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STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	MONMOUTH COUNTY COURT
Plaintiff,	:	LAW DIVISION - CRIMINAL
	:	
v.	:	INDICTMENT NO.: 19-02-283-I
	:	PROSECUTOR FILE NO.: 18-4915
PAUL CANEIRO,	:	
	:	**NOTICE OF MOTION**
Defendant.	:	**TO PRECLUDE FINANCIAL**
	:	**CRIMES/ MOTIVE EVIDENCE**

TO: AP Chris Decker & AP Nicole Wallace
Monmouth County Prosecutor's Office
132 Jerseyville Avenue
Freehold, NJ 07728

PLEASE TAKE NOTICE that on a date set by the Court, or as soon thereafter as counsel may be heard, Monika Mastellone, Esq., attorney for Defendant, Paul Caneiro, shall move before the Honorable Marc C. Lemieux, A.J.S.C., at the Monmouth County Superior Courthouse, 71 Monument Street, Freehold, New Jersey, for an Order granting preclusion of certain financial crimes/ motive evidence. The defendant will rely upon oral argument and the attached brief in support of this Motion.

/s/ Monika Mastellone
Monika Mastellone, Esq.
Attorney for Defendant

Dated: May 7, 2025

State of New Jersey

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May 7, 2025

The 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

Motion to Preclude Financial Crimes/ Motive Evidence

Dear Judge Lemieux:

Please accept this letter brief in lieu of a more formal brief in support of the defendant's Motion to Preclude Financial Crimes/ Motive Evidence.

STATEMENT OF RELEVANT FACTS

On February 25, 2019, Paul Caneiro was indicated via Indictment No. 19-02-283 as follows: four counts of first-degree Murder contrary to N.J.S.A. 2C:11-3(a)(1) and/ or N.J.S.A. 2C:11-3(a)(2) (Counts 1 through 4); two counts of first-degree Felony Murder contrary to N.J.S.A 2C:11-3(a)(3) (Counts 5 & 6); two counts of second-degree Aggravated Arson contrary to N.J.S.A. 2C:17-1(a) (Counts 7 & 8); second-degree Possession of a Weapon for an Unlawful Purpose contrary to N.J.S.A. 2C:39-4(a) (Count 9); second-degree Unlawful Possession of a Weapon contrary to N.J.S.A. 2C:58-4 (Count

10); third-degree Possession of a Weapon for an Unlawful Purpose contrary to N.J.S.A. 2C:39-4(d) (Count 11); fourth-degree Unlawful Possession of a Weapon contrary to N.J.S.A. 2C:58-4 (Count 12); second-degree Theft of Movable Property contrary to N.J.S.A. 2C:20-3(a) (County 13); fourth-degree Misapplication of Entrusted Property (Fiduciary Duty) contrary to N.J.S.A. 2C:21-15 (Count 14); and two counts of third-degree Hindering Apprehension contrary to N.J.S.A. 2C;29-3b (Counts 15 & 16).

On May 7, 2025, the defense filed a Response Letter to the State's previously filed 'Letter of Intent' to Admit Certain Evidence. Therein, the defense outlined the three separate theories of motive that the State intends to set forth in this case. The first theory is that Paul Caneiro ("Paul") committed these murders "in the expectation of" realizing pecuniary gain. Specifically, so that he could receive $1.5 million in life insurance money. Relatedly, a second theory is that Paul committed these murders so that he could use the money to maintain his lavish lifestyle, particularly one that the State alleges he shared with his paramour.

The third theory, subject of the instant Motion, is that Paul committed these murders to "escape detection for another crime." Specifically, the State alleges that over a 23-month period, Paul stole and misappropriated approx. $78,000 from a trust account. The State further alleges that "as of the evening of November 19, 2018, Paul knew that Keith had discovered the thefts," and therefore, Paul murdered Keith's entire family to avoid detection of this alleged theft. In addition to this evidence being presented as motive evidence, it is also being presented as substantive evidence with respect to Counts 13 and 14 of the instant Indictment.

The discovery provided by the State related to this theory includes approximately 30,000 pages of financial documents and other evidence, ranging from financial data and banking records across a variety of financial institutions, to recorded calls, emails, various business records, and approx. 58 supplemental investigation reports, generally authored by Det. Debra Bassinder of the MCPO Financial Crimes Unit. Based on a review of this information, the defense anticipates that the State intends to call Det. Bassinder to testify, as a lay witness, to the alleged financial crimes evidence in this case. However, for the

reasons discussed below, the defense objects to this testimony/ evidence being presented through lay witnesses. To properly advance this theory at trial, the State must present the testimony and opinions of a financial expert.

