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May 7, 2025

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

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

Defense Response to State's Notice of Intent to Offer Certain Evidence

Dear Judge Lemieux:

On October 2, 2020, the State filed a letter, titled "Notice of Intent to Offer Certain Evidence." Therein, the State outlines a series of evidence which the State intends to offer, or may intend to offer, at trial. This letter was reviewed by the undersigned once new counsel was assigned in mid-January of this year. As a result of that review, the defense's responses and objections are contained herein.

I. Financial Motive Evidence – Three Distinct Theories

As the defense understands the State's case, the State intends to argue three distinct theories of motive to the jury:

First, the State intends to argue that Paul Caneiro ("Paul")[1] committed these murders "in the expectation of" realizing pecuniary gain. (Sb2). Specifically, the Canada Life trust, valued at approx. $3 million, was set up such that if Keith Caneiro died, then that money would go to his wife, Jennifer. However, if Jennifer also died, then the money would go to their two children, [redacted]. However, if those two children also died, then the money would go to Paul Caneiro and Corey Caneiro, equally. Therefore, the State's first theory of motive is that Paul murdered Keith's entire family so that he could receive his one-half of the $3 million.

Second, the State intends to argue that Paul committed these murders to "escape detection for another crime." (Sb2). Specifically, the State alleges that over the course of a 23-month period, Paul stole, or misappropriated funds, from a trust account, and that Keith became aware of this the night before the murders. More specifically, the State alleges that on November 19, 2018, Keith suspected that Paul had 'stolen' about $78,000 from the trust account. The State further alleges that "as of the evening of November 19, 2018, Paul knew that Keith had discovered the thefts." (Sb2), and therefore, Paul murdered Keith's entire family to avoid 'detection' of this alleged theft.

To be clear, the defense does not object to the State's first theory of motive. As outlined by the State, this theory is straight-forward, provides a clear financial motive, and does not confuse the issues. Additionally, assuming that the State admits the evidence through the proper channels and lays the appropriate foundation, this motive evidence can be admitted in accordance with Rules of Evidence.

However, for reasons that will be addressed in a separate motion, the defense objects to the State's second theory of motive being offered at trial. Unlike the first theory, this second theory is convoluted, speculative, clearly confuses the issues, and requires expert testimony to be admissible at trial. Additionally, as discussed further below, the State is relying on overly prejudicial and inadmissible hearsay evidence to advance this

[1] Due to numerous victim/ witness names in this case containing the 'Caneiro' last name, all individuals will be referred to by the first name in this Motion. This is done simply to avoid any confusion.

theory, which violates the defendant's Sixth Amendment right to confront his accuser. Thus, as will be argued in a separate, forthcoming motion, the defense is moving to preclude the State's second theory of financial crimes/ motive evidence. However, some of the arguments are overlapping, and will be included in this letter as well.

Third, as discussed further below, the State intends to argue that simply because Paul was having an extramarital affair with another woman, he therefore was motivated to murder his brother's entire family. The defense objects to this motive evidence as well.

II. Defendant's Statements: Text Messages / Emails / Telephone Calls

The State informs that it "intends to offer statements defendant made in text messages, emails, and telephone calls in the **months, days, and hours** preceding the murders" as well as "statements defendant made during calls with family members and a coworker after the murders, while detained" in MCCI. (Sb6) (emphasis added).

As this Court has come to learn, the discovery in this case is extremely voluminous and includes numerous extractions of a variety of digital devices that are likely to contain "text messages, emails, and telephone calls" made in the "months, days, and hours preceding the murders." For instance, extractions were performed on Paul's cell phone, apple watch, iPad, and MacBook laptop. Additional extractions were performed on Keith's cell phone and various digital devices owned by the other Caneiros, such as cell phones/ tablets belonging to their wives and children. Both Paul's iCloud account and Keith's google cloud accounts were recovered as well. Some of these extractions, alone, amount to several hundreds of thousands of pages when converted to PDF form.

At this point, the defense does not know which specific text messages, emails, or telephone calls the State intends to introduce at trial. The sheer volume of discovery, and the limited time counsel has had to review it, makes it impossible to identify or raise targeted objections to particularized statements. In fact, in the State's presentation of this matter to the grand jury, not a single text, email, or phone call made by Paul Caneiro is ever mentioned. Moreover, while the State's discovery in a serious, complex case such as this one typically includes supplemental investigation reports outlining the specific

texts/ messages/ emails/ phone calls that investigators find probative to their case, the defense is not aware of any such reports that exist in this case. As such, the defense is at a clear disadvantage and is unable to raise any objections preemptively.

Moreover, while the State filed a 'Motion to Admit Text Messages' on March 14, 2020 (granted by Judge Oxley on June 2, 2020), this Motion only seeks to admit 4 text messages sent by Keith to Paul in the early morning hours of November 20, 2018. The State has not filed any additional motions to admit any additional text messages. It is therefore the defense's position that if the State seeks to admit additional messages at trial, the defense should be on notice of same. Otherwise, for the reasons discussed below, the defense may object at trial, at sidebar, each time the State seeks to admit a new message the defense was not previously made specifically aware of.

The defense underscores three potential objections: authentication, relevance, and prejudice pursuant to N.J.R.E. 901, 401, 403. First, with respect to authentication, before any such communications can be admitted, the State must lay a proper foundation and adequately authenticate the source, authorship, and reliability of these statements in accordance with N.J.R.E. 901.

By way of an example, the defense has in its discovery numerous emails that were provided to law enforcement by Corey Caneiro. These emails include emails sent to and from a host of individuals (including Paul) – none of which are Corey Caneiro. That is, Corey Caneiro is not a direct party to these emails. Moreover, it is unclear how Corey Caneiro came into possession of these emails. Thus, the defense objects to the admission of these emails, which cannot be properly authenticated. There is no way to know whether these emails have been doctored, fabricated, or changed. The only way in which these emails can be properly authenticated is if the foundation is laid by the actual author/ sender/ recipient, or, possibly through an extraction performed on a device that contains these emails.

Second, the defense recognizes that – assuming proper authentication – communications made by the defendant, a party opponent to the State, fall within a

hearsay exception. Nevertheless, the messages/ emails must satisfy a 401/ 403 analysis. The defense, therefore, may object on grounds of relevance and/ or prejudice.

