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June 13, 2025

The Honorable Marc C. Lemieux, A.J.S.C.
Monmouth County Court House
71 Monument Park
Freehold, New Jersey 07728

Re: State of New Jersey v. Paul Caneiro
Indictment No. 19-02-0283; Case No. 18-4915
Motion In Limine to Admit Certain Motive Evidence
Returnable: June 13, 2025

Dear Judge Lemieux:

Please accept this letter brief as supplementation to the State's May 7, 2025 letter whereby the State moved before this Court for an in limine ruling approving the admission of certain evidence it identified in its October 2, 2020 letter titled Notice of Intent to Offer Certain Evidence.

STATEMENT OF FACTS[1]

By way of background, defendant and his brother, victim Keith Caneiro, owned two businesses together: Ecostar, a pest control company which the brothers owned fifty-fifty; and, Jay Martin Consulting d/b/a Square One, a computer consulting company, of which Keith owned 90% and defendant 10%. Square One was the moneymaker and had one major client, the Doris Duke

[1] The Statement of Facts contain only those facts relevant to frame the legal issues addressed in this brief.

Foundation (approximately $127,000/month). Doris Duke's contract with Square One was set to expire on December 31, 2018, and Keith was concerned that it would not renew.

On July 27, 1999, an Irrevocable Life Insurance Trust was prepared by legal counsel on behalf of Keith. See State's Exhibit 1. Upon its creation, Keith transferred $1,000 into the Trust. Keith named defendant as his Trustee. Per the terms of the Trust, if the settlor (Keith) predeceased his spouse, then the Trustee was to pay Keith's spouse and issue (children) "such amounts from the net income or principal or both . . . as the Trustee deems necessary or desirable to provide for the support and education of such beneficiaries." See State's Exhibit 1, Article 3. If Keith's spouse did not survive the him, then at the time of Keith's death the Trustee "shall divide the property in the . . . Trust . . . among the settlor's and settlor's spouse's surviving issue." See State's Exhibit 1, Article 4. If no children survive both the settlor and settlor's spouse, then one-half of the property would be distributed to defendant and one-half would be distributed to Corey Caniero.[2] Ibid.

On August 19, 1999, Keith purchased a "whole life" life insurance policy with a face value ("death benefit") of three-million dollars from the Canada Life Assurance Company (hereinafter, "Canada Life."). See State's Exhibit 2. Keith transferred ownership of same over to the Trust; the Trust became the beneficiary of the life insurance policy. See State's Exhibit 2, page 18.[3] The yearly premiums required to be paid to Canada Life were approximately $29,640. Id. at page 3. The premiums could be paid at one, three, or six month intervals. Id. at page 8. In this case, quarterly premiums in the amount of $7,854.50 were required to be paid by the Trustee on behalf of the settlor. Per the terms of the life insurance policy, the policy could be surrendered for its cash surrender value at any time. Id. at page 7. Additionally, the life insurance policy had a provision

[2] Corey Caneiro is Keith and defendant's brother.
[3] The numbering on the pages for State's Exhibit 2 ends at page 17. However, there are 9 more pages that follow. that are not numbered. Thus, "page 18" refers to the very next page after page 17. It has a heading of "Part I "Primary Insured Information."

which permitted the insurance company to automatically make a loan at the end of the grace period to pay any unpaid premium if the cash surrender value was sufficient. Id. at page 11. The loan was then required to be paid back with interest. Id. at 10-11.

A business convenience checking account was opened on May 25, 2006 at TD Bank in the name of ATF Keith Caneiro Irrevocable Trust Agreement DTD 07/27/99, Keith Caneiro Grantor, Paul Caneiro Trustee. (Hereinafter to be referred to as the "Trust account."). The Trust account was established for the sole purpose of receiving money earmarked to be paid to Canada Life for the quarterly premiums on Keith's life insurance policy. Thus, on a weekly basis, payroll checks were issued from Square One and/or Eco Star and were directly deposited into the aforementioned Trust account. As Trustee, defendant was responsible for paying the quarterly premiums out of the Trust account to Canada Life with the accumulated funds.

