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

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

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

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

Dated: May 6, 2025

State of New Jersey

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May 6, 2025

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

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

Motion to Preclude Arson Expert Testimony

Dear Judge Lemieux:

Please accept this letter brief in lieu of a more formal brief in support of the defendant's Motion to Preclude Arson Expert Testimony.

FACTS AND PROCEDURAL HISTORY

On November 20, 2018 at 12:34pm, a 911 caller reported a fire at 15 Willow Brook Road in Colts Neck, New Jersey. Law enforcement officers responded. On February 21, 2019, Det. Joseph Cordoma of the Monmouth County Prosecutor's Office authored an "Origin and Cause Investigation" report about the fire at that location. Monmouth County Prosecutor's Office, Fire Investigation Report – Origin & Cause Investigation Scene (Feb. 21, 2019) (Exhibit A). Based on officers' physical examination of the scene, Det. Cordoma concluded that the fire originated in the basement storage structure. Id. at 19. Det. Cordoma also concluded that the fire was "slow burning," remaining in its "incipient stage" for "an extended period of time," "possibly hours after

the first ignition." Id. at 17-18. Det. Cordoma also concluded that the fire was "incendiary," which means it was intentionally set. Id. at 16-17.

Det. Cordoma has a PhD in Philosophy with a Major in Health Science. CV and Certifications of Joseph Cordoma at 2. (Exhibit B) He has testified as an expert four times in New Jersey since 2009, and never as an expert in fire investigation. Ibid. He completed a "Basic Course for Arson Investigators" in 2002. Id. at 8. In the last 23 years, he seems to have attended 94 hours of training in fire-investigation-related fields, however, his last training was in 2015. Id. at 9-26.

The defense retained Christopher Wood to review the materials in this case and determine whether there is any way, based on arson expertise, to determine the rate of the spread and growth of fire in this case. Report of Christopher Wood (Exhibit C). Mr. Wood has a Masters in Science in Fire Protection Engineering. CV of Christopher Wood at 2 (Exhibit D). Mr. Wood has been a Certified Fire and Explosion Investigator for 30 years. Id. at 5. Critically, he is a Principal Member and past Secretary of the National Fire Protection Association Technical Committee on Fire Investigations (responsible for NFPA 921). Id. at 3. Det. Cordoma wrote in his report that the fire investigation in this case "was guided with practices suggested" in NFPA 921, which "Sets the bar for scientific-based investigation and analysis of fire and explosion incidents." Exhibit A at 10.

LEGAL ARGUMENT

Det. Cordoma's report fails to meet the requirements of Rule 702 and likely relies on the testimonial hearsay of non-testifying experts. Because of the failure to meet the requirements of Rule 702, his opinion—in its totality or portions of it—must be excluded. In the alternative, a hearing must be held in order to determine which portions of his opinion are inappropriately based on hearsay obtained from other investigators.

Expert witnesses, use their special "knowledge, skill, experience, training, or education" to draw inferences from observed events. N.J.R.E. 702. In order for expert testimony to be admissible under N.J.R.E. 702, three requirements must be met:

(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror;

(2) the field testified to must be at a state of the art such that an expert's testimony could be sufficiently reliable; and

(3) the witness must have sufficient expertise to offer the intended testimony.

State v. Olenowski, 253 N.J. 133, 153 (2023) (Olenowski I).

Prong (1) requires that the testimony actually be helpful to the jury. State v. Berry, 140 N.J. 280, 291 (1995). Expert testimony is not helpful when it encompasses issues that are within the common knowledge of a lay person. Id. at 202.