In addition to the above communications 'preceding' the murders, the State "also intends to offer statements defendant made during phone calls . . . while detained in [MCCI] on the present charges." (Sb6). The State then goes on to suggest that, "If defendant requests a hearing [on the admissibility of these jail call statements] and the Court finds one is required, it may be conducted in limine per R. 3:25-4(d)(1). . . . If defendant believes it is to his benefit to have the hearing held earlier, he should be required to file a motion for one, with excludable time attributed to him." (Sb7).

Again, with respect to the jail calls, there are upwards of 600 jail calls provided by the State. Without knowing which calls, specifically, the State intends to use, the defense is unsure what, if any, objection(s) it has to this evidence. Therefore, the defense simply requests that the State identify, and/ or provide transcripts, of the specific calls that it intends to admit at trial, so that the defense can determine whether a Motion is even necessary. Of course, the defense would expect that any jail calls ultimately admitted are properly sanitized/ redacted such that the jury is not aware that the calls were recorded by MCCI.

Preemptively, it is worth noting that like the texts and emails, the defense would object to the admission of any calls that are not relevant or that are overly prejudicial i.e. that are misleading, confuse the issues, or result in undue prejudice to the defendant. In that vein, it's worth emphasizing that jail calls are often admitted at trial to show presence of conspiracy, attempts to witness tamper or obstruct justice, and/ or admissions of guilt. See, e.g., State v. Jones, 242 N.J. 156 (2020) (jail calls admitted to show defendant was directing others to kill a testifying witness, and therefore to show he took a substantial step in attempting to murder that witness); State v. Burden, 393 N.J. Super. 159 (App. Div. 2007) (jail calls admitted to show witness tampering). However, here, the defense is not aware of any calls of this nature that exist in this case. Moreover, again, in a case such as this one where the State intends to use jail calls, the defense typically receives a supplemental report wherein the detective who listened to the calls highlight the probative

calls. Here, the defense is not aware of any such report, and thus is again, at a disadvantage.

III. Text / Email Communications Between Keith and Paul

As outlined/ discussed in its Letter of Intent, the State intends to admit at trial numerous text message and email communications that allegedly occurred between Paul Caneiro and Keith Caneiro. Some of these texts and emails, according to the State, date back to March 2016 – **over 2.5 years before the murders**. (Sb4). Likewise, others date back to 2017, with the remaining texts and emails occurring in 2018. (Sb4).

Most of these communications concern a protracted business relationship between the brothers, Paul and Keith. Given the excruciating detail that these communications offer with respect to the history of their business relationship – none of which is relevant to the murders – the defense will likely raise objections pursuant to N.J.R.E. 901, 401, 403, and possibly even 404(b). To be sure, much of this evidence will cause "undue prejudice, confusion of the issues, or mislead[] the jury." Beyond that, this evidence will cause "undue delay, waste of time, or needless presentation of cumulative evidence" in this trial.

IV. Hearsay Statements of Keith Caneiro

It has long been held that cross-examination is the "greatest legal engine ever invented for the discovery of truth." California v. Green, 399 U.S. 149, 158 (1970) (quoting 5 Wigmore § 1367). Our Supreme Court has confirmed this principle, explaining that a criminal defendant's right to confront his accusers is essential to the justice system, because it provides the accused an opportunity to test the reliability of a witness's assertions. State v. Cabbell, 207 N.J. 311, 329 (2011). The right to cross-examine one's accusers is so deeply-entrenched in our justice system that both the United States Constitution and the New Jersey Constitution guarantee a defendant standing trial in a criminal prosecution the right to confront all individuals bearing witness against him ("the Confrontation Clause"). U.S. Const. Amend. VI; N.J. Const. Art. I, par. 10; see Crawford v. Washington, 541 U.S. 36, 46 (2004); Cabbell, 207 N.J. at 328.

Generally, the Confrontation Clause guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him." Crawford v. Washington, 541 U.S. 36 (2004). In Crawford, the United States Supreme Court made clear that testimonial statements of an unavailable witness are inadmissible unless the defendant had a prior opportunity for cross examination. Crawford fundamentally rejected any reliability-based exception to this constitutional protection, holding that "[admitting] statements deemed reliable by a judge is fundamentally at odds with the right of confrontation." Id. at 61. Indeed, when a defendant's right to confrontation has been violated, it is "a fatal error, mandating a new trial, unless [the Court is] 'able to declare a belief that it was harmless beyond a reasonable doubt.'" Cabbell, 207 N.J. at 338 (quoting Chapman v. California, 386 U.S. 18, 24 (1967)). This is because the right to confront and cross-examine accusing witnesses is "among the minimum essentials of a fair trial[.]" State v. Budis, 125 N.J. 519, 531 (1991).

With respect to hearsay statements that violate the right to confrontation, "[i]t seems apparent that the Sixth Amendment's Confrontation Clause and the evidentiary hearsay rule stem from the same roots." Giles v. California, 554 U.S. 353, 365 (2008) (quoting plurality opinion in Dutton v. Evans, 400 U.S. 74, 86 (1970)). Importantly, the Giles Court rejected the State's argument that because the defendant had murdered the victim, the defendant had "forfeited his right to object to the witness's testimony on confrontation grounds[.]" Id. at 364-65. While maybe tempting, this argument not only improperly assumes the defendant's guilt, but also fails to appreciate how 'intertwined' the Sixth Amendment and hearsay are: "No case or treatise that we have found, however, suggested that a defendant who committed wrongdoing forfeited his confrontation rights but not his hearsay rights. And the distinction would have been a surprising one, because courts prior to the founding excluded hearsay evidence in large part *because* it was unconfronted." Id. at 365 (emphasis in original).

Here, the State intends to admit hearsay statements made by the deceased victim, Keith Caneiro. Specifically, the statements include:

1) threatening to eliminate Susan from payroll;
2) criticizing defendant for mishandling business matters;

3) pushing the sale of Ecostar;
4) questioning/accusing defendant as to shortages in the trust account;
5) taking steps to change trustees on the trust account;
6) indicating an intention to sever his business relationship with defendant and seek new employment;
7) voicing plans to take a loan against the trust to pay off his home mortgage;
8) demanding the trust bank account number from defendant and the location of money that should have been but was not paid to the trust.

