PREPARED BY THE COURT

STATE OF NEW JERSEY Plaintiff, v. PAUL J. CANEIRO Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CRIMINAL PART MONMOUTH COUNTY INDICTMENT No. 19-02-0283-I CASE No. 18-4915 **ORDER**

THIS MATTER having been brought before the Court on application of defendant Paul J Caneiro (Monica Mastellone, Esq., and Victoria Howard, Esq., appearing), for an order to change venue, and Raymond S. Santiago, Monmouth County Prosecutor, (Christopher J. Decker, Assistant Prosecutor, and Nicole Wallace, Assistant Prosecutor, appearing) for the State of New Jersey; and the Court having held a hearing; and having reviewed and duly considered the arguments and papers submitted; and for good cause shown;

IT IS on this 4th day of April, 2025;

ORDERED that the defendant's motion to change venue is **DENIED** without prejudice; and it is further

ORDERED that a copy of this order shall be served upon all counsel of record via e-courts.

Hon. Marc C. Lemieux, A.J.S.C.

For reasons set forth in the Statement of Reasons attached to this Order.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

STATE OF NEW JERSEY Plaintiff, v. PAUL J. CANEIRO Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: CRIMINAL PART MONMOUTH COUNTY INDICTMENT No. 19-02-0283-I CASE No. 18-4915 **STATEMENT OF REASONS**

Lemieux, A.J.S.C.

I. INTRODUCTION:

This matter comes before the court on the Defendant's motion for change of venue. The court has reviewed Defendant's brief in support of his motion, along with the accompanying exhibits. The court has also reviewed the State's brief in opposition to the motion, along with their exhibits. Finally, the court has reviewed the supplemental letter briefs accompanied by additional exhibits for the court to consider. The court incorporates all these items into the record as if they were argued in open court.

II. FACTUAL AND PROCEDURAL HISTORY:

On November 20, 2018, first responders arrived at the scene of a fire in Colts Neck, New Jersey, where the investigation uncovered evidence of a quadruple homicide. The four victims were identified as Keith, Jennifer, [redacted] Caneiro.

Earlier that day, firefighters responded to a fire at the house of decedent's brother, defendant Paul Caneiro. On November 21, 2018, the Defendant was arrested under suspicion of arson for the fire at his own residence. He was subsequently charged in

connection to the Colts Neck fire and homicides. On November 29, 2018, the Honorable James McGann granted the Defendant's pre-trial detention.

On February 25, 2019, the Defendant was indicted for the following offenses:

First Degree Murder, in violation of 2C:11-3a and/or b of K.C.

First Degree Murder, in violation of 2C:11-3a and/or b of J.C.

First Degree Murder, in violation of 2C:11-3a and/or b of [redacted]

First Degree Murder, in violation of 2C:11-3a and/or b of [redacted]

First Degree Felony Murder, in violation of 2C:11-3a(3)

First Degree Felony Murder, in violation of 2C:11-3a(3)

Second Degree Aggravated Arson, in violation of 2C:17-1a

Second Degree Aggravated Arson in violation of 2C:17-1a

Second Degree Possession of a Weapon for an Unlawful Purpose, in violation of 2C:39-4a

Second Degree Unlawful Possession of a Weapon, in violation of 2C:39-5b

Third Degree Possession of a Weapon for an Unlawful Purpose, in violation of 2C:39-4d

Fourth Degree Unlawful Possession of a Weapon, in violation of 2C:39-5d

Second Degree Theft, in violation of 2C:20-3a

Fourth Degree Misapplication of Entrusted Property, in violation of 2C:21-15

Third Degree Hindering Apprehension of Oneself, in violation of 2C:29-3b

Third Degree Hindering Apprehension of Oneself, in violation of 2C:29-3b

On the same day, a notice of aggravating factors was returned on the four counts of murder exposing the Defendant to a sentence of Life without Parole on each count.

Since its inception, this case has received media coverage, beginning with the initial fire and continuing through the investigation and prosecution of this matter. The volume and frequency of coverage has fluctuated over the past six years, peaking during the initial investigation, diminishing in the intervening years, and briefly resurging with significant developments.

Of this coverage, the Defendant has identified nearly 500 distinct articles covering the events and proceedings of this case, published across continents. This is likely a non-exhaustive list in today's world of digital media. Most of these articles were published in 2018 and 2019. Eight articles were published in 2020, two in 2021, six in 2022, six in 2023, and forty-four in 2024. Of the 2024 articles, forty pertained to the evidentiary hearing held in the final months of the year, while one March 2024 article addressed delays in setting a trial date. In March 2025, 23 additional articles or links were published.[1]

Beyond procedural updates, media coverage has included articles on developments in the investigation, speculation about the relationship between the defendant and his brother, and commentary on the recent evidentiary hearing. Podcasts, YouTube videos, and other entertainment media have also addressed the case. While some include only brief mentions, others include in-depth analysis.

[1] Some of these articles consist of multiple news outlets republishing the same reporting or distributing it through a newswire service, but each publication is still noted. Additionally, some of the articles listed by defendant are duplicates, published on the same date by the same outlet but listed in the exhibits twice.

The Defendant's Position

The Defendant argues that a fair and impartial trial cannot be had due to extensive pretrial publicity, social media coverage, comments made by the Prosecutor's Office during press conferences, photos of the Defendant in prison garb, the fact that he is represented by the Office of the Public Defender, and the cumulative effect all these sources have had on the potential jurors within Monmouth County. He claims that the "[r]elentless inflammatory reporting, combined with pretrial sabotage via social media, requires a change of venue in this case." Db at 1. Defendant argues that "[a]ny efforts to remediate the prejudicial media coverage have been to no avail" and that the press "has erupted into [a] frenzy" at each development of the case. Db at 3. He supports this argument by producing a list of approximately 500 online sources that refer to this case, and he and the State agree that it is difficult to determine if this list is exhaustive.

Defendant's argument is that there has been too much information disseminated about this case, that all of it is prejudicial to him, and that the State's theory of motive has been made public for so long that the Monmouth County population has prejudged him. He also suggests that the public's disdain for him has bled over to his legal counsel and that only a jury from outside Monmouth County can remedy these disadvantages.

He is guaranteed a right to a fair and impartial jury, which Defendant claims cannot be found in Monmouth County. Defendant argues that the case is "high profile" which has resulted in this case being mentioned in national headlines and in newspapers overseas. Db at 5. Hearings have been live-broadcasted, and articles have included clips from previous hearings. Db at 11. Defendant argues that these articles mostly come from Asbury Park

Press, whose "reader-base consists primarily of residents of the Ocean County and Monmouth County area." Db at 11.

The Defendant argues that the statements made by former Prosecutor Gramiccioni has predisposed jurors to take his view of the evidence without giving the chance for potential jurors to apply their own judgment. Db at 9. He states that the "jury pool in Monmouth County is tainted by the Prosecutor's will," which is a prejudice that would be "extremely difficult, if not impossible, to overcome." Db at 9. Defendant claims that this is an "extreme case" where a change of venue is required. Db at 26.

The Defendant claims that prejudicial details which a juror should never hear have been spotlighted by the news. Db at 14. Some examples given were his mugshot, his incarceration status, him appearing in court in shackles, the contents of the previously sealed Affidavit of Probable Cause, and other inadmissible hearsay evidence. Db at 14-15.

Defendant further argues for a change of venue based on "the backlash in the comments and the discourse on social media platforms." Db. at 16. He lists many comments from different articles that he argues are meant to "reveal how people truly view Paul Caneiro." Db at 16. Defendant states that many comments occurred over six years ago, but that some were taken from 2024 and 2025 articles. Db at 22. He notes that "these comments are obviously not all from members of the Monmouth County community," but they show the "feelings of those who are familiar with this case." Db at 22. Defendant argues that an "overwhelming number of the public comments across the internet call for the death penalty," which aligned with the former Prosecutor stating, "Paul Caneiro is deserving of the death penalty." Db at 26. Per the Defendant, this shows that the public has already assumed his guilt.

Defendant claims that "[g]iven how much this gruesome event has horrified and struck the heart of the Monmouth County community, there is no question that they will feel most compelled to presume guilt." Db at 27.

Next, Defendant argues that he and Keith Caneiro were influential figures in their community. Db at 28. "The brothers' close relationship and successful businesses were well known within Monmouth County." Db at 28. He states that the "deaths of a prominent and affluent family immediately captured the attention of the community," and it has held onto it since. Db at 31. This focus will then hinder his ability to receive a fair trial.

Defendant claims that news spreads fast in modern day, so there can be "no question that these news articles have had insurmountable prejudice on the Defendant and his ability to have a fair trial." Db at 33. "The sheer volume and intensity of this coverage goes far beyond what is typical for a homicide case, elevating it to an extraordinary level of public scrutiny and sensationalism." Db at 34. He states that media has been saturated in Monmouth County, and it has been "relentless," with a "recent surge during the litigation of the DNA/Daubert issue." Db at 34.

Monmouth County is the "community who will retain, process, and recall this information in a much more impactful and unforgettable way." Db at. 35. The Defendant argues that this case will hit the jurors too close to home for them to be fair and impartial. Db at 36.

