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STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	MONMOUTH COUNTY COURT
Plaintiff,	:	LAW DIVISION - CRIMINAL
	:	
v.	:	INDICTMENT NO.: 19-02-283-I
	:	PROSECUTOR FILE NO.: 18-004915
PAUL CANEIRO,	:	
	:	**NOTICE OF MOTION TO PRECLUDE**
Defendant.	:	**SELECT STATEMENTS ALLEGEDLY**
	:	**MADE BY THE DEFENDANT**

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

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

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

Dated: June 9, 2025

State of New Jersey

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June 9, 2025

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

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

Motion in Limine to Preclude Select Statements Allegedly Made by Defendant

Dear Judge Lemieux:

Please accept this letter brief in support of the defense's Motion in Limine to Preclude Select Statements Allegedly Made by the Defendant.

RELEVANT FACTS

Previously, the State filed a Motion to Admit Statements made by the defendant, Mr. Paul Caneiro. On April 8, 2025, this Court held a 104(c) hearing, during which the State called 5 witnesses to testify about the defendant's alleged statements. For three of those witnesses – Barnhard, Marino, and Redmond – those statements were recorded on BWC. However for the

remaining two witnesses, Fire Marshal Flannigan and Det. Brady, the alleged statements were entirely unrecorded.

On May 6, 2025, the Court ruled that the defendant's statements were made voluntarily and thus were admissible at trial. The Court also ordered the State to provide the defense with "written notice of the specific statements it seeks to admit by May 30, 2025, so that Defendant has adequate notice before trial."

On May 30, 2025, the State supplied the defense with a letter containing the statements that the State seeks to admit against the defendant at trial. Noticeably absent[1] in the letter was a statement that defendant allegedly made to Fire Marshal Flannigan that he "didn't have any enemies." Specifically, Fire Marshal Flannigan testified at the 104 hearing as follows:

> **Q:** . . . as far as your report, which you were referencing, is it complete as far as what Mr. Caneiro supposedly said?
>
> **A:** Yes, ma'am.
>
> **Q:** Okay. So, there's nothing that you would later say that he said that's not contained in your report.
>
> **A:** There was one thing on my report, my notes that I did not put in my report. And that was Mr. Caneiro mentioned that he didn't have any enemies. And I didn't ask that question.

(T:43-1 to 10). Fire Marshal Flannigan later elaborated as follows:

> **Q:** Okay. You indicated on cross examination that Mr. Caneiro made a statement to you that he has no enemies. Do you recall that?
>
> **A:** Yes.
>
> **Q:** Can you explain how that came about and when that was?

[1] The defense notes that clarification was sought because this statement was noticeably absent. However, for all other statements, the defense is relying upon the accuracy of the State's letter and will object to any additional statements testified to at trial that are not contained in the letter.

A: He just said it.

Q: When was that the first or second time?

A: Second time.

Q: Okay.

A: I believe.

Q: Did you ask him any follow up questions with regard to that?

A: No.

(T:61-12 to 25).

The actual phrase included in Flannigan's notes simply states "enemys [sic] – no." Importantly, Fire Marshal Flannigan made clear on more than one occasion that he had no independent recollection of the events or his conversations in this case and was relying heavily on his report, which he reviewed no less than 10 times during the hearing. (T:19-6 to 16; T:35-3 to 20; T:59-11 to 60-6). Notably, even his report, upon which he was relying to testify, was written 8 days later. (T:35-21 to 36-13). He even noted during his testimony that he "believe[d]" the defendant made this statement – not that he, in fact, did.

On June 4, 2025, the State clarified that it was seeking to elicit this alleged unrecorded statement at trial, despite it being absent from its letter.

In addition, the State's letter includes an unrecorded statement allegedly made by Mr. Caneiro to Det. Brady, specifically, that during the time that police were searching defendant's vehicle, defendant allegedly stated, "that door is making me nervous." More specifically:

> **Q:** Okay. What, if any, statements did Mr. Caneiro make at the time that the car was being inspected?
>
> **A:** He made a statement of, that door is making me nervous.

Q: Do you know what he was referring to?

A: He was referring to the garage door to the house that was being looked at. There was a black burn mark near the bottom corner of the door next to a gas can. We were opening and closing that door looking, you know, putting some pieces together and investigating. And that's when he made that comment.

Q: Was that comment made in response to any questioning?

A: No.

(T:207-17 to 208-3).

Q: You also testified on direct to a statement Mr. Caneiro made, you believe he made at the time, which was that door is making me nervous.

A: Yes.