The defense objects to the admission of this evidence on hearsay grounds, confrontation clause concerns, and because – contrary to the State's assertion – this evidence does not meet the standard under State v. Calleia, 206 N.J. 274 (2011).

In Calleia, our Supreme Court explained that the State cannot automatically use a deceased victim's statements to prove a defendant's state of mind as to motive:

> A synthesis of the aforementioned line of cases illuminates a clear evidentiary prohibition.
>
> A deceased victim's then-existing state of mind cannot *directly* prove a defendant's motive; the state-of-mind exception to the hearsay rule ***does not permit imputation of a defendant's state of mind out of no more than a deceased person's feelings about that defendant.*** That is to say, subject to certain exceptions, a fact probative of the victim's state of mind, standing alone, does not tend to prove any material fact about a defendant's conduct or state of mind. *See Downey, supra,* 206 *N.J.Super.* at 391, 502 *A.*2d 1171 ("The important fact ... was the state of mind of the defendant, not that of the deceased."). That is the import to the admonition in *Machado, supra,* that "[d]eclarations of the victim's state of mind ... should not be used to prove the defendant's motivation or conduct." 111 *N.J.* at 489, 545 *A.*2d 174.

Calleia, 206 N.J. at 291-92. (Emphasis added). The Court explained that this "principle has been used often to exclude a victim's statements of fear." Id. at 292. That is, prosecutors cannot admit statements by the victim that simply indicate the victim 'feared' a defendant, "where the victim gives no basis for his fearfulness that is tied to the defendant's mindset or knowledge[.]" Ibid (noting that "what is particularly harmful about statements of fear" is their improper suggestion that "violence permeated the relationship between the victim and the defendant"). Our Supreme Court ultimately ruled that:

> Without more, a victim's fear of a defendant is not probative of a defendant's potential motive.
>
> However, when testimony regarding a decedent's state of mind establishes a fact that, **if known by defendant**, could give rise to a motive, such testimony is admissible subject to balancing under *Rule* 403. **That said, a fact can only be probative on the question of motive if a defendant is aware of that fact.** Thus, in order to be admissible as motive evidence, the State must directly or circumstantially show that the accused probably knew of the facts that are alleged to have given rise to the motive. *See* 2 *Wigmore on Evidence* § 389, at 417 (Chadbourn rev.1979) (explaining that circumstance that gives rise to motive "*must be shown* to have probably *become known* to the [accused]"); 40A *Am.Jur.2d Homicide* § 264 (2008) (explaining that "facts that are not directly or circumstantially shown to have been known to the accused at the time of the homicide are not admissible"). [Additional citations omitted].
>
> Thus, when a victim's state-of-mind hearsay statements are relevant to show the declarant's own conduct, and when such conduct is known or probably known to the defendant, it also can give rise to motive, and the statements become admissible for that purpose, subject to the usual balancing under *N.J.R.E.* 403.

Calleia, 206 N.J. at 295-96. (Emphasis added).

In short, the Court made clear: "There can be no misunderstanding: a prosecutor must demonstrate that a defendant knew or likely knew of a victim's conduct in order for the victim's conduct to provide motive evidence." Id. at 297. (Emphasis added). This is consistent with how state-of-mind exception evidence does "**not include[e] a statement of memory or belief to prove the fact remembered or believed**[.]" Id. at FN2; N.J.R.E. 803(c)(3). (Emphasis added).

Here, the State's first problem with seeking admission of Keith's statements is that these statements – taken over the course of weeks, months, and possibly years – constitute a mere collection of select statements taken out of context and then stitched together in an effort to suggest a motive.

The fact that Keith 'criticized defendant for mishandling business matters' or that Keith 'pushed the sale of Ecostar' does not in any form suggest a motive. The brothers, Keith and Paul, were in business together for over 30 years and worked together as partners for over 10 years. Over those many years, the brothers had business-related quarrels and at one point, Keith walked away from the business only to return some years later and resume his partnership with Paul. The fact that their relationship experienced moments of contention – and even separation from each other – does not support the State's theory of motive. In fact, it is misleading and confuses the issues.

Next, with respect to other statements – such as Keith 'threatening to eliminate Susan from payroll,' and 'taking steps to change trustees on the trust account' and 'indicating an intention to sever his business relationship with the defendant and seek new employment' and 'voicing to take a loan against the trust to pay off his home mortgage' – the State must demonstrate that the accused had knowledge of these intentions. Without proof Paul had knowledge of these statements made by the Keith, they are irrelevant. However, notwithstanding any knowledge of the statements, they are still irrelevant to motive in this case.

As an example, with respect to Keith 'threatening to eliminate Susan from payroll,' this is a statement that was made to others but not to Paul. Specifically, on the eve of the murders, Keith Caneiro tells Ron Artiges that "I'm gonna cut his – I'm gonna cut his wife off and pay that to my loan. I'm done with him." He also tells Tiffany Rivera to take Susan off of the payroll after Paul had asked Tiffany to increase his salary to account for car insurance payments. However, again, the defense is not aware of any statements made directly to Paul putting him on notice of the intention to 'cut him off.'

Nevertheless, it should also be noted that the State's discovery suggests that this was not the first time that Keith "threatened" to remove or reduce Susan's pay. Often, it was an empty threat made by Keith when he was frustrated with Paul. (See Tiffany Rivera's statement, Bates #1269-1281 at 9-10). In fact, the State notes in their letter:

> **On September 17, 2018**; Keith told defendant, "Paul - we are done – I'm not paying you moving forward. You have to find a way on your own. . . . I'm going to stop paying you this week. . . . I'm done. I want out." **The**

> **following day**, Keith directed his office manager to determine the minimum number of hours "Susan" would have to work to retain the family's health insurance.

(Sb4) (Emphasis added). Clearly, Keith had a habit of threatening to cut-off Paul or to stop paying his wife. This one example was neither the first nor the last time these "threats" were made over the course of a business relationship that lasted three decades. Yet, even this one example demonstrates that Keith's threats were empty: he neither stopped paying Paul that week nor did he stop paying Susan. Again, the aforementioned statements that the State seeks to admit (#s1 through 7, supra) are irrelevant, misleading, prejudicial, and confuse the issues in this case.