The State's Position

The State's contention is that there has been no dissemination of inappropriate information to the press, and that the coverage that has occurred in this case aligns with what would be inspected in a multiple-arson, multiple-homicide investigation. They argue

that "in most cases, even pervasive pretrial publicity does not necessarily preclude the likelihood of an impartial jury[.]" Sb at 15. While the coverage in this case has been extensive, the State's position is that it still cannot meet the high bar required for a change of venue.

The State argues that "[g]iven the nature and circumstances of the crimes, it is not surprising this case has received significant media attention, and Defendant's proffer shows spurts of fact-based reporting that occurred when there was a new development or court date." Sb at 20. The State furthers this point by claiming that the articles Defendant submitted do not show a "finding that pretrial publicity has been 'extensive, excessive, and ongoing' or 'inflammatory' such that prejudice must be presumed." Sb at 20. The 474 articles proffered have been published over a six-year span, which means that media "has not been daily or even weekly, and the pattern has been to publish when there was a development of significance or a court event to report." Sb at 20. "[M]ajority of Defendant's proffered articles were published in November and December of 2018," which is expected as it is when "events were fresh and court dates were unfolding." Sb at 21. State claims that there was an "uptick in publishing" in 2024 due to the Daubert hearing, but prior to it there was only other article that year. Sb at 22.

State alleges that the significant media coverage surrounding this case has not created a "carnival-like" atmosphere. Sb at 22. State argues that Defendant has not produced persuasive evidence of community hostility to justify a change of venue as the news articles did not consist of editorials or opinion articles. The articles proffered by Defendant do not "indicate a media campaign against" him, but are fact based and report on both sides of the case. Sb at 24.

State further addresses Defendant's allegation that comments on news media have created "extreme community hostility." Sb at 24. "[T]here is no evidence the individuals who chose to comment on the internet articles are Monmouth County residents or members of Defendant's prospective jury pool." Sb at 24.

Next, State writes that neither the victims nor the Defendant can be considered prominent members of the community. Sb at 25. State claims it "would be a fair statement that most people in Monmouth County have never heard their names prior to the murders," so this weighs against a presumption of prejudice. Sb at 25.

State agrees that this case has received national media attention, which required people to search for them. Sb at 26. These articles were internet based, so State argues there is "no reason to believe that residents of Monmouth County read more online news articles than people in other areas." Sb at 26.

State addresses that if "too much prejudicial information has been made public," then "the remedy is a probing and thorough voir dire rather than a presumption of prejudice." Sb at 27. The size of Monmouth County "nonetheless makes it hard to accept that 12 impartial individuals" could not be found to serve on the jury. Sb at 28. "Given the nature and facts of this case…it is difficult to imagine that those facts would not have a similar impact on a jury comprised of Monmouth County residents" as they would on out of county residents. Sb at 28.

The State submits that Defendant has "not established 'presumptively prejudicial' pretrial publicity," so that a change of venue is necessary. Sb at 29.

III. LEGAL ANALYSIS:

Criminal charges must be filed in the county wherein the offense occurred. See R. 3:14-1. However, the court may grant a change of venue or impanel a foreign jury if it finds that a fair and impartial trial cannot otherwise be held in the original county. See R. 3:14-2. This determination is within the trial court's discretion. See State v. Marshall, 123 N.J. 1, 76 (1991).

Due Process requires that an accused receive a trial by an impartial jury, free of outside influences. A trial court must take strong measures in evaluating and balancing two of our most basic constitutional guarantees: a free press, and a fair trial. The court must ensure that the balancing of those guarantees never weighs against the accused.

Here, the Defendant argues that a fair trial cannot be held in Monmouth County due to the cumulative impact of extensive pretrial publicity, widespread social media commentary, public statements by the Prosecutor's Office, photographs of the Defendant in prison garb, his previous representation, and the overall influence of these factors on the local jury pool.

Both the United States and the New Jersey Constitutions guarantee criminal defendants the right to a fair trial before a panel of impartial and indifferent jurors. See State v. Koedatich, 112 N.J. 225, 267-68, certif. denied 488 U.S. 1017 (1989); Irvin v. Dowd, 366 U.S. 717, 722 (1961); U.S. Const. amend. VI; N.J. Const. art. I, ¶10. However, the jurors "need not be ignorant of the facts of the case." Koedatich, 112 N.J. at 268 (citing State v. Sugar, 84 N.J. 1, 23 (1980)). The preservation of an impartial jury lies at the core of a fair trial: "triers of fact must be as nearly impartial as the lot of humanity will admit." State v. Williams, 93 N.J. 39, 60 (1983) (internal quotation marks omitted).

In State v. Biegenwald, the Court noted "it is axiomatic that a criminal defendant's right to a fair trial requires that he be tried before a jury panel not tainted by prejudice." 106 N.J. 13, 32 (1987) (Biegenwald II). This includes the fundamental requirement that the jury's verdict be based solely on evidence presented in open court—not on outside influences. See State v. Bey, 112 N.J. 45, 75 (1988) (quoting Sheppard v. Maxwell, 384 U.S. 333, 351 (1966)).

In certain cases, pretrial publicity may threaten a defendant's right to a fair trial. Widespread and inflammatory publicity may require trial court to employ a range of protective measures, including a change in venue, expansive voir dire, the use of a foreign jury, adjournment of the trial, or restrictions on public commentary by those involved in the proceedings. Biegenwald II, 106 N.J. at 32 (citing R. 3:14-2; Williams, 93 N.J. at 67–68).

Courts have also recognized that prejudice may arise not only from pretrial exposure but from media coverage during the trial itself. To guard against this, trial courts must take meaningful steps to minimize the risk that publicity both before and during trial, that might distort a juror's perception of the case. See State v. Feaster, 156 N.J. 1, 50 (1998).

The court will analyze the potential prejudice from pretrial publicity in two ways: (1) whether the trial atmosphere is so corrupted by publicity that prejudice may be presumed; or (2) whether pretrial publicity, while extensive, is less intrusive, making the determinative issue the actual effect of the publicity on the impartiality of the jury panel. Biegenwald II, 106 N.J. at 33.

Presumed Prejudice

In rare cases, prejudice may be presumed on the part of the entire jury pool. Koedatich, 112 N.J. at 269. The community must have been "saturated" with prejudicial and inflammatory media publicity about the crime. State v. Harris, 156 N.J. 122, 143 (1998). Saturation, in this context, means a torrent of publicity that so corrupts the trial atmosphere as to create "a carnival like setting". Ibid. Such a setting is "entirely lacking in the solemnity and sobriety to which a defendant is entitled in a system that subscribes to any notion of fairness and rejects the verdict of a mob." Id. at 270-71 (quoting Murphy v. Florida, 421 U.S. 794, 799 (1975)). This mob mentality requires more than "the mere existence of any preconceived notion" though, to allow any prior knowledge to establish presumed prejudice would create "an impossible standard." Murphy, 421 U.S. at 800.

The Defendant reads the New Jersey's Supreme Court's summation in State v. Nelson of State v. Harris, describing presumptively prejudicial publicity as that which creates either "'a carnival-like setting' **or** 'a barrage of inflammatory reporting'" as disjunctive, and argues that it describes two thresholds for prejudicial publicity. See Nelson, 173 N.J. at 476 (quoting Harris, 156 N.J. at 143, 147-48) (emphasis added). The Court disagrees with that interpretation.

The Court, in Harris, was elaborating on the concept of a carnival of publicity, which is "recognized as a barrage of inflammatory reporting that may but need not include all of the following: evidence that would be inadmissible at the trial, editorial opinions on guilt or innocence, and media pronouncements on the death-worthiness of a defendant." Harris, 156 N.J. at 147–48. The continuation of such publicity during trial was the concern in capital cases such as Harris, when a media source conducted a "vengeance seeking

crusade" and leveled a "stream of invective" against a defendant. Harris, 156 N.J. at 145. In Harris, the Trentonian newspaper

> ran many front-page, invective-filled headlines: "Ex–Inmate: Suspect is a Loudmouthed Punk," "Huggins Suspect 'Would Kill You in a Heartbeat,'" "Profile of a Monster: The Man Who Killed Kristin Huggins Committed His First Rape as a Teenager," "From Boy to Beast," "Huggins Slayer Terrorizes Prison," "He's Satan in Disguise." Other news accounts discussed the defendant's prior criminal record as well as other crimes he was suspected of committing. An editorialist predicted that death by lethal injection would rid society of "one of the biggest pieces of human trash ever to blight Trenton streets."
>
> . . .
>
> Based on the content of the newspaper coverage and the paper's editorial stance, the trial court concluded that Ambrose Harris "was no longer the subject of a news story, but rather the target of the newspaper's crusade."
>
> [Id. at 145-146.]

Such invective was described by the Harris Court as both a "carnival" and a "barrage" at once, and Nelson's summation of the two descriptions did not bifurcate the analysis. See Nelson, 173 N.J. at 476. The analysis encompasses both but remains the same.

In State v. Timmendequas, "[t]hough not comparable to the 'stream of invective' and 'vengeance seeking crusade' found in State v. Harris, the [trial] court nevertheless found the totality of the coverage and its nature had been constant and prolonged." State v. Timmendequas, 161 N.J. 515, 551 (1999) (internal punctuation marks omitted). Timmendequas was a highly publicized case which ultimately led to the passage of Megan's Law, and the trial court found that there was at least a realistic likelihood of prejudice to defendant, if not presumed prejudice. Id. at 552.

