
Appendix

APPENDIX A

TRIAL VIDEOS

For trial videos, the below links are organized by trial day. However, please note that with respect to the time-stamp references contained within its brief, the defense is solely relying on the videos published by Law & Crime. As noted in its brief, the defense incorporates the trial videos and can provide downloaded copies upon request.

TRIAL DAY 1 – January 12, 2026

Law & Crime	https://www.youtube.com/watch?v=ZWQfKZCK4Dc&t=22966s
Court TV	--
APP	https://www.youtube.com/watch?v=RjPn7eStixl&t=12486s

TRIAL DAY 2 – January 13, 2026

Law & Crime	https://www.youtube.com/watch?v=wiHzVSjqiKw&t=27978s
Court TV	https://www.youtube.com/watch?v=6g30uHR3lyc&t=28325s
APP	https://www.youtube.com/watch?v=IPPVoep3-ak

TRIAL DAY 3 – January 14, 2026

Law & Crime	https://www.youtube.com/watch?v=uLLJhGY6b2g&t=566s
Court TV	https://www.youtube.com/watch?v=u0V3XAhRPI4&t=770s
APP	https://www.youtube.com/watch?v=guvZEHvzLNI

TRIAL DAY 4 – January 15, 2026

Law & Crime	https://www.youtube.com/watch?v=LgE63a9J_Lw&t=6310s
Court TV	https://www.youtube.com/watch?v=493ySpUi8k0&t=2596s
APP	https://www.youtube.com/watch?v=3FdW73pdt2Y

TRIAL DAY 5 – January 20, 2026

Law & Crime	https://www.youtube.com/watch?v=GZbf6J6_ifw&t=13749s
Court TV	https://www.youtube.com/watch?v=griuuv2fWIM
APP	https://www.youtube.com/watch?v=kubemmbMsEU

TRIAL DAY 6 – January 21, 2026

Law & Crime	https://www.youtube.com/watch?v=M5RKQ22H0ao
Court TV	https://www.youtube.com/watch?v=V9oTzH7G19Y&t=265s
APP	https://www.youtube.com/watch?v=Zwe3BT_AD8E

TRIAL DAY 7 – January 22, 2026

Law & Crime	https://www.youtube.com/watch?v=nP8Qv0epdjl
Court TV	https://www.youtube.com/watch?v=PK-s9q7JDbs&t=19496s
APP	https://www.youtube.com/watch?v=j_0cejaHfh0

TRIAL DAY 8 – January 23, 2026

Law & Crime	https://www.youtube.com/watch?v=F8-MMWnbG6k&t=14335s
Court TV	https://www.youtube.com/watch?v=5HjfCI-nMMY
APP	https://www.youtube.com/watch?v=GlbvGhmmRI0

TRIAL DAY 9 – January 27, 2026

Law & Crime	https://www.youtube.com/watch?v=N_6yeNJQtFM
Court TV	https://www.youtube.com/watch?v=o35BKDr-27M&t=21063s
APP	https://www.youtube.com/watch?v=gAWV2e7afIM

TRIAL DAY 10 – January 28, 2026

Law & Crime	https://www.youtube.com/watch?v=26iJ-EPwMLw
Court TV	https://www.youtube.com/watch?v=2DpBQysk6cg
APP	https://www.youtube.com/watch?v=Lqprpsy5tlw

TRIAL DAY 11 – January 29, 2026

Law & Crime	https://www.youtube.com/watch?v=S9d5kHmgdlc
Court TV	https://www.youtube.com/watch?v=dxuvl4nR4og&t=27972s
APP	https://www.youtube.com/watch?v=QnQakMdjXPY

TRIAL DAY 12 – February 2, 2026

Law & Crime	https://www.youtube.com/watch?v=t1EnyBKUU4
Court TV	https://www.youtube.com/watch?v=wR1Yhh0Z-uc
APP	https://www.youtube.com/watch?v=UVWpZ616ZWM

TRIAL DAY 13 – February 3, 2026

Law & Crime	https://www.youtube.com/watch?v=4DJa7lgtvZo
Court TV	https://www.youtube.com/watch?v=OOq0IVsKWUE
APP	https://www.youtube.com/watch?v=DsdjWLzHRH8

TRIAL DAY 14 – February 4, 2026

Law & Crime	https://www.youtube.com/watch?v=X7njUx8DzGQ&t=21442s
Court TV	https://www.youtube.com/watch?v=EeEidJO5sdA&t=16s
APP	https://www.youtube.com/watch?v=8LplTcfSdzs

TRIAL DAY 15 – February 6, 2026

Law & Crime	https://www.youtube.com/watch?v=urKfpG0nudo
Court TV	https://www.youtube.com/watch?v=Zr9mUz2M1d0&t=9167s
APP	https://www.youtube.com/watch?v=FqIVIQ5_vo8

TRIAL DAY 16 – February 9, 2026

Law & Crime	https://www.youtube.com/watch?v=SeeKLdh6aPQ&t=27333s
Court TV	https://www.youtube.com/watch?v=dBBW58p9jEQ&t=12s
APP	https://www.youtube.com/watch?v=fSiwikNhTLg

TRIAL DAY 17 – February 10, 2026

Law & Crime	https://www.youtube.com/watch?v=QAjh1OpswvQ&t=26447s
Court TV	--
APP	https://www.youtube.com/watch?v=7wzokqkEYXc

TRIAL DAY 18 – February 11, 2026

Law & Crime	https://www.youtube.com/watch?v=rToX8kugNFk&t=24668s
Court TV	--
APP	https://www.youtube.com/watch?v=8x_pfe0aOgU

TRIAL DAY 19 – February 12, 2026

Law & Crime	https://www.youtube.com/watch?v=N9XYTaEdy7s&t=4453s
Court TV	--
APP	https://www.youtube.com/watch?v=-skfWDpg21Y

TRIAL DAY 20 – February 13, 2026

Law & Crime	https://www.youtube.com/watch?v=oBvTrhod0c8
Court TV	--
APP	https://www.youtube.com/watch?v=oRTuSpAQm5Q

APPENDIX B

TRIAL AUDIO

For trial audio, particularly portions which are not captured on video such as sidebar conversations, the defense incorporates the following Courtsmart audio. The defense can provide downloaded copies upon request.

TRIAL DAY 1 – January 12, 2026

State v Caneiro 1-12-26 AM (1)
State v Caneiro 1-12-26 AM (2)
State v Caneiro 1-12-26 AM (3)
State v Caneiro 1-12-26 PM

TRIAL DAY 2 – January 13, 2026

State v Caneiro 1-13-26 AM
State v Caneiro 1-13-26 PM

TRIAL DAY 3 – January 14, 2026

State v Caneiro 1-14-26 AM
State v Caneiro 1-14-26 PM

TRIAL DAY 4 – January 15, 2026

State v Caneiro 1-15-26 AM
State v Caneiro 1-15-26 PM

TRIAL DAY 5 – January 20, 2026

State v Caneiro 1-20-26 AM
State v Caneiro 1-20-26 PM

TRIAL DAY 6 – January 21, 2026

State v Caneiro 1-21-26 AM
State v Caneiro 1-21-26 PM (1)
State v Caneiro 1-21-26 PM (2)

TRIAL DAY 7 – January 22, 2026

State v Caneiro 1-22-26 AM
State v Caneiro 1-22-26 PM

TRIAL DAY 8 – January 23, 2026

State v Caneiro 1-23-26 AM
State v Caneiro 1-23-26 PM (1)
State v Caneiro 1-23-26 PM (2)

TRIAL DAY 9 – January 27, 2026

State v Caneiro 1-27-26 AM
State v Caneiro 1-27-26 PM (1)
State v Caneiro 1-27-26 PM (2)

TRIAL DAY 10 – January 28, 2026

State v Caneiro 1-28-26 AM
State v Caneiro 1-28-26 PM

TRIAL DAY 11 – January 29, 2026

State v Caneiro 1-29-26 AM
State v Caneiro 1-29-26 PM

TRIAL DAY 12 – February 2, 2026

State v Caneiro 2-2-26 AM
State v Caneiro 2-2-26 PM

TRIAL DAY 13 – February 3, 2026

State v Caneiro 2-3-26 AM
State v Caneiro 2-3-26 PM

TRIAL DAY 14 – February 4, 2026

State v Caneiro 2-4-26 AM
State v Caneiro 2-4-26 PM

TRIAL DAY 15 – February 6, 2026

State v Caneiro 2-6-26 AM
State v Caneiro 2-6-26 PM

TRIAL DAY 16 – February 9, 2026

State v Caneiro 2-9-26 AM
State v Caneiro 2-9-26 PM

TRIAL DAY 17 – February 10, 2026

State v Caneiro 2-10-26 AM (1)
State v Caneiro 2-10-26 AM (2)
State v Caneiro 2-10-26 PM

TRIAL DAY 18 – February 11, 2026

State v Caneiro 2-11-26 AM
State v Caneiro 2-11-26 PM

TRIAL DAY 19 – February 12, 2026

State v Caneiro 2-12-26 AM
State v Caneiro 2-12-26 PM

TRIAL DAY 20 – February 13, 2026

State v Caneiro 2-13-26 AM
State v Caneiro 2-13-26 PM (1)
State v Caneiro 2-13-26 PM (2)

APPENDIX C

MEDIA & PUBLIC REPORTING

The following are examples of various videos that the media / public viewers posted to social media accounts, including YouTube, Facebook, Instagram, and TikTok. These videos highlight instances where the Court demonstrated frustration, anger, or hostility toward the defense as well as some of the occasions where the Court joked with the jurors. The defense incorporates these videos as part of the record and can provide downloaded copies upon request.

Trial TV Live

- "Paul Caneiro Trial: Judge Lemieux SMACKS DOWN the Defense" (2-10-26)
- "NJ v. Paul Caneiro – Judge Lemieux Loses Patience" (1-15-26)
- "NJ v. Paul Caneiro: Judge Cuts Off the AI Debate" (1-15-26)
- "Paul Caneiro Trial: Judge Lemieux is NOT Happy" (2-9-26)
- "Paul Caneiro Trial – 'Who Hit the Snooze Button?'" (1-22-26)
- "Paul Caneiro Trial – Judge Lemieux Jokes About Holding Mother Nature in Contempt" – "Another day, another Judge Lemieux comedic moment." (1-27-26)
- "First time Reading a Clock – Judge Lemieux" (1-13-26)

Court TV

- "I needed a stress ball." (1-14-26)

Law & Crime Trials

- "Judge Loses Patience with Paul Caneiro's Lawyer Again" (1-15-26)
- "Judge Steps In During Heated Questioning in Paul Caneiro Trial" (2-4-26)
- "Judge and Defense Attorney Clash in Heated Moment at Paul Caneiro Trial" (2-10-26)

Asbury Park Press

- "Paul Caneiro case: Judge scolds defense for withholding possible evidence in quadruple murder trial" (2-10-26)

NJ.Com

- "Judge in Paul Caneiro trial scolds defense over hiding evidence" (2-10-26)

Best Videos US 2025

- "Judge Steps In During Heated Questioning in Paul Caneiro Trial" (2-4-26)
- "Judge Loses Patience with Paul Caneiro's Lawyer Again" (1-15-26)

Meghan Cunniff

- "Angry Judge yells at defense attorney for not disclosing evidence." (2-11-26)



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March 16, 2026

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

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

Motion for New Trial

Dear Judge Lemieux:

Please accept this letter brief, in lieu of a more formal brief, in support of the defense's Motion for a New Trial.

