected conduct resulting in motive, and do nothing more than to paint Paul in a bad light for inadvertently sending Keith's money to the wrong account.

Next, the September 17th statements likewise do not fall within the 403(c)(3) / Calleia exception and are even more prejudicial than the April 2018 statements. These statements made by Keith that defendant is not “entitled to anything – you should just be happy that I was trying to help you out since your accident” and “I can't help you anymore” and “I have supported you in as many ways as possible – but I can't do it anymore” are the type of statements that N.J.R.E. 403(c)(3) expressly prohibit: “statement[s] of memory or belief.” Likewise, Calleia does not permit these statements. They merely demonstrate Keith's feelings and opinions about Paul at an earlier time and pertain to the Keith's subjective recollections of past events. Contrary to Calleia, the statements do not demonstrate anything about Keith's future intent/ actions/ plans that would cause Paul to react with motive. Rather, they are just statements and opinions about how Paul should be grateful. And, in fact, Paul did not react with motive because Keith was not killed on September 17th or the following day of September 18th; he was killed two months later.

In that vein, these stale statements do not reflect Keith's state of mind at the relevant time of the murders. These statements were made 2 months prior to the murders and therefore lack temporal proximity. With respect to timing, there must be some meaningful time frame that applies to the admissibility of the communications if they are being expressly used to suggest motive; and there must be some definitive indication that the communications actually relate to motive. Admission of this type of evidence cannot be based on speculation nor based on a drawn-out timeline of each and every time a victim and defendant have had a disagreement. In Calleia, for example, marital disputes or arguments that occurred in the 'weeks, months, and years' leading up to the victim's decision to seek divorce would not be admissible, and it is no different here. At some point, prior arguments or disagreements between Keith and Paul are not relevant or probative of motive but rather are merely reflective of the ongoing familial and business relationship the brothers held for 30+ years. Also, they are inherently vague and without the ability to confront/cross-examine the declarant, these statements have the clear capacity to mislead or confuse the jury.

Importantly, Calleia is also clear that "when testimony regarding a decedent's state of mind establishes a fact that, if known by defendant, could give rise to a motive, such testimony is admissible subject to balancing under Rule 403." Calleia, 206 N.J. at 295-96. (Emphasis added). "Of course, trial courts should remain vigilant to ensure that an evidentiary submission's probative value is not substantially outweighed by prejudicial effect." Calleia, 206 N.J. at 297. Under N.J.R.E. 403, evidence is excluded when its probative value is substantially outweighed by risk of undue prejudice, confusion of the issues, misleading the jury, or when the presentation of such evidence constitutes a needless presentation of cumulative evidence. As stated, here, there are portions of the proposed evidence that is admissible under the 403(c)(3) / Calleia exception. This

evidence, such as the Wyze camera conversations captured on video on the eve of the murders falls within this exception because it is relevant, probative, and temporally proximate to the time of the murders. However, at a certain point, a line must be drawn that separates the evidence that is relevant and appropriate for admission at trial, and the evidence that is not relevant, too remote in time to the murders to hold sufficient probative value, too prejudicial, too confusing or misleading, and /or too cumulative. The April 10th /11th and September 17th statements discussed herein are examples of such statements that fall on the inadmissible side of that line.

In short, the 403(c)(3) / Calleia exception is designed to be narrowly tailored. Here, the plethora of the communications and statements by Keith that the State seeks to admit constitute a very broad array of hearsay that the State is attempting to use to bolster its financial motive theory, which (at least in part) is convoluted, confusing, and reaching. Additionally, it is potentially problematic that the only way to introduce some of this evidence is to introduce other hearsay evidence that does not fall within the exception, such as the communications between Keith and Tiffany Rivera. See Calleia, 206 N.J. at 296 “[A] fact can only be probative on the question of motive if a defendant is aware of that fact.”) (emphasis added). Finally, it should be noted that some of these communications, if admitted, may need to be sanitized or redacted consistent with the agreed upon testimony related to Point I.

POINT III

ANY OTHER PURPORTED MOTIVE / 404B EVIDENCE SOUGHT TO BE ADMITTED BY THE STATE PURSUANT TO ITS 2020 LETTER OF INTENT SHOULD BE ADDRESSED PRETRIAL BY THIS COURT.

As explained in the procedural history, *supra*, the State originally indicated a potential desire to admit a host of purported motive evidence, including that which constitutes 404b evidence. However, in its ‘more comprehensive brief’ filed 6/13/25, the State only chose to address

two issues: the [REDACTED] issue and the 403(c)(3) / Calleia issue regarding Keith's hearsay statements. Subsequently, on 6/25/25, the defense learned that the State was still seeking to admit the 'cache of weapons' evidence, which is now also being addressed next week.

Ultimately, the defense understands the State may still be in the process of deciding which additional alleged motive evidence, if any, it may wish to use at trial. As such, the defense would not seek to waste judicial resources or undermine judicial economy with pretrial motions/procedures on issues that may ultimately be moot. And, therefore, the defense has no objection to determining remaining issues at a future time deemed appropriate by this Court. However, the defense respectfully requests that, if the State is going to seek to admit the additional evidence named in the 2020 Letter, then the issue(s) be decided pretrial rather than mid-trial.

CONCLUSION

For the forgoing reasons, the defense respectfully requests that the instant Motion be decided in a manner consistent with the arguments and caselaw discussed herein.

Sincerely,

/s/ Monika Mastellone

Monika Mastellone, Esq. 122942014

/s/ Andy Murray

Andy Murray, Esq. 007752008

CC: AP Christopher Decker; AP Nicole Wallace