The Court balanced the defendant's right in that case to a fair and impartial jury against the rights of the victim's family members to attend the trial, and ultimately a foreign jury was impaneled rather than moving the trial to another venue. Id. at 553.

In Rideau v. Louisiana, 373 U.S. 723 (1963), the defendant's jailhouse confession was taped without his knowledge or consent, and without counsel present, and then broadcast on local television multiple times. Id. at 724. After three airings of the defendant's pre-arraignment "interview", in a parish of approximately 150,000 people, every member of the jury which convicted him stated they had seen the confession at least once. Id. at 725. The denial of defendant's request for a change of venue was considered a denial of due process, as "the people of Calcasieu Parish saw and heard, not once but three times, a 'trial' of Rideau in a jail, presided over by a sheriff, where there was no lawyer to advise Rideau of his right to stand mute." Id. at 727.

Prejudice was presumed both pre- and post-change of venue in Estes v. Texas, 381 U.S. 532 (1965), when defendant's trial was relocated to a new venue, but the subsequent "activities of [] television crews and news photographers led to considerable disruption of the [pretrial] hearings." Id. at 536. In Estes, a massive amount of pretrial publicity—totaling 11 volumes of newspaper clippings—leading up to defendant's trial for "swindling" required relocation to a venue 500 miles away.

That proved ineffectual, however, when live television and radio broadcasts of pretrial hearings and the presence of reporters within the bar of the court meant that "the picture presented was not one of that judicial serenity and calm to which petitioner was entitled." Ibid. The Court acknowledged that "[t]he law . . . favors publicity in legal proceedings, so far as that object can be attained without injustice to the persons immediately concerned." Id. at 542.

In Estes, however, the pretrial media circus occurred in the presence of the sworn jury pool, and inconsistent management of the media during the trial itself only

compounded the error. Similar to the broadcast of Rideau's jailhouse confession, the media coverage turned Estes' proceeding into a "[t]rial by television." Id. at 549.

Live or daily broadcasts of the trial itself present unique due process challenges because "televised jurors cannot help but feel the pressures of knowing that friends and neighbors have their eyes upon them." Furthermore, television equipment may increase jury "distraction," and "new trials plainly would be jeopardized" by heavy publicity of the first. Applying the rule in Rideau, the Court found Estes had been deprived of due process by the continuous media influence resulting in a "public presentation of only the State's side of the case." Id. at 551.

Prejudice has not been presumed, however, when news coverage was consistent with what would be expected for a murder trial. See, e.g., Koedatich, 112 N.J. at 273 (prejudice should not be presumed in the absence of a "circus-like atmosphere" or revelations of "inflammatory" evidence); Biegenwald II, 106 N.J. at 35 (trial court not required to "presume the existence of prejudice prior to jury voir dire" when the trial was adjourned for six months, newspaper coverage subsided, and the court prohibited further public comment by counsel). Nor was prejudice presumed in Murphy when "[s]ome of the jurors had a vague recollection of the robbery with which petitioner was charged, and each had some knowledge of petitioner's past crimes." 421 U.S. at 800.

In Koedatich, the defendant was charged and ultimately convicted for the murders of Amie Hoffman, an eighteen-year-old high school cheerleader, and Deirdre O'Brien, a twenty-five-year-old woman who was abducted and killed a few weeks after Hoffman's body was discovered. The investigation and subsequent trial "were attended by intense publicity." Koedatich, 112 N.J. at 265.

> The publicity included in the record in the Koedatich case was generated primarily in early December following Ms. O'Brien's stabbing death and again in January following Koedatich's arrest. During these periods, almost-daily reports were published by several newspapers including the Morristown *Daily Record,* the *Easton* (Pennsylvania) *Express* and the *Star–Ledger* (Morris, Sussex, Warren edition). Other newspapers, including the Dover *Daily Advance,* the Bridgewater *Courier–News,* the *Passaic Herald News* and the *New York Daily News,* provided less frequent coverage. The December articles chronicled in detail the circumstances surrounding the killing, the statewide manhunt and extensive investigation that ensued and the resulting fear and anxiety felt by many area residents. These articles postulated a possible relation between the O'Brien murder and several other unsolved murders in the area. Koedatich's arrest in January was announced by banners, front page headlines. Published articles extensively reported Koedatich's background and personal history including his prior criminal involvement.
>
> [Ibid.]

Koedatich moved, several times, for a change of venue. "Finding that a fair and impartial jury could be selected, the trial court denied all the defendant's motions[.]" Id. at 267. "Short of a change of venue, the defendant argue[d] that the only other way to obtain a fair and impartial jury was for the trial court to have excluded for cause any juror who had read or heard about the case." Id. at 268. The Supreme Court was "unpersuaded" by this argument. Id. at 269.

In Biegenwald, news coverage was similarly extensive. Biegenwald was charged with the murder of Anna Olesiewicz and implicated in the deaths of several others. Biegenwald II, 106 N.J. at 19-20. Due to the details of the investigation and inflammatory comments by law enforcement, local and regional papers had given Biegenwald the nickname "the thrill killer." Id. at 21. The Supreme Court noted that there was "extensive pretrial publicity concerning the defendant in newspapers distributed in Monmouth County." Biegenwald II, 106 N.J. at 30–31. There were frequent articles in "the Asbury Park Press, . . . the Star Ledger, The New York Times, the Daily News, the New York Post,

the Record (Bergen County), the Atlantic City Press, the Trentonian, the Daily Register (Monmouth County), the Home News (Middlesex County), and the Philadelphia Inquirer, as well as substantial radio and television publicity." Id. at 31. These articles included quotes from the prosecutor and recounted "the police digging to locate bodies, maps to gravesites, interviews with families of victims, and photographs of the defendant in handcuffs." Ibid. The defendant moved for a change of venue "on the ground that the extensive pretrial publicity made it unlikely he could receive a fair trial in Monmouth County." Ibid. The motion was denied, counsel was ordered to cease commenting to the press, and the case proceeded to trial. Id. at 21.

After defendant's conviction and on appeal, the Supreme Court noted that "pervasive pretrial publicity does not preclude the likelihood of an impartial jury," and that the "appropriate inquiry is whether the jury selection process actually resulted in a fair and impartial jury." Id. at 36. The pretrial publicity was concentrated in April and May of 1983, and the adjournment of the trial date for six months allowed the "impact of the publicity to subside." Id. at 35. During voir dire, "a few jurors were observed reading newspaper accounts of the trial in the jury assembly room" before they were called in. Id. at 32. Jurors were excused for cause, after they indicated "that their familiarity with the case would affect their ability to serve impartially." Id. at 36. The sixteen impaneled jurors had "indicated that they had encountered little or no publicity regarding the case," and in the end, the jury "did not include anyone who recalled having previously read anything" about the instant case, or the other deaths. Id. at 36-37. The Supreme Court held that, even though the "case was the subject of widespread and inflammatory publicity," a significant "portion

of the jury array was relatively unexposed to pretrial publicity and that the jurors impaneled constituted a fair and impartial trial jury." Id. at 37.

Murphy also did not require a change in venue, despite extensive press coverage during his robbery trial, due to his prior conviction for the attempted theft of the Star of India diamond. 421 U.S. at 795. The media referred to him as "Murph the Surf." Ibid. He had also been previously convicted of one count of murder and pled guilty to a federal indictment involving stolen securities. Id. at 796. Each of these cases was considered "newsworthy," and the record contained "scores of articles reporting on petitioner's trials and tribulations during this period" with many "purportedly relate[d] statements that [Murphy] or his attorney made to reporters." Ibid. The defendant moved for a change of venue based on the pretrial publicity, but it was denied. Ibid.

During voir dire, no impaneled juror "betrayed any belief in the relevance of petitioner's past to the present case." Id. at 800. Jurors who indicated that they had an opinion of the defendant's guilt were excused. Id. at 803. Ultimately, the circumstances surrounding this trial were not "sufficiently inflammatory." Id. at 802. The news articles concerning the defendant were concentrated more than seven months prior to jury selection, with most being factual in nature. Ibid. The circumstances did not suggest "a community with sentiment so poisoned against petitioner as to impeach the indifference of jurors who displayed no animus of their own." Id. at 803 (emphasis added).

To determine whether a court should presume prejudice, the following non-exhaustive factors should be analyzed:

1) The evidence of extreme community hostility toward Defendant;
2) The prominence of either the victim or defendant within the community;
3) The nature and extent of the news coverage;
4) The size of the community;

5) The nature and gravity of the offense; and
6) The temporal proximity of the news coverage to the trial.

[State v Nelson, 173 N.J at 476 (quoting State v. Koedatich, 112 N.J. at 282-284).] .

As these factors are non-exhaustive, and given the rise in social media that has occurred in the 23 years since Nelson, this court will address the social media comments specifically as a seventh factor. During oral argument, the Defendant and State agreed the Court could analyze the social media in this case within Nelson factors 1 or 3, but the Court will analyze it separately so as not to run the risk of obfuscating its weight.