Next, the State wishes to admit Keith's statements 'questioning the defendant as to shortages in the trust account' and 'demanding the trust bank account number from defendant and location of the money that should have been paid to the trust.' Unlike the above statements, these statements were made directly to Paul. However, the issue with these statements is likewise that they are misleading and confuse the issues before the jury. The State wishes to offer these statements to suggest that because Paul learned on the eve of the murders that Keith suspected the money to be missing, he decided to then murder Keith and his entire family later that night (early morning).

To be clear, however, the State concedes that this was not the first or only time that Paul had taken money from Keith. In fact, the State's letter explains:

> **For years**, defendant had transferred money from the TD trust bank account into his personal bank accounts. **Defendant paid the money back** to the trust bank account -- completely in 2014, and mostly in 2015 and 2016. In 2017 and 2018 though, defendant's unauthorized takings from the trust bank account were not restored to the trust bank account.

(Sb5) (emphasis added). The State also explains that in "July and August 2017, defendant made payments from his personal account directly to [the trust] in the amount of $19,880." (Sb5). Additionally, the State explains, "in April 2018, defendant claimed that he had mistakenly deposited $25,045 worth of trust premiums into a different account with a similar name to pay his daughter's school tuition" and that "defendant promised to make restitution." (Sb5) (emphasis added).

By the State's own theory, for years, Paul had taken money from the trust account, which Keith was well aware of, and which Paul would in fact pay back, or make efforts to pay back. The present instance is therefore no different, and to suggest otherwise is truly deceiving. Thus, to present this single instance of money taken to the jury would be extremely misleading. Taken in a vacuum, it suggests that Keith would be appalled, and that Paul would be fearful of Keith's reaction. Taken in the actual context of the history of their business and personal relationship, it simply suggests the latest instance of Paul borrowing money from the trust, with the intention to pay it back, and Keith – as always – being frustrated, yet tolerant and forgiving.

In this context, it makes no sense that Paul would suddenly feel compelled to murder his brother and his brother's entire family simply because Keith suspected Paul took money from the account – which is no different than any other past time this happened. That is, Paul did not murder Keith and his family in 2014 when he borrowed money from the trust and Keith found out, nor did Paul murder Keith and his family in 2015 or 2016 when he borrowed money from the trust and Keith found out. Likewise, Paul did not murder Keith in 2017 when he borrowed money from the trust and Keith found out. Yet, the State wants to argue that in 2018, Paul suddenly decides to murder Keith and his family. This undoubtedly constitutes misleading evidence that confuses the issues, and will cause undue prejudice.

Indeed, the only way to defend against this claim would be to bring in the prior instances, which qualify as prejudicial 404(b). Moreover, without the ability to cross examine Keith Caneiro, this alleged motive evidence is taken out of context and the probative value of this evidence is highly inflated and misleading. While Keith expressed anger on the eve of the murders, this was no different than any of the prior occasions. However, because we do not have video of all prior occasions, the only way the defense could feasibly counter this evidence or at least, put it into context, would be to cross examine Keith Caneiro, which is not an option here. Instead, the defense is left with a detective on the stand with no personal knowledge of the intricacies of the brothers' relationship, who would be speculating that on this particular occasion, Keith's threats

were not empty, **and** further speculating that, Paul somehow had knowledge that this time, these threats were supposedly not empty.

As such, the proposed evidence is not only speculative, but it is also not relevant under N.J.R.E. 401. "Relevant evidence" means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action. Here, as explained, the fact that Keith suspected Paul took money – again – from the trust account does not 'have a tendency' to prove that Paul suddenly on this occasion had a motive to kill his brother. It, simply, has a tendency to prove that Paul had a pattern and practice of borrowing money from the trust and then paying it back, or making efforts to pay it back. It shows that Keith was tolerant and forgiving of Paul's tendency to borrow the money – which, given the State's concession, is not a fact in dispute.

Nevertheless, even if the evidence were deemed relevant, the evidence does not satisfy the N.J.R.E. 403 balancing test for the reasons discussed above. That is, the fact that this particular instance of alleged misappropriated money is only a snapshot of a larger pattern that has occurred over the years, along with the inability to cross examine Keith Caneiro to put this evidence into context, along with the fact that the defense would have to admit 404(b) evidence to refute the alleged weight of this evidence, causes this evidence to be unduly prejudicial.

And, the time that it would take for the State and the defense to go back and forth about years' worth of financial history and habits, would amount to confusion of the issues as well as a waste of time. Moreover, the fact that the State has an entirely separate and distinct theory of motive (that Paul killed Keith's entire family to receive his portion of the $3 million) creates a "needless presentation of cumulative evidence." That is, while motive is not an element of the offense, an overwhelming majority of this trial will be spent presenting and refuting this alleged motive evidence.

V. Wyze Camera Footage

At the outset, it must be noted that although the State highlights 3 calls in its Letter of Intent (Sb12), the State has confirmed to the defense that it intends to admit ALL calls contained in the Wyze Transcript/ Wyze video compilation, which

amounts to 53 transcript pages and approx. 2 hours worth of spliced video, respectively. See Exhibit (transcript of Wyze calls) attached hereto. This evidence also amounts to 20+ different phone calls made over the course of approx. 4 hours (3:37 PM to 7:35 PM) to various persons, including Keith's business accountant, insurance broker, his officer manager, other employees of his business, and multiple family members. Importantly, the Wyze video captures only Keith's statements made on his side of the conversations.

It should also be noted that it is the defense's position that the State must file a formal motion to admit the 2 hours worth of Wyze camera footage into evidence at trial. In fact, it is the defense's position that **a hearing is necessary** so that the Court can review the video outside of the presence of the jury, with arguments and objections placed on the record, and where the court can make rulings on which, if any, of the 20+ calls are admissible at trial. This notwithstanding, the defense sets forth an overview of its objections herein.

As noted, in its Letter of Intent, the State highlights 3 specific, recorded calls, along with an email communication typed in live time. According to the State, this evidence "establishes both the motive for defendant's ensuing crimes and their timing: why the murders were committed that night, within hours of defendant learning of the victim's discovery." (Sb12-13) The State further argues that portions of Keith's statements qualify as excited utterances and the email supports an inference about what was "probably" communicated to Paul Caneiro. (Sb12).

