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May 7, 2025

The Honorable Marc C. LeMieux, A.J.S.C.
Monmouth County Courthouse
71 Monument Park
Freehold, New Jersey 07728

Re: State of New Jersey v. Paul Caneiro
Indictment No. 19-02-0283; Case No. 18004915
Motion In Limine
Returnable: June 2, 2025

Dear Judge LeMieux:

Please accept the following letter in support of the above-captioned motion. On October 2, 2020, the State filed a Notice of Intent, outlining for the defendant and the Court various categories of motive-related evidence it would be admitting at defendant's trial and setting for the legal bases that permitted the admission of this hearsay and/or intrinsic and/or N.J.R.E. 404(b) evidence, see Pa1-13. By way of this notice, the State sought to provide defendant with the pre-trial "opportunity to consent the evidence by motion to exclude, should he see fit to do so." Pa1. To date, defendant has not moved for exclusion of the State's intended motive evidence.

Out of an abundance of caution, the State now moves before this Court for an in limine ruling approving of the admission of the motive evidence it identified for the defendant almost five years ago. In support of this request, the State will rely on the factual recitations and legal support contained in its prior submission, see Pa1-13, with the following supplementation.

The State's motive evidence centers around the intertwined finances of the defendant, his brother (and victim) Keith, and their businesses. See Pa2-13. Counts 13 and 14 specifically charge defendant with theft from Keith and misapplication of entrusted property. Two of the aggravating factors on the murders charged in Counts One through Four, N.J.S.A. 2C:11-3(b)(4)(d) and (f), relate to these financial crimes in that the State intends to prove that defendant murdered his victims to avoid the detection of this theft and to gain financially from his victims' deaths. The motive evidence the State seeks to admit either directly proves these financial crimes and aggravating factors and/or establishes the financial precarity that caused the defendant to act as he did on November 20, 2018.

The State stands by its position, as set forth fully in its October 2, 2020 Notice of Intent, see Pa1-13, that the motive evidence it seeks to admit qualifies as intrinsic evidence as defined by State v. Rose, 206 N.J. 141 (2011) and its progeny. While it is true that “[w]henver the admissibility of

uncharged bad act evidence is implicated, a Rule 404(b) analysis must be undertaken,” Rose, 206 N.J. at 179, the required analysis does not start with application of N.J.R.E. 404(b) and the governing four-factor Cofield¹ test. A court must first determine “whether the evidence relates to ‘other crimes,’ and thus is subject to continued analysis under Rule 404(b)” or is “intrinsic evidence,” which “need only satisfy the evidence rules relating to relevancy, most importantly Rule 403” to be admissible. Rose, 206 N.J. at 179; State v. Brockington, 439 N.J. Super. 311, 326-27 (App. Div. 2015).

“The term ‘intrinsic’ is not easy to define with precision.” Brockington, 439 N.J. Super. at 327. Nonetheless, it is understood to apply to “evidence [that] does not involve some other crime, but instead pertains to the charged crime.” State v. Sheppard, 437 N.J. Super. 171, 193 (App. Div. 2014). Intrinsic evidence includes two “categories of evidence:”

First, evidence is intrinsic if it “directly proves” the charged offense. This gives effect to Rule 404(b)’s applicability to only evidence of “other crimes, wrongs, or acts.” If uncharged misconduct proves the charged offense, it is not evidence of some “other” crimes. Second, “uncharged acts performed contemporaneously with the charged crime may be termed intrinsic if they facilitate the commission of the charged crime.”

Rose, 206 N.J. at 180 (quoting United States v. Green, 617 F.3d 233, 248-49 (3rd Cir. 2010)); Brockington, 439 N.J. Super. at 327-28. For the first category

¹ State v. Cofield, 127 N.J. 328 (1992).

of evidence – that which directly proves the charged offense – “[t]he operative factor is whether the evidence has probative value as to the charged offense.” Brockington, 439 N.J. Super. at 328. “If uncharged misconduct directly proves the charged offense, it is not evidence of some ‘other’ crime.” Rose, 206 N.J. at 180.