Q: Right? And you put it in quotes. And then you say, you did not question Paul as to why he felt this way, correct?

A: Correct.

Q: So, you didn't ask any follow up questions. You're not sure what he was referencing at that point.

A: It was just an observation that I heard.

Q: Something you heard, but there was no follow up.

A: No.

(T:246-5 to 18). Det. Brady also confirmed that this alleged statement was not in his notes taken simultaneously on scene, but rather, only put in his report which he wrote 2+ months later. (T:264-19 to 248-8).

For the reasons discussed below, the defense moves to preclude these two unrecorded statements from use against defendant at trial.

LEGAL ARGUMENT

POINT I

THESE TWO UNRECORDED STATEMENTS SHOULD BE PRECLUDED AS UNRELIABLE, IRRELEVANT, OVERLY PREJUDICIAL, AND CONTRARY TO THE DEFENDANT'S FIFTH AMENDMENT RIGHT AT TRIAL.

The admissibility of all evidence used in a criminal proceeding must be "clearly established." See State v. Harvey, 151 N.J. 117, 252 (1997) (J. Handler, dissenting) (quoting State v. Haskins, 131 N.J. 643, 649 (1993); Romano v. Kimmelman, 96 N.J. 66, 90; State v. Johnson, 42 N.J. 146, 171 (1964)); State v. Raso, 321 N.J. Super. 5, 17 (1999)). "Such a high standard is justified because freedom – indeed life – is at stake." Ibid (citing State v. Cary, 99 N.J. Super. 323, 333 (Law Div. 1968) aff'd, 56 N.J. 16 (1970)).

First, evidence must be competent and reliable. See State v. Chen, 402 N.J. Super. 62, 78 (App. Div. 2008) aff'd as modified, 208 N.J. 307, 27 A.3d 930 (2011); see also State v. Chen, 208 N.J. 307, 319 (2011) (explaining that unreliable evidence is not to be presented to the jury). Indeed, "[c]ompetent and reliable evidence remains at the foundation of a fair trial, which seeks ultimately to determine the truth about criminal culpability." Chen, 402 N.J. Super. at 62 (quoting State v. Michaels, 136 N.J. 299, 316 (1994)). "If crucial inculpatory evidence is alleged to have been derived from unreliable sources due process interests are at risk." Michaels, 136 N.J. at 316. As such, courts have a "responsibility to ensure that evidence admitted at trial is sufficiently reliable so that it may be of use to the finder of fact who will draw the ultimate conclusions of guilt or innocence." Ibid.

Therefore, the "foundation of our evidence rules, at least insofar as jury trials are concerned, is to provide the fact-finder with only reliable and probative evidence." State v. A.O.,

397 N.J. Super. 8, 30 (App. Div. 2007) (Weissbard, J.A.D. concurring). Thus, second, only evidence that is deemed relevant is admissible at trial. N.J.R.E. 402. "Relevance is a function of probative value; by definition, evidence is not relevant unless it has a '*tendency in reason to prove or disprove* any fact of consequence to the determination of the action.'" Chen, 402 N.J. Super. at 78 (citing N.J.R.E. 401) (emphasis in original). Importantly, "[e]vidence that is wholly unreliable has no tendency to prove or disprove anything." Ibid.

Third, even if the evidence has some probative value, if that 'probative value' is "substantially outweighed by the risk of: undue prejudice, confusions of issues, or misleading the jury" then the evidence may be excluded." See ibid; N.J.R.E. 403(a). "[T]he question is not whether the challenged testimony will be prejudicial to the objecting party, `but whether it will be unfairly so.'" Griffin v. City of East Orange, 225 N.J. 400, 421 (2016) (citing Stigliano v. Connaught Laboratories, 140 N.J. 305, 317 (1995)). "In order to prevent evidence which is excludable under N.J.R.E. 403 from reaching the ears of the jury, a motion in limine can be made to exclude it prior to trial." Biunno, et al, N.J. Rules of Evidence – Annotated at 216 (2025).

Here, these two statements that the State seeks to admit at trial are not reliable, are not relevant, and are prejudicial to the extent that any probative value they do offer is substantially outweighed by risk of undue prejudice.