A review of certified bank records reveals the following regarding defendant's financial status during the timeframe of January 1, 2017 to November 20, 2018.[4] Defendant's total revenue for the year 2017 was approximately $490,032. Of that, approximately $242,653 came from [redacted] benefit payments to defendant[5]. Approximately $141,678 came from salary defendant collected from Square One and Ecostar.[6] This figure includes approximately $27,642 in auto reimbursement. Additionally, Square One provided defendant and his family with health insurance. Approximately $33,680 came from the Trust account. More specifically, in 2017, defendant electronically transferred $31,900 from the Trust account into a bank account in his name, maintained at TD Bank; he transferred $1500 from the Trust account into a joint bank

[4] This is the timeframe listed in the indictment for Counts 13 (Theft) and 14 (Misapplication of Entrusted Property).
[5] Defendant had been collecting [redacted] since 2013. Specifically, for the year 2017, defendant collected approximately $78,263 in Social Security [redacted] $60,000 from a group policy that defendant's employer, Square One, maintained with Sun Life Insurance Company, and $104,390 from private [redacted] coverage defendant had with Unum Insurance Company.
[6] This income was directly deposited into a bank account in the name of Susan Caneiro, defendant's wife. Susan did not work, a fact that is contained in multiple witness statements, including the statement of Susan Caneiro herself.

account he maintained with Susan at TD Bank; and he transferred $280 from the Trust account into a joint bank account he maintained with his daughter at TD Bank.[7] Of the required premiums to be paid to Canada Life in 2017, defendant only paid $25,709. Defendant's total expenditure for the year 2017 was approximately $409,244.

Defendant's total revenue for the year 2018 was approximately $541,695. Of that, approximately $143,282 came from [redacted] benefit payments to defendant.[8] Approximately $180,000 came from salary defendant collected from Square One and Ecostar.[9] This figure includes approximately $36,627 in auto reimbursement. Approximately $44,500 came from the Trust account. More specifically, in 2018, defendant electronically transferred $43,500 from the Trust account into a bank account in his name, maintained at TD Bank; and he transferred $1,000 from the Trust account into a joint bank account he maintained with Susan at TD Bank. Of the required premiums to be paid to Canada Life in 2018, defendant only paid $8500. Defendant's total expenditure for the year 2018 was approximately $322,975.

A review of defendant's expenses for 2017 and 2018 reveal that he struggled with debt and bills. Defendant owed back taxes to the Internal Revenue Service, which he repaid in monthly sums; there were two mortgages on his family residence; he had multiple car payments, which included three Porsches. Defendant also had a girlfriend, for whom he had leased an Audi and taken on trips. The last transfer defendant made out of the Trust account was on November 18, 2018, at approximately 11:33 a.m. when defendant transferred $1200 into his personal bank account.

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[7] Defendant paid $19,800 back to the Trust account in 2017.

[8] In 2018 defendant collected approximately $29,352 in Social Security [redacted] $9,540 from Sun Life Insurance Company, and $104,390 from Unum Insurance Company.

[9] This income was directly deposited into a bank account in the name of Susan Caneiro.

Steven Weinstein (hereinafter, "Steve"), the accountant for the Caneiro businesses, would periodically request that defendant provide the monthly TD Bank statements for the Trust account. Defendant would then send Steve and Keith the bank statements via PDF email attachments. During previous years, due to the automatic loan provision on Keith's life insurance policy, a loan had accrued on the policy. Keith was aware of the loan and had been working to pay it down. However, in the weeks leading up to Keith's and his family's murders, Keith had discovered that the loan on his life insurance policy had increased. He discussed same with Steve, as well as with his insurance adjuster, Ronald Artiges (hereinafter, "Ron"). On November 19, 2018, Keith and Ron learned that Canada Life had not received any payments toward the premiums since April of 2018. The question became: how was it that Canada Life was not receiving any payments when the bank statements defendant sent clearly reflected payments being made to Canada Life from the Trust account? This was the question that Keith had been attempting to get to the bottom of on the evening of November 19, 2018; the question that Keith communicated directly to defendant that evening, via two telephone calls, the last call being only hours before Keith and his family were brutally murdered.

Keith's side of the phone calls was captured on his home video surveillance system (Wyze cameras).[10] The first phone call was made from Keith to defendant at approximately 3:50 p.m. on November 19, 2018:

> Keith: Hey, what are you doing?
>
> Keith: Canada Life is telling me they haven't been receiving money except in April. That doesn't make any sense.