In Brockington, 439 N.J. Super. at 325-34, the Appellate Division applied the first category of intrinsic evidence to observations by police of the defendant and his codefendant engaging in a pattern of drug-distribution related behavior several times before the transaction for which defendant was charged. Ibid. “The officer ... observed three incidents in which a third party walked up to defendant, engaged in a short conversation and handed defendant money. Defendant then handed the third party an item. The last of these incidents precipitated defendant’s arrest and the recovery of drugs from both defendant and the purchaser.” Id. at 332. The appellate court found that “[e]vidence that [defendant] and [his codefendant] were present at that location, meeting with a string of individuals and apparently engaging in coordinated transactions, was probative of his intent, an element that had to be proven for the four counts that charged him with possession with intent to distribute[.]” Id. at 332.

Because the evidence was intrinsic, it only needed to satisfy N.J.R.E. 403 to be admissible; its probative value could not be “substantially outweighed by the risk of ... undue prejudice.” Id. at 333 (quoting N.J.R.E. 403); see also State v. Long, 173 N.J. 138, 163-64 (2002)(quoting State v. Koskovich, 168 N.J. 448, 486 (2001)) (“Evidence claimed to be unduly prejudicial is excluded only when its probative value is so significantly outweighed by [its] inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation of the issues in the case”).

The appellate court found it met this requirement as well:

[T]he testimony regarding defendant’s earlier actions had no “inherently inflammatory potential.” The actions merely mirrored the conduct that was the basis of the charges. The jury could accept the testimony as proof of defendant’s intent and participation in a conspiracy or reject it as inadequate. The evidence had no capacity to divert them from a “reasonable and fair evaluation” of the issues.

Brockington, 439 N.J. Super. at 333-34.

Evidence not qualifying as “intrinsic” is nonetheless still admissible if it can satisfy N.J.R.E. 404(b). Rose, 206 N.J. at 180. N.J.R.E. 404(b) authorizes admission of “evidence of other crimes, wrongs, or acts” “as proof of motive ... when such matters are relevant to a material issue in dispute.” See also Rose, 206 N.J. at 158-59. In Cofield, 127 N.J. at 338, the New Jersey Supreme

Court set forth four factors to be established by the offering party as prerequisites for the admission of such “other crimes” evidence:

1. The evidence of the other crime must be admissible as relevant to a material issue; 2. It must be similar in kind and reasonably close in time to the offense charged; 3. The evidence of the other crime must be clear and convincing; and 4. The probative value of the evidence must not be outweighed by its apparent prejudice.

See also Rose, 206 N.J. at 159-60; State v. Gillispie, 208 N.J. 59, 85 (2011); Long, 173 N.J. at 161; State v. Covell, 157 N.J. 554, 564 (1999); State v. Castagna, 400 N.J. Super. 164, 175 (App. Div. 2008).

“[A]pplication of the Rule 404(b) balancing test and the Cofield test” rests within the trial court’s “broad discretion.” Castagna, 400 N.J. Super. at 182. In exercising this discretion, the trial court should engage in a “careful and pragmatic evaluation” “based on the specific context in which the evidence is offered.” Gillispie, 208 N.J. at 85; Covell, 157 N.J. at 564.

The first Cofield factor requires the “proffered evidence ... be ‘relevant to a material issue genuinely in dispute.’” Gillispie, 208 N.J. at 86 (quoting State v. Darby, 174 N.J. 509, 519 (2002)). Relevant evidence is evidence that has “a tendency in reason to prove or disprove any fact of consequence to the determination of the action.” N.J.R.E. 401; Rose, 206 N.J. at 160. The “special” relevance of motive evidence is well recognized. Calleia, 206 N.J. at 293. Unlike other evidence of a defendant’s guilt, motive evidence has the

“unique capacity to provide a jury with an overarching narrative, permitting inferences for why a defendant might have engaged in the alleged criminal conduct.” Ibid.; see also Castagna, 400 N.J. Super. at 179 (preclusion of motive evidence would hinder a prosecution in a manner “equivalent” to a “production of MacBeth without the witches”).