Obviously, speculating what was "**probably**" communicated to Paul Caneiro is inadmissible speculation. No witness, and certainly not a recording, can be used to suggest to the jury what was "probably" communicated. The State cites Calleia, supra, at 296 in support of its position that the evidence can be used to suggest what was "probably" communicated to Paul. However, the State mis-cites the proposition that Calleia stands for with respect to "probably." The Calleia Court states:

> Thus, when a victim's state-of-mind hearsay statements are relevant to show the declarant's own conduct, and when such conduct is known or **probably** known to the defendant, it also can give rise to motive, and the

> statements become admissible for that purpose, subject to the usual balancing under *N.J.R.E.* 403.

Calleia, 206 N.J. at 296. (Emphasis added). The Calleia Court is using the word "probably" to explain a scenario where it can be reasonably inferred that the defendant had knowledge of the deceased victim's conduct. For example, if Keith Caneiro was in his kitchen, yelling "I can't believe that Paul stole this money from me; I am going to contact the police and press charges," while Paul was sitting in the adjacent living room, it could be inferred that Paul "probably" heard Keith yelling in the next room.

However, the State seeks to use this evidence to create a speculative leap of what the State suspects Keith was "probably" *trying* to communicate to Paul: "that Keith knew the money did not go where the falsified statements said it did, which was why Keith was demanding to know where it went" (Sb12) – without ever actually saying those words to Paul. The only thing that Keith communicated to Paul during these recorded calls was that he wanted to borrow Paul's TD-Bank login so that he could clarify "with the insurance company," whether the payments were in fact being made or not." As Calleia makes clear, this speculation is not permitted because the defendant, Paul, had no personal knowledge that Keith was making these statements to others.

In that vein, it must be reminded that, as Calleia also makes clear: "when testimony regarding a decedent's state of mind establishes a fact that, if known by defendant, could give rise to a motive, **such testimony is admissible subject to balancing under *Rule* 403**.Calleia, 206 N.J. at 296. (Emphasis added). Thus, even if this Court finds the proposed evidence to be probative of motive, it is still subject to exclusion if it is unduly prejudicial.

The State also contends that some of these statements are excited utterances. Pursuant to N.J.R.E. 803(c)(2), an excited utterance is "A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition and without opportunity to deliberate or fabricate." To qualify as an "excited utterance," the rule requires that three conditions be met. The statement must be (1) related to a startling event, (2) made under the stress of excitement caused by the event, and (3) made without opportunity for the declarant to deliberate or fabricate. See

State ex rel. J.A., 195 N.J. 324, 340 (2008); State v. Branch, 182 N.J. 338, 366 (2005); State v. Cotto, 182 N.J. 316, 327-330 (2005); State v. Long, 173 N.J. 138, 159 (2002). In State v. Branch, our Supreme Court explained why the third fact cannot be lost on the court's analysis. Particularly, as it relates to issues concerning the confrontation clause:

> The Confrontation Clause and hearsay rules "protect similar values," .... We must not minimize the importance of the role that cross-examination plays in the ascertainment of truth in our criminal justice system. By this opinion, we intend to place sensible limits on, not eliminate, the contemporary interpretation of the excited utterance exception to the hearsay rule.

182 N.J. at 344, 357-365.

Here, the statements that the State seeks to admit – statements over the course of a 2 hour-long video – do not qualify as excited utterances. The State's reliance on State v. Long, 173 N.J. 138 (2002) is misplaced. In Long, the victim relayed shocking and emotionally distributing information to her mother almost instantaneous to learning it. Id. at 149. By contrast, Keith's statements – as the State itself acknowledges, related to financial irregularities that he had been investigating for "the last half day" and was engaged in a back-and-forth with the insurance company and accountant. Going back even further, the State indicates that Keith "intermittently became aware of shortfalls to the trust" going back to May 2017 (Sb5). Additionally, as it relates specifically to Keith's call with Corey Caneiro highlighted in the State's brief (Sb12), the tone of Keith's statements to Corey was calm, reflective, and measured – more akin to a summary or post-event analysis than a spontaneous, sudden emotional outburst.

Worth also mentioning, however, is that just because a statement is made in an animated or emotional fashion, does not automatically qualify the statement as an excited utterance. In State v. Prall, 231 N.J. 567, 585 (2018), the Court rejected the admissibility of a statement made by a victim realizing he was on fire in his bed, exclaiming, "my brother, my brother" (defendant was his brother), finding that the victim-declarant could not have based his statement on his personal knowledge since he did not see who started the fire. In State v. Cotto, 182 N.J. 316, 330 (2005), the Court excluded statements made by victims of a robbery and assault, even though the victims were described by officers

as "shaking uncontrollably" and "a nervous [w]reck" during questioning. 182 N.J. at 324, 330.

Here, the State contends that the Wyze recordings “capture [Keith’s] voice, emotions, and his spirit more than any witness's testimony or written communication could.” (Sb11). However, as just discussed, the emotion and spirit possessed by the declarant are not what controls whether the statement is an excited utterance. Additionally, because the declarant is unavailable, this Court must take into consideration how the admission of these statements may interfere with the purpose of the Confrontation Clause. Again, without the opportunity to cross examine Keith about the 53-pages worth of statements he made, the defendant is severely prejudiced.

In sum, the recorded statements that the State intends to admit at trial are prejudicial hearsay and the State has not identified applicable hearsay exceptions that would permit wholesale admission of these 53-pages / 2-hours worth of out-of-court assertions. Many of the statements are accusatory or testimonial in nature and are being offered to establish critical facts such as motive, financial tension, or the defendant’s purported conduct. Moreover, the statements contain repeated speculation, accusations, and assumptions about Paul intent, conduct, and honesty. Some of the statements (about Paul) are overly dramatic, and inflammatory, such as “He destroyed me,” “He’s killing me,” and “He fucked me again.” (Wyze Camera Transcript at pages 26-28, Bates #57890-57942). Other statements, such as “I try to do the right thing all the time. And all I ever got for it was pain,” are inappropriate to put before the jury and will prejudice the defendant. (Wyze Camera Transcript at pages 47 and 48).

Accordingly, the State must file a Motion to Admit these statements and outline, specifically, on what basis each of the statements/ 20+ phone calls are admissible. Then, a hearing must be held for the Court to decide. Rather than putting the onus on the defense to throw the kitchen sink at each of these statements/ calls, the State should provide notice as to why these statements are purportedly relevant and admissible so that the defense can adequately respond/ object. At the very least, if the Court were to permit the admission of any of these statements, redactions will be necessary.