Prong (2) requires that expert testimony also must be reliable and based on reliable information in order to be admissible. In other words, "[f]or an opinion to be admissible under N.J.R.E. 702, the expert must utilize a technique or analysis with 'a sufficient scientific basis to produce uniform and reasonably reliable results so as to contribute materially to the ascertainment of the truth.'" State v. J.R., 227 N.J. 393, 409 (2017) (quoting State v. Kelly, 97 N.J. 178, 210 (1984)). Even if the overall reasoning methodology is reliable, an opinion is not admissible unless that reliable methodology was in fact reliably applied "to the facts at issue." Olenowski I, 253 N.J. at 147. See also In re Accutane Litig., 234 N.J. 340, 378 (2018) (explaining that adopting Daubert helps to ensure "that only reliable and reliably applied expert testimony enters New Jersey's courts"). As the proponent of the evidence, the State has the burden to "clearly establish" that the testimony is sufficiently reliable under N.J.R.E. 702. State v. Cassidy, 235 N.J. 482, 492 (2018).

Prong (3) requires that an expert have sufficient expertise to offer reliable testimony on the issue at hand. This requirement relates to and supports the reliability requirement. "[T]he witness's proponent show that the witness has sufficient skill or knowledge related to the pertinent field or calling that her inference will probably aid the trier in the search for truth." 1 McCormick On Evid. § 12 (9th ed.). See also Prado Alvarez v. R.J. Reynolds Tobacco Co., 405 F.3d 36, 40 (1st Cir. 2005) (an expert witness "should have achieved a meaningful threshold of expertise[.]") A purported expert with insufficient training or education in a subject cannot be relied on to give a helpful, reliable opinion.

Expert opinion testimony must be distinguished from lay opinion testimony. Lay witnesses do not use specialized knowledge but rather testify on matters that are rationally based on the witness's perception and will assist the jury in understanding a fact in issue. State v. Watson, 254 N.J. 558, 591 (2023); N.J.R.E. 701. Lay witnesses are not allowed to offer "a lay opinion on a matter not within the witness's direct ken and as to which the jury is as competent as he to form a

conclusion." State v. McLean, 205 N.J. 438, 459 (2011) (internal quotation marks and alterations omitted).

Together, these rules and case law create two important limits on opinion testimony that are particularly relevant to this case. Expert opinions must be based on knowledge, training, and expertise that the jury does not have and that was reliably applied to the facts at issue. Neither expert nor lay opinions are "a vehicle for offering the view of the witness about a series of facts that the jury can evaluate for itself or an opportunity to express a view on guilt or innocence." Id. at 462.

A. Det. Cordoma Does Not Possess Sufficient Expertise To Be an Expert in Fire Investigation.

Det. Cordoma fails to meet prong (3) due to his lack of training and education in this complex field.

"Fire scene investigation is very challenging." OSAC, Fire & Explosion Investigation Subcommittee, Strengthening Fire and Explosion Investigation in the United States: A Strategic Vision for Moving Forward 3 (2021) (Exhibit E).[1] The National Fire Protection Association "is a nonprofit organization dedicated to fire prevention, and NFPA 921 is a document intended to 'establish guidelines and recommendations for the safe and systematic investigation or analysis of fire and explosion incidents.'" Russell v. Whirlpool Corp., 702 F.3d 450, 454 (8th Cir. 2012) (internal quotation marks omitted). It is the leading organization in the fire investigation field and produces two standard guides, which are considered authoritative. NFPA 921, the Guide for Fire and Explosion Investigations, and NPFA 1033, Professional Qualifications for Fire Investigator.[2] Det. Cordoma has been trained on both of these standards. Exhibit B at 9. OSAC has included both standards on the OSAC Registration of Standards, which "indicates that the documents are . . . .

[1] OSACs are established through the National Institute of Standards and Technology (NIST), which is part of the federal government. NIST, The Organization of Scientific Area Committees for Forensic Science, https://www.nist.gov/organization-scientific-area-committees-forensic-science (Last Visited July 17, 2024). OSAC "was created in 2014 to address a lack of discipline-specific forensic science standards. OSAC fills this gap by drafting proposed standards and sending them to standards developing organizations (SDOs), which further develop and publish them." Ibid.