RELEVANT FACTS

Trial in this matter commenced on January 5, 2026 with jury selection, and thereafter began with opening statements and testimony on January 12, 2026. The trial continued until a verdict was reached on Friday, February 13, 2026. The jury found the defendant, Paul Caneiro, guilty on all counts. That same date, the Court set a briefing schedule and hearing date for any Motion for a New Trial filed by the

defense. On Monday, February 23, 2026, the defense filed a Motion for a New Trial in accordance with the Court's schedule and now submits this brief in support thereof. The facts pertaining to each Point raised herein will be discussed in each respective Point below. However, in further support of this motion, and to complete the record for review, the defense hereby incorporates and relies upon the video/audio recordings of this trial. See Appendix A & B. This matter is presently scheduled for Monday, April 20, 2026.

LEGAL ARGUMENT

Pursuant to R. 3:20-1, the trial court “may grant the defendant a new trial if required in the interest of justice.” “[A] ‘miscarriage of justice’ can arise when . . . the case culminates in a ‘clearly unjust result.’” Hayes v. Delamotte, 231 N.J. 373, 386 (2018) (quoting Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521-22 (2011)). “A ‘miscarriage of justice’ has been described as a ‘pervading sense of wrongness needed to justify an appellate or trial judge undoing of a jury verdict which can arise from manifest lack of inherently credible evidence to support the finding, obvious overlooking or undervaluation of crucial evidence, or a clearly unjust result[.]” Risko, 206 N.J. at 521-22 (quoting Lindenmuth v. Holden, 296 N.J. Super. 42, 48 (App. Div. 1996) and Baxter v. Fairmount Food Co., 74 N.J. 588, 597-98 (1977)). A clearly unjust result may occur, and thus a new trial may be warranted, when the denial of justice results from a denial of due process. See State v. Van Ness, 450 N.J. Super. 470 (App. Div. 2017); State v. Greci, 197 N.J. 604 (2009); Glossip v. Oklahoma, 604 U.S. 226, 252 (2025).

In Dolson v. Anastasia, our Supreme Court explained that the relevant question to address on a motion for a new trial is “whether the result strikes the judicial mind as a miscarriage of justice[.]” 55 N.J. 2, 6 (1969) (quoting Kulbacki v.

Sobchinsky, 38 N.J. 435, 459 (1962) (Weintraub, C.J., and Jacobs and Francis, J.J., dissenting)). “A motion for a new trial must be made to the trial judge before the issue may be offered on appeal.” Id. at 7. On appeal, appellate courts give “due deference” to the trial court’s “feel of the case” Risko, 206 N.J. at 522, however, are still left to assess whether there was “a manifest denial or miscarriage of justice.” Dolson, 55 N.J. at 7.

POINT I

THE TRIAL COURT’S DENIGRATION OF DEFENSE COUNSEL RESULTED IN A DENIAL OF A FAIR TRIAL.

“A judge must conduct a trial in a fair and impartial manner, refraining from remarks that might prejudice a party or might influence the minds of the jury.” Mercer v. Weyerhaeuser Co., 324 N.J. Super. 290, 297-98 (App. Div. 1999) (citing Cestero v. Ferrara, 110 N.J. Super. 264, 273 (App. Div. 1970), *aff’d* 57 N.J. 497 (1971) (noting that judges are required to “be patient, dignified, and courteous to . . . lawyers”). Although “[g]reat latitude is given to a trial judge in the conduct of a trial[,]” there are still “bounds within which he must stay.” State v. Zwillman, 112 N.J. Super. 6, 20 (App. Div. 1970); Weyerhaeuser 324 N.J. Super. at 298. A judge “must not throw his judicial weight on one side or the other.” Zwillman, 112 N.J. Super. at 21; Weyerhaeuser, 324 N.J. Super. at 298.

“A trial judge should never unfairly criticize or humiliate defense counsel or a defense witness.” Zwillman, 112 N.J. Super. at 21 (citing State v. Guido, 40 N.J. 191 (1963)); Weyerhaeuser Co., 324 N.J. Super. at 298. “To demean an attorney, particularly in front of a jury, is completely unacceptable.” Ibid. “[T]rial judges must be courteous to counsel and be temperate, attentive, patient and impartial.” Weyerhaeuser, 324 N.J. Super. at 298. Otherwise, conduct to the contrary “can easily

prejudice a jury since it conveys the opinion of the judge as to his belief or disbelief in one side of the case.” Ibid. “Where it appears that the trial judge has turned the jury against the defendant by mistreating defendant’s counsel in front of the jury, a new trial is required.” Ibid. No single instance needs to be sufficient to warrant a new trial; rather, the actions of the trial judge that can deprive a defendant of a fair trial may be considered in the aggregate. Id. at 299.

The reason judges must be particularly cautious with their treatment of counsel in front of a jury is because “[t]o the jury, the trial judge is the symbol of experience, wisdom and impartiality and, as such, must take great care not to throw his judicial weight, even inadvertently, on one side or the other.” Colucci v. Oppenheim, 326 N.J. Super. 166, 179 (App. Div. 1999) (citing Weyerhaeuser, 324 N.J. Super. at 298). That is, “[t]he trial judge is an imposing figure.” Guido, 40 N.J. at 208. “If he so intervenes as to suggest disbelief, the impact upon the jurors may be critical.” Ibid. “Therefore, a trial judge should never unfairly criticize counsel in front of the jury.” Oppenheim, 326 N.J. Super. at 179.

This concept – that trial judges are viewed by jurors as forceful and highly respected authority figures in the courtroom – was expressed by Justice Timpone in State v. Ross:

Walk into any trial courtroom in this State—whether furnished in gray gunmetal or carved wood—the centerpiece is the judge's bench, rising above all else and all others. That is not happenstance. The message is clear: the judge presides; the judge decides; the judge has the final word.

Trial lawyers are well aware of a judge's impact on a sitting jury. Judges dote on jurors. They generally exhibit kindness and understanding toward jurors, making them feel welcome and part of the process. Judges often banter with jurors, recognize when they need a break, and

try to accommodate their schedules. As jurors enter and exit the courtroom, many judges stand in deference. Notably, jurors return the deference. Jurors may raise an eyebrow at the lawyers' arguments and examinations but they usually take a judge's pronouncements as gospel. When a judge speaks, jurors listen.

229 N.J. 389, 416 (Timpone, J.J., dissenting).

Importantly, a judicial authority can drift from neutrality not just with verbal comments, but through nonverbal cues as well. That is, “[the] duty of impartiality extends to demeanor.” Allen v. Alabama, 290 Ala. 339, 343 (1973). “[F]acial expressions, gestures, and nonverbal communications which tend[] to ridicule defendant and his counsel, could, standing alone, operate so as to destroy the fairness of a trial.” Ibid. In fact, “courts have long acknowledged that nonverbal judicial behaviors, for example the facial expressions or tone of voice cues of the judge, can alone influence jury verdicts and sometimes do so in impermissible ways or to an impermissible extent.” Peter David Blanck et al., The Appearance of Justice: Judges' Verbal and Nonverbal Behavior in Criminal Jury Trials, 38 Stan. L. Rev. 89, 89 (1985).

Additionally, our Supreme Court explained in State v. O'Brien that the “Defendant was entitled to face a single adversary, the State.” 200 N.J. 520, 539 (2009). A defendant “should not have had to bear the consequences of a judge” who at times acts as a second adversary and at other times, “appeared to disbelieve” either the defense attorney or a defense witness. See ibid. Moreover, “Defense counsel should not be subjected to disparaging remarks for simply doing his or her job.” State v. Frost, 158 N.J. 76, 86 (1999).

In assessing the validity of prejudice, courts “are not to reach a conclusion of harmless error because [the court] may believe that the defendant in fact was guilty

as charged.” Zwillman, 112 N.J. Super. at 20 (citing State v. Wolak, 26 N.J. 464, 481 (1958) and Weiler v. United States, 323 U.S. 606, 611 (1945)). Indeed, “appellate courts are deeply concerned with the fairness of trials of persons charged with crime whose lives or liberty are at stake. And the intensity of that concern cannot be regulated according to our view of the strength or weakness of the State’s case.” Ibid (quoting State v. Pickles, 46 N.J. 542, 566 (1966)). “In other words, the fact that [a] verdict could be sustained does not mean that it should be sustained.” Weyerhaeuser, 324 N.J. Super. at 298.

This is because “[a] cardinal principle of our legal system is that courts of justice act upon the belief that if guilty, a party will be so found after a fair trial. Both the ends and the means of a trial must be fair, and no matter how abhorrent the offense charged or how evident the guilt, an accused has an absolute constitutional right to a fair trial before an impartial judge and an unprejudiced jury.” Zwillman, 112 N.J. Super. at 20 (citing State v. Jackson, 43 N.J. 148 (1964); State v. Marchand, 31 N.J. 223 (1959); and State v. Orecchio, 16 N.J. 125, 142 (1954)).

In the instant case, the court engaged in repeated conduct that denigrated defense counsel both in and out of the presence of the jury. Beginning on the first day of trial, the court was often impatient, critical, and hostile toward the defense, and only the defense.¹ There were numerous instances where the Court chastised and was accusatory toward the defense. Additionally, during a variety of sidebars, the Court exhibited a clearly angry demeanor toward defense counsel, which was observable by the jury.² Such demeanor included pointing at counsel, becoming

¹ See Courtsmart (1-23-26, PM session (1)) at 1:00 to 12:45 (Counsel asked at sidebar for the Court to be more patient with defense counsel, particularly in front of the jury, however, the Court was ‘very surprised’ by, and took exception to, this request).

² See, e.g., Courtsmart (1-12-26, PM session) at 2:43:4 to 2:50:10. Courtsmart (1-15-26 AM session) at 1:21:53 to 1:24:35; (1-15-26 PM session) at 0:38:19 to 0:39:25.

flushed, scowling, squeezing a stress ball³, and other angry gesticulations. This conduct continued throughout the course of the trial. This conduct, particularly when it occurred in the presence of the jury, prejudiced the defense.