LEGAL ARGUMENT

POINT I

AN EXPERT WITNESS IS REQUIRED FOR ADMISSION OF CERTAIN FINANCIAL CRIMES/ MOTIVE EVIDENCE.

Under our rules of evidence, there are three distinct categories of testimony a witness can give: (1) fact testimony; (2) lay opinion testimony; and (3) expert opinion testimony. State v. McLean, 205 N.J. 438, 456-62 (2011).

The first category, fact testimony, consists of what a witness "perceived through one or more of the senses." Id. at 460. Such testimony includes a description of what the witness did or saw, but does not include an opinion, "lay or expert, and does not convey information about what the [witness] 'believed,' 'thought,' or 'suspected.'" Id. at 460.

The second category, lay opinion testimony, is admissible only if it falls within "the narrow bounds" provided by N.J.R.E. 701. Id. at 456. Thus, a lay witness may only give an opinion when it is rationally based on his or her "personal observations and perceptions" and will assist the jury in understanding the witness's testimony or determining a fact in issue. Id. Our Supreme Court has held that these requirements mean that a lay witness may offer opinion testimony only "on matters of common knowledge and observation." State v. Bealor, 187 N.J. 574, 586 (2006) (emphasis added). As the Court explained, categories of appropriate lay opinion testimony include the speed at which a vehicle was traveling, State v. Locurto, 157 N.J. 463, 471-72 (1999) or the distance of a vehicle from the intersection where an accident occurred, State v. Haskins, 131 N.J. 643, 649 (1993).

The third category, expert opinion testimony, is governed by N.J.R.E. 702, 703, and 704, and allows experts to "explain the implications of observed behaviors that would otherwise fall outside the understanding of ordinary people on the jury." McLean, 205 N.J.

at 460. Only those with appropriate qualifications may testify as experts and a number of safeguards must be employed by the trial court when expert opinion testimony is admitted. Id. at 455, 460.

"Expert witnesses are often uniquely qualified in guiding the trier of fact through a complicated morass of obscure terms and concepts." United States v. Duncan, 42 F.3d 97, 101 (2nd Cir. 1994). The relaying of expert opinion testimony through lay witnesses, therefore, is explicitly barred by our jurisprudence, notably by McLean, supra. If testimony involves an opinion that requires "scientific, technical or other specialized knowledge," an expert is therefore required. N.J.R.E. 702. Here, the State is seeking to introduce complex financial crimes evidence through the testimony of lay witnesses. However, this evidence requires a financial expert.

If an expert witness seeks to give an opinion that requires "scientific, technical or other specialized training," the witness must fulfill the requirements of N.J.R.E. 702, of having the necessary "knowledge, skill, experience, training, or education." As relevant here, the standard "applies not only to testimony based on scientific knowledge but also to testimony based on **technical or other specialized knowledge**." State v. Olenowski, 253 N.J. 133, 154 (2023) ("Olenowski I"). (emphasis added). Importantly, certain prerequisites must be met. First, the witness must be qualified in the area. Second, the proponent must comply with the rules of discovery, giving the adversary an expert report that is more than a net opinion and explaining the methodology that forms the basis for the opinion. R. 3:13-3 (b)(1)(i). Third, the field of inquiry must be sufficiently reliable. Olenowski I, 253 N.J. at 143.

In this case, the State wants to tell the jury that the reason Paul Caneiro killed his brother and his brother's entire family is because he was concerned about "avoiding detection" of certain financial crimes. According to the State, those crimes included taking or depriving $78,000 money from the trust fund. As a result, the State argues the Canada Life insurance policy was not being adequately funded.

In order to prove this, the State intends to have a detective testify to what the financial records state, and then further testify to the alleged meaning behind those

records, in order to then also draw conclusions and opinions about how Paul committed financially related crimes. However, drawing these conclusions is not as simple as the State tries to make them seem. Only an expert can draw the analysis, opinions, and conclusions that the State wishes to put before the jury at trial.