Regarding any redactions or preclusion of evidence, Calleia also explained:

> All that said, **we are not unconcerned, however, with the sheer amount of evidence the trial court permitted, all cumulative of the same essential point**: that Susan Calleia intended to divorce her husband and had likely taken a number of actions to that effect. Insofar as the State was able to present enough evidence to show that defendant likely knew his wife was interested in a divorce, **additional statements that prove various actions by her to facilitate the divorce were unnecessarily cumulative and potentially distracting to a jury**. See N.J.R.E. 401, 403. Moreover, in specific regard to the hearsay statements at issue, they have no probative value unless defendant at least might have been aware of the actions revealed by such statements.

Calleia, 182 N.J. at 302. (Emphasis added). Thus, here, the State's desire to admit 20+ calls contained in 2 hours worth of audio/ video, 50+ transcript pages, along with the aforementioned texts, emails, and phone calls – is going to amount to the very type of "unnecessarily cumulative and potentially distracting to the jury" evidence that the Court warned about. The State simple does not need all of this evidence to make its point. And, it certainly is distracting because motive is not an actual element of the offense.

VI. Additional Recorded Hearsay Statements

In addition to the Wyze calls, the defense is in receipt of additional recorded calls obtained from Canada Life (70-page transcript) and from CitiBank (no transcript received). The State did not include these statements in its Letter of Intent, however, it is the defense's understanding that this evidence was obtained/ received after the State filed its letter. On May 1, 2025, the defense contacted the State via email inquiring whether the State was intending to admit these recorded calls as well. To date, the defense has not yet received a response. For many of the reasons already articulated herein, it is the defense's position that these recorded calls constitute inadmissible hearsay. It is therefore the defense's position that the State must file a formal motion to admit these statements, identifying the basis on which it seeks admission. Absent a motion, the defense will object on grounds of hearsay, relevance, and prejudice.

VII. Inadmissible 404b Evidence

In its letter, the State outlines a series of 404(b) evidence that it intends to admit, or possibly admit, at trial. The State claims that some of this evidence is "intrinsic" rather than 404(b) evidence, however, the defense disagrees (for the reasons discussed below). As such, the defense's position is that if the State intends to admit any of this 404(b) evidence at trial, the burden is on the State to file a Motion to Admit this evidence. Without a Motion by the State and a ruling derived therefrom, the defense will object to any and all of this evidence at trial.

Under N.J.R.E. 404(b), "evidence of other crimes, wrongs, or acts is not admissible to prove a person's disposition in order to show that on a particular occasion the person acted in conformity with such disposition." This limitation is essential to guard against the risk "that the jury may convict the defendant because he is a 'bad' person in general" and not because the evidence adduced at trial establishes guilt beyond a reasonable doubt. State v. Cofield, 127 N.J. 328, 336 (1992). Because of the inherently prejudicial nature of such evidence, the Rule is generally "a rule of exclusion rather than a rule of inclusion." State v. Gillispie, 208 N.J. 59, 85 (2011) (Citing State v. Darby, 174 N.J. 509. 520 (2002)).

To prevent end-runs around this safeguard, the New Jersey Supreme Court has ended the practice of admitting "res gestae" evidence and has limited when prior acts may be considered "intrinsic" and therefore not subject to Rule 404(b). See State v. Rose, 206 N.J. 141 (2011). In Rose, the Court adopted a narrow two-part test from the Third Circuit's decision in United States v. Green, 617 F.3d 233 (3d Cir. 2010). Under Rose and Green, evidence is intrinsic only if it:

1. **Directly proves** the charged offense; or
2. constitutes **uncharged acts performed contemporaneously** with the charged crime that also **facilitate the commission** of the charged crime.

See Rose, 206 N.J. at 180-81 (citing Green, 617 F.3d at 248–49). The Court therefore directed that "[w]henever the admissibility of uncharged bad act evidence is implicated, a

Rule 404(b) analysis must be undertaken." Id. at 179; see also State v. Cofield, 127 N.J. 328, 338 (1992).

Even if the Cofield 404(b) test is met, the court must still conduct a heightened balancing under N.J.R.E. 403. Because of the grave risk that jurors will convict based on propensity or emotion rather than evidence, the Rule requires exclusion if the risk of prejudice **merely outweighs**—rather than substantially outweighs—the probative value. See State v. Willis, 225 N.J. 85, 99–100 (2016); State v. Reddish, 181 N.J. 553, 608 (2004). When less prejudicial alternatives exist, the balance tips even further toward exclusion. Rose, 206 N.J. at 161.

Here, the State lists the following as topics of evidence that it intends to introduce as intrinsic evidence:

1. Insurance Fraud
2. Record Falsification
3. Prior Arguments with Keith
4. Extramarital Affair
5. Cache of Weapons
6. Prior Residential Fire

This threshold issue - whether these allegations fall outside the scope of Rule 404(b) - is a critical one. The defense's position is that the State's characterization of much of this evidence is incorrect; it is not intrinsic, but rather 404(b). It must therefore be subjected to a strict 404(b) analysis and excluded if it fails to satisfy this standard.

1. Evidence of Insurance Fraud

The State acknowledges that this alleged conduct has been charged under a separate indictment, which has not been joined under R. 3:15-1. The State also informs that it "does not intend to alert the jury that defendant engaged in this fraud" unless the defendant 'opens the door' by contesting his control over certain bank accounts in the name of his wife, Susan Caneiro. The State claims that if defendant does contest his access to these bank accounts, then the State will have to tell the jury why the money

was distributed to Susan Caneiro's accounts: allegedly, to perpetuate the defendant's insurance fraud.

First, to be clear, the alleged insurance fraud is 404(b) evidence; there is nothing 'intrinsic' about this evidence. Second, assuming arguendo the defendant 'opens the door,' the relevant question is not why the money was distributed to Susan, it is simply that the defendant gained access to it. That is, in order to prove insurance fraud, the State would need to first prove that Paul, in fact, had access to the accounts. Proof that Paul had access to the accounts is the only evidence that would need to be admitted were the defendant to open the door. Stated another way, if defendant contests his access to Susan's accounts, then the State need merely demonstrate that he, in fact, had access to same – not why. Cf. State v. Sterling, 215 N.J. 65, 101 (2013) ("The State only needed to prove that it had obtained defendant's DNA and that it had obtained a search warrant to find a gun at defendant's home. . . . It was not necessary for the State to go into detail about how defendant was caught outside of S.P.'s home in order to tie in the DNA evidence and gun used against defendant."). Here, as in Sterling, the evidence "is precisely the type of unduly prejudicial other-crimes evidence that N.J.R.E. 404(b) means to exclude." Ibid.