Also during the trial, the Court repeatedly sustained its own sua sponte objections against only the defense.⁴ In doing so, the court coupled its objections with a frustrated tone and demeanor aimed at the defense.⁵ At other times, the Court made critical and prejudicial remarks to counsel, in front of the jury, during counsel's cross examinations.⁶ At another time, after the State made a hearsay objection, the Court sua sponte accused the defense of a discovery violation.⁷ The following day, the court berated defense counsel, accusing the defense of committing an intentional discovery violation for not disclosing a screenshot she had for less than 24 hours and did not use at trial.⁸ The Court also repeatedly questioned counsel's credibility during the exchange.⁹ And, later was also critical of the defense witness's credibility as well.¹⁰

³ The stress ball was originally introduced to the Jury on day 3 of the trial. The court told the jury "I picked the soft one . . . I'm gonna see how I do with this, you guys can keep an eye on me, see how I'm doing with this." "Trial Day 3" (1-14-26) at 8:50 to 9:15. Thereafter, during the trial, the Court repeatedly squeezed the stress ball at times when defense counsel was cross examining or when the Court was speaking to defense counsel at sidebar. Because the Court told the jury to 'keep an eye on' his use of it, the jury was cognizant of the correlation between the stress ball and frustration with the defense.

⁴ See, e.g., "Trial Day 1" (1-12-26) at 6:19:05; "Trial Day 2" (1-13-26) at 7:45:14; "Trial Day 3" (1-14-26) at 5:35:27.

⁵ See ibid.

⁶ See, e.g., "Trial Day 4" (1-15-26) at 1:28:05 to 1:28:40; 6:11:30 to 6:13:55; "Trial Day 8" (1-23-26) at 3:58:20 to 3:58:55.

⁷ "Trial Day 16" (2-9-26) at 6:57:38 to 6:58:23; 7:34:26 to 7:35:20; Courtsmart (2-9-26 PM session) at 1:51:05 to 1:52:30.

⁸ "Trial Day 17" (2-10-26) at 00:00 to 45:45; See also "Trial Day 4 (1-15-26) at 6:31:20 to 6:40:04; 7:01:30 to 7:06:10.

⁹ See ibid.

¹⁰ See id. (Trial Day 17) at 7:20:05 to 7:20:47; 7:21:40 to 7:22:00; 7:23:05 to 7:23:30.

Some of these occurrences were so staggering that both the media and the public reported on these instances.¹¹ If the public spectators were impacted by these moments, then so too were the jurors.

This issue was further exacerbated by the fact that the court built an exceptionally positive rapport with the jury during the trial. This rapport when contrasted with the court's consistent negative treatment of the defense undermined the patience and impartiality that the court must exhibit before the jury. The court began every trial day with a friendly joke or "question of the day" with the jury.¹² The jury would fully engage, often replying back and engaging in a very pleasant banter with the court.¹³ In addition, the court would often continue the banter/ joking at other stages of the day such as before or after midmorning, lunch, and afternoon breaks.¹⁴ At the end of the day, as the jury would single-file out of the courtroom, a majority of the jurors would say goodbye, wave, smile, or even wink (juror #9) to the court as they departed.

Not only did the jurors view the court as a prestigious figure, but also, one that they clearly aligned themselves with. Because the jurors had such an incredibly positive rapport with the court, and because the court was so friendly, favorable, and kind toward them, it in effect underscored the negative feelings that the court expressed toward the defense. And, as a result, the Court left the jurors with the consistent impression that the Court disapproved of the defense because the defense

¹¹ See Appendix C.

¹² See ibid; see generally, "Trial Day 1" through "Trial Day 20."

¹³ See ibid. Some of these jokes included the Court offering to sing for the jury; the Court and jury discussing moving the trial to Florida for purposes of nicer weather; the Court and jury joking about holding Mother Nature in contempt and forming a mob against her; and a juror joking that he 'wanted to make the Court batman.'

¹⁴ See ibid.

was doing something bad, wrong, deceiving, or otherwise deserving of reprimand. As such, because the jurors looked so favorably upon the court, and even so clearly admired the court, the risk that the jurors then adopted those unfavorable feelings toward the defense is significant.

Overall, based on the court's conduct, it often appeared that the defendant was not facing "a single adversary" but rather "had to bear the consequence" of a judge who at times acted as a second adversary and who "appeared to disbelieve" either defense counsel or a defense witness. See State v. O'Brien, supra, 200 N.J. at 539. As a result of the Court's repeated prejudicial conduct toward the defense in this case, the defendant did not receive a fair trial by a neutral arbiter of justice.

POINT II

THE PROSECUTOR'S SUMMATION CONTAINED NUMEROUS ERRORS WHICH INDIVIDUALLY AND/ OR CUMULATIVELY WARRANT A NEW TRIAL.

Prosecutors are afforded considerable leeway in closing arguments. State v. R.B., 183 N.J. 308, 330 (2005); State v. Harris, 141 N.J. 525, 559 (1995); State v. Williams, 113 N.J. 393, 447 (1988). However, "[a]lthough a prosecutor has considerable leeway in presenting a summation, State v. Chew, 150 N.J. 30, 84 [] (1997), cert. denied, 528 U.S. 1052 [] (1999), [the prosecutor] may not exceed the parameters of 'permissibly forceful advocacy' established by decisional law." State v. Munoz, 340 N.J. Super. 204, 217-18 (App. Div. 2001) (citing State v. Marshall, 123 N.J. 1 (1991), cert. denied, 507 U.S. 929 (1993); State v. Perry, 65 N.J. 45, 47 (1974); and State v. Mayberry, 52 N.J. 413, 437, cert. denied, 393 U.S. 1043 (1969)). That is, while prosecutors are "entitled to sum up the State's case graphically and forcefully[.]" a prosecutor's summation must be "limited to commenting upon the

evidence and the reasonable inferences to be drawn therefrom.” State v. Feaster, 156 N.J. 1, 58-59 (1998) (citing State v. Marquez, 277 N.J. Super. 162, 171 (App. Div.1994); State v. Johnson, 31 N.J. 489, 510–11 (1960)), certif. denied, 141 N.J. 99 (1995); and State v. Johnson, 120 N.J. 263, 296 (1990)).

This is because “the primary duty of a prosecutor is not to obtain convictions, but to see that justice is done.” State v. Ramseur, 106 N.J. 123, 320 (1987). “It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” State v. Farrell, 61 N.J. 99, 105 (1972) (quoting Berger v. United States, 295 U.S. 78, 88 (1935)).

With that said, “[a prosecutor’s] comments during opening and closing carry the full authority of the State.” State v. Smith, 167 N.J. 158, 177 (2001) (quoting State v. Frost, 158 N.J. 76, 87 (1999) and State v. Spano, 64 N.J. 566, 568 (1974)); see also State v. Johnson, 31 N.J. at 511. Thus, courts will not tolerate “prosecutorial excesses.” See ibid. That is, our courts “have not hesitated to reverse convictions where [they] have found that the prosecutor in his summation over-stepped the bounds of propriety and created a real danger of prejudice to the accused.” Johnson, 31 N.J. at 511 (citing State v. D’Ippolito, 19 N.J. 540 (1955); State v. Siciliano, 21 N.J. 249 (1956); and State v. Welsch, 29 N.J. 152 (1959)); see also Smith, 167 N.J. at 178. Our Supreme Court has noted, “this is particularly so when a life is at stake. Ibid (citing State v. Mount, 30 N.J. 195, 213 (1959)).

Ultimately, prosecutorial error warrants reversal where the State’s conduct was: (i) “clearly and unmistakably improper;” and (ii) “so egregious as to deprive the defendant of the right of a fair trial.” State v. Timmendequas, 161 N.J. 515, 573 (1999). Here, “the prosecutor’s remarks in the context of his summation as a whole,

. . . did have the capacity to unfairly influence the jury and deprive defendant of a fair trial.” State v. Atwater, 400 N.J. Super. 319, 337 (App. Div. 2008). And, importantly, “Given the order of summation, defense counsel never responded to the statements made by the prosecutor.” State v. Feaster, 156 N.J. 1, 58 (1998).

i. The State Repeatedly Shifted the Burden to the Defense, While Also Improperly Testifying to Facts and Information Not in Evidence.

The burden of proof in a criminal case rests on and remains with the prosecution. In re Winship, 397 U.S. 358 (1970). “It is, of course, a basic tenet of our criminal jurisprudence that a defendant has no obligation to establish his innocence ... and his failure [to proffer evidence] cannot affect a jury’s deliberations.” State v. Jones, 364 N.J. Super. 376, 382-85 (App. Div. 2003). Because it is solely the State’s burden, a defendant need not call any witnesses or testify on his own behalf, and may choose instead to rely on the presumption of innocence. State v. Hill, 199 N.J. 545, 559 (2009).

Accordingly, courts in this state "have always placed an extraordinarily high premium on the jury's correct understanding that defendants have no burden to clear themselves of guilt." State v. Grice, 109 N.J. 379, 395 (1988) (O'Hern, J., dissenting) (citing State v. Spano, 64 N.J. 566 (1974)). Our Supreme Court has condemned any "language that misstates or dilutes the State's burden to prove guilt beyond a reasonable doubt." State v. Medina, 147 N.J. 43, 59 (1996). Thus, an argument in summation that tends to dilute the State's burden of proof is highly improper. State v. Sherman, 230 N.J. Super. 10, 16 (App. Div. 1988).

Additionally, our Supreme Court has made clear that “prosecutors should not make inaccurate legal or factual assertions during a trial and that they must confine their comments to evidence revealed during the trial and reasonable inferences to be

drawn from that evidence.” State v. Smith, 167 N.J. at 178 (citing Frost, 158 N.J. at 86, State v. Marks, 201 N.J. Super. 514, 534 (App. Div.1985), certif. denied, 102 N.J. 393, (1986)). Our Supreme Court has likewise made clear that prosecutors may not ‘impl[y] to the jury that he possesses knowledge beyond that contained in the evidence presented” nor can they “reveal[] that knowledge to the jury.” Feaster, 156 N.J. at 59 (citing State v. Rose, 112 N.J. 454, 519 (1988)). “A prosecutor is permitted to respond to an argument raised by the defense so long as it does not constitute a foray beyond the evidence adduced at trial.” Munoz, 340 N.J. Super. at 216 (citing State v. Wilson, 128 N.J. 233, 241–42 (1992); State v. Johnson, 287 N.J. Super. 247, 266 (App. Div.), certif. denied, 144 N.J. 587 (1996)).

Here, the State’s summation contained numerous, repeated statements that ran contrary to the State’s burden of proof. At the same time, the State also repeatedly asserted significant, prejudicial, and/or speculative ‘facts’ that were not in evidence and were never presented to the jury. This combination was extremely prejudicial to the defendant.

The DVR Cameras

During the trial, the defense suggested that the cameras were shut off due to Wifi issues, along with, issues that the defendant was having with “stuff in his garage” as he told police the morning of fire. In summation, the defense anticipated that the State was going to argue that the Wifi did not affect the hardwired system, however, noted for the jury that there was no expert testimony presented by the State to that effect. The State was well within its right to respond to the defense’s arguments by arguing (as it did) that the defendant shut off the cameras in anticipation of committing a crime and that the Wifi did not affect the hard-wired cameras.