Here, the State can call the detective, a lay witness, to testify to **facts** only: there was a trust agreement; that agreement pertained to certain parties; there was a trust account; payments were made; etc. However, whether the defendant's payments or taking money from the trust was in conformance with the trust agreement is an **opinion** that only an expert can give. While the State's discovery is flush with allegations that Paul failed to serve the trust in conformance with his fiduciary duty (i.e. that he stole money from the trust), the State lacks adequate evidence, through a finance expert, to show that in fact, Paul did breach his fiduciary duty – and, that the trust then suffered harm. If no breach or harm occurred, then neither a theft crime nor a misappropriation of funds crime occurred either.[1]

Thus, the State intends to have its lay witness detective testify to these conclusions when this witness is not qualified to opine about them. Det. Bassinder is not a qualified financial expert who can opine about whether Paul Caneiro breached his fiduciary duty (and thus committed a crime) when he dispersed money from the trust account into his own accounts. Det. Bassinder has no personal knowledge nor any expert knowledge that is required for the purpose of having a lay jury conclude that a bad act occurred. Merely concluding that there's a trust account that Paul took/ stole money from is the functional equivalent of a net opinion, which is inadmissible, prejudicial, and misleading to the jury.

As it applies here, for example, the trust agreement contained in discovery was created on July 27, 1999. (Exhibit A). Therein, Paul was designated as the Trustee. The "Powers of Trustee" are then specified in paragraph 6.6(l). The agreement empowers the

[1] See New Jersey Model Jury Charge, Misapplication of Entrusted Property (Fiduciary Duty) (Approved 6/16/08) *available at https://www.njcourts.gov/sites/default/files/charges/misenprp.pdf?cb=5b9183a5*
New Jersey Model Jury Charge, Theft of Movable Property (Revised 2/11/08) *available at https://www.njcourts.gov/sites/default/files/charges/theft003.pdf?cb=5b9183a5.*

trustee, without court approval, to issue loans – even to himself – that are 'commercially reasonable.' In other words, pursuant to the Trust Agreement, Paul was authorized to take money from the trust and loan it to himself. The question becomes, therefore, whether the loan was commercially reasonable, not whether he could make the loan (take the money) at all. And, if it was not commercially reasonable, then the next question is whether the trust suffered any harm. Only a financial expert can conduct the requisite financial analysis to answer these questions.

Moreover, the State wants to paint the picture at trial that Paul was taking money from the trust behind Keith's back, without his knowledge. The State's theory asserts that only Paul had access to the TD Bank account and that Keith was none the wiser to what was going on with the account. However, the State's own discovery clearly contradicts this. First, the Signature Card for the TD trust account lists both Paul Caneiro and Keith Caneiro. (Exhibit B). This means that both Paul and Keith were authorized signors on the account, and both of them had the authority to make transactions on the trust's behalf. The monthly TD Bank statements pertaining to the account were also mailed to Keith's home address – not Paul's. (Exhibit C). This means, at any given time, Keith could view the statements to ascertain the status of the account. Likewise, Keith could walk into any TD bank and ask for information related to the account. In no way was Keith restricted from accessing or having knowledge related to the account. Not only does this reality affect the credibility of the State's theory, but it also raises another issue: since both brothers had equal access to the account, a cold read of the financial documents does not tell us who made those deposits or debits – and the State's lay witnesses certainly cannot opine about this.

In short, there is no obvious narrative that can be derived from the bank records, nor does the State have an expert to put forth the narrative they desire. If anything, the documents themselves contradict the State's desired narrative. Thus, at bottom, the State is simply speculating as to what these documents mean rather than relying on an expert to explain what they actually mean or what they can actually tell us. Only a properly qualified financial expert can testify to the opinions and conclusions that the State alleges here, if the expert even agrees they are accurate.

Accordingly, the nature of this financial crimes/ motive evidence clearly involves scientific, technical, and other specialized knowledge. Just as a lay detective would not be allowed to read to a jury the numbers in the alleles and loci found in a DNA report, the detective here cannot be permitted to read information from the financial documents, nor opine as to what they mean, when she has no specialized knowledge or expertise in this area. Nor can the jury simply be given the facts of the financial documents and be asked to draw conclusions about whether fraud occurred, because, for all of the reasons discussed above, that conclusion is beyond the ken of an average juror's understanding. Olenowski I, 253 N.J. at 143.