"The [opening the door] doctrine is to prevent prejudice and is not to be subverted into a rule for injection of prejudice. Introduction of otherwise inadmissible evidence under the shield of this doctrine is permitted 'only to the extent necessary to remove any unfair prejudice which might otherwise have ensued from the original evidence.'" State v. James, 144 N.J. 538, 556 (1996) (quoting California Ins. Co. v. Allen, 235 F.2d 178, 180 (5th Cir. 1956) (alterations in original). The doctrine "is essentially a rule of expanded relevancy and authorizes admitting evidence which otherwise would have been irrelevant or inadmissible in order to respond to (1) ***admissible evidence*** that generates an issue, or (2) ***inadmissible evidence*** admitted by the court over objection." Id. at 554. Here, the State seeks to offer this evidence merely if it is contested whether defendant had access to Susan's accounts. If such contesting of this issue occurred, the State need only cure the issue by offering evidence that defendant did in fact have access to the accounts, not that he had access *because* he was engaging in disability fraud.

2. Record Falsification

The State also seeks to introduce evidence that Paul "falsified bank statements to make it appear that deposits had been made to the victim's trust account when in fact they had not," and claims that such evidence is intrinsic to the charged theft offenses. (Sb 8). However, this evidence is not intrinsic under the narrow Rose framework. As the Court in Rose made clear, only two types of evidence qualify as intrinsic: (1) evidence that directly proves the charged offense, and (2) uncharged acts that were contemporaneous with and facilitated the commission of the charged crime. Rose at 180. The alleged falsification here does not "directly prove" the charged theft. By the State's own theory, the documents were not used to perpetrate any misappropriation; the State does not allege these records enabled access to funds, were presented to any bank to effectuate any transfer, or otherwise caused the theft to occur. At most, it represented a post hoc attempt to obscure financial discrepancies - not an act that facilitated the theft itself.

3. Prior Arguments with Keith

The State seeks to introduce a series of alleged disputes between Paul and his brother Keith, spanning from 2016 through the day before the fire. (Sb 9). Without knowing exactly which evidence this entails, for the same reasons discussed in Points II through IV, supra, the defense objects to the admission of this evidence.

4. Extramarital Affair

As another part of its motive theory, the State wants to present evidence that Paul had a romantic relationship with Yisel Restrepo in 2017 and 2018. According to the State, Paul's relationship with his paramour contributed to his alleged lavish lifestyle. And, by some logical leap, in order to maintain this lifestyle while under financial strain, he decided to murder his brother and his brother's entire family. Additionally, the State wishes to argue that Paul risked his own family's lives because he had a paramour, meaning – according to the State – he therefore did not care about the wellbeing of his own family.

In short, there is absolutely no basis for the State to admit this extremely inflammatory, prejudicial, speculative, and misleading evidence. Point blank: the fact that

Paul had a paramour has no place in this case and no curative instruction will mitigate against the prejudice. Indeed, this evidence is hardly relevant and can very easily be sanitized. Moreover, it is based on mere speculation and wanting rationale.

First, the State does not need this purported motive evidence, which is far from compelling and instead creates an improper character assassination. In fact, the State does not need to show that Paul was having an affair to make their point: Paul (allegedly) enjoyed a lavish lifestyle, which he needed financial resources to support. The State can clearly 'sanitize' this purported motive evidence to remove the unnecessary, prejudicial mention of his paramour.

Second, the relevance of this evidence is extremely low, while the risk for prejudice is extremely high. At a minimum, the prejudice outweighs any probative value. Accordingly, this evidence is not admissibly under N.J.R.E. 401 and 403. It is not only irrelevant, but also misleading because as is made clear in the discovery, Paul's wife Susan knew about Paul's affair and continued to accept him in their home, as her partner and father of their children. There is absolutely no evidence to suggest that Paul was a bad father or bad partner; Susan informs officers that she and Paul were simply having marital issues while never once stating or insinuating that Paul was a bad person or bad family man. For the State to somehow suggest this is beyond speculative; it is offensive and entirely untrue.

Third, this evidence is both improper and inadmissible under N.J.R.E. 404(b): the State wishes to suggest that Paul did not value his family, and that he therefore was willing to risk the lives of his immediate family and end the lives of his brother's family. This evidence therefore does not establish motive and instead invites improper character-based prejudice.

The court, when considering admissibility of 404(b) evidence, is required to conduct "a more searching inquiry" than the general evaluation needed under N.J.R.E. 403(a), which precludes evidence only if the risk of undue prejudice substantially outweighs the probative value. State v. Reddish, 181 N.J. 553, 608 (2004). "With respect to other-crimes evidence, ... the potential for undue prejudice need only outweigh

probative value to warrant exclusion." Ibid. Thus, as stated supra, the Rule is viewed "as a rule of exclusion rather than a rule of inclusion." Ibid. That is, "it will be the exceptional, and not the usual, case where the evidence of other bad acts is substantially relevant for reasons other than proof of criminal character." Cofield, 127 N.J. at 337 (quoting Harris v. Maryland, 597 A.2d 956 (1991)).

Additionally, the State's reliance on State v. McGuire, 419 N.J. Super. 88 (App. Div. 2011), is misplaced. The Appellate Division in McGuire never characterized the defendant's extramarital affair as "intrinsic" evidence. Rather, the court summarily concluded that the affair was relevant to the defendant's motive in a case where he was accused of killing his wife — the same person directly affected by the infidelity. Id. at 140-141. In that context, the affair helped illuminate the dynamics of the marital relationship and the underlying conflict at issue. No such connection exists here; Paul is not accused of harming his spouse to avoid a messy divorce or to pursue a future with his paramour. In fact, as is made clear in the discovery, Paul's wife Susan knew about Paul's affair and continued to accept him in their home, as her partner and father of their children.