However, in addition to these arguments, the prosecutor took it a step further and prejudiced the defendant by arguing that the defendant failed to provide an explanation for the cameras having been shut off. First, the prosecutor stated “***There is NO explanation for shutting [his cameras] off. We’ll talk about the Wifi later.***”¹⁵ See State v. Engel, 249 N.J. Super. 336, 381 (App. Div. 1991) (“Our Supreme Court has repeatedly criticized prosecutorial derelictions of this kind, noting that it is improper for a prosecutor to remark that the defense has offered ‘no explanation[.]’”). The prosecutor then posed the question, “Why would Paul Caneiro shut his DVR off at 1:28 in the morning?”¹⁶ and a couple minutes later, argued, “He’s gone to his garage in the middle of the night when he’s told police he’s sleeping; and he walked up, faces the camera, and all of a sudden it shuts off. ***If there is another explanation for what happened there, I have no idea what it is.***”¹⁷

Corey Caneiro

During the trial, and in the context of the State’s failure to investigate, the defense raised the issue of third-party guilt based on Corey Caneiro having the same (or even greater) financial motive as the State alleged Paul Caneiro had in this case. Specifically, that Corey Caneiro was a beneficiary and stood to gain \$1.5 million – or possibly \$3 million – if Keith and his family were deceased. This information was presented at trial through the testimony of various witnesses. Certain witnesses were also able to confirm that Corey had knowledge of the trust based on communications that he had with Keith about it. However, none of these witnesses testified – one way

¹⁵ “Trial Day 18” (2-11-26) at 5:19:10.

¹⁶ Id. at 5:27:50.

¹⁷ Id. at 5:29:00.

or another – whether Corey had knowledge that he was a beneficiary. This information was simply never presented to the jury and Corey did not testify at trial.

However, the State nevertheless repeatedly told the jury that “Corey had no idea” and that Corey “didn’t even know about” the fact that he was a beneficiary. This prejudicial testimony that came from the prosecutor, and not any witness, undermined the defense in an unfair way. The State suggested to the jury that it had information beyond what was presented at trial, and even went so far as to argue that it “shouldn’t have to prove” that Corey did not have anything to do with the murders. These prejudicial statements, outlined below, not only provided the jury with information found nowhere in the trial but also unfairly misstated the State’s burden and shifted the burden to the defense. That is, third-party guilt is not an affirmative defense that the defense bears a burden to prove. Rather, it is essentially a reasonable doubt that the State bears the burden of disproving. The State’s comments include:

- “I’m a little sick of hearing about Corey Caneiro. What did you hear about Corey Caneiro during the course of this trial? . . . What’s interesting is what you never heard in this courtroom, and that is that Corey Caneiro had any clue that he was a contingent beneficiary to this trust. You never heard that. . . Corey had no idea based upon the evidence in this case that he stood to gain either 50% or 100% [of the money].”¹⁸
- “What did you ever hear that should have said to those [detectives] hey we should get Corey’s financial records, hey we should have look closer at Elisa’s phone cause they only looked at it for 2 days – *there’s nothing there* – we didn’t get his DNA ladies and gentlemen –”¹⁹

The defense objected at this point to the comment “there’s nothing there” as testimonial and misleading because the testimony was that the detectives did not ever look at the full phone extraction. The Court overruled the objection. However, the prosecutor clarified that he did not mean the phone, but rather,

¹⁸ Id. at 5:25:05.

¹⁹ Id. at 5:50:25.

was referencing Corey, generally. Either way, however, the statement was still testimonial and not supported by the evidence presented at trial:

“There was nothing there that made Corey Caneiro look like a suspect. You’ve heard nothing other than he’s got a motive because he’s a contingent beneficiary that was signed in 1999 when he was a lot younger that he doesn’t know about.”²⁰

- ***“We don’t get someone’s DNA, we don’t go get DNA, just because. . . . Yes, we don’t have [Corey’s] DNA, but why should we have his DNA? . . . We don’t just ask for DNA and send it out because somebody stands to gain something that they don’t even know about.”***²¹
- ***“It’s a pretty farfetched argument to make that we should have accused Corey of murder because he stood to gain \$1.5 million that he didn’t even know about.”***²²

It should be noted that this statement was also prejudicial in that it mischaracterized the defense. The defense never argued that Corey Caneiro “should have been accused of murder” but rather argued that Corey Caneiro should have been investigated because of his similar motive and other evidence. In effect, the State created a straw-man defense and then shifted the burden by faulting the defense for not proving that defense.

- In the context of discussing Keith and Paul’s relationship, the State speculated that Paul was ‘fed up’ with doing ‘Keith’s chores’ and then told the jury that ***“there’s no issue like that with Corey or anybody else.”***²³
- In the context addressing the Corey Caneiro third-party guilt defense, the State told the jury, “Let’s just keep that in mind, when we’re trying to ***tarnish something that has no evidence.***”²⁴
- “They brought up Corey, right? They want to talk about Corey. What’s Corey look like? We’ll talk about why that’s important later. **I shouldn’t have to**

²⁰ Id. at 5:51:00.

²¹ Id. at 8:07:30.

²² Id. at 5:54:38.

²³ Id. at 7:05:40.

²⁴ Id. at 7:27:21.

prove that to you, ladies and gentlemen. He has nothing to do with this. Nothing.²⁵

Significantly, this last statement was objected to by the defense based upon the State's renunciation of bearing a burden to disprove the defense as well as based upon the prosecutor again testifying to facts not in evidence. In response, the Court overruled the objection and stated (in front of the jury) "It's overruled. It's definitely not an objectionable thing." The Court then directed the prosecutor to "go ahead."²⁶

In short, the State was well within its rights to make arguments to the jury that dispelled or disproved the defense. However, the State was not within its rights to argue information that was never testified to by any witness, or to renounce its burden, or to shift the burden to the defense by faulting them for not presenting more information pertaining to Corey Caneiro.

Jennifer Caneiro's Phone

During the course of the trial, the defense raised an important issue about Jennifer Caneiro's phone having never been found at the murder/ arson scene. That is, Keith's phone and 8-year-old Sophia's phone were both found on scene and cell phone extractions were then performed on both phones. Two separate search warrants were executed at 15 Willow Brook (Keith's home) and the responding personnel also went through painstaking lengths to dig through the debris, where they were able to locate small items such as shell casings and projectiles. Despite this, Jennifer's phone was never located. Additionally, investigating detectives also never obtained phone records for Jennifer Caneiro's phone to ascertain who she last called/ texted or the cell site location information for her phone. The defense argued

²⁵ "Trial Day 19" (2-12-26) at 25:05.

²⁶ Id. at 25:20

this was significant because Jennifer's phone was never found in Paul Caneiro's direct or constructive possession and the phone records could have revealed the last general location of the phone.

In response to the defense's point, the State argued:

"What was Jennifer Caneiro doing? What was she responding to? *Her husband had left the bed, right?* He went to investigate why the power's out. . . . This isn't a robbery. *No one took Jennifer Caneiro's phone.* Could they have looked for it? For sure. For sure. If they looked back now, *they would have gone up to the master bedroom and they probably would have found it.* Could they have gotten phone records? Sure *but you can't search something you don't have.*"²⁷

The issue with this testimony is three-fold. First, it includes facts that were not in evidence: there was no testimony or evidence that Keith was in bed or left the bed. Second, the prosecutor's testimonial statement that "*no one took Jennifer Caneiro's phone*" combined with the completely unsupported contention that if the detectives "*would have gone up to the master bedroom [] they probably would have found it*" constitutes prejudicial speculative testimony by the prosecutor that is nowhere found in the evidence. Certainly, no detective testified to this as it would be inadmissible speculation. Nevertheless, arguing this to the jury suggests that the State has information outside of the trial record. Third, the prosecutor's statement that "*Could they have gotten phone records? Sure but you can't search something you don't have*" was prejudicial and misleading because you do not need the physical phone in order to subpoena phone records from a phone carrier. In fact, testimony from State's witness Det. Migliorisi runs contrary to this misleading assertion.

²⁷ "Trial Day 18" (2-11-26) at 7:10:50.

ii. The State Also Made Numerous Improper Comments to the Jury, Including Offering Its Own Personal Opinion and Offering Information Beyond the Trial Record.

During its summation, the State referenced the dinner that Ben Paolucci and Keith Caneiro had a few days before the murders. The State told the jury:

“You heard about that right? They had dinner that night and [the defense] were saying that [Ben] didn’t say anything bad about Paul – *but there’s only certain things that we can elicit from witnesses that’s actually admissible.*”²⁸

The defense objected, at which point the State said in the presence of the jury “it’s true.”²⁹

The Court then sustained the objection and directed the jury to “disregard that last statement.”³⁰ Notwithstanding the Court’s instruction to disregard the last statement, however, the jury was essentially told that the State has additional information that undermines the defense’s assertions, however, the State could not elicit that information at trial. This runs directly counter the notion that “prosecutors may not ‘impl[y] to the jury that he possesses knowledge beyond that contained in the evidence presented[.]’ Feaster, 156 N.J. at 59. The limiting instruction did not cure the resulting harm. The jury was left with the undeniable impression that there existed additional information that was harmful to the defendant.

The State also improperly informed the jury of his own personal opinion on several occasions. First, in the context of explaining how a perpetrator of these crimes would have needed to switch out the gun barrel, the prosecutor told the jury:

²⁸ Id. at 6:50:54.

²⁹ Id. at 6:51:08

³⁰ Ibid.

*“I don’t – I don’t have a gun, so, I’ve heard how you do it.”*³¹

This statement presents two issues. First, the prosecutor’s argument to the jury was that a sophisticated gun owner such as Paul Caneiro would know how to switch out a gun barrel whereas the average person (such as Corey) would not. Thus, by telling the jury that the prosecutor, a member of law enforcement, does not even know how to do this – and has only been told how to do it – improperly compared the prosecutor’s heightened knowledge of guns against that of Paul Caneiros. That is, if the prosecutor does not even know how to switch out the barrel, then certainly no other lay citizen would know either. By inference, the prosecutor told the jury that Paul Caneiro has firearm skills that far exceed not just the average person but also the prosecutor, and therefore, Paul Caneiro must have committed the crimes.

Second, informing the jury that an esteemed and well-respected agent of law enforcement and representative of the State of New Jersey in a serious quadruple homicide trial does not own a single gun, was extremely prejudicial to the defendant in this case. To be sure, after the Court denied the defendant’s motion to preclude the ‘weapons cache’ evidence, the parties crafted a jury instruction which limited the use of this evidence. However, the implications of the prosecutor’s statement undermined the purpose of that charge. It was not appropriate information for the jury to consider, it certainly was not evidence in this case, and it prejudicially aligned the State with non-gun ownership.

Indeed, what further compounded the prejudice of this statement is when the prosecutor then later referred to the defendant’s gun – the alleged murder weapon – as “a beast.” Specifically, while holding up the defendant’s Sig Sauer firearm for the

³¹ “Trial Day 19” (2-12-26) at 1:52:00.

jury to see, the State said, “*this thing’s a beast.*”³² This inflammatory remark about a normal handgun, combined with the notion that the prosecutor in this case does not even own any guns, creates improper and prejudicial suggestions to the jury about how to consider this evidence. It was none of the jury’s business whether the prosecutor owned any guns, nor was it proper for the prosecutor to characterize the handgun as “a beast.”