[10] In addition to the recordings from the Wyze cameras, which include both audio and video, as well as timestamps, Keith's and defendant's cell phone extractions and cell phone records also corroborate the timing of these phone calls.

Keith: Canada Life. They're saying they haven't received money since April.

Keith: I, I know it's not true. I need you to send me a statement (inaudible) that. Cause I'm on the phone with them all day already.

Keith: I need to access the money.

Keith: Fine. Did you—do you have it scanned somewhere?

Keith: Do you have it scanned in (inaudible)? Can I log in to it and grab it?

Keith: Do you have the online access?

Keith: If you could just see a way to send me the password and I'll do the research myself.

Keith: Thanks.

The second phone call was made from Keith to defendant at approximately 6:05 p.m. on November 19, 2018.

Susan: Hello?

Keith: Hey Sue, how are you? Sorry for calling the house line. I'm looking for Paul. I know he's sleeping but I need to talk to him.

Susan: Want me to have him call you?

Keith: Yeah. Yeah, definitely.

Susan: (Inaudible).

Keith: Thanks.

Susan: Want me to have him call you on (inaudible)?

Keith: Yeah, please. Tell him to call me on my mobile. Bye.

Susan: On your mobile?

Keith: Yep. Bye.

Susan: Okay.

Keith: Bye.

Defendant called Keith back at approximately 6:06 p.m. The following is captured via Wyze camera:

Keith: Hi.

Keith: I just spent the last hour and a half on the phone with the insurance company. They're saying they haven't received any money and that they took a loan against my account and they're taking another one in October which is just, is just, in uh October – I need to know

Keith: Show me where you're sending the checks in online. You're writing them out online. I need to know where they're going.

Keith: I need you to wake up, Paul, and do it. I . .

Keith: Short of you being dead, I need to, I need to see the stuff.

Keith: Give me the login to your account then.

Keith: The login to the TD account.

Keith: Give me the log, give me the login to the TD account.

Keith: YOUR TD account. You don't know your . . .

Keith: You don't know your TD login?

Keith: Go find it and give it to me.

Keith: I need to see it now, Paul. I need to . . .

Keith: . . . see it.

Keith: I need to see it now. I need it.

Keith: I understand . . .

Keith: Paul, I understand that. I just spent half the day . . .

Keith: Paul, I'm telling you. I need it.

Keith: I need it.

Keith: I need it.

Keith: Give me the fucking login, Paul.

Keith: Give me the login, Paul.

Keith: Paul, just give me the login so I can see where the money went.

Keith: Then . . .

Keith: . . . get on your computer and tell me where the money went.

Keith: Paul, somebody else can read it to you there. I need to know where that money went.

Keith: Not in a little while, Paul. I . . .

Keith: I understand you're saying you need to . . .

Keith: Wake the fuck up, Paul.

Keith: Paul, I, I'm telling you. I just spent half the day looking for this. I'm, I need to know where it went.

Keith: Paul

Keith: Paul

Keith: Are you sure it went to the right place this time?

Keith: You have cashed checks? You have cashed checks?

Keith: Paul

Keith: I hear what you're saying.

Keith: Paul. I'm worried. I need to know where it went.

Keith: Alright. An hour or two. An hour or two.

Keith: An hour or two, Paul. That means by eight-o-clock.

There are no further electronic communications between Keith and defendant that night, aside from four text messages Keith sent to defendant between 3:14 a.m. and 3:18 a.m. on the morning on November 20, 2018:

> 3:14:58: "My power is totally out at home. Total ac failure."
>
> 3:15:01: "I used the manual switch in the basement but nothing is working."
>
> 3:17:59: "I'm not even sure what to do."
>
> 3:18:13: "The generator says ac failure. Going outside to see if the generator is in the right mode.[11]

Later that day, Keith's body was discovered outside in the area of the generator. He had been shot five times. His wife's and children's bodies were located inside the house. His wife suffered multiple stab wounds and a gunshot wound to the head. The children were repeatedly stabbed.

Although Keith was prevented from getting to the bottom of the question as to why Canada Life was not receiving payments, the answer became clear during the course of the investigation: defendant was not sending payments to Canada Life. Instead, he was paying himself. The bank statements defendant sent to Keith and Steve were altered. Specifically, the bank statements defendant sent via PDF attachments for the months of May, June, July, August, and September of 2018 reflect several payments being made in various amounts to "Canada Life Assurance Company" out of the Trust account. However, a cross reference to the actual certified TD Bank statements (obtained via subpoena from TD Bank) reveal that the aforementioned payments were not, in fact, made to "Canada Life Assurance Company;" rather, they consisted of electronic transfers of funds directly into defendant's own personal TD Bank accounts. A review of defendant's certified bank records corroborates same.