For the same reasons a lay witness cannot opine on the meaning of these financial transactions, the State cannot urge a lay jury to draw conclusions, unassisted, about the meaning of these financial transactions. Only with appropriate expert testimony could this theory be presented to the jury. "A jury should not be allowed to speculate without the aid of expert testimony in an area where laypersons could not be expected to have sufficient knowledge or experience." Kelly v. Berlin, 300 N.J. Super. 256, 268 (App. Div. 1997) (internal quotation marks and alterations omitted). "A factfinder should not be allowed to speculate without the assistance of expert testimony in an area where the average person could not be expected to have sufficient knowledge or experience." State v. Doriguzzi, 334 N.J. Super. 530, 538 (App. Div. 2000). See also Froom v. Perel, 377 N.J. Super. 298, 318 (App. Div. 2005) (expert testimony required because issues surrounding real estate transaction and financial structure of such transactions is "beyond the common knowledge of lay persons.") (internal quotation marks omitted). Because the State has not put forth an expert to explain a theory of financial fraud that is beyond the understanding of a lay person, the State must be barred from arguing this theory of financial fraud.

To be sure, financial crimes are often litigated in the criminal system and civil system, alike. And, when they are litigated, experts are commonly used to explain complex finance-related concepts to jurors. See, e.g., Francis v. United Jersey Bank, 87 N.J. 15, 22-23 (1981) (expert described the reinsurance business and explained that "in general there kinds of checks may be drawn from this account: checks payable to

reinsurers as premium, checks payable to ceders as loss payments and checks payable to the brokers as commissions."). Even "Bookkeeping," for example, "is a science requiring specialized knowledge." Robbins v. Passaic Nat. Bank & Trust Co., 109 N.J.L. 250, 255 (1932). Bookkeeping "may or may not, like abstract mathematics, be an exact science, but it is a subject requiring expert and trained knowledge[.]" Ibid. (noting that "experts on both sides were called to testify respecting the effect of these payments on the financial relations of the parties; one side testifying that they represented an actual loss to the plaintiffs through payments to the bank; the other that they represented no loss whatever").

The reason it is important for complicated issues to be demonstrated through experts is to ensure that the conclusions presented are reliable, as opposed to speculative. Importantly, when experts testify, they must be able to explain the reasoning or methodology underlying the testimony and "whether that reasoning or methodology can be properly applied to the facts in issue." Olenowski I, supra at 147 (emphasis in the original). This is because "[r]eliability is critical to the admissibility of expert testimony." Id. at 150. "[A]n expert opinion that is not reliable is of no assistance to anyone.'" Ibid (quoting Kelly, 97 N.J. at 209).

By not retaining an expert, the State is attempting to dodge the obligation to ensure that its theory of financial fraud is the reliable outcome of a reliable methodology reliably applied. They are also dodging the obligation to explain the basis of an expert's opinion, as required by N.J.R.E. 702, N.J.R.E. 702, and Rule 3:13-3. Here, there has been no discovery tendered that identifies the reasoning or methodology behind the conclusions of financial misappropriation in this case. The conclusions that the State seeks to elicit, therefore, are akin to a "net opinion." "The net opinion rule is a 'corollary of [*N.J.R.E.* 703] ... which forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data.' The rule requires that an expert "'**give the why and wherefore' that supports the opinion**, '**rather than a mere conclusion**.'" Townsend v. Pierre, 221 N.J. 36, 53–54 (2015) (emphasis added). Thus, here, the contentions that Paul stole and misappropriated money are the functional equivalent of a

mere conclusion unsupported by the methodology in arriving at those conclusions. Such baseless speculation is inappropriate for an expert, a lay person, or the jury itself.

For the reasons stated, if the State intends to introduce testimony regarding this financial motive/ crimes evidence, it must do so through an expert. In order to do so, it must submit an expert report that explains not only the opinion, but the basis for that opinion, in time for the defense to prepare for the trial that fast approaches. This testimony Is not appropriate for a fact witness, a lay witness, or to be left to the jury to speculate upon. These opinions regarding misappropriation of funds, breach of fiduciary duty, and whether the trust suffered any harm are far from lay opinions "on matters of common knowledge and observation." State v. Bealor, 187 N.J. 574, 586 (2006). Accordingly, the State cannot present this evidence to the jury without expert testimony, and therefore, absent an expert who can reliably opine, this evidence must be excluded at trial.

CONCLUSION

For the foregoing reasons and authorities cited in support thereof, the defendant respectfully requests that his motion be granted.

Respectfully Submitted,

/s/ Monika Mastellone
Monika Mastellone, Esq.
Attorney ID No. 122942014

CC: AP Chris Decker; AP Nicole Wallace