The next prejudicial statement occurred when the prosecutor discussed the fact that although the generator was shut off and the power was cut at Keith’s house, the solar panel array was left undisturbed. The prosecutor stated:

“Because what you found out about the solar panel array is that it’s not a backup source of power. And I don’t know, *I’m no electrician, but I would have thought that the solar panel might have done something when the power goes out*, but it actually doesn’t. And really the only people that know that are the people that were there when it was installed and the house was being built: Paul Caneiro, Keith Caneiro. So you wonder why that wasn’t shut off? Because it didn’t need to be.”³³

The issue with this statement is twofold. First, the prosecutor is improperly testifying to the jury what he personally would have thought about the function of the solar panel array, and is doing so in the context of what an educated, reasonable person would have assumed versus what he claims the alleged perpetrator, Paul Caneiro, would have known to be true. There is no evidence in the record to support this. There is no evidence in the record to support the notion that a reasonable assumption about solar panels is that they serve as a backup source of power.

³² *Id.* at 3:19:45.

³³ *Id.* at 2:00:10.

There is likewise no evidence in the record that “only” Paul and Keith would have known that the solar panel array was not a backup source of power. In fact, there is no evidence that “only” Paul and Keith were there when the house was being built – as opposed to Corey – nor is there any evidence that Paul was even present at all when the house was being built. The sum of this statement – which pertains to a significant issue in this case – is that it is misleading, speculative, factually inaccurate, and improperly based upon the prosecutor’s personal subjective opinion. The prosecutor, regardless of whether he meant to do so, used his position as an educated, knowledgeable, and successful authority figure to align himself with what Corey Caneiro or another alleged perpetrator would have done: disconnect the solar panel array. This was improper and prejudicial to the defense.

Another significant issue raised by the defense during the trial was the distance from Keith’s house to the location of the parked Macan vehicle outside of Keith’s property line. The defense asked numerous witnesses whether they measured this distance, and none who testified did. There were photos shown but no testimony about the actual distance was presented to the jury. The defense argued in closing that this was significant in light of the tight timeline according to the State’s evidence.

In responding to this argument, the State told the jury: “*I mean, I skip the nearest bathroom and I go to the next bathroom, that’s probably the distance of me running to get to that car to get onto Willow Brook.*”³⁴ This comment not only constitutes the prosecutor’s subjective opinion testimony to the jury based on facts not in evidence, but also it is not even clear what bathrooms in the courthouse to which he is referring or what those estimated distances are. The jurors in this case,

³⁴ Id. at 3:26:27.

unlike the litigants and spectators, were not at liberty to roam the courthouse hallways and explore the distance between various bathrooms. Rather, they were strictly escorted through the locked hallways to and from the courtroom (which the public does not have access to).

The prosecutor also offered an improper, inflammatory opinion about how Sophia's blood ended up in the kitchen of 15 Willow Brook:

There's a bunch of blood in the kitchen, which Detective Cordoma explained about, you know, he's an expert in blood spatter analysis. There's not a lot of blood in the kitchen. And you know, we get criticized because he only swabbed four areas, but you can't swab every single place where there's blood. State police, I think you heard, they're not going to test it all – that's for sure. They took an area here, an area here, an area there, and an area here. And you know who you found, Sophia; you found Jesse by the handprint, very visible handprint on the south side of the kitchen island. And then you go around to where Jesse's found. And I said it yesterday, but you find that blood on the kick plate on the bottom, the stainless steel cabinets. And man, we really just figured it would be Jesse's [blood], right? And maybe it took them so long because they were just trying to piece this together – like what can we do to kind of explain one day to a jury what happened in that kitchen? And lo and behold that testing – that area – is Jesse. We know, they found him dead there, he's lying on the ground up against the cabinet, he's got blood there. *But who would have thought that Sophia's blood's there like she's trying to help her brother. She's bleeding – there's no other explanation other than "Jesse! Jesse!" And then for some reason, she's bleeding in the kitchen, and she decides – not sure she didn't want to decide – to run away.* And she goes upstairs. And that's where she's left. That's where she's incapacitated to the extent that she can't get the hell out of that house.³⁵

This 'opinion' by the prosecutor – that there's "no other explanation" for Sophia's blood being in the kitchen other than Sophia entering the kitchen, while bleeding, to

³⁵ Id. at 1:38:21 to 1:40:03.

try and tend to her dying brother and trying help him wake up by stating, “Jesse! Jesse!” – is not only speculative and not supported by the State’s expert testimony, but also an extremely inflammatory, vivid depiction designed to elicit sympathy and inflame the passions of the jury.

Det. Cordoma, the State’s expert in blood stain pattern analysis, testified that, “in conclusion, my analysis revealed that at a minimum, one mobile blood source entered and exited that kitchen, or had movement of possibly entering and exiting that kitchen or consistent with . . . entering and exiting that kitchen, I should say.” On cross, Det. Cordoma reiterated this and confirmed that it was his only conclusion. In fact, defense counsel asked:

Q: Other than that one conclusion – as we know, there’s blood all over this kitchen. Are there any other conclusions that you can draw about movements, directions, things that happened in a certain order, or how many people were present? Any conclusions that you can draw about any of that?

In response to this question, Det. Cordoma confirmed the answer was “no.”

Notwithstanding that the State’s own expert could not draw any additional conclusions about what occurred in the kitchen, the prosecutor offered to the jury his own improper speculative opinion that “there was no other explanation” for Sophia’s blood being in the kitchen than Sophia desperately trying to tend to her brother and trying to wake him up by crying “Jesse! Jesse!” after they were both stabbed and injured. This inflammatory speculation, unsupported by the testimony, “had the potential of evoking the jury's sympathy and outrage.” State v. Rodriguez, 365 N.J. Super. 38, 48 (App. Div. 2003). It also misled the jury and, particularly in light of the animated, over-the-top, inflammatory testimony of the Medical Examiner, Dr.

Zhang,³⁶ unduly prejudiced the defendant. See State v. Blakney, 189 N.J. 88, 96 (2016) (“[T]he assistant prosecutor’s duty is to prove the State’s case based on the evidence and not to play on the passions of the jury or trigger emotional flashpoints, deflecting attention from the hard facts on which the State’s case must rise or fall.”); State v. W.L., 292 N.J. Super. 100, 111 (App. Div. 1996) (“[E]motional appeals by the prosecutor calculated to arouse sympathy for the victim and hate and anger against the defendant have a strong potential to cause a miscarriage of justice.”); State v. Gregg, 279 N.J. Super. 182, 191 (App. Div. 1994).

Another instance of improper commentary during summation occurred when the prosecutor referenced ‘God’ numerous times throughout his closing. These comments inappropriately invoked religion and constituted inflammatory and prejudicial remarks. The most prejudicial examples include:

- “He’s thinking about that special bond with Jesse and **he’s thinking about God**, what I just did to my niece.”³⁷
- That’s why that facial injury slamming into her face, pierced her brain – **God help me** – that’s why I got DNA off the handle of the knife.”³⁸
- “But by the **grace of God**, we actually see that light right there.”³⁹
- “**God only knows** what [Jess and Sophia] were saying to [Paul].”⁴⁰

Lastly, during its summation, the State improperly told the jury that they do not tell witnesses what to say. Specifically, in the context of discussing the testimony

³⁶ “Trial Day 14” (2-4-26) at 3:05:40 to 3:50:00; 5:08:35 to 5:57:20.

³⁷ “Trial Day 18” (2-11-26) at 5:46:00.

³⁸ Id. at 7:51:55.

³⁹ “Trial Day 19” (2-12-26) at 10:19.

⁴⁰ Id. at 3:05:00.

of Heather Capp and Jonathan Harrington, which the State claimed was “simply incorrect,” the State told the jury:

“It’s been argued extensively this morning and in the past that we ignored Heather Capp and we ignored Johnathan Harrington’s information – you know, the 4:30 thing. I want to say, first thing’s first: *we don’t tell people what to say. We don’t try to change times. . .*”⁴¹

“But we know based upon the investigation, it wasn’t like it wasn’t challenged or investigated, but we know that Heather Capp and Jonathan Harrington saw the first responders because we know what time the fire started. . . . so that point, ladies and gentlemen, I suspect that’s not something that was ignored. It wasn’t ignored. *And also, is not something where we told people what to say or to change their story, because that’s not the way these things work.*”⁴²

Although the prosecutor made these statements in the specific context of Capp and Harrington’s testimony, the State was essentially bolstering the credibility of all of its witnesses by telling the Jury that they (the State) do not tell witnesses what to say. See State v. Scherzer, 301 N.J. Super. 363, 445 (App. Div. 1997) (“A prosecutor may argue that a witness is credible but may not personally vouch for the credibility of a State witness or suggest that the witness's testimony has been ‘checked out,’ thereby referring to matters outside the record.”). Moreover, this statement, combined with the numerous insinuations that portions of the defense witnesses’ testimony were either not credible or were “convenient” suggests that while the State does not tell their witnesses what to say, the defense does. It was improper for the State to imply that their witnesses’ testimony can be trusted because ‘they don’t tell their witnesses what to say.’

⁴¹ “Trial Day 18” (2-11-26) at 6:04:00.

⁴² Id. at 6:11:28.

iii. The State Also Cast Unjust Aspersions and Denigrated the Defense During Its Summation.

“It is improper for a prosecutor during summation to demean the role of defense counsel or cast unjust aspersions upon a lawyer's motives.” State v. Munoz, 340 N.J. Super. at 218 (citing State v. Thornton, 38 N.J. 380, 397 (1962), cert. denied, 374 U.S. 816 (1963); State v. Pindale, 249 N.J. Super. 266, 286 (App.Div.1991); State v. Lockett, 249 N.J. Super. 428, 434 (App. Div.1991), certif. denied, 127 N.J. 553 (1991); and Sherman, 230 N.J. Super. at 16); see also Scherzer, 301 N.J. Super. at 445; State v. Acker, 265 N.J. Super. at 356); Frost, 158 N.J. at 86. By way of some examples, “[i]t is improper” for the prosecutor “to suggest that testimony was fabricated with the assistance of defense counsel, State v. Rose, 112 N.J. 454, 518 (1988); to characterize the defense as ‘outrageous’ or ‘absolutely preposterous,’ State v. Acker, supra, 265 N.J. Super. at 356; or to suggest that defense counsel is obscuring the truth, State v. Lockett, 249 N.J. Super. 428, 434–35 (App. Div.), certif. denied, 127 N.J. 553 (1991).” Scherzer, 301 N.J. Super. at 446; see also Munoz, 340 N.J. Super. at 218 (explaining that a “prosecutor should not, without support in the evidence, accuse defendant of conspiring with defense counsel to conceal or distort the truth”) (citing Sherman, 230 N.J. Super. at 19).