[11] These text messages were previously ruled admissible.

Defendant doctored the statements he sent to Keith and Steve by changing the name of the payee.

The November 19th phone calls were merely the last in a series of communications between Keith and defendant that transpired over the months leading up to the murders. During those prior communications, Keith voiced his frustrations with defendant, and also relayed his future financial plans to defendant multiple times. Those plans did not include defendant. Specifically, Keith had begun taking steps to provide for his family in the event that Doris Duke did not renew their contract with Square One. Keith's plan was to sell Ecostar, cash out his life insurance policy, and get a job in the marketplace. Keith's plan would have the effect of cutting off two of defendant's relied upon sources of income: salary from the businesses and monies taken from the Trust account. Dissolution of the businesses would also mean that defendant would lose his health insurance benefits. Moreover, because defendant was collecting [redacted] he would be unable to obtain a job in the workforce without losing his [redacted] payments. As such, if Keith's plan were to come to fruition, defendant would not only lose "Susan's" salary, but he would be unable to replace it with income from outside employment. Further, without access to the Trust account, defendant would no longer be able to use the account as his personal cash cow. Thus, the prior communications between Keith and defendant during the months leading up to the murders are relevant because they give significant context and weight to the November 19th phone calls.

On March 5, 2018, Tiffany Rivera (hereinafter, "Tiffany"), the office manager for the businesses, emailed defendant advising that Keith was currently meeting with Ron in order to go over the Trust account. Tiffany told defendant that Ron "believes you are the one that

would need to call in as you had to set up security questions and that's what they need in order to fax/email the statements."

On March 19, 2018, Steve sent Keith and defendant an email with an attachment of his reconciliation of all internal Trust activity.

Between April 10th and April 11th of 2018, the following conversation took place between Keith and defendant via text message:

April 10th

Keith: Do you have the previous year statements from the insurance company for the trust?

Keith: I'm still trying to reconcile.

Keith: I need the previous years.

Paul: I have to look at my sent email. I'll do it later

Keith: No. There should have been statements for the last few years in paper format

Keith: How are you handling Katie and her insurance

Keith: I think Jennifer wants to move the trust to her sister. I'm going to need you to fill out the paperwork.

Paul: I can't do this now. I am about to talk to Susan.

Paul: Ok

Keith: Ok

Keith: Talk to Susan. I'll have the lawyer send the paperwork for Bonnie and we can get that done.

Keith: I'm having issues lining up your paperwork with the insurance company. Ron was on the phone with them for hours this week.

Keith: They don't have all the payments you sent.

Keith: And that worries me.

April 11th

Keith: You still alive

Paul: Yes. I went to bed early I was shot.

Paul: I figured out why there are payments missing. I selected the wrong payee from my list and made them but to Pacific Lending, the servicer for student loans instead of Pacific Life. I changed the name of the account to Trust so this will not happen again while this account is still open. I asked Ron for the numbers and I am going to go over all of the payments today at TD. I am selling off some of my investments today and once the transfer is completed I will make a single payment plus interest to the trust policy. I'm sorry about that and will make it right. Let me know when you create a new trust account with Bonnie, so we can set up the direct deposit from payroll. I can pay the balance of the existing trust account and then close that account.

Paul: I didn't sleep most of the night trying to sort this out. I know you are stressed and I'm sorry, I am stressed out more than I have ever been. I understand your decision and I am not upset. I know I failed you on this and I am sorry and embarrassed about this – I have had my head up my ass and now things are clear.

Keith: Let me know when you find out how much you moved to the wrong place – talk to Ron – we have been trying to reconcile this shit for weeks.

Paul: $25,045.77

Keith: Over the past year?

Paul: 2017 and 2018

Keith: Has it happened prior?

Paul: With interest $25,806.41

Paul: no

Paul: I didn't have the loan payments with that servicer.

Defendant did not make another payment to Canada Life after April of 2018.