Should the court, after applying these factors, find that the pretrial publicity does not rise to the level where prejudice should be presumed, then an inquiry is still required as to "whether an impartial jury could be obtained from among the citizens of the county or whether they are so aroused that they would not be qualified to sit as a jury to try the case." State v. Wise, 19 N.J. 59, 73 (1955). The question is whether "a change of venue is necessary to overcome the realistic likelihood of prejudice from pretrial publicity[.]" State v. Williams, 93 N.J. 39, 67 (1983); see also Koedatich, 112 N.J. at 267 (clarifying that the standard articulated in Wise calling for "clear and convincing proof that a fair and impartial trial could not be had" had been modified by Williams).

This court will now analyze the Nelson/Koedatich factors to determine if prejudice should be presumed due to pretrial publicity.

1. Community Hostility Toward the Defendant

The Defendant cites several instances in support of his claim of extreme community hostility exists. The Defendant mentions former Prosecutor Christopher

Gramiccioni's comments at a November 29, 2018, press conference, as well as anonymous or semi-anonymous comments on news articles and in social media.

Extreme community hostility can be presumed if "the record demonstrates that the community where the trial was held was saturated with prejudicial and inflammatory media publicity about the crime." Harris, 156 N.J. at 144. Absent that saturation, there must be a showing that "jurors demonstrated actual partiality or hostility that *cannot be laid aside.*" Ibid. (emphasis added).

Prosecutor Gramiccioni's remarks at a press conference are not indicative of the community's overall opinion. While a prosecutor must tread carefully when addressing the public, he has a right to inform the public of certain information. Public statements to the press by members of the Prosecutor's office are governed by New Jersey Rules of Professional Conduct 3.6 and 3.8. These rules prohibit "an extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding." RPC 3.6. there are exceptions for the disclosure of, *inter alia*, "(1) the claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved; (2) the information contained in a public record; (3) that an investigation of the matter is in progress; (4) the scheduling or result of any step in litigation[.]" Ibid. Prosecutors are further prohibited from making "extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused" with an exception provided for "statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose." RPC 3.8

Prosecutors "have a special obligation to seek justice and to not simply convict." Biegenwald II, 106 N.J. at 40. However, statements that express an opinion on the merits of a case, while worthy of "disapproval" are not necessarily "so egregious that it deprive[s] defendant of a fair trial" or require a change of venue. Ibid. In Biegenwald, a Monmouth County Prosecutor underwent a public relations campaign that did improperly influence the jury pool. He "assumed defendant's guilt, and commented on his motive, events surrounding the crimes, and portions of the State's evidence." Id. at 38. "Among the prosecutor's statements were that defendant committed the murders 'because he wanted to see someone die' on those nights; that defendant shot [one victim] 'for the sheer pleasure of seeing her die'; and that Biegenwald was a 'perverted, sick individual.'" Ibid. The holding of the Court and the relevant disciplinary rules "prohibit[] an attorney involved in an ongoing criminal trial from making extrajudicial comments concerning the guilt or innocence of a criminal defendant or the quality of the evidence or the merits of the case when such remarks are ... *reasonably likely* to interfere with a fair trial." Id. at 39 (emphasis in original). Despite repeated and egregiously inflammatory comments, the Court found no interference with the trial, as those statements occurred in "April and May of 1983 . . . and the trial court's July 1983 order barring statements by counsel and adjourning the trial date until November further served to mitigate the adverse impact of the prosecutor's comments on the jury panel." Id. at 40-41.

Former Prosecutor Christopher Gramiccioni's comments at a November 29, 2018 press conference are neither evidence of community hostility, nor did they serve to inflame the community.

Mr. Gramiccioni's comments are readily distinguishable from the comments made by the prosecutor in Biegenwald. Gramiccioni held two press conferences, one approximately 24 hours after the initial fires. At the time of this initial conference, the Defendant had been arrested on suspicion of arson related to the fire at his own residence and was explicitly not named as a suspect in the ongoing homicide investigation.

At the second conference, Gramiccioni confirmed his office's intent to charge Mr. Caneiro but ultimately declined to answer many questions as to motive or the nature of those charges.

There are two comments in that latter conference that give this court pause and warrant disapproval: the suggestion that Gramiccioni would have sought to try the matter as a "capital case," and that it was "the most brutal case that [he has] seen in [his] experience here." His personal opinions are not relevant to providing the community with information as to these alleged crimes. These comments were not "necessary to inform the public" under RPC 3.8 and approach the type of "extrajudicial statement" contemplated by RPC.

They are not, however, one of the enumerated categories of extrajudicial statement mentioned in the 2003 official comment to RPC 3.6, and they were not part of Mr. Gramiccioni's prepared remarks; they were each in response to questions from the public and were limited to a singular instance. Any commentary on whether any case would qualify as a capital case is inappropriate and has been since the abolition of the death penalty in New Jersey in 2007. Furthermore, characterization on the nature of a crime does not serve to give the public information about public safety or the results of the investigative process.

Nevertheless, these comments were not made in open court before an impaneled jury. Defendant's reliance on Aponte v. State, 30 N.J. 44 (1959), State v. Rivera, 437 N.J. Super. 434 (2014), and State v. Farrell, 61 N.J. 99 (1972), is misplaced. Each of those cases dealt with improper statements, personal opinions, or unbecoming behavior made in the presence of a jury, during opening statements or summations.

A jury, as a captive audience, is an attentive and receptive audience at that point; an isolated comment at a single press conference 6 years ago cannot be reasonably viewed as having the same effect. While it is "error to permit the prosecutor to declare his personal belief of a defendant's guilt in such a manner that the jury may understand that belief to be based upon something which the prosecutor knows outside the evidence[,]" Gramiccioni's comments were not before a jury and did not rise to the level of expressing a belief of the Defendant's guilt. Farrell, 61 N.J. at 103.

In Biegenwald, a six-month interval between the prosecutor's public comments on the case and the trial, coupled with a prohibition from further comment, was sufficient to insulate the trial from any potential prosecutorial misconduct. Here, the case is more insulated than that: not only have six years passed, but there has been a change in Prosecutor in Monmouth County. There is no ongoing media campaign. There were two offhand comments in a single press conference which referred to the crime itself, rather than the Defendant.

While all prosecutors have an obligation to seek justice, "prosecutors in capital cases have a special obligation to seek justice and to not simply convict." Biegenwald II, 106 N.J. at 40. Comments by prosecutors in capital crimes such as Biegenwald were rightly subject to the highest scrutiny, but even under that scrutiny the impact of those statements

can be mitigated. Absent the "uniquely harsh sanction" of a capital case, the comments of a former prosecutor, standing alone, are certainly not sufficient to warrant a change of venue. State v. Ramseur, 106 N.J. 123, 324 (1987).[2]

Although the comments of former Prosecutor Gramiccioni are noted, they do not tip the scales, and the court cannot assume they infected the entire venire.

This court has specifically reviewed all the Asbury Park Press articles and finds them to be factual, and not a "crusade" against the Defendant. See Harris, 156 N.J. at 145. The Asbury Park Press has provided responsible reporting of the case without editorializing, pronouncing personal views, or engaging in name-calling of this Defendant. Their coverage has been fair and consistent with what would be expected for pretrial publicity of an alleged multiple homicide. While coverage exists over the past six years, there is not a barrage inciting community hostility.

Moreover, the Court will instruct potential jurors of their role in a jury trial: decide the credible, believable facts and apply the law to those facts to determine a verdict. They are not to contemplate sentencing.

The Defendant further argues that media reporting attributes trial delays to the Defendant in the public eye. There is no evidence in the media coverage reviewed by this court to support that argument.

The Defendant also argues that the social media comments indicate that the community has not afforded him a presumption of innocence. While social media will be discussed in its own factor, there is insufficient evidence to support that all comments made

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[2] Defendant's argument that this matter should be treated as a capital case because it carries the harshest sanction that New Jersey can currently impose is discussed infra.

on social media originated from Monmouth County residents. While some comments refer to the County, or to a specific town, it is not a substantial amount.

Presuming hostility of the entire venire based on these arguments is a speculative leap with very limited traction. If potential jurors are identified as the author of these comments or as approving of these comments, they will be excused from this case.

For context, most of the comments are from 2018 and 2019. Assuming they are remembered by other potential jurors is too attenuated at this point. The Defendant's presumption of innocence will be impressed upon the venire, and only those who can follow that instruction will be suitable to serve on this jury.

The Defendant contends the initial reporting of the facts was inherently prejudicial. This is addressed in factor 5, but, at this time, social media posts and information supplied in the exhibits fail to show potential jurors recall six-year-old details. While a juror may remember some details, if the Court is convinced that they can fairly and impartially sit as a jury, that juror can sit on the case.

For the reasons stated above, unlike Timmendequas and Harris, the first factor does not support a finding that the Court should presume the venire would have a hostility towards the Defendant.

2. Prominence of Victim or Defendant in the Community

The Defendant claims that both the victims and the Defendant were prominent in their respective communities. Defendant's brief refers to Keith Caneiro as an "influential figure" who "stood out due to his leadership" as CEO of three successful businesses. The court concludes Keith Caneiro's success or achievements noted in the media are not what

the Nelson court intended when analyzing this factor. One newspaper article published before Keith Caneiro's death refers to him as "Keith Martin" and refers to the Defendant as Keith's "first employee, Paul Caneiro." The article does not describe their relationship as brothers and uses Keith's middle name as his last name. It does not indicate a "close relationship" that is "well known within Monmouth County." Post November 2018 articles regarding the Caneiro brothers' joint business ventures do not rise to the level of "prominence."