With respect to Flannigan's statement, it must be first emphasized that he hardly recalls what happened that day, let alone what was supposedly said by Mr. Caneiro about 'enemies.' That is, first, Flannigan's notes simply indicate "enemys [sic] – no" and this supposed statement, as Flannigan acknowledged, never made its way into his report. Next, on cross, Flannigan claimed that Mr. Caneiro stated that "he didn't have any enemies." However, on redirect, Flannigan testified (agreed) that he "believe[d]" Mr. Caneiro stated that "he has no enemies." The statement

itself – which continually changes – is clearly not a reliable iteration of whatever it is that Mr. Caneiro allegedly stated. Also, due to Flannigan's lack of independent recollection about this statement, it cannot be determined – almost 7 years later – that his testimony about it is reliable. Importantly, reliability must be established and not simply assumed. Here, however, admission of this statement would be doing exactly that. With respect to Det. Brady's statement, he claims that Mr. Caneiro stated that a door was making him nervous. However, this statement appears nowhere in Brady's notes and was therefore not memorialized until 2+ months later when he finally wrote his report. As such, neither statement is reliable. Even further compounding the issue of reliability is the fact that neither statement was recorded. Therefore, there is no independent recordation or mechanism to confirm the reliability of these purported statements.

Nevertheless, the next issue with these statements is that they are not relevant to any disputed fact in issue. The burden is on the State to establish the relevance of these statements at trial. Thus far, they are simply alleged statements that Mr. Caneiro blurted out without further explanation or inquiry by the listener. Both Flannigan and Brady are testifying to a variety of statements that Mr. Caneiro made during the course of a conversation or on-scene interview that took place between them and Mr. Caneiro. However, in contrast, these statements were not made in connection, relation, or response to any questions posed by the interviewers. Thus, it is unclear what relevance, if any, these statements have to the State's case.

Bleeding into the next issue, is that without it being clear how these statements are relevant to the State's case, there is a substantial risk that the statements may easily "confuse" or "mislead" the jury. For what purpose are these statements being offered? What disputed fact do they have a tendency of proving or disproving? "Enemies – No" means what exactly? "That door is making me nervous" – means what exactly? Because these statements have no context whatsoever, it is

entirely unclear how they are relevant. In fact, that is precisely the point: any purported relevance suggested by the State will be based entirely upon speculation of what the State *thinks* these statements mean. The State had an opportunity to clarify these statements when they were originally made, however, neither Flannigan nor Brady elected to make such clarification.

As a result, if the State were permitted to introduce these statements, the only way by which the defense could counter the State's speculation would be to either ask objectional questions on cross or to call the defendant himself to the stand. With respect to the former, these questions would clearly call for speculation. Thus, the only way to explain the true intention of these alleged random statements made/ remembered out of context would be to have the defendant take the stand and explain them. This would, of course, be unduly prejudicial to the defense.

To be sure, no defendant should be compelled to take the stand at trial to explain evidence that has been admitted out of context. See U.S. Const., Amend. V. In State v. Marchand, 31, N.J. 223 (1959), our Supreme Court vacated the defendant's conviction for Arson when the State improperly introduced at trial statements made by the defendant which were not related to the instant investigation. The Court cited to another case, State v. Cohen, 97 N.J.L. 5 (Sup. Ct. 1922) to illustrate how the evidence was problematic:

> Chief Justice Gummere stated that the undoubted general rule is that whenever the statement of a party is put in evidence, all that was said by him at the same time and upon the same subject matter is admissible; and that the whole of it should be taken and considered together; but there is an important limitation to the rule. The proof in such case is to be confined to what was said upon or concerning those matters which are the subjects of inquiry or investigation. Every remark or observation made upon those topics is to be received as competent evidence, because they may essentially modify the character and purport of the whole conversation, and vitally affect what might otherwise appear to be explicitly asserted or denied. But if other subjects are mentioned, remote and distinct from

> that which is the object of inquiry or investigation, it is obvious that whatever may be said concerning them can have no tendency to illustrate, vary or explain it. **Everything pertaining to these additional and extraneous matters are to be rejected as irrelevant.** The opposing party is entitled to have all that was then said in relation to the inquiry laid before the jury; but the door is not thereby opened for the introduction of what was said in relation to an entirely different and unconnected matter, although in the same statement.

Marchand, 31 N.J. at 229-230 (citing Cohen, 97 N.J.L. at 9-10). (Emphasis added). The Court then further explained that, "evidence relating to defendant's credibility may not be offered in advance of defendant's appearance on the stand. The effect of such an attack would be to compel defendant to take the stand." Id. at 232. Likewise, "Depreciatory innuendoes and insinuations destitute of all probative substance may be very devastating to the protective rights of a defendant." Ibid (quoting State v. Bartell, 15 N.J. Super. 450, 458 (App. Div. 1951)).