As such, “[a] wider range of evidence may be admissible to prove motive as long as there is a logical connection between the alleged motive and the other-crimes evidence.” Castagna, 400 N.J. Super. at 178; Covell, 157 N.J. at 565; Calleia, 206 N.J. at 293. This is true even if the events relevant to motive “occurred previous to the commission of the offense.” Castagna, 400 N.J. Super. at 178 (quoting State v. Rogers, 19 N.J. 218, 228 (1955)); Long, 173 N.J. at 162.

The materiality of motive evidence is also long and well recognized. “[M]otive is a material issue in dispute where the defendant asserts innocence.” Castagna, 400 N.J. Super. at 178; see also, e.g., Rose, 206 N.J. at 163, 165 (“although defendant did not expressly place the issue in dispute, his motive was material, and vitally so, because it was the string that tied the State’s entire case together. Without knowing that defendant was in prison on charges that he attempted to murder [the victim] at the time that [the victim]

was killed, the jury would have been left without a crucial piece of evidence: why defendant wanted [the victim] killed”).

Similarity – the second Cofield factor – is not universally required. Rose, 206 N.J. at 160; Gillispie, 208 N.J. at 88-89. Instead, satisfaction of the similarity requirement is “limited to cases that replicate the circumstances in Cofield.” Rose, 206 N.J. at 160; Goodman, 415 N.J. Super. at 230. In fact, “when motive is the object of the proffered evidence, similarity is not a requirement for admissibility.” Castagna, 400 N.J. Super. at 179; State v. Collier, 316 N.J. Super. 181, 194 (App. Div.), aff’d, 162 N.J. 27 (1999).

The temporality requirement of the second factor does not require absolute contemporaneousness. To the contrary, “[o]ur courts have found the ‘reasonably close in time’ aspect to be satisfied” even where there has been a substantial passage of time. Castagna, 400 N.J. Super. at 179 (10 months); State v. Krivcska, 341 N.J. Super. 1, 41 (App. Div.), certif. denied, 170 N.J. 206 (2001), cert. denied, 535 U.S. 1012 (2002) (two years). The significance of the passage of time becomes even less important where “the evidence is proffered as an interrelated series of events ... leading to defendant’s criminal acts.” Castagna, 400 N.J. Super. at 179.

Cofield’s third factor requires “the prosecution ... establish that the act of uncharged misconduct which it seeks to introduce into evidence actually

happened by ‘clear and convincing’ evidence.” Rose, 206 N.J. at 160 (quoting Cofield, 127 N.J. at 338); State v. Hernandez, 170 N.J. 106, 126-28 (2001) (finding “brutally honest” testimony of cooperating codefendant met clear and convincing prong, even in the face of his admitted hostility to defendant, admission he would lie under oath, and his testimony was pursuant to a favorable plea agreement with the State).

The fourth and final Cofield factor requires “the party seeking to admit other-crimes evidence ... establish[] that the probative value of the other-crimes evidence is not outweighed by its apparent prejudice.” Castagna, 400 N.J. Super. at 175; see also N.J.R.E. 403. It is acknowledged that other crimes evidence has a prejudicial capacity “in that way that all highly probative evidence is prejudicial: because it tends to prove a material issue in dispute.” Rose, 206 N.J. at 164.

Thus, “[t]he mere possibility that evidence could be prejudicial does not justify its exclusion.” Long, 173 N.J. at 164 (quoting State v. Morton, 155 N.J. 383, 453-54 (1998), cert. denied, 532 U.S. 931 (2001)). “That evidence is shrouded with unsavory implications is no reason for exclusion when it is a significant part of the proof. The unwholesome aspects, authored by defendant himself ..., if the evidence is believed, [is admissible if] inextricably entwined

with the material facts.” Long, 173 N.J. at 164-65 (quoting State v. West, 29 N.J. 327, 335 (1959)).