Similarly, the candlelight vigil held at Colts Neck Town Hall on November 22, 2018, was more indicative of a community processing their sorrow and coming together to remember the family, not a memorial for a public figure in their community. It was a singular instance, not an annual tradition. Neither Caneiro brother was an elected official, a church or community leader, or of singular renown. They were both normal individuals with normal lives. The consideration of prominence in the community is most relevant when the victim is held in particularly high esteem and the defendant is a "stranger to [the] community." Koedatich, 112 N.J. at 272 (citing Williams v. Superior Court of Placer County 34 Cal.3d 584, 668 (1983)). Here, there was not much disparity between the Defendant's status and his brother's. While every person is noteworthy in the hearts of their friends and neighbors, a modest family man is not a particularly prominent member of a community that boasts multiple celebrities.

While the Defendant has been depicted in many news articles after his arrest pending trial, there is no evidence that this exposure has made him a "prominent" member of the community. Over the past 10 years, Monmouth County has had several homicides where defendants have been charged with multiple murders with significant media

coverage. In each of these homicide trials, the court conducted probing voir dire and produced fair and impartial juries.

Even when the accusations themselves cause a degree of prominence and "some recognition of defendant's name" by virtue of pretrial publicity itself, recollection of a defendant's name does not rise to the level of presumptive prejudice. State v. Biegenwald, 126 N.J. 1, 25 (1991) (Biegenwald IV).

While Colts Neck is a small, highly affluent community and was particularly impacted by the deaths of the Caneiro family, those effects are not present throughout the entire county. The second factor weighs in favor of the State.

3. The Nature and Extent of the News Coverage

The Defendant argues that the nature and extent of the publicity is insurmountable in getting a fair trial in Monmouth County. There has been media and social media coverage since Defendant's arrest in November, 2018. Some media reports and social media comments included emotionally charged statements. The New Jersey Supreme Court has held that "a defendant is not entitled to jurors who are totally ignorant of the facts and issues involved in a given case." Koedatich, 112 N.J. at 268. "It is sufficient if the juror can lay aside his[/her] impression or opinion and render a verdict based on the evidence presented in court." Ibid. Media coverage that is sensationalized or inflammatory can be presumed prejudicial. If the media coverage is factual, it undermines the claim of presumed prejudice. See, e.g., Murphy, 421 U.S. at 802.

Asbury Park Press, the local media outlet for Monmouth and Ocean County, was one of the more frequent publishers surrounding this case. Since 2018, Asbury Park Press has published eighty-eight articles about this case. Yahoo News also included coverage,

but all of their articles were republications in their role as a news aggregator. In total, Yahoo News published twenty-four articles, with sixteen being pulled from Asbury Park Press, one pulled from the New York Post, one from ABC 7 Bay Area, three from Patch.com, one from Time, one from People, and one from NBC News. None of the articles published by Yahoo News were original articles written by Yahoo.

The Asbury Park Press primarily serves Monmouth and Ocean Counties, with a roughly equal number of readers in each. Their online publication makes up much of their subscriber and reader base, with roughly 1.4 to 1.95 million unique device visits each month. This does not necessarily mean individual readers, as a reader may have more than one device. NJ.com, which provides statewide coverage and includes Middlesex and Mercer County regional papers in its brand portfolio, receives about 60 million views each month.[3] The Asbury Park Press is undoubtedly the most localized of all the referenced news coverage, and continues to cover events and updates in the case. There was no evidence provided to indicate whether NJ.com, with its wider statewide readership and larger coverage area, is read more extensively within Monmouth County than other sources. NJ.com has not, however, continued to cover this case. The last article published on NJ.com for this case was in November 2020.

Defendant's supplemental argument, that nearly half of the average 1.75 million monthly Asbury Park Press views are from Monmouth County and, therefore, there have been 805,000 views in March 2025, is not as impactful as they suggest. Even if his estimate is accurate, 805,000 device views does not mean that articles concerning this case have

[3] https://www.nj.com/news/2024/12/njcom-ranked-as-the-top-local-news-site-nationally-for-audience-by-comscore.html. This number is for all brands across the state, and does not necessarily represent an equal comparison.

been read 805,000 times—it means that the domain for the Asbury Park Press has been visited 805,000 times. There is no means to differentiate a user who visited the front page or the sports section from one who read about this case.

Outside the immediate Monmouth County area, regional and national news outlets also reported on the case. The New York Post published seventeen original articles throughout the span of this case. The first article was published on November 21, 2018, with the most recent article published on December 27, 2024. Most of these articles are factually rooted, but two deal with speculation about Defendant's demeanor leading up to the day before the murders took place. NBC (with NBC 4 New York, NBC 5 WPTZ, NBC News, NBC News 4KVOA, and NBC News Center Maine) also posted multiple articles about this case. Altogether, NBC published nineteen articles regarding this case, but some contained reporting from the Associated Press rather than new insight. CBS (with CBS Austin, CBS New York, CBS News, CBS News the Morning, CBS News New York, CBS News Philadelphia, and CBS WUSA 9) published twenty-four original articles. The first article was published on November 21, 2018 with the most recent one on March 18, 2019.

In State v. Harris, pretrial news coverage had a particularly focused and inflammatory tone. After multiple front-page headlines featured in a single newspaper, it was clear that the defendant "was no longer the subject of a news story" but had become the editorial cause célèbre of the Trentonian. Harris, 156 N.J. at 145. That type of public demonizing is absent from this case. One New York Post Article from December 2018 alleges that Defendant may have had a past "violent streak." The substance of the article amounts to little more than a vaguely remembered interaction that is not repeated in subsequent stories or reported on by other publications and has little bearing on this case.

Another describes the deaths of the Caneiro family themselves as "heartbreaking." These isolated headlines are not character assassinations of the kind that gave the Harris court concern, and they do not rise to an insurmountable concern here.

Some of the articles, podcasts, and other media in this case range from slightly to moderately inflammatory when considered in isolation. These articles are from late 2018 and early 2019. Over 5 years ago. While the court is cognizant of potential inflammatory comments from over 5 years ago, since those comments the media coverage is factual and is only reporting court events

There is always "reason to believe that even in highly publicized cases the venire will contain many individuals who have not been exposed to the publicity or who, if exposed, are only faintly aware of the nature of the case." Williams, 93 N.J. at 66. Although the sheer volume of news articles weighs in favor of Defendant for this factor, the impact of the news coverage in this case falls off dramatically after 2019. With over 75% of the news articles having been published over 4 years ago, neither the nature nor the extent of the coverage, particularly the recent coverage, can rise to the level of presumed prejudice.

Defendant cites Timmendequas for the proposition that the number of articles in that case, less than the total number of articles in the instant case, supported a change of venue, though it ultimately resulted in a foreign jury. Db at 32. While it is accurate that the number of articles in this case is greater than the number in Timmendequas, the issue is the timing and content of those articles, not the mere quantity. In Timmendequas, the pretrial publicity was "constant, prolonged, and horrendous." 161 N.J. at 551. The coverage in the Trentonian "often assumed defendant's guilt and disclosed defendant's prior sex offense convictions[.]" Ibid. It referred to him as "scum" and "trash," among other names. It

disclosed his previous refusal of psychological counseling. Ibid. Newspapers frequently stressed that the defendant had confessed to the crime and called for his execution. Ibid. The trial court found that "the totality of the coverage and its nature" had been "constant and prolonged" and warranted a change of venue. Ibid.

The Defendant notes the total number of articles referenced in Timmendequas as 437, and notes that his near-500 pieces of media coverage surpass that count. The 437 articles in Timmendequas were published in a 31-month period between his arrest and conviction. This case has been pending for approximately 77 months. The timeframes are simply different. Defendant's attempt to use social media to bolster his argument, and suggest that this matter is like Timmendequas, is also factually inaccurate. Most of those comments are from 2018 and 2019, and anonymous comments are not a reliable source of journalism. They do not have the same perceived authority as a newspaper's pronouncement, and there is no reason to give them the same weight.

This case is readily distinguishable. There are no media outlets calling the Defendant any names. The Defendant has maintained his innocence, and no media outlet has stated that the Defendant has given anything close to an admission. The media has not called for his death. No Monmouth County State legislators commented on Defendant's guilt or suggested reinstating the death penalty. The Defendant has argued that he has been called "a host of similar hostile terms" as Timmendequas, and that "the public" has called for his demise. Db at 33. This obscures the issue, as the media has not committed those acts and, as analyzed infra, it is not appropriate to ascribe anonymous social media comments to "the public" as a whole.