Throughout the State’s summation, there were several instances where comments were made that cast aspersions on or denigrated the defense. These comments included comments that were made in direct response to the issues raised by the defense. For example, the defense argued that the evidence in this case is consistent with there being two perpetrators rather than one. In response to this, the prosecutor stated “*I’m a little sick of hearing about two people.*”⁴³ Next, in response to the defense raising the issue that Corey Caneiro was never investigated, the

⁴³ Id. at 5:25:05

prosecutor commented similarly “*I’m a little sick of hearing about Corey Caneiro.*”⁴⁴ The prosecutor also stated, “*Anybody can go ‘Corey did it’*”⁴⁵ and again, in response to the defense arguing that Corey Caneiro should have been better investigated, the prosecutor argued, “*Should we be stupid or should we follow the evidence?*”⁴⁶

These comments demeaned the defense, improperly included the prosecutor’s own personal opinion about the defense, and essentially told the jury that the defense was “stupid.” Moreover, the prosecutor mischaracterized the law related to the third-party guilt charge by stating that *anyone* could say “Corey did it.” Contrary to this assertion, the law requires that the defense meet a certain threshold before the jury is able to receive the third-party guilt charge. In other words, this comment took away the merit of the defense and replaced it with the assertion that all it takes is for someone to point a finger in another person’s direction. Further, the comment suggests to the jury that burden should be shifted to the defense i.e. that the defense needed to provide more evidence with respect to Corey Caneiro.

Another way in which the State cast aspersion on the defense during summation was by repeatedly suggesting that the defense had hidden information from the State or was in some way unfairly surprising the State at trial. These instances include:

- “I’m a little sick of hearing about 2 people – *which is, for the first time today.*”⁴⁷

⁴⁴ Ibid.

⁴⁵ Id. at 7:07:43.

⁴⁶ “Trial Day 19” (2-12-26) at 1:34:35.

⁴⁷ “Trial Day 18” (2-11-26) at 5:25:05.

- “*We heard for the first time today*, that it was actually him in that garage, shutting [the cameras] off.”⁴⁸
- “And again, today, you heard Ms. Mastellone say that that was Mr. Caneiro in the garage shutting off his cameras, *but that’s not something that’s ever been acknowledged. You didn’t hear the detectives testify that it was Paul Caneiro shutting off his cameras.*”⁴⁹
- “*All of a sudden now it’s like, ok it IS the Macan*, we just can’t prove to you who’s in it.”⁵⁰
- “You heard about the soundproofing. *I’ve never heard that before*, but you heard it. I guess there were some soundproof rooms. That’s convenient now, but it is what it is.”

First, these comments improperly touched on the defendant’s Fifth Amendment Right because the comments suggested that the defendant should have previously disclosed this information either to police, to the State, or to the jury via his testimony. See State v. Engel, 249 N.J. Super. 336, 382 (App. Div. 1991) (“A prosecutor should not either in subtle or obvious fashion draw attention to a defendant’s failure to testify. Remarks which ‘skirt the edges’ of impermissible comment are neither desirable nor worth the risk of reversal of what may be a well-deserved conviction.”) (citing State v. Dent, 51 N.J. 428, 442 (1968)). Of course, the defendant was under no obligation to disclose information to the police or to the State prior to trial; nor was the defendant under any obligation to testify.

Second, in all criminal cases, with the exception of certain ‘affirmative defenses’ delineated by rule or statute, which require notice to the State, the defense

⁴⁸ Id. at 5:19:00.

⁴⁹ Id. at 5:56:12

⁵⁰ Id. at 7:16:15.

is under no obligation to disclose its defense or defense strategy to the State ahead of trial. See, e.g., State v. Alston, 212 N.J. Super. 644, 648 (App. Div. 1986) (“Defendant is not required to give pre-trial notice to the State of any defense, strategy or tactic except as specifically required by [Rule]” and “except in those cases specified in the rules, a defendant is not required to commit to a defense or strategy until the State has rested.”). Here, notwithstanding the fact that the State was put on notice of the Corey Caneiro third-party guilt defense back in 2019 by prior counsel (well before the undersigned were assigned to this case in 2025), no such notice to the State was ever actually required. Likewise, the fact that the defense argued that the evidence supported a two-person perpetrator theory, or that the defense decided to concede certain evidence in closing, were not arguments which the defense was ever required to tell the State ahead of trial.

As such, it was improper for the State to make repeated comments to the jury that cast blame on the defense for raising, arguing, or conceding facts for the first time at trial. To be clear, if a witness had testified to a new fact for the first time at trial, contrary to a prior statement given by that witness in which that fact was either different or omitted, that would be fair comment by either party in summation because it would affect that witness’s credibility. However, here, the State was not commenting on a *witness’s* failure to disclose certain facts; but rather, the State was improperly commenting on the defense’s failure to disclose to the State ahead of trial certain facts or concessions – an obligation which the defense simply does not have. As a result, the jury was misled into the false belief that the defense had somehow deprived the State of a fair trial or that the defense was ‘playing dirty’ or failing to comply with a discovery obligation that does not exist.

To be sure, the defense was not required to disclose to the State ahead of trial that it was relying on a two-person theory as part of its defense. And as such, it was

unfair for the State to tell the jury that it was an argument which the State was hearing “for the first time today.” With respect to the remaining comments, it appeared that the State relied upon the Court’s Watson rulings to argue to the jury that the defense was improperly conceding certain facts for the first time. However, notwithstanding the Court’s rulings with respect to what is appropriate for video narration, the parties are always permitted to make their respective arguments in closing.

In fact, the defense has always conceded, for example, that the State was permitted to argue in closing that it was Paul Caneiro on the garage video. The issue of whether it is appropriate for an officer – who was not present at the time and who has no prior familiarity with the defendant – to make an identification of the defendant in a video is a separate issue from whether the parties can argue the identification in closing. Here, the State not only improperly told the jury that the defense has ‘never acknowledged’ the defendant’s identity, but also improperly highlighted to the jury that the officers did not testify to that fact. These comments, individually and collectively, prejudiced the defense.

Next, in its summation, the State also made the following comment: “And in her opening, and again this morning, Ms. Mastellone said to you – *and I get it, I get it, she’s doing her job.*”⁵¹ The issue with this comment is that it sends a message to the jury that defense counsel is not making arguments that are meritorious, but rather, is simply saying things because ‘she has a job to do.’ Stated another way, this comment suggests that the defense “contrived” a defense, Rose, 112 N.J. at 52, or worse, “suggested that defense counsel was defending a man [s]he knew was guilty.” State v. Paziora, 2010 WL 2346592 at *11. For this reason, the defense objected to this comment, however, the Court overruled the objection. Nevertheless, the defense

⁵¹ (5:41:58)

maintains that this comment, particularly when considered in the totality of all other comments, was prejudicial to the defense. See State v. Lockett, 249 N.J. Super. 428, 433 (App. Div. 1991) (“A prosecutor is not permitted to cast unjustified aspersions on defense counsel's motives.”) (citing Sherman, 230 N.J. at 16).

Lastly, the State erroneously mischaracterized the defense’s argument that Keith, not Paul, was stressed about money in November of 2018 because unlike Paul, Keith did not have significant disability income to fall back on. Specifically, the State told the jury:

“And it’s almost like, are we criticizing Keith because he didn’t have disability to fall back on? Like, does that make him a bad guy? Like, everybody should have disability and still be able to work at the family business? . . . Keith doesn’t have that fall back, right? Paul has disability, right? That’s what they’re arguing to you.”⁵²

This statement constitutes denigration of the defense that is rooted in a mischaracterization of the defense’s summation. It erroneously suggests that the defense was villainizing the victim, Keith, by “criticizing” him for not having disability and classifying him as “a bad guy” – neither of which the defense ever argued or even suggested.

iv. In Its Summation, the State Also Improperly Opined on the Defendant’s State of Mind – Without Any Evidence to Support It.

During its summation, there were several instances where the prosecutor improperly opined on the defendant’s state of mind. These speculative comments were unsupported by the actual evidence and also improperly highlighted the fact that the defendant never testified.

⁵² Id. at 6:49:40.

First, in attempting to explain to the jury why their alleged perpetrator, the defendant, was “sloppy” in the way he allegedly committed the crimes, the prosecutor stated:

- ***“The problem with murder, especially when you kill your niece and your nephew, is that no matter how ruthless the crime is or your intent is, you still never know how you’re going to react after something like that. I mean, none of us know. And he just annihilated his nephew and his niece[.]”***⁵³
- ***“[It’s] because of what he just did. And the effect, no matter what you think of Mr. Caneiro, the effect that what he did to those little kids had to have had on him. Had to have.”***⁵⁴
- ***“And he’s driving home . . . And he’s got that voice in his head, right? He’s thinking about that special bond with Jesse. He’s thinking about ‘God what I just did to my niece.’”***⁵⁵

Through these statements, the prosecutor is offering an unqualified expert opinion on human behavior and the effects that committing crimes such as these would have “had to have” had on a person i.e. the defendant Paul Caneiro. This testimony is not based on any evidence presented at trial. The State never offered expert testimony to this effect. There certainly was no basis to speculate to the jury what Paul was “thinking” that evening or that he had a “voice” in his head. See State v. Atwater, 400 N.J. Super. 319, 337 (App. Div. 2008) (finding that the prosecutor’s comment that the defendant was “closing in on the kill” had the “capacity to unfairly influence the jury and deprive the defendant of a fair trial” because “[t]here was no evidence whatsoever that defendant acted intentionally or that he was in any way focused on hitting the victims, as this remark suggests”); Lockett, 249 N.J. Super. at

⁵³ Id. at 5:43:29.

⁵⁴ “Trial Day 19” (2-12-26) at 22:00.

⁵⁵ “Trial Day 18” (2-11-26) at 5:45:55.

433 (finding that it was improper for the prosecutor to “falsely suggest[] that defendant smiled after striking the victim with his automobile” because there was “no evidence of this baseless accusation”).

Moreover, these comments are prejudicial because they further highlight the fact that the defendant never testified. That is, the prosecutor, through these comments, is speaking for the defendant in a manner that reminds the jury that they never heard from Paul or what his perspective was. Instead, they are hearing what the prosecutor is speculating the defendant’s perspective was, without any evidence to support it. These comments, like the others discussed herein, prejudiced the defendant.

In a similar vein, the prosecutor also inserted unsupported speculation of how the defendant felt about his brother, Keith. There were numerous witnesses who testified to the fact that the defendant loved his brother very much and would do anything for him. Not a single witness testified to the contrary. Yet, the prosecutor argued in summation that “*I think [Paul] feels underappreciated*”⁵⁶ and that “*Paul’s sick of having to deal with, in his mind, this BS from Keith.*”⁵⁷ These unsupported comments prejudiced the defense because they undermined the defense that Paul would never murder his brother and family, whom he loved wholeheartedly. This state of mind alleged by the prosecutor in summation was never established during the trial, and results in the prosecutor speaking for Paul.