[2] The most recent version of both manuals can be accessed for free at nfpa.org.

consensus standards that are well accepted by the fire and explosion investigation community and have met the standards of quality to be included in the Registry." Exhibit E at 2-3.

NFPA 1033 was written in order "To develop clear and concise job performance requirements that can be used to determine that an individual, when measured to the standard, possess the skills and knowledge to perform as a fire investigator." NFPA 1033-2022 at 1. NFPAA mandates that a "fire investigator shall remain current" in subjects including fire chemistry, thermodynamics, fire dynamics, explosion dynamics, fire investigation methodology, and fire investigation technology. NFPA 1033-2022 at 4.1.7. There is no evidence that Det. Cordoma ever had sufficient knowledge of these fields, but if he has, that knowledge would not be current, having not participated in any fire investigation training of any kind since 2015. Exhibit B at 26.

Additionally, NFPA 1033 requires that the "fire investigator **shall** complete and document a minimum of 40 hours of continuing education training every five years by attending formal education courses, workshops, and seminars," a requirement that Det. Cordoma does not meet, having not attended any training in a decade. NFPA 1033-2022 at 4.1.7.3. (Emphasis added). In order to "interpret and analyze the effects of burning characteristics of the fuel involved and the effects of ventilation on different types of materials," as Det. Cordoma purports to have done in his report, a fire investigator must understand, among other things, "fire chemistry, [and] fire dynamics, including compartment fire development." NFPA 1033-2022 at 4.2.5 Det. Cordoma's CV does not reveal he has any training or education that would enable him to understand these complex scientific principles.

Appropriate qualifications are necessary for the court to have confidence that the fire investigator can reliably context a fire investigation, a field that is very complex and which has been plagued by a lack of rigor and tendency toward unreliability over the decades. "As a forensic science discipline, fire investigation is challenged by the amount of widespread, persistent, and problematic myths affecting the beliefs and the behavior of its practitioners[.]" OSAC, Strengthening Fire and Explosion, at 6. In the words of OSAC, "[t]he methodology of fire investigation has changed dramatically over the last three decades, as the industry has moved from art to science." Id. at 25. See also State v. Rassmussen, 2017 WL 3013212, at *5 (Minn. Ct. App. July 17, 2017) (Kirk, J., concurring) ("Arson investigations have too often led to wrongful convictions with horrible consequences."). But the shift towards science—and away from the

folklore and gut instinct that is the reason arson investigation has led to wrongful convictions[3]—requires ensuring that people who testify in this field are actual experts who can understand and reliably apply that science.

As OSAC notes, a "challenge to the accurate representation of fire investigation evidence in court is the lack of the appreciation on the part of lawyers and judges for the lack of expertise of some in the fire investigation community." Exhibit E at 8. Nonetheless, the Daubert test was designed in part to assure that the expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152 (1999). Det. Cordoma does not have the training or education that an expert in the field should have, according to that field's standards. Therefore, he cannot bring the necessary rigor to his testimony. As gatekeeper, this Court has the duty to ensure that only investigators with sufficient expertise testify about this challenging field. Det. Cordoma does not have sufficient expertise to testify. His testimony must be excluded.

B. The Arson Report Contains Conclusions That Are Neither Appropriate Expert Opinions Nor Appropriate Lay Opinions. These Opinions Must Be Excluded.

In portions of the Det. Cordoma's report, he provides opinions that are not based on his training and experience. Rather, two of his opinions—(1) that the fire was slow burning and (2) that the fire was "incendiary"—are simply lay opinions. In reaching these opinions, Det. Cordoma was merely connecting the dots in a way that relied on his common sense, not his expertise in arson, and is unhelpful to the jury. For these reasons, he must be precluded from testifying about those two opinions.