There have also been headlines in this case that reported on the Defendant's statements of his innocence, despite Defendant maintaining that no one has supported him in that regard. A November 2018 headline titled: "Lawyer: Uncle Paul is Innocent – Find Family's Real Killer!" was published by 94.3 "The Point," a local radio station which serves Monmouth County and broadcasts from Tinton Falls. Another headline, from the local PBS affiliate, reads: "Lawyer: Brother of victim at mansion innocent of any charges." The Asbury Park Press published a similar article, with the Defendant's statement of innocence featured prominently in the headline. New Jersey 101.5 and News 12 New Jersey also covered the Defendant's statements of innocence in their statewide news coverage. Nationally distributed headlines in CBS News, Business Insider, the Daily Herald, NBC, and Fox News have done the same. While a notoriously un-journalistic UK tabloid, The Daily Mail, published two misleading headlines in 2019, no US-based news sources have published headlines assuming guilt.[4]

Alternative media sources, such as Wikipedia pages and podcasts, are not, as Defendant suggests, analogous to local or national media sources. Defendant argues these types of sources are "feeding the public's insatiable appetite for more media coverage, intensifying the media frenzy surrounding the case." Db at 34. It is a leap to call the coverage a "frenzy," even if podcasts or entertainment products use an inflammatory headline—such as the YouTube video titled "he frames his own attack and killed his brother." A video with 1.5 million views, or a podcast in the "true crime" genre with a large subscriber base that covers this case in a single episode, are not indicative of the public's

[4] The two Daily Mail headlines in question suggest that the defendant was already found guilty of some of the accusations against him. The remaining headlines from the Daily Mail make it clear that defendant has plead not guilty, and only stands accused of these offenses.

"insatiable appetite" for news about this case: they are indicative of the popularity of those specific entertainment brands. These videos are viewable across continents, and when compared to the world population of billions of people, 1.5 million views are not all that high.[5] It is a similar leap to say that the ubiquity of internet use in Monmouth County and across the world means that sources such as these are like localized publicity. While Defendant is correct that people use the internet, that does not mean the venire has visited these sites or listened to these podcasts.

The Defendant also argues that the Asbury Park Press' providing a hyperlink to an initial 911 call in this case could potentially prejudice the venire. First, we have no way to know if the venire has listened to the 911 call prior to voir dire; second, even if they have, it is information and not narrative or commentary by the press. Any juror who may have heard the call can be instructed to disregard prior knowledge of, and to only consider it if it is presented as evidence at trial. State v. Manley, 54 N.J. 259, 270 (1969) (jurors are presumed to follow the court's instructions). The 911 call also does not identify the Defendant in any way and was placed long before the Defendant was accused. The Supreme Court has not found a presumptively prejudicial atmosphere where news articles were "largely factual" and where voir dire did not reveal bias against the defendant. Murphy, 421 U.S. at 799.

Overall, the media attention from multiple outlets reached its peak in 2019 and has since subsided. Although recent events have spurred a small uptick in coverage, only the Asbury Park Press and NBC news consistently report on this case. A substantial case will garner substantial coverage, but what matters is whether that coverage is inflammatory,

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[5] The most popular video on YouTube has 15 billion views.

invective-filled, or excessive. "[M]ost cases of consequence garner at least some pretrial publicity." Skilling v. United States, 561 U.S. 358, 379 (2010). "Prominence does not necessarily produce prejudice, and juror *impartiality* . . . does not require *ignorance*." Id. at 381 (emphasis in original). While the court must give weight to the extent of the news coverage, it is not substantial weight considering the nature of the media publicity was not inflammatory.

4. The Size of the Community

The size of the community does not justify this court in presuming that the juror pool is prejudiced. Monmouth County has over 640,000 residents.[6] Approximately 440,000 of those residents are eligible for jury service.[7] Colts Neck is a smaller town of only 10,000 or so residents.[8] While Colts Neck residents potentially have a closer connection to this case, as discussed supra, this community does not constitute a significant portion of the potential jury pool. Although a potential juror who lived in Colts Neck during or temporally close to the events of this case would require a searching, and perhaps skeptical, voir dire to ensure impartiality; there are tens of thousands of potential jurors in Monmouth County who do not share the same connection.

The Defendant argues that Monmouth County towns are "close-knit" "conservative" and "prideful" but does not elaborate on how those qualities make a Monmouth County resident more prone to prejudice or less fit for jury service. He argues that a lower per-capita homicide rate in Monmouth County makes its residents more

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[6] The 2020 census reported 643,615 residents. https://data.census.gov
[7] This are an estimated 444,460 residents age 20-74. It is assumed eligible 18- and 19-year-olds will roughly balance out ineligible members of the listed cohort.
[8] 9,957 as of the 2020 census.

susceptible to the effects the media attention and public scrutiny that follows one. Db at 37. Monmouth County residents have seen several high-profile homicides in recent years, including a multiple-homicide on New Year's Eve/Day 2018 by a 16-year old against his parents, sister, and grandmother, and a young woman murdered by a purported friend for a paltry amount of money. Those cases were heard by Monmouth County juries after significant media coverage. Looking at the Defendant's own sources, Monmouth's homicide rate is also not meaningfully different from either Ocean or Middlesex County.[9]

The court rejects the Defendant's argument analogizing the Monmouth County resident's impact of this multiple homicide case to the public's emotional impact of the September 11th 2001 terror attacks.

It is similarly not appropriate to discuss how jurors will or will not be affected by serving on a jury in a high-profile case because that is not the scope of the inquiry. The purpose of examining the size of the community is to ensure that "the pool of eligible jurors [is] large enough to protect defendant's rights" and to analyze the extent to which pretrial publicity has saturated the venire. Nelson, 173 N.J. at 478.

The size of the community is also relevant when considering whether a significant portion of the venire will have a personal connection to the case. Here, Defendant makes a very relevant point. The smaller communities of Colts Neck and Ocean Township may prove to have a deeper memory of the events of this case. The court will exercise heightened caution with any member of the Colts Neck and Ocean Township communities.

Defendant also identified several fire, ambulance, and law enforcement agencies who were first responders. A direct witness to the initial fires would not be a suitable juror.

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[9] https://www-doh.nj.gov/doh-shad/indicator/view/Homicide.County.html

Whether the first responders spoke with family and friends will need to be rooted out with appropriate voir dire. It is too early to know the impact on any of the 250 potential witnesses talking to family or friends about the case. It should not be assumed these witnesses will presumptively taint all potential jurors.

The size of the community weighs in favor of the State but does present relevant questions for crafting a searching voir dire.

5. The Gravity of the Offenses Charged

The defendant faces six first degree crimes, along with multiple second, third- and fourth-degree crimes. As mentioned, Monmouth County has conducted many jury trials with defendants charged with multiple murders. Some of these trials involved allegations of arson, a child killing his parents, sister, and grandmother, a father killing his infant daughter, and the death of a young woman whose body was thrown from a bridge. The Defendant is charged with the same crimes as the cases mentioned above with the same potential life without the possibility of parole sentence.

The media has addressed the Defendant's sentencing exposure and has included details gleaned from civil complaints and the unsealed affidavit of probable cause. The facts underlying the charges are emotional and significant. But factual reporting, even reporting of purported facts that will ultimately be analyzed by a jury, does not create presumptively prejudicial publicity.

On a separate note, the fact that the Honorable Lisa P. Thornton, A.J.S.C., ordered the sealing of the State's October 2, 2020 letter captioned "Notice of Intent to Offer Certain Evidence" does not support the argument that these charges are somehow too great to be tried in Monmouth County, especially considering that letter still has not been made public.

Judge Thornton acknowledged that the release of the State's October 2, 2020 letter to the press would "make the process of selecting jurors a far more arduous process." In balancing the interests of the public with the rights of the accused, she noted that the way news is disseminated "is very different today" than it was before the development of the internet. Releasing what is, in essence, a private conference between attorneys memorialized as a letter would improperly intrude into the pretrial proceedings and give far too detailed a picture of evidence that is, as Defendant correctly suggests, inappropriate for discussion outside of trial.[10] The purpose of sealing that document was to secure the information contained within. Speculation as to whether Monmouth County would have been particularly susceptible to the details of that letter is, thankfully, moot.

The Defendant has argued that, since he faces the most serious sanction available in New Jersey, this motion should be treated as though it were a capital case. That is not so, and there is no precedent supporting such an argument. The death penalty was not modified in New Jersey, it was abolished. The 2007 amendments to N.J.S.A. 2C:11-3 do not merely alter the penalty for capital crimes, they remove procedural aspects such as a separate sentencing phase imposing a death sentence. Although life without the possibility of parole is now the most severe punishment available in New Jersey, it is not procedurally identical to the "uniquely harsh sanction" of death. State v. Ramseur, 106 N.J. 123, 324 (1987).

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[10] That letter, however, has never been released to the public, and none of the information contained within will be discussed. Judge Thornton correctly observed that the letter was far more than the "succinct statement" that would be offered at opening of a trial, and speculated far more on the quality of the state's proofs than would ever be acceptable pre-trial.

The legislature's intent to distinguish between former capital cases and post-abolition trials can also be found in amendments to other statutes. N.J.S.A. 2B:23-10, "Examination of Jurors," no longer contains the following provision: "b. The examination of jurors shall be under oath only in cases in which a death penalty may be imposed." Had a sentence of life without parole been intended to stand entirely in the shoes of the death penalty, and for the caselaw concerning capital offenses to remain fully applicable today, then these statutory provisions would have remained unchanged. The court has found no authority suggesting that the heightened analysis appropriate for capital cases should be applied in all high-profile cases, or in any case where a defendant faces a life sentence without the possibility of parole. However, if the court did apply that heightened scrutiny, this case still would not rise to the level of presumed prejudice after a full examination of the Nelson/Koedatich factors.