In mid-summer of 2018, a prospective buyer had emerged for Ecostar. Keith wanted to sell. Defendant wanted to wait. The prospective buyer wanted an analysis of Ecostar assets, to make a fair offer. Defendant stalled producing the analysis. The buyer originally

offered $850,000, but when it was not accepted, the buyer reduced the offer to $750,000. Keith was upset and blamed defendant for losing the higher offer. Defendant knew this as Keith communicated his feelings about same to him. During this time period, Keith was also preparing for and communicating with defendant about the possibility of Square One losing its contract with Doris Duke. Between September and November of 2018, communications between Keith and defendant became heated and Keith relayed his future plans to defendant multiple times.

On September 6, 2018, Tiffany emailed Keith advising that defendant told her the company had not been reimbursing him properly for "two cars, Susan and his" and that defendant "would like the following done to his pay per week. Add $396.24 per week to the new amount of $646.15 to pay for the past." Keith confronted defendant about his request, ultimately telling defendant, "I'm not obligated to give Sue or anyone else anything. This is exactly why I don't want to be in business with you or anyone else and want to go work for a company." Keith stated, "The reason I need to sell Ecostar is because I need back the money – I just put 100k into the fucking company."

On September 13, 2018, multiple electronic communications between Keith and defendant reveal that Keith wanted to accept the 850k offer on Ecostar but defendant wanted to wait. During one such communication, Keith told defendant that with the sale of Ecostar he would use the money to pay down the loan on his life insurance policy and put money into his children's savings account. Keith advised, "I have a plan for the future."

On September 17, 2018, Keith and defendant exchanged electronic communications whereby Keith expressed his frustrations with defendant. Keith again relayed his future financial plans, telling defendant that "we are done" and admonished that defendant is not

"entitled to anything – you should just be happy that I was trying to help you out since your accident." Keith continued, "I want out. If I could get a decent job in the marketplace I would just fucking walk." Keith elaborated, "I can't help you anymore. I need to start thinking about paying for my kids' college. And putting money away for retirement – I don't have insurance policies to pay me if I don't work. You have that. So figure out a way to restructure things to live within that – and I'll do what I need to do to ensure that my kids will be able to afford college without giving them loans – which is exactly what you did. So I just want the same for my family." Paul responded, "I get a fraction of what I was making even with Susan's paychecks." Keith replied, "Ok – nothing I can do there," stating, "I have supported you in as many ways as possible – but I can't do it anymore – and we have to move forward. So let's take the Ecostar cash and move forward." Defendant replied: "I'll think about it."

On November 5, 2018, the following text message exchange, in pertinent part, took place between Keith and defendant:

Keith: I also want to see if we can do something to get cash for Ecostar.

Keith: In case Duke doesn't renew.

Paul: Ok

Paul: How are you feeling?

Keith: Tired

Paul: Rest. We can talk tomorrow.

Keith: I'm thinking that if shit really goes sideways. I can cash out my 401k and insurance and get rid of my mortgage.

Paul: Relax

Keith: Even if I lose money doing that.

Paul: Please

Keith: That's me relaxing. I'm planning ahead just in case.

Paul: Go to sleep.

Keith: I have OCD. I can't help it.

Paul: I'll talk to you tomorrow. I'm almost asleep.

Keith: Ok

Keith: Let's see if we can get a call going with the people interested in Ecostar tomorrow.

Keith: Even if it is 900 . . . I would do it.

Paul: Fucking relax.

Paul: Go to sleep.

Keith: Ok

Paul: We don't need to do this tomorrow.

Paul: We don't know what the future is.

On November 15, 2018, Steve forwarded Keith and defendant an email from a prospective Ecostar buyer that contained an offer of 750k. Steve advised that the offer was "tremendous" and that they should take it. Keith agreed. Defendant's response was, "They said 850k."

On November 19, 2018, Ron called Keith and advised him of the cash surrender value of his life insurance policy, and further advised that no contributions had been made to Canada Life since April 2018. Keith requested bank statements for the Trust account from Steve, which Steve forwarded to him. The statements reflected that payment was being sent to Canada Life. Keith then forwarded the bank statements to Ron, who called Canada Life. Canada Life maintained that they had not received the payments reflected on the bank

statements. Later that afternoon and evening, Keith called defendant and the aforementioned phone calls took place.