Portions of the opinion proffered by the State's arson expert violates these rules. His opinion on the rate of spread of the fire is unreliable and not based on his technical expertise, but rather simply on his lay opinion, which he arrives at by considering evidence other than the fire

[3] See, e.g., https://innocenceproject.org/news/john-galvan-arthur-almendarez-and-francisco-nanez-are-exonerated/; https://innocenceproject.org/news/illinois-man-released-after-wrongful-arson-murder-conviction/; https://innocenceproject.org/news/texas-fire-marshal-discusses-arson-case-review/; https://innocenceproject.org/news/cameron-todd-willingham-wrongfully-convicted-and-executed-in-texas/

evidence itself. His opinion that the fire is "incendiary" is an inappropriate lay opinion on the ultimate issue in the case. Both of these opinions must be excluded.

1. The opinion on the rate of spread of the fire is unreliable.

First, Det. Cordoma's opinion that the fire spread slowly is unreliable and is not based on any technical knowledge or training. Det. Cordoma includes that "indicators" within the basement support the inclusion that the fire was in an "incipient stage for an extended period of time." Exhibit A at 17. That conclusion seems to be built entirely on the "presence of heavy soot." Ibid. **But Det. Cordoma failed to apply the scientific method when he failed to consider another hypothesis: that the fire was fast-burning.** Had he properly considered that hypothesis, he would not have been able to reject it. This opinion is unreliable and inadmissible.

Rendering a conclusion without testing all possible hypotheses is unreliable, unscientific, and a violation of the standards of the fire investigation filed. As NPFA 921 explains, "[a]ll hypotheses must be subject to rigorous testing through the scientific method" and cautions that "the inability to refute a hypothesis does not mean that the hypothesis is true." NFPA 921-2024 at 24 (emphasis added). The limited physical evidence noted by Det. Cordoma is consistent with a slow-burning fire. However, it is also consistent with the possibility that "there was solely a large flaming fire in the storage closet." Exhibit C at 5. As Mr. Wood explains, "[t]he fire scene evidence does not allow for the testing of these two hypotheses and subsequent falsification of one of the two hypotheses to the exclusion of the other." Ibid. That is because the fire patterns left in either scenario would look the same. Ibid. Either a slow-burning fire became a fast, flaming fire—as hypothesized by the State and its expert—**or** solely a fast, flaming fire would leave the same patterns behind because the flaming stage, which exists in both scenarios, "would mask any slow or smoldering fire effects and make the two fire regimes indistinguishable." Ibid. But Det. Cordoma failed to consider that relevant hypothesis, therefore settling on the only hypothesis he considered. That conclusion is unscientific and unreliable.

Further undermining the reliability of the opinion is that Det. Cordoma failed to mitigate exposure to information that would improperly influence his opinion, as required by NPFA 921 and other relevant standards in the field. "Unlike a quantifiable scientific measurement, the analysis, importance, and underlying cause of any given fire pattern, as well as a determination of how a fire developed based on those patterns, is mainly dependent on the subjective interpretation

of the examiner. The reliability and validity of fire scene examination based on fire pattern analysis are unknown, and the ambiguous nature of the examination lends itself to bias, misinterpretation, and misidentification." Paul Bieber, Fire Investigation and Cognitive Bias, Wiley Encyclopedia of Forensic Science 1 (2014). Fire pattern analysis is particularly prone to cognitive bias because the investigator generally is aware of domain-irrelevant information, conducts the investigation at the scene as opposed to the laboratory, and has close relationships with law enforcement. Id. at 2. Because of the subjective nature of the discipline and the potential for bias, it is all the more important that the specific techniques used in any given case are both reliable in general and reliable as applied to the case at hand.