Lastly, even if the court were to find this purported motive evidence relevant and admissible, it still must be sanitized. "[W]here the other-crimes evidence is otherwise admissible but involves inflammatory and other unduly prejudicial facts, the judge is obliged to require the evidence to be sanitized to the extent necessary to accommodate both the State's right to establish a fact in issue and the defendant's right to a fair trial." State v. Collier, 316 N.J. Super. 181, 185 (App. Div. 1998), aff'd o.b., 162 N.J. 27 (1999). The "evidence must be sanitized so that only those facts are admitted that are reasonably necessary to advance the probative purpose for which the evidence is proffered." State v. Sheppard, 437 N.J. Super. 171, 196 (2014).

As noted above, if the State can show that Paul was in fact living a lavish lifestyle and spending money frivolously, then that is all they need to suggest he committed the murders for financial gain. That is, the State does not need to include the fact about the paramour to show that Paul lived lavishly and to suggest he wished to maintain his lifestyle.

5. Cache of Weapons

The State also seeks to introduce evidence concerning Paul's lawfully owned weapons, ammunition and shooting accessories. This includes handguns, rifles, a shotgun, ammunition, firearm accessories, and shooting targets recovered from his home as well as materials found in the trunk. The State argues this evidence is admissible as probative of Paul's "profound interest in weapons" and "practiced proficiency with guns." Further, that "he had practiced shooting at ranges" and to show that "Keith was hunted like an animal outside in the dark, and shot repeatedly." (Sb9-10).

First, this is not intrinsic evidence of any kind; in fact, this evidence is entirely irrelevant. Beyond relevance, this evidence is significantly, if not solely, prejudicial.

First, it is clear that while the evidence includes a wide assortment of firearms and other weapons – these weapons have no connection with the allege crimes. Simply owning guns/ weapons, consistent with the Second Amendment, or practicing at a shooting range, does not have any relevance to the charged crimes. In this case, there are two alleged murder weapons: (1) a kitchen knife that was found at the crime scene (Keith's home), which the State contends was taken from Keith's kitchen knife set; and (2) a gun that was found in Paul's basement.[2] While the State may certainly present evidence that the alleged murder weapon was found in Paul's basement, the remaining weapons are irrelevant. They are not alleged to have been used to harm anyone, let alone the victims in this case. Likewise, the State alleges that ammunition found in Paul's basement matches ammunition found at the crime scene. Again, the State can present this evidence, however, it can be presented separate and apart from any mention of Paul's legally-owned gun collection.

To be sure, the fact that the State wishes to demonstrate that Paul is some sort of gun/ knife afficionado does not therefore make it more probable that he is the murderer. Indeed, much of America is comprised of gun afficionados who collect guns, knives, and other weapons. In many parts of America, gun and knife shows are a

[2] The State also alleges that additional gun accessories were found in Paul's vehicle, which is separate from the 'cache of weapons' in Paul's basement.

common, regular occurrence. In the wake of Bruen and its progeny, more citizens have sought legal permits to carry. Notably, if the State alleged that Paul was some expert, specially trained marksman, and had an expert to show that the shootings must have been committed by someone with such training, that would raise a different analysis. However, here, that is not what the State is suggesting or seeking to prove.

And yet, while roughly half of America is comprised of strong proponents of the Second Amendment, legal gun ownership is a heated topic of debate that currently divides our nation. That is, in the wake of rising gun violence and increased mass shootings, many in our country are anti-gun ownership and/ or advocates for more gun restrictions and more stringent gun-related laws.[3] In fact, the United States surgeon general has "taken the unprecedented step of declaring gun violence a public health crisis."[4] Given this divide, roughly half the jurors will pre-judge or prejudice the defendant simply for being an avid gun collector. In today's climate, admission of this evidence is not worth this risk of such prejudice.

Moreover, the State's reliance on State v. Loftin is distinguishable. 146 N.J. 295 (1996). In Loftin, the State's clear purpose in admitting evidence of the defendant's "significant amount of gun paraphernalia" along with the "knowledge, competency, and experience of defendant in handling firearms" was to counter the suggested defense of accidental shooting. Id. at 384 ("Such evidence is significant to show that defendant intended to kill Marsh when he shot him in the head, and that the shot was not the result of an accidental discharge caused by an inexperienced marksman."). Here, defendant is not raising an 'accidental shooting' defense. Therefore, there is no demonstrated need to present this evidence to a jury as it serves no probative value. See State v. Coyle, 119 N.J. 194, 219 (1990) ("Defendant's ownership of *Soldier of Fortune* magazine, the silencer instructions, and the gun catalogue does not demonstrate sharpshooter ability. Because it seems doubtful that those items would improve one's proficiency with a firearm, they are not admissible to show defendant's intention to wound his victim first."). (Emphasis added).

[3] https://www.pewresearch.org/short-reads/2024/07/24/key-facts-about-americans-and-guns/
[4] Ibid.

6. Prior Residential Fire

The State also references a "suspicious" residential fire that occurred at Paul's home in 2008, for which no charges were ever brought and no findings of criminal culpability were made. Although the State claims it does not intend to introduce this evidence affirmatively, it seeks to preserve the ability to do so if the defense "opens the door." There is simply no feasibly way that the defendant could ever 'open the door' to this evidence because there are no set of circumstances under which this evidence could ever be deemed admissible. In short, this evidence is obviously not intrinsic nor can it even qualify as 404(b) because there is zero evidence that Paul ever committed this purported 'prior bad act.' Cofield, supra, at 338. Under such analysis, the State would have to show, by "clear and convincing evidence" that the defendant intentionally lit the prior fire. Here, the State did not even have probable cause to charge Paul, therefore, it will never establish this by much higher standard of clear and convincing evidence. Additionally, the fire itself was never deemed to be arson, but rather, merely suspicious. In short, this section does not warrant any further discussion; this evidence is not admissible.

Conclusion

As discussed in this letter, there is a variety of evidentiary rulings that this Court either must make or should make prior to trial. As indicated herein, some of these issues should be brought before this Court by way of a formal motion, while others should require the State, for the sake of transparency and efficiency, to put the defense on notice of the more specific items of evidence (e.g. text messages, etc.) that it intends to offer at trial. Otherwise, the defense is left guessing in the dark and objecting for the first time at trial.

Respectfully Submitted,

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