The “determinative question” to be analyzed by the trial court is, therefore, whether the “evidence was unfairly prejudicial, that is whether it created a significant likelihood that the jury would convict defendant on the basis of the uncharged misconduct because he was a bad person, and not on the basis of the actual evidence adduced against him.” Rose, 206 N.J. at 164 (emphasis original); Gillispie, 208 N.J. at 90. To answer this question, “the trial court must engage in a careful and pragmatic evaluation of the evidence to determine whether the probative worth of the evidence is outweighed by its potential for undue prejudice.” Gillispie, 208 N.J. at 89-90 (quoting State v. Barden, 195 N.J. 375, 389 (2008)).

While the fourth Cofield factor “impos[es] a stringent standard for the admission of other-crime evidence, our courts have not frequently excluded highly prejudicial evidence under the fourth prong.” Long, 173 N.J. at 162. This is especially true where the other crimes evidence bears relevance to motive; “greater leeway is given when the evidence is proffered on the issue of motive, and there must be a ‘very strong’ showing of prejudice to exclude evidence of a defendant’s motive.” Castagna, 400 N.J. Super. at 180; Long, 173 N.J. at 164; Covell, 157 N.J. at 570; see also Calleia, 206 N.J. at 294

("[t]ime and again, courts have admitted motive evidence when it did no more than raise an inference of why a defendant may have engaged in criminal conduct, and even in the face of a certain degree of potential prejudice stemming from the evidence").

This "broad allowance for motive evidence permits jurors, in their role as fact-finders and judges of credibility, to reject a given explanation for conduct as inconsistent with their understanding of human nature, or to accept a motive as a rational premise that could lead a defendant to criminality." Calleia, 206 N.J. at 294. As such, "[w]here the prosecution has a theory of motive that rests [even] on circumstantial evidence, that evidence should not be excluded merely because it has some capacity to inflame a juror's sensibilities; to hold otherwise would preclude a jury from inferring a defendant's 'secret design or purpose.'" Ibid. (quoting State v. Rogers, 19 N.J. 218, 228 (1955)).

Whether viewed through the prism of intrinsic evidence, as conduct that directly proves and/or was performed contemporaneously with the murders of his brother and his brother's family, or N.J.R.E. 404(b) motive evidence, the testimony and the documentary evidence identified by the State in 2020 is admissible evidence the State should be permitted to present to a jury. The jury should be able to consider as direct proof of defendant's guilt evidence

establishing that Keith was beginning to uncover defendant's thefts and was looking to end their business relationship in the months and days leading up to the murders.

The evidence the State seeks to admit demonstrates that defendant's financial circumstances in 2017 and into 2018 were dire. Defendant, his family and defendant's paramour were living well beyond the defendant's means. That Keith was planning on moving on from the brothers' shared business ventures put one stream of defendant's income in jeopardy. That Keith was discovering defendant's other stream of income – stealing from the trust – not only put into jeopardy defendant's ability to continue to access trust money, but also incentivized defendant to see Keith and his family – the other beneficiaries of the trust – as obstacles to his future financial success and freedom from criminal prosecution. Right as these various financial matters were about to a head, defendant killed Keith and his family. Thus, the murders of Keith, and those who would first benefit from Keith's death – his wife and children, simply cannot be excised from the details of Keith's and the defendant's failing business relationship or from defendant's trust thefts.

Even if this Court were to disagree that the impending demise of defendant's business relationship with Keith and his discovery of defendant's thefts in the lead up to the murders constituted intrinsic evidence, denial of the

State's motion would not follow as the evidence the State seeks to admit meets all three required Cofield factors. With regard to the first Cofield factor, the State's motive evidence falls well within that which New Jersey precedent has found to be relevant motive evidence. As our Court recognized in Calleia, 206 N.J. at 301, "[i]t takes no great leap of intuition to understand that divorce could motivate a person to kill." Similarly, no great leap is needed to understand that the end of any relationship, including a business relationship, could motivate a person to kill. Likewise, our courts have routinely found relevant, and therefore admissible to prove motive, evidence establishing that the victim has either discovered or implicated the defendant in criminal conduct. See State v. Mazowski, 337 N.J. Super. 275, 283-84 (App. Div. 2001) (collecting cases)