The NFPA cautions investigators extensively about expectation and confirmation bias. NFPA 921-2024 at 24. As the Organization of Scientific Area Committees (OSAC) explained in 2021, "[e]xpectation bias arises when investigators reach premature conclusions. By not collecting and examining all of the relevant data, or by relying on irrelevant data, an investigator can form invalid conclusions." Exhibit E at 91. "Confirmation bias occurs when an investigator lapses into seeking to prove rather than refute a hypothesis. As the scientific method dictates, testing of the hypothesis should be designed to disprove that hypothesis. This testing needs to be sufficiently rigorous to discriminate among competing hypotheses." Ibid. In addition to those two biases is motivation bias, which "is a discrepancy, usually conscious, motivated by one's personal situation." Ibid.

To mitigate bias, the current best practice requires that investigations "consider only data that are relevant to the current task." Id. at 92. It is also recommended that technical reviews of work product should be performed, a procedure that seems not to have occurred in this case. Ibid. Neil Richard Morling and Marika Linnea Henneberg, Contextual Information and Cognitive Bias in the Forensic Investigation of Fatal Fires: Do these Incidents Present an Increased Risk of Flawed Decision-making? 62 Int'l. J. of L., Crime & Justice 1, 9 (2020) (reviewing research on cognitive bias and forensics that has emerged in the last 15 years and concluding that "[a]ll forensic investigations are potentially vulnerable to cognitive bias and contextual information is a common cause for creating such bias. The complementary nature of fatal fire investigations and the difficulties that investigators face in finding conclusive proof of the nature of the victim's death can leave these investigations more susceptible to bias. If the investigative process allows too much

contextual information to be provided to forensic practitioners then errors in decision-making may follow.").

Det. Cordoma wrote this report four months after the fire occurred. Like everyone else working on the case, and anyone reading the news, he must have been exposed to a tremendous amount of information about the case. He consulted with at least 11 other people before writing his report. Information about how tragic the deaths are in this case, that there is a suspect in custody, and the suspected timeline of the events of that day is information Det. Cordoma had *but did not need*. See Exhibit A at 19 (referring the reader to another report that relays the "potential timeline of events prior and after the reported fire incident"). The State's timeline of events requires this fire to have been slow burning. Det. Cordoma knew that when he wrote it.

In fact, Paul Caneiro had an undisputed alibi from 5 a.m. until 12:30 p.m. when the fire was discovered at 15 Willow Brook: he was stuck on scene at his own home with countless officers, detectives, EMS workers, and fire personnel who reported to the scene of the fire at his own home around 5 a.m. Therefore, the only way that the State can allege Paul Caneiro is responsible for the fire at 15 Willow Brook is to argue that he lit the fire prior to 5 a.m., but that it didn't set off any smoke alarms until 7.5 hours later, and therefore, that the fire was "slow-burning." When Det. Cordoma wrote this report months after Mr. Caneiro was charged with these crimes, Det. Cordoma knew that a slow-burning fire is the only theory that would fit the State's timeline of the case.

Mr. Wood, however, explains that it is impossible to reach a scientific conclusion about whether the fire burned at a slow or a fast rate **based solely by the fire scene evidence**. Exhibit C at 6. Because the fire evidence is so ambiguous, Det. Cordoma cannot be using a reliable methodology based on training and expertise to reach that conclusion. Instead, it seems that that opinion is based on information outside of any fire investigation expertise Det. Cordoma *may* have, and instead is based, at best, on timeline information gathered from other sources. That would be an inadmissible lay opinion masked as an expert opinion, because the jury is just as well-equipped to consider the other factual information in this case as Det. Cordoma is and draw whatever conclusion it sees fit. Such an opinion is not an expert opinion, even if given by a person with a specific area of expertise. As our Supreme Court has explained, "[a]n expert witness should distinguish between what he knows as an expert and what he may believe as a layman. His role is

to contribute the insight of his specialty." State v. Jamerson, 153 N.J. 318, 340 (1998) (internal quotation marks omitted). At worst, the opinion is based on speculation and bias.

In short, Det. Cordoma's conclusion about the rate of growth of the fire is unreliable. He failed to test alternate hypothesis and took no steps to mitigate the effect of cognitive bias in reaching his opinion. It must be excluded.