The gravity of the offense is reflected by the sentence that Defendant faces if convicted, but the fact that this sentencing exposure has been mentioned in pretrial publicity does not mean that it has tainted the jury pool. "The core of the jury's duty is to determine criminal culpability, not punishment." State v. Short, 131 N.J. 47, 61 (1993). See also Shannon v. United States, 512 U.S. 573, 579 (1994) (it is "well established that when a jury has no sentencing function, it should be admonished to reach its verdict without regard to what sentence might be imposed"). Extraneous information provided to a jury "invites them to ponder matters that are not within their province, distracts them from their factfinding responsibilities, and creates a strong possibility of confusion." Ibid. Here, however, and as it is with Defendant's pretrial photographs in prison garb, sentencing information is not being placed before a jury currently. Under the model jury charges, it is

made clear to a prospective jury, and reiterated before deliberations, that a juror's role is to determine the believable facts and apply them to the law as given by the judge, not to consider the potential sentence. Prior to the abolition of capital punishment, when juries did have a role in sentencing, they were still limited in their deliberations and instructed not to consider matters such as parole eligibility. State v. White, 27 N.J. 158, 179 (1958).

Years-old information on the Defendant's charges, gathered from the initial unsealing of the affidavit of probable cause, is not shown to be at the forefront of every Monmouth resident's mind, and does not appear to be refreshed by recent publicity. The extent to which any potential juror is pondering the sentencing exposure of the Defendant is a proper topic for voir dire, and it is proper to instruct the jury to disregard sentencing exposure in their deliberations.

This court finds that the gravity of the offenses does not weigh in favor of Defendant's argument that this court should presume prejudice.

6. Temporal Proximity of the News Coverage to Trial

A lapse in time between news coverage and the actual trial is an especially relevant consideration in a determination of presumed prejudice.

The New Jersey Supreme Court has squarely addressed the question of temporal proximity. In Biegenwald, there was extensive news coverage of the crimes, including statements by the prosecutor (as addressed supra), photos of murder scenes, reports of defendant's prior murder conviction and interviews with the victims' families. Even though there was intense torrent of initial publicity, newspaper coverage died down after a few months. The Court in Biegenwald found that, based on the six-month span between the most intense media coverage and the start of trial, there was enough time for the impact of

that media coverage to subside. Biegenwald IV, 126 N.J. at 35. In addressing the timeline of publication, it was "abundantly clear" that this was "not a case in which the trial court was required to presume the existence of prejudice prior to the jury voir dire." Ibid. "The extensive pretrial publicity was concentrated in April and May, 1983. In addition to prohibiting further public comment by counsel, the trial court adjourned the trial date until mid-November, allowing nearly six months to permit the impact of the publicity to subside." Ibid.

Here, the gap is much greater than six months. Much of the reporting on this case is concentrated in 2018 and early 2019, when the victims were first discovered deceased and when the Defendant was arrested. As the Supreme Court stated in Patton v. Yount, "the passage of time . . . can be a highly relevant fact" that can rebut "any presumption of partiality or prejudice[.]" 467 U.S. 1025, 1035 (1984). The Defendant argues that the passage of time from initial reporting to trial must be analyzed differently in 2025 than it was in 1983, because the internet provides more access to details of this case. When Judge Thornton sealed the state's October 2, 2020 letter, she recognized this fact, as well: digging up old news articles once required a trip to the library and possibly referencing microfilm archives, but now it requires little more than an internet search.

While this court gives Defendant's argument credence, even internet sources do not last forever. Websites are taken down, hyperlinks stop working, and archived articles receive updates. Online news today may be edited tomorrow. Even some sources offered by the Defendant are no longer available at the links provided. Information is more accessible in the modern age, but it is also more ephemeral. Temporal proximity of the news coverage to the trial still matters, because in the current age of instantly delivered

news, human beings still have finite attention spans. When a story leaves the front page, it is replaced with the next headline; whether anyone reads through the archives of a story depends in large part on how sensational the coverage.

There is no question that some reporting contains emotional information. More recent news coverage has, however, been focused on the Olenowski hearing and March 2025 decision. As time passes, news coverage will separate to focus on the impending trial date.[11] Defendant has pointed out that the comments sections on the recent video streams and articles have not restricted themselves to the scientific validity of DNA evidence and have at times devolved into more inflammatory rhetoric. The court recognizes these comments. Ultimately, the press does not have control over the topics of conversation in the comment sections, but those comments do not reflect the tone and tenor of the recent headlines and are "below the fold" and not necessarily viewed by every reader.

The temporal proximity of the news coverage to trial is noted, but it does not weigh in favor of the Defendant's position.

7. Social Media Comments

Social media comments and reactions (i.e., "likes") on news articles, in internet forums, and following podcasts and YouTube videos are sometimes used as a news source that the Defendant argues are a proxy for the hostility of the Monmouth County community. While the vitriol expressed in some of these comments are concerning to this

[11] Whether or not recent articles have spurred any members of the public to research the history of this case is, however, a relevant inquiry during voir dire.

court and warrants separate discussion, social media is not news. Social media is not a real-life community. It is something distinct and carries its own weight.

Whether news coverage is so inflammatory that it has saturated a community is something that can be determined in advance of assembling a venire. Whether the comments section of online news articles and social media sites accurately reflects a community's sentiments, however, cannot. At this stage in the proceedings, the court cannot determine whether a potential juror is capable of setting aside any partiality or hostility because those potential jurors are not yet identified and cannot be tied to any feelings of hostility present in the social media comments presented. The social media comments cited by Defendantdefendant, sites such as Facebook, Instagram, and YouTube, as well as below comments in online newspapers such as the New York Post, are largely anonymous or semi-anonymous, and there is no way to determine what portion of those comments come from actual Monmouth County residents.

As other jurisdictions have observed, internet coverage is not localized. See, e.g., McMillan v. State, 139 So.3d 184, 243-44 (Ala. Crim. App. 2010) (noting that internet comments "standing alone" did not show a saturation of pretrial publicity, and collecting cases). Individuals with a personal relationship to a case may be more likely to follow its developments online, but internet coverage on a case is not more available locally than nationally. Without verification, there is no way to identify whether a person is a current resident, an eligible juror, or representative of a cross-section of the community.

For traditional press coverage to create the presumption of prejudice, it must so saturate the community as to corrupt the jurors' ability to be fair and impartial. The comment section that accompanies the publicity cannot be said to have a greater reach and

saturation than the publicity itself. During oral argument, the Defendant suggested that a social media comment is indicative of how a commenter has been affected by the article it accompanies, and that is shows how any Monmouth County juror would react upon reading that article. "To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard." Irvin, 366 U.S. at 723. Other jurisdictions have already rejected the idea that internet comments are a good proxy for local sentiment. "The question before the [court] is not whether the blog authors could serve as fair and impartial jurors, but whether an impartial jury can be selected[.]" Gotbaum v. City of Phoenix, 617 F. Supp. 2d 878, 881–82 (D. Ariz. 2008); see also Poitra v. State, 275 P.3d 478, 484 (Wyo. 2012) (comments posted anonymously, without an indication of how broadly read they are, are afforded "little weight" in a presumed prejudice analysis).

Most publicly available and easily accessible social media comments in this case can be found accompanying videos on YouTube. The Defendant has identified 29 distinct videos, ranging from official news broadcasts or live telecasts of court proceedings to video "podcasts" and other entertainment products. Of those, nineteen have comments enabled. Most comments were posted shortly after the publication of the video they accompany, with very few instances of sustained activity and some isolated single comments years after the fact. The video of the Defendant's arraignment, posted by CBS New York 6 years ago, has 9 comments.[12] Only one comment has been posted in the last two years.[13] In contrast,

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[12] https://www.youtube.com/watch?v=CZfSNM8-27g
[13] 4 months ago, @Ultorvindex writes "ENVY"

however, the most viewed YouTube video has 1.5 million views over the past 3 years, with 5,392 comments and a consistent post history.[14] This video is not from a news source; it is from an entertainment product. It is not holding itself out as a journalistic source and it is not local in its focus. The viewers and commenters appear to be fans of the content creator, not followers of this case.[15]

In this comment section, and in other comment sections, there are individuals who assume Defendant's guilt and wish him harm. What cannot be ascertained is the individual's identity, the likelihood that any potential juror is wading through anonymous, frequently misspelled, and grammatically flawed comments, and whether anyone views these as persuasive or authoritative, or whether they are even read or retained.[16] Many online comments are simply anonymous individuals shouting into the void.