The testimony and evidence the State seeks to present to the jury is exemplary of these possible logical conclusions that the jury should be allowed to consider and make. Keith was on the precipice of both ending his business relationship, discovering defendant's thefts, and meting out the legal and financial consequences that would come from that discovery. All of defendant's prior efforts to keep the business running, e.g., delaying its sale, and keep his access to the trust account funds, e.g., creating forged documents, were starting to fail. Keith was planning for his post-business future and made

clear to defendant that he was wise to what defendant had done with the trust account. So, the defendant killed Keith and all of the financial beneficiaries of Keith's death that stood ahead of him. The jury is entitled to hear this relevant theory of motive and the relevant evidence that supports it.

As to the third Cofield factor, the State can meet the clear and convincing bar. In its Notice of Intent, the State set forth the evidence supportive of its motive theory. See Pa2-12. To the extent this evidence includes hearsay statements by the victim, these imbedded hearsay statements are admissible pursuant to N.J.R.E. 803(c)(3) and Calleia. N.J.R.E. 803 (c)(3) allows the admission of “[a] statement made in good faith of the declarant's then existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental feeling, pain, or bodily health).”

“[W]hen testimony regarding a decedent's state of mind establishes a fact that, if known by defendant, could give rise to a motive, such testimony is admissible, subject to balancing under Rule 403” and subject to proof, either “directly or circumstantially,” “that a defendant knew or likely knew of a victim's conduct.” Calleia, 206 N.J. at 295-97. “When a victim's projected conduct permits an inference that defendant may have been motivated by that conduct to act in the manner alleged by the prosecution, the statement satisfies the threshold for relevance.” Id. at 296. Applying this standard, the Calleia

Court found admissible “through Rules 803(c)(3) and 401” hearsay statements by the victim to her friends “because they are relevant to show the [victim’s] conduct, specifically that she took steps toward obtaining a divorce,” which when “conjoined with defendant’s awareness of her actions,” “gives rise to a possible motive to kill her.” Id. at 301.

Like in Calleia, the hearsay statements of the victim imbedded in the State’s motive evidence are admissible. All of the imbedded hearsay statements establish the victim’s intent to extricate defendant from his business and financial life, actions the defendant did not want to accept and which, similar to the defendant in Calleia, motivated the defendant to kill. The State has direct and/or circumstantial evidence to prove defendant’s knowledge of the victim’s intent, specifically by way of emails and recorded telephone calls to and with the defendant.

Finally, as required by both N.J.R.E. 404(b)’s fourth factor and by Calleia, the motive evidence the State seeks to admit satisfies the balancing test in that its probative value outweighs any potential for prejudice. It is only through knowing about the impending demise of defendant and Keith’s business and financial relationship, Keith’s desire to move on from their shared business ventures, and Keith’s discovery of defendant’s trust account thefts, that the jury can fully understand why defendant decided to annihilate

Keith and his family that November, 2018. Admission of this evidence is not unfairly prejudicial. To the contrary, admission of this evidence “is surely consistent with the essential role of the jury to assess whether a given defendant might be driven to kill” in response to the termination of this business and financial relationship “or whether the prosecution has failed to show that the asserted motivating factors could in fact drive the defendant to commit the acts alleged.” Calleia, 206 N.J. at 301. Because the tests of Cofield, Rose, and Calleia have been met, the motive evidence proffered by the State since 2020 should be deemed admissible.

Respectfully submitted,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

/s/ Monica do Outeiro

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On the Letter

c Monika Mastellone, A.D.P.D.

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In support of its motion, the State shall rely upon the annexed brief and appendix and oral argument made at the time of the hearing of the within motion.

Respectfully submitted,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

/s/ Monica do Outeiro

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I hereby certify that a copy of the within Notice of Motion was electronically served upon the defendant, through his attorney, on the 7th day of May, 2025, by way of eCourts.

/s/ Monica do Outeiro
Monica do Outeiro, 041202006
Assistant Prosecutor
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