⁵⁶ *Id.* at 5:47:00.

⁵⁷ “Trial Day 19” (2-11-26) at 45:55.

v. The State Additionally Argued Many Other Facts Not in Evidence, Which Prejudiced the Defendant.

“Prosecutors must argue based on facts in the record.” Timmendequas, 161 N.J. at 595 (citing State v. Moore, 122 N.J. 420, 462, 585 A.2d 864 (1991)). In fact, prosecutors are “duty bound” to do so. See Acker, 265 N.J. Super. at 357. As noted supra, it is improper for prosecutors to “make inaccurate legal or factual assertions during a trial and that they must confine their comments to evidence revealed during the trial and reasonable inferences to be drawn from that evidence.” State v. Smith, 167 N.J. at (2001) (citing Frost, 158 N.J. at 86)); see also Feaster, 156 N.J. at 58-59; State v. McGuire, 419 N.J. Super. 88, 145 (App. Div. 2011).

Among various other comments unsupported by the evidence, a few statements stand out as particularly prejudicial. First, as noted above, the defense argued that the evidence supported a two-person perpetrator theory. One item of evidence that the defense argued supported this theory was that there were two – not one – pairs of jeans. (One pair being the item that was separated out by the DNA lab, and the other pair being the item that was melted to a yellow crate). The prosecutor argued to the contrary: that both of these items were the same (one) pair of jeans.

However, in a further attempt to dispel the defense’s theory, the prosecutor told the jury that the DNA lab did not test the second item of jeans melted to the yellow crate because “*they saw that they were one pair of jeans.*”⁵⁸ This assertion was extremely prejudicial to the defense because it erroneously suggested that the qualified DNA experts were somehow able to determine that there was only one pair of jeans. The prosecutor therefore improperly “implic[d] to the jury that he possesses

⁵⁸ Id. at 1:37:21.

knowledge beyond that contained in the evidence presented[.]” Feaster, 156 N.J. at 59 (citing Rose, 112 N.J. at 519).

Indeed, no witness ever testified to this. No State lab technician or anyone else for that matter ever testified that the reason the lab did not test the second item of jeans is because they concluded that it was the same one pair of jeans.

In fact, Allison Lane from the New Jersey State lab explained the precise reason that they do not test every item: “The laboratory does the analysis for the entire State of New Jersey, so we employ case management and not every item in a case can get analyzed at a given time. We know we can always go back and do more analysis if deemed necessary.”

Thus, the reason that the second jean item was not tested is because of the State Lab’s attempt to manage their high caseload. Not for any other reason. As such, not only was this argument to the jury unsupported the testimony, but it was contrary to the testimony as well.

Worth noting, this was not the only time that the prosecutor offered inaccurate and unsupported testimony about the DNA lab. As noted supra, the prosecutor argued at one point that “*you can’t swab every single place where there’s blood. State police, I think you heard, they’re not going to test it all – that’s for sure.*” This testimony was also misleading and mischaracterized the trial testimony: no witnesses ever testified that they were somehow limited in the amount of swabs they could obtain; nor did anyone from the state lab ever testify that they would refuse to test all items submitted. Rather, they explained that “not every item in a case can get analyzed *at a given time*” and that they “know we can always go back and do more analysis if deemed necessary.” In fact, Ms. Lane was specifically asked whether she would test “all 10” swabs if 10 swabs had been submitted to her, and she again

explained that no, she would not test all 10 swabs at once because they have “limited resources” however, she again noted that she “can always go back and do more testing.”

Another instance where the prosecutor argued a fact not in evidence is when the prosecutor stated:

“And ultimately, *you’ll find that [Paul]’s using that scarf wrapped around a knife stabbing Sophia* because we know from the DNA and we knew this early on that Sophia’s blood is on the handle of this knife. . . . *Wraps the scarf around his hand with the nitril glove.* That’s why that facial injury slamming into her face, pierced her brain – God help me – that’s why I got DNA off the handle of the knife.”⁵⁹

This speculative statement, like the others noted herein, is not supported by any of the testimony. No witness testified to this fact, nor is it a ‘reasonable’ inference that can be drawn from the evidence presented. There is no basis in the trial record to support the notion that anyone, let alone the defendant, wrapped a scarf around the knife or his hand.

Next, the prosecutor also argued that the defendant, prior to allegedly leaving his home and committing the murders, was upstairs in his room practicing his target shooting with his laser light and other Sig Sauer gun. Specifically, the prosecutor told the jury:

- “He’s up in his room. *Paul’s up in his room playing with the laser kit, Sig Sauer.*”⁶⁰

⁵⁹ “Trial Day 19” (2-12-26) at 7:51:50.

⁶⁰ “Trial Day 18” (2-11-26) at 1:21:55.

- “1:27 AM, Paul plugs in his iPhone. *Probably just after practicing with the laser light and that other Sig Sauer.*”⁶¹

To be clear, the evidence presented at trial was that the defendant was upstairs in his room sleeping beginning at 3 PM that day. The evidence was also that the laser kit and second Sig Sauer were found in his room when it was searched. However, there was no evidence whatsoever that the defendant was “playing” or “practicing” with his laser light and second gun just prior to allegedly murdering his family.

In State v. Feaster, supra, our Supreme Court took issue with the prosecutor arguing in summation that the defendant “loaded the weapon during the car ride” because that statement “had no basis in the record and was highly improper.” 156 N.J. at 62. In that same case, our Supreme Court found, “Equally unavailing is the State's argument that because Georgetown Road runs on the “blind side” (the garage side) of the Family Texaco, an inference that defendant approached in this manner was supportable.” Id. at 63. Like the first statement, there was “no evidence adduced at trial” to support this statement. Ibid. See also, Atwater, supra, 400 N.J. Super. At 336-37.

Similarly, in State v. Lockett, also discussed supra, our appellate division took issue with the prosecutor’s statement that the defendant had “smiled” after hitting the victim with his vehicle. 249 N.J. Super. at 435. The court explained, “The jury would be justified in concluding that a driver who smiled after striking down a helpless pedestrian certainly manifested extreme indifference to human life. The statement was highly prejudicial.” Ibid.

Here, in the same vein, the prosecutor made statements that, if true, would certainly support a finding that the defendant was the murderer in this case. In other

⁶¹ Id. at 3:23:42.

words, the State was arguing that Paul Caneiro was engaging in target practice just prior to the murders because he was preparing for his kill. However, there is no evidence that the defendant was doing this, and the defendant was thus prejudiced.

Finally, the defense raised the point that the defendant could not have started the small garage fire because it occurred approx. 1.5 minutes after he had already pulled his wife's vehicle out of the driveway and pulled it in front of his house. And, because it was gasoline fueled, so (as testified to by the State's expert John Lightbody), the fire would have ignited instantaneously. The State presented no evidence to the contrary. However, in closing, the State offered two opposing, speculative explanations. First, the State offered:

“Now, I’d suggest to you that when you look at that, it’s impossible to say that there wasn’t someone there i.e. Mr. Caneiro, who came out of the car and went back up there. It would have been as simple as we said, his family gets in the car, but the wife went back inside, his daughter was calling 911, and I don’t know exactly when she got in the car. They all got in the car. There’s no doubt about that. But what if he just pulls the car out onto the street and whether the family’s there yet or not, if they are, ‘I forgot to shut the garage door.’ Boom. Towards the freaking car because that’s the car that you just used to kill everybody.”

And second, the State alternatively opined:

‘[H]e either set that fire right before he pulled the car out and it just took a minute or he went back up.

Although the State took the position that “it’s impossible to say that there wasn’t someone there,” and that you could possibly “see some movement in that area,” the State criticized the defense for arguing that it could be someone other than Paul Caneiro. Both of these alternative explanations are speculative and unsupported by

the evidence. There was no evidence that Paul Caneiro ever went back toward the garage after he pulled the car out. Nor was there any evidence that the garage fire was set in such a way that it would or could have resulted in a delayed combustion. In fact, the State's own expert testified to the opposite: that gas ignites immediately. In effect, the State substituted its own non-expert opinion for that of its own expert in an effort to explain away a valid point raised by the defense.

In short, these summations errors both individually and cumulatively prejudiced the defendant to the extent that he was denied a fair trial, and a new trial is warranted.

POINT III

THE COURT'S REQUEST FOR EX-PARTE LETTERS PREJUDICED THE DEFENSE.

“Rule 1:2–1 requires [a]ll trials, hearings of motions and other applications ... [to] be conducted in open court[.] Compliance with this requirement is mandated by the ‘due process requirements of the Fourteenth Amendment.’” *In re Duboy*, 410 N.J. Super. 190, 201 (App. Div. 2009) (citing Pressler, Current N.J. Court Rules, comment 1 on R. 1:2–1 (2010)). “Consequently, except in unusual circumstances, a trial court should not communicate ex parte with a party or witness, even with the parties' consent.” *Id.* at 201-02 (citing *In re Yaccarino*, 101 N.J. 342, 385 (1985)). “Moreover, in a circumstance where such a communication may be justifiable or occurs accidentally, the court must promptly place the contents of the communication on the record and afford the parties an opportunity to seek recusal or other appropriate relief.” *Id.* at 202.

In this case, months prior to trial, the Court suggested during an off-the-record conference with all parties present that the defense provide the Court with an ex-

parte letter regarding its defense, and more specifically, regarding Corey Caneiro. The Court evidently extended this suggestion to the State as well, although this was not clear to the defense at the time of the conference.

Notwithstanding the Court's suggestion, the defense elected not to provide an ex-parte letter ahead of trial. Once the trial commenced, however, the Court twice during the first day of trial encouraged defense counsel at side bar to submit an ex-parte letter that proffered the information which the defense possessed pertaining to Corey Caneiro and its defense. These requests by the Court occurred after the Court accused the defense of not having a good-faith basis to ask a certain question on cross-examination.

The first occasion occurred when the defense asked Ben Paolucci, a close friend of Keith's, a series of questions concerning what the police failed to ask him when they took a statement from him. After counsel asked the question, "*They didn't ask you if there was anyone in the family who had any tendencies of violence, did they?*" the State objected.⁶²

At sidebar,⁶³ the State asked that the defense cite a rule as to how the question was relevant. The Court then stated, "**believe me, she better**" and demanded that defense counsel cite a rule. Uncertain what the Court was referring to, counsel attempted to explain the narrow purpose of the question i.e. "I'm asking what they failed to ask him," however, the Court interrupted and in an accusatory fashion, chastised defense counsel, stating:

**"That's not what you're doing. That's not what you're doing.
Don't tell me – I saw what you did. So don't do it. Do not mess**

⁶² "Trial Day 1" (1-12-26) at 7:50:38.

⁶³ Courtsmart (1-12-26, PM session) at 2:43:4 to 2:50:10.

around. I'm telling you right now that you need a good basis to ask these questions. So far, **there is no basis to ask these questions.** You want to say all the things they didn't ask? Fine. But to call somebody else vicious or violent or whatever other words, **you better have a basis behind that before you ask it. You don't have one at this moment.**"

Defense counsel attempted to speak, however the Court again interjected:

"I'm not done! Be careful."