Defendant also refers to 20 postings on the website reddit.com. Reddit is an online platform that functions like the message boards of the early internet focused more on comment and discussion than the actual articles that are posted as conversation starters. None of these discussion-heavy environments have more than 50 comments.[17]

Websites such as Facebook and Instagram present their own challenges. Discussion on these platforms have been, as Defendant has shown, ongoing. There are multiple local Facebook groups and communities, some public and some private, that involve discussion by members of the Monmouth County community under their own names. Instagram accounts are sometimes publicly identifiable, and sometimes semi-anonymous, but show

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[14] https://www.youtube.com/watch?v=6jTqH89IQXs
[15] One commenter refers to this episode as "one hell of a story. AND A REMEDY FOR BOREDOM."
[16] The extent to which any potential juror reads YouTube comments is a relevant inquiry for voir dire.
[17] https://www.reddit.com/r/newjersey/comments/9z7z04/rnewjersey_trying_to_find_the_perp_and_motive_for/?rdt=38678 has 46 comments. More than 10 of them are on unrelated topics.

the same ongoing discussion. They are also not, as Defendant suggests, universally negative towards him. On the Monmouth County Prosecutor's Office Facebook page, accompanying a video of their November 21, 2018 press conference, a user comments (in response to another user disparaging the Defendant) "[t]he man is innocent until proven guilty and you just called him an animal. A very ugly thing to say less he has in effect been convicted of these crimes. The guilty until proven innocent mentality has to stop."[18]

Not all Facebook or social media users appear to harbor the same disdain. However, whether individual comments are positive or negative, it is not appropriate to speculate as to whether these are the sentiments of the community at large, because we know exactly whose sentiments these are. There is no way to know whether these comments are the sentiments of the community at large. Individuals who have expressed abhorrent views about the Defendant are clearly not fit members of a jury, but it is not fair to saddle the entire venire with the same views.

The tone and tenor of many of these online comments are concerning to the court, and the court must conduct extensive questioning to determine the level of both passive consumption of social media as well as active participation in comment pages. Without that extensive questioning, however, it would be as inappropriate to say that these comments reflect the entire venire's opinion.

The social media comments, while pointed and inflammatory, cannot all be directly attributed to Monmouth County. Many are anonymous and cannot be verified. Many are posted on media outlets with national distribution and potentially originate from outside

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[18] https://www.facebook.com/MCProsecutors.Office/videos/mcpo-press-conference-colts-neck-fire/296616334396679/

New Jersey. It is not appropriate to presume they reflect the thoughts and attitudes of the entire venire prior to voir dire.

The content of these comments weighs in favor of Defendant's argument that this court should presume prejudice, but the totality of the circumstances makes that finding premature without a further determination that these comments reflect the average sentiment in Monmouth County, and not merely a vocal and emboldened few.

All these factors are non-exhaustive, but the overarching standard is clear: cases resulting in presumed prejudice are "relatively rare." Nelson, 173 N.J. at 475. In balancing the Nelson/Koedatich factors, while the social media comments weigh in the Defendant's favor, the rest of the factors does not warrant the court finding of presumed prejudice. Harris, 156 N.J. at 143. Therefore, this court does not find a presumed prejudice against a Monmouth County venire.

If prejudice is not presumed, a trial court has discretion to grant a change of venue motion in cases in which pretrial publicity, while extensive, is less intrusive, making the determination issue the actual effect of the publicity on the impartiality of the jury panel. Biegenwald, 106 N.J. at 33.

Actual Prejudice

Although it is not possible to assess actual prejudice in a particular juror who is not yet before the court, it is nevertheless proper to determine whether there is reason to believe actual prejudice will be found. See Harris, 156 N.J. at 144. The proper test for actual prejudice is to determine whether there is a "realistic likelihood of prejudice from pretrial publicity." Williams, 93 N.J. at 67 n. 13. Even if one cannot be found from the evidence

before the court at this time, the court will continue this inquiry during jury selection. See State v. Marshall, 123 N.J. 1, 76-77 (1991).

Since the news coverage in this case has not been so inflammatory and saturated as to jeopardize a potential juror's impartiality, the proper question is whether a juror has retained the coverage and formed a conclusion that cannot be cast aside. In Marshall, "ninety-seven out of 147 potential jurors had read or heard about the case . . . [and] nine out of sixteen impanelled jurors knew something about the case from the media." Id. at 77. Nevertheless, there was no realistic likelihood of prejudice arising from the mere fact that jurors had some prior knowledge of the case. "Jurors who have formed an opinion on the guilt or innocence of a defendant must be excused." Ibid. (emphasis added). A juror's "familiarity with the case does not warrant their automatic excusal. [New Jersey has] long recognized that impanelled jurors need not be ignorant of the facts of the case." Ibid. (citing Sugar, 84 N.J. at 23; Koedatich, 112 N.J. at 268).

The trial court in Marshall included three questions in their pre-selection questionnaire regarding pretrial publicity, and any juror who indicated exposure to pretrial publicity "disclaimed any detailed knowledge about the case." Marshall, 123 N.J. at 78. Here, the coverage has been extensive, but the delays have also been significant. Memories as to details of the case and potential conclusions have had time to fade or be cast aside. See Nelson, 173 N.J. at 477. Although news coverage stored on the internet can indeed be stored and accessed quickly, the public's attention span and their memories are not so durable.

Despite Defendant's attempt to use social science research to suggest that any pretrial publicity has a lasting, or even permanent, effect on a potential juror's impartiality,

there is no justification for expanding the holding in State v. Henderson, 208 N.J. 208 (2011), to stand for the proposition that pretrial publicity has the same effect on a potential juror as suggestive coaching would have on an eyewitness.

Jurors do not give evidence, they evaluate it. The procedures and precedents for protecting a defendant from juror prejudice are well-established and have been discussed at length, and substituting our State's extensively analyzed jurisprudence in favor of the tentative findings of a handful of studies, offered without the support of an expert, is not justified.

Balancing the intensity of the initial media response in 2018 and 2019 with the intervening half-decade means that the voir dire in this case must be comprehensive. It should focus not only on the specific news sources regularly viewed by a prospective juror, but whether they are an active listener/viewer of podcasts or YouTube videos on "true crime" subjects. Whether they actively participate in social media, and how often they read or post to comment sections on news or video websites.

Should the voir dire disclose significant impermissible exposure then the court will consider other options to obtain a fair and impartial jury. Marshall, 123 N.J. at 78. A trial court must "analyze and evaluate carefully the words, attitude and demeanor of the juror when he asserts an impartial mind and one which is free from prejudice regardless of [pretrial publicity]." State v. Van Duyne, 43 N.J. 369, 386 (1964). Should there remain "any lingering doubt about the juror's capacity for impartiality, he should be excused from service." Ibid.

In balancing all available information to determine the realistic likelihood of prejudice, this court also acknowledges the fact that photos of the Defendant at his pretrial

detention hearing and other pretrial conferences do depict him in prison garb. "New Jersey has been especially vigilant in protecting a defendant's right not to be compelled to appear at trial in prison attire[.]" State v. Maisonet, 166 N.J. 9, 18 (2001). Much like prosecutorial comments, however, there a distinction between appearing at trial before an impaneled jury in prison garb and appearing in a pretrial proceeding. The Defendant is entitled to have his case "determined solely on the basis of the evidence introduced at trial[,]" but not every circumstance surrounding the pretrial proceedings will have an impact on a jury's determination. See State v. Zhu, 165 N.J. 544, 553 (2000).

When a defendant appears before the jury in prison garb, there is no question that jurors have seen him and that "it may affect a juror's judgment, furthers no essential state policy and operates usually against only those who cannot post bail prior to trial." State v. Artwell, 177 N.J. 526, 535 (2003). A pretrial photograph of the defendant in prison garb, however, is not a live appearance before the jury. The Defendant asserts that the existence of such photographs can "inject prejudice" into the jury. State v. Lazo, 209 N.J. 9, 19 (2012). Lazo, however, as well as State v. Johnson, 421 N.J. Super. 511 (App. Div. 2011), which Defendant cites for the same proposition, address situations where such photos are being used for identification or otherwise admitted into evidence. That is not at issue here. While such photos may influence a juror in a way that could not be "realistically neutralized" were they entered into evidence, a juror having seen such a photo in the past, if at all, would not have the same effect. See State v. Burton, 309 N.J. Super. 280, 289 (App. Div. 1998).

There is also nothing to suggest that prior reporting on the Office of the Public Defender's involvement in the case would have any impact on the jury pool, nor does

Defendant's citation to State v. Martini, 131 N.J. 176 (1993) give any support to the idea that it is even error to mention the OPD's involvement. Id. at 265 (questioning whether a mention of Public Defender representation caused harm at all).

The jury for this case has not been selected, and it is impossible to determine whether Monmouth County residents are more or less likely to have seen pretrial photographs of Mr. Caniero in prison garb. Previous appearances by the Defendant in prison garb exemplify a situation where "the proper voir dire of the jury, coupled with a cautionary instruction, could guard against potential prejudice." State v. Maisonet, 166 N.J. 9, 18 (2001).

IV. CONCLUSION:

As the New Jersey Supreme Court has stated, "[a] defendant is not entitled to jurors who are totally ignorant of the facts and issues involved in a given case." Biegenwald IV, 126 N.J. at 24-25. A collection of inflammatory comments on social media, does not, by itself, indicate that the average resident shares these improper sentiments or has prejudged the Defendant.

Based on the above-mentioned factors, there is evidence that potential jurors of this county have been exposed to pre-trial publicity. However, those factors do not show that this publicity has created one of those rare instances in which a court should presume, before any voir dire, that that the entire potential pool of jurors is so prejudiced as to deprive defendant of a fair and impartial jury. See Nelson, 173 N.J. at 478; Maisonet, 166 N.J. at 18.

For the foregoing reasons, the Defendant's motion is DENIED without prejudice. After an extensive and probing voir dire, should evidence of a realistic likelihood of

prejudice arise, Defendant may re-assert this motion for a change in venue or to impanel a foreign jury.