2. The opinion that the fire is incendiary is an inappropriate lay opinion.

Det. Cordoma also concluded that the fire was "incendiary." Exhibit A at 16, 17. Whatever merits that opinion may have during an investigation, it is not admissible at trial. This opinion is not an expert opinion, but rather an inappropriate lay opinion that violates Rules 701 and 403. It must be excluded.

NFPA 921 defines an incendiary fire as "a fire that is intentionally ignored in an area or under circumstances where and when there should not be a fire." NFPA 921-2022 at 3.3.124. NFPA 921 provides a long list of fire and non-fire related indicators that can be used to infer if a fire was deliberately set. These factors—which include absence of personal items prior to the fire, evidence of other crimes, indications of financial stress, over-insurance, owners with fires at other properties—have nothing to do with arson expertise or fire dynamics, and everything to do with personal ideas of how people behave. NPFA 921-2022 at 23.3 (delineating "potential indicators not directly related to combustion . . . that tend to show that somebody had prior knowledge of the fire."). Although the presence or absence of one or more of these indicators may offer circumstantial evidence regarding intent or motive, the evaluation of these indicators does not require any form of scientific, technical or specialized process and does not form the basis of an expert opinion.

The opinion about the intent and state of mind of the person who set the fire is inappropriate testimony. First, it is not expert testimony. It is not based on Det. Cordoma's expertise and training in arson investigation. It is merely a speculative inference drawn from the available physical evidence. See also Parisa Dehghani-Tafti & Paul Bieber, Folklore and Forensics: The Challenges of Arson Investigation and Innocence Claims, 119 W. Va. L. Rev. 549, 561 (2016) (the classification of the cause of a fire as accidental, natural, or incendiary "is not a forensic or scientific conclusion, and not truly an expert opinion at all."). Tellingly, Det. Cordoma rejects the

hypothesis that the fire was accidental because "[n]o competent accidental ignition source was identified during the fire investigation[.]" Exhibit A at 19. However, "no proven sources of ignition" were found in the closet at all. Id. at 16.

Det. Cordoma is connecting the dots one way: he doesn't think it makes sense for this fire to occur any way than purposefully. But he isn't relying on his expertise and training for that. He is using his common-sense. That's a lay opinion, not an expert opinion, and it's inadmissible. See Somnis v. Country Mut. Ins. Co., 840 F. Supp. 2d 1166, 1173 (D. Minn. 2012) (arson expert "may testify at trial that his examination of the fire scene failed to reveal an accidental cause for the fire. However, his opinion that the fire was incendiary would not be helpful because it would not tell the jury anything that lay persons could not logically deduce on their own; he would be drawing his conclusion in the same manner as lay persons, i.e., by exercising simple logic.") (internal quotation marks and alterations omitted); Ramsey v. Commonwealth, 105 S.E.2d 155, 159 (Va. 1958) ("In an arson case, a witness cannot, as a general rule, testify concerning his opinion as to whether the fire was or was not of incendiary origin, that being a question for the jury to determine, and upon which they can usually form their own opinion without any need of expert advice.") (internal quotation marks omitted).

Insofar as it requires any expertise, whatever it is, it is not what Det. Cordoma is being offered as an expert in, which is arson investigation. The opinion would be inadmissible on that basis alone. Jamerson, 153 N.J. 318 (2011) (pathologists' testimony that required expertise in accident reconstruction was inadmissible). See also Gayton v. McCoy, 593 F.3d 610, 617 (7th Cir. 2010) ("The question we must ask is not whether an expert witness is qualified in general, but whether his qualifications provide a foundation for him to answer a specific question.") (internal alterations and quotation marks omitted). There is no basis to suggest that Det. Cordoma is an expert on people's states of mind or motivations.