Here, permitting the State to present the evidence that is comprised of defendant's irrelevant, out-of-context statements would cause the defendant to face an unduly unfair choice: either let the jury erroneously conclude the relevance of the statements as speculated by the State, or, take the stand to explain. This catch-22 is contrary to the intent of the Fifth Amendment and must be prohibited. Accordingly, these statements, which offer no relevance, no explanation as to what is meant by them, and whose significant to this case would be purely speculative, must be precluded at trial.

POINT II

BECAUSE MANY OF THE STATEMENTS WHICH THE STATE SEEKS TO ADMIT ARE UNRECORDED, THE JURY MUST BE GIVEN A HAMPTON/ KOCIOLEK CHARGE.

In State v. Kociolek, 23 N.J. 400 (1957), our Supreme Court discussed the inherent weakness of unrecorded statements allegedly made by the defendant. The Court highlighted the generally recognized risk of a witness misunderstanding or not accurately recalling the words allegedly used by the defendant:

> There are inherent weaknesses in this character of testimony: faulty memory, the danger of error in understanding and repetition. Such are the reasons for the rule. Bankers Trust Co. v. Bank of Rockville Center Trust Co., 114 N.J.Eq. 391, 400 (E. & A.1933). 'All verbal admissions' of the accused 'are received with caution.' Wilson v. United States, 162 U.S. 613, (1896).
>
> 'Aside from the danger of fabrication, **verbal admissions are regarded as unreliable evidence, because experience shows that they are frequently misunderstood, imperfectly remembered, and inadvertently made**.' Tousey v. Hastings, 194 N.Y. 79 (Ct.App.1909).
>
> There is a 'general distrust of testimony reporting any extra-judicial Oral statements alleged to have been made, including a party's admissions;' the 'great possibilities of error in trusting to recollection-testimony of oral utterances, supposed to have been heard, have never been ignored; but an antidote is constantly given by an instruction to the jury against trusting overmuch the accuracy of such testimony'; 'Verbal precision is of course important to the correct understanding of any verbal utterance, whether written or oral, because the presence or absence or change of a single word

> may substantially alter the true meaning of even the shortest sentence.'

23 N.J. at 421-422. (Emphasis added). The Court also went on to explain, " . . . the effect that this kind of testimony is dangerous, first, because it may be misapprehended by the person who hears it; secondly, it may not be well-remembered; thirdly, it may not be correctly repeated.' Id. at 422 (quoting Tilton v. Beecher, 2 Abbott's Rep. 837 (1875)).

Accordingly, in this case where the State intends to offer into evidence numerous unrecorded conversations – 2 between Flannigan and Mr. Caneiro and 5 between Brady and Mr. Caneiro – the defendant requests that a Hampton/ Kociolek charge be given to the jury. See State v. Hampton, 61 N.J. 250, 271–72 (1972) and State v. Kociolek, 23 N.J. 400, 421–22 (1957). "Hampton requires that a jury be instructed to view all the circumstances to determine whether a defendant's written, oral or recorded statement is true. If it finds it is not true, it must treat it as inadmissible and disregard it." State v. Jackson, 289 N.J. Super. 43, 51 (App. Div. 1996). "Kociolek provides for a similar but more detailed instruction, stressing the inherent weakness in oral unrecorded [statements]." Ibid.

CONCLUSION

For the forgoing reasons, the defense respectfully requests that the instant Motion in Limine be granted.

Sincerely,

/s/ Monika Mastellone
Monika Mastellone, Esq. 122942014

CC: AP Chris Decker; AP Nicole Wallace

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ATTORNEY FOR DEFENDANT, PAUL CANEIRO

STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	MONMOUTH COUNTY COURT
Plaintiff,	:	LAW DIVISION - CRIMINAL
	:	
v.	:	INDICTMENT NO.: 19-02-283-I
	:	PROSECUTOR FILE NO.: 18-004915
PAUL CANEIRO,	:	
	:	**ORDER GRANTING PRECLUSION**
Defendant.	:	**OF SELECT STATEMENTS**
	:	**ALLEGEDLY MADE BY DEFENDANT**

THIS MATTER having been brought before the Court by Monika Mastellone, Esquire, appearing, on behalf of the Defendant, Paul Caneiro, and Chris Decker and Nicole Wallace, Assistant Prosecutors, Monmouth County Prosecutor's Office, appearing for the State, and the Court having heard arguments of counsel and for good cause shown;

IT IS on this day of 2025, hereby **ORDERED** that defendant's Motion to Preclude select statements allegedly made by the defendant is **GRANTED**.

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