Counsel then advised – given the general nature of her question – that she was uncertain what the Court was asking. She asked if the Court was inquiring whether there were family members who have exhibited tendencies of violence. The Court then said "I don't know. **I'm asking what it is because no one has told me that.**" Defense counsel then advised the Court, to the best of her recollection, of the slew of charges, arrests, and restraining orders that Corey Caneiro has had in the past. Counsel also clarified, "I truly am asking, just that they didn't ask this question." In response to a comment by the State, counsel stated, "I'm simply asking that they did not ask. That's the point. They did not ask."

When the Court indicated that the question could open doors, counsel for a third time confirmed the limited purpose of her question: "Again, I'm only asking what they failed to ask him to demonstrate that they didn't actually try to conduct a more thorough investigation. That's it. I'm not asking what the answer is, I'm just asking if they asked that question. That's all." Because counsel had a copy of the witness's statement, counsel knew this question was never asked and thus anticipated that the witness's answer would be "no."

The Court permitted counsel to ask the question, however, while still at sidebar, the Court stated:

“Remember how I said before the trial started, that if we’re going to go down a certain path, that it would be a good idea to provide the Court with law in advance so that I would have a good understanding of where we were going. So far, I have not received that from the defense. . . . I would suggest that you guys give me something so that I have more of a basis to know where you’re going – and again – I’m not going to take your strategy away. You can send it to me privately. They don’t have to see it. But I at least have to know where you’re going.”

In response, defense counsel informed the Court that it was intending to supply the Court with something before Corey Caneiro testified. Thereafter, the second occurrence was at the end of the day after the jury was excused. The Court called up counsel to sidebar (off-the-record) and again asked defense counsel to submit something ex-parte to the Court as discussed at the earlier sidebar.

In light of the Court’s repeated requests for the ex-parte letter, along with the Court’s accusations against counsel that she either did not have a good-faith basis for asking certain questions, the defense prepared a comprehensive 24-page letter pursuant to the Court’s request. The letter was submitted ex parte on January 19, 2026. (Exhibit).

The following day, on January 20, 2026, the defense learned, for the first time, that evidently the State had submitted an ex-parte letter back in December 2025, weeks prior to the start of trial. The context in which the defense learned this is as follows. On that same date, the State had informed the Court ex-parte that it was possibly intending to call Corey Caneiro the next day. In light of that information, and the timing of defense counsel’s letter (the day prior), the Court had concerns about whether it was ready to rule on the admissibility of the information proffered by the defense. After an off-the-record conference, the State agreed to hold off on

calling Corey Caneiro. Ultimately, everyone agreed to hold a conference later that week to discuss the issues related to his testimony.

On Friday, January 23, 2026, the conference was held in court, with the defendant present, however it was off the record. During this conference (discussed supra in Point I), the Court went through the defense's proffer letter and indicated to the parties how the Court was inclined to rule as to each potential topic of cross examination. As the Court went through each portion of the defense's letter, the defense and the State had an opportunity to clarify or argue the issues. The defense, concerned that the disclosure of this information to the State could impede the defense, requested that the State not disclose the contents of the conference to Corey Caneiro, to which the State agreed.

However, the State's letter was never discussed and to this day, as of the writing of this brief, the defense has never been advised of what is contained in the State's letter. Notably, the defense did raise the question at the first initial off-the-record sidebar conference on 1.20.26 whether that letter should be discoverable to the defense.

On Tuesday, January 27, the Court issued a 49-page Order & Opinion addressing the issues related to Corey Caneiro and ruling accordingly. This notwithstanding, neither the State nor the defense ever called Corey Caneiro as a witness at trial.

The prejudice to the defendant is the Court's interference in this case. First, as a result of the Court suggesting the submission of these ex-parte letters months before trial, the State provided an ex-parte letter to the Court – entirely unbeknownst to the defense. While the defense has no knowledge or information as to what is

specifically contained in this letter, the defense can only assume that it contained some sort of proffer of information concerning Corey Caneiro.

The issue is that, because the defense was never informed that the State had provided a submission, let alone what was contained in the submission, the trial began without the defense having an opportunity to respond to, or rebut, what was in the State's letter. As a result, it appears the Court began making evidentiary rulings based on information that was incomplete and one-sided. The defense can only assume this is what prompted the Court's conduct as far as chastising and accusing the defense of not having a good faith basis to ask certain questions. Learning on January 20th that the State had already provided a letter to the Court weeks prior to the start of trial, suddenly put into context the Court's January 12th comments that "there is no basis there to ask these questions," "you don't have [a basis] at this moment," and "no one has told me that."⁶⁴

Gatekeeping the State's submission from the defense – both in substance and the fact that it was submitted – prevented the defense from having the opportunity to respond in kind. To be sure, trial courts serve a gatekeeping function. However, what occurred here does not fall within an appropriate exercise of that function. See generally, State v. Gerena, 249 N.J. 304 (2021); State v. Santamaria, 236 N.J. 390 (2019); State v. Williams, 240 N.J. 225 (2019); In re Accutane Litigation, 234 N.J. 340 (2018); Borough of Saddle River v. 66 East Allendale, LLC, 216 N.J. 115 (2013); State v. Chen, 208 N.J. 307 (2011).

At the very least, the defense should have been made aware that a submission was provided by the State so that the defense could move to compel a copy of it under the discovery rules, and if denied, appeal interlocutory a denial of that ruling.

⁶⁴ Courtsmart (1-12-26, PM session) at 2:44:30 to 2:45:00.

And/ or alternatively, the defense could have responded via letter sooner, and/ or the defense could have filed an affirmative Motion for the Court to rule on, with an opportunity to argue the issues more comprehensively on the record. Regardless, faulting the defense in the midst of trial for not providing information to the Court about its defense, while at the same time not disclosing that the State had provided a submission, was fundamentally unfair.

Additionally, the defense was left with the residual concern that all of the information discussed in its letter and at the conference was now disclosed to the State, and in essence, the State had a roadmap of the defense's cross examination. Given the way that this issue transpired in the midst of trial, the defense was left with limited options as far as how to proceed.

In short, the defense was prejudiced by these ex-parte communication requirements and by the fact that the court did not "promptly place the contents of the communication on the record and afford the parties an opportunity to seek . . . appropriate relief." Id. at 202.

POINT IV

CUMULATIVE ERROR WARRANTS A NEW TRIAL

It is recognized that a defendant is not entitled to a perfect trial. State v. Wakefield, 190 N.J. 397, 537 (2007) (citations omitted). However, it is also a fundamental tenet that our system protects the right that a defendant has to a fair trial. Ibid. "Thus, . . . where 'legal errors . . . in their aggregate have rendered a trial unfair, our fundamental constitutional concepts dictate the granting of a new trial[.]'" Id. at 538 (quoting State v. Orrechio, 16 N.J. 125, 129 (1954)). "[T]he predicate for relief from cumulative error must be that the probable effect of the cumulative error was to render the underlying trial unfair." Ibid.

This principle was recently reaffirmed by our Supreme Court in State v. Butler, -- A.3d -- (2026 WL 515653). Just last month, our Supreme Court held that a new trial is warranted “if the cumulative effect of a series of errors is so great as to deprive a defendant of a fair trial.” Id. at *14 (quoting Burney, 255 N.J. at 29). The analysis is not focused “on the number of mistakes but rather [] whether the errors together amount to an injustice.” Ibid (citing Comprehensive Neurosurgical, P.C. v. Valley Hosp., 257 N.J. 33, 85-86 (2024)). “[I]f the combined effect of multiple errors deprives a party of a fair trial,” then a new trial should be ordered. Ibid (quoting Torres v. Pabon, 225 N.J. 167, 191 (2016)); see also State v. Jenewicz, 193 N.J. 440 (2008) (holding that the impact of cumulative error required reversal, notwithstanding that the State presented “powerful” evidence to undermine the defendant’s defense); State v. Hunt, 25 N.J. 514, 536 (1958) (reversing a murder conviction based on cumulative error); State v. Orecchio, 16 N.J. 125 (1954) (“[W]here any one of several errors assigned would not in itself be sufficient to warrant a reversal, yet if all of them taken together justify the conclusion that defendant was not accorded a fair trial, it becomes the duty of this court to reverse”);

Here, “[t]he cumulative effect of these errors cannot be overlooked.” Butler at *15. “The State's framing of the case blurred the lines between facts properly before the jury” and the improper, unsupported information and speculation argued by the State in summation. Thus, assuming *arguendo* that each of the errors detailed supra did not alone violate fundamental constitutional rights, in the aggregate these errors denied the defendant a fair trial. Thus, a new trial is warranted.

POINT V

**THE JURY'S VERDICT AS TO COUNTS XIII AND XIV
WERE AGAINST THE WEIGHT OF THE EVIDENCE.**

Pursuant to Rule 2:10-1, "In both civil and criminal actions, the issue of whether a jury verdict was against the weight of the evidence shall not be cognizable on appeal unless a motion for a new trial on that ground was made in the trial court."

Here, the evidence presented in this case, even with all favorable inferences afforded to the State, was not sufficient for a finding that the defendant stole or misappropriated funds in an amount of \$75,000 or more. In fact, the State conceded this and unequivocally told the jury no less than three separate times that it was only asking the jury to find the defendant guilty of stealing and misappropriating in the \$500 to \$75,000 range, not more. Specifically, the State told the jury in closing:

- "[H]e got caught stealing somewhere probably under \$75,000 . . ." ⁶⁵
- "We're going to ask you to find between \$75,000 and \$500 . . . Not above \$75,000." ⁶⁶
- "When I submit you find Mr. Caneiro guilty of theft, there's over \$75,000 and then there's \$500 to \$75,000. Conservatively, there's no doubt. We will ask you to find in that range." ⁶⁷

Additionally, during this last statement to the jury, the State's PowerPoint slide read:

TOTAL THEFT OF \$43,500 IN 2018
Adding in 2017, **the Theft is slightly under \$75,000**

⁶⁵ "Trial Day 18" (2-11-26) at 5:27:02.

⁶⁶ "Trial Day 19" (2-12-26) at 32:11.

⁶⁷ Id. at 1:13:30.

(Emphasis added). Thus, despite a lack of evidence, and even with the prosecutor's acknowledgment, the jury still found the defendant guilty of the highest value range. This only further demonstrates the jury's animus toward the defendant. In light of the above, at the very least, these Counts were against the weight of the evidence.

CONCLUSION

In light of the foregoing, and for all of the reasons and authorities cited herein, the defendant respectfully requests that his Motion for a New Trial be granted.

Sincerely,

/s/ Monika Mastellone

Monika Mastellone, Esq. 122942014

/s/ Andy Murray

Andy Murray, Esq. 007752008

CC: AP Christopher Decker;

AP Nicole Wallace