Even if this were somehow considered expert testimony about arson, it is inadmissible under our evidence rules and case law. Expert testimony that "embraces an ultimate issue to be decided by the trier of fact," N.J.R.E. 704, is not admissible unless the subject matter is beyond the ken of the average juror. State v. Simms, 224 N.J. 393, 403 (2016). See also McLean, 205 N.J. at 453 "experts may not, in the guise of offering opinions, usurp the jury's function by ... opining about [a] defendant's guilt or innocence[.]"); Jamerson, 153 N.J. at 340-41 (what the pathologist

"did know and the jurors did not were the psychological causes of the [victims'] death," but the pathologist "was in no better position . . . . to conclude that the collision as not an accident than the jurors themselves." If the jury were to find that Mr. Caneiro set the fire, whether he set the fire on purpose is the ultimate question of guilt on the arson charges and felony murder charges. Such testimony on his intent is inadmissible.

Last, even if it were expert testimony, it is unreliable. There is no methodology pointed to in Det. Cordoma's evaluation of the mental state of a person igniting a fire. Moreover, as discussed above, Det. Cordoma was exposed to a tremendous amount of biasing information in his assessment of the fire, further undermining the reliability of this conclusion. However Det. Cordoma arrived at that conclusion, the State cannot demonstrate that it was the result of a reliable methodology reliably applied, as N.J.R.E. 702 requires.

C. A Hearing Must Be Held To Determine If The Expert Relied On The Testimonial Hearsay Of Other Experts.

Less than a year ago, a critical case concerning admissibility of expert testimony was decided by the United States Supreme Court. In Smith v. Arizona, 602 U.S. 779 (2024), the Court ruled that experts cannot testify to hearsay statements relied upon in support of their opinions when those out-of-court statements are asserted for their truth. In other words, "[w]hen an expert conveys an absent [witness's] statements in support of the expert's opinion, and the statements provide that support only if true, then the statements come into evidence for their truth." Id. at 780. The Court explained that doing so violates the confrontation clause. Id. at 779, 783.

To be clear, the Court held, "the Confrontation Clause applies in full to forensic evidence." Ibid. As such, "the Clause bars the admission at trial of an absent witness's statements—however trustworthy a judge might think them—unless the witness is unavailable and the defendant had a prior chance to subject her to cross-examination." Id. at 784.

In this case, Det. Cordoma wrote in his report that **11 people** "were present during various stages of the Origin and Cause Investigation." Exhibit A at 5-6. Det. Cordoma also wrote that "Structural Fire Components and Utilities information was gathered by Deputy Fire Marshal Dean Stoppiello" in his report. Exhibit A at 7. The report mentions reports written by others throughout. Id. at 4, 5, 8, 9, 11, 14, 15, 16, 19. It is therefore unclear from the Origin and Cause Report whether Det. Cordoma's opinions come solely from his first-hand perception of the scene or whether he

relied on the reports and statements of others in coming to his conclusion. If the latter, Det. Cordoma's report and anticipated testimony presents Confrontation Clase issues. As the Supreme Court explained, when a testifying expert uses the work of another witness "to explain the basis" of his own opinion, that means the expert is relaying that other witness's statements "for their truth." Id. at 803. Because it is unclear how much of Det. Cordoma's opinion rests on his own perception and how much it rests on the perception and conclusions of others, a hearing must be held to determine the basis of his opinion prior to trial.

CONCLUSION

Det. Cordoma's opinion must be excluded. In the alternative, this Court must hold an evidentiary hearing to determine the basis and reliability of his opinion pursuant to N.J.R.E. 104 and consistent with Smith v. Arizona, supra.

Respectfully Submitted,

/s/ Tamar Lerer

Tamar Y. Lerer, Esq.
Attorney ID No. 063222014

Respectfully Submitted,

/s/ Monika Mastellone

Monika Mastellone, Esq.
Attorney ID No. 122942014

CC: AP Chris Decker; AP Nicole Wallace