LEGAL ARGUMENT

POINT I

THE FACT THAT DEFENDANT WAS COLLECTING [redacted] INSURANCE WHILE RECEIVING A SALARY IS ADMISSIBLE N.J.R.E. 404B EVIDENCE

N.J.R.E. 404b authorizes admission of "evidence of other crimes, wrongs, or acts" as proof of motive . . . when such maters are relevant to a material issue in dispute." See also State v. Rose, 206 N.J. 141, 158-159 (2011). In State v. Cofield, the 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.

127 N.J. 328, 338 (1992). Here, the fact that defendant was collecting [redacted] while receiving a salary is admissible motive evidence as it satisfies all four Cofield requirements.

The first Cofield factor requires the "proffered evidence . . . be 'relevant to a material issue genuinely in dispute.'" Gillispie, 208 N.J. 59, 86 (2011) (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. State v.

Calleia, 206 N.J. 274, 293 (2011). 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 State v. Castagna, 400 N.J. Super. 164, 179 (App. Div. 2008) (preclusion of motive evidence would hinder a prosecuting 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; State v. Covell, 157 N.J. 554, 565 (1999); Calleia, 206 N.J. at 293. This is true even if the events relative 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)); State v. Long, 173 N.J. 138, 162 (2002).

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").

Here, defendant asserts his innocence. Thus, his motive is a material issue in dispute. Castagna, 400 N.J. Super at 178; Rose, 206 N.J. at 163. To be clear, the State has no intention of uttering the phrase "insurance fraud" to the jury. However, the reality is that the jury will hear that part of defendant's revenue came from [redacted] payments while part of his revenue

came from a salary from the businesses. Under different circumstances, the State would agree to sanitize the source from which that portion ([redacted] payments) of defendant's income came.

However, knowledge of the fact that defendant was collecting [redacted] is important in proving motive because the [redacted] payments would prevent defendant from replacing lost income. Stated differently, if defendant were to get a job, he would lose his [redacted] payments. Thus, faced with the likely imminent reduction to his income (loss of income from the businesses and from the Trust account), and no way to replace that income, defendant was at risk of becoming insolvent, especially given the fact that his expenses were fixed. A jury should be allowed to infer that this growing financial precarity created a motive for defendant to murder the victims. A jury should be permitted to infer that defendant's desperation to prevent Keith's plan from coming to fruition drove him to murder Keith and Keith's family. A jury should be permitted to infer that by murdering Keith and Keith's family, defendant would be able to keep Ecostar running; he would stand to collect 1.5 million dollars from the Irrevocable Life Insurance Trust; and his ongoing theft from Keith's Trust account (and efforts to covered up same by altering the bank statements) would remain undisclosed. Accordingly, the evidence the State seeks to introduce is highly relevant to the material issue of motive.

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. Super. at 160. 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, 136 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.

Here, since motive is the object of the proffered evidence, the similarity requirement of factor two is inapplicable. Castagna, 400 N.J. Super. at 179; Collier, 136 N.J. Super. at 194. The temporality requirement is clearly satisfied because defendant was engaging in the proffered conduct (collecting [redacted] while receiving a salary) at the time of the murders. Moreover, as discussed in the facts section of this brief, this evidence is proffered as an interrelated series of events that took place over the course of several months leading up to the murders. Castagna, 400 N.J. Super. at 179. As such, factor two is satisfied.

The third Cofield 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, 236 N.J. at 160 (quoting Cofield, 127 N.J. at 338); State v. Hernandez, 170 N.J. 106, 126-128 (2001) (finding "brutally honest" testimony of cooperating codefendant met clearer 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).

As previously stated, the State has no intention of calling defendant's financial arrangement "insurance fraud" at trial. (Albeit, that is exactly what it is). A grand jury previously found probable cause to indict defendant for one count of second-degree insurance fraud, for which he currently stands charged by way of a separate indictment. That being said, the State can certainly prove, by clear and convincing evidence, the simple fact that for the years 2017 and 2018, part of defendant's revenue came from [redacted] payments and part of his revenue came from salary from the businesses. All of the documentation to support this fact, and the names of witnesses who can testify to same, have been supplied to the defense in discovery under both the aforementioned indictment as well as the current indictment. Therefore, factor three is satisfied.

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 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, 453-454 (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 164-165 (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)).

The probative value of alerting the jury to the sources of defendant's revenue ([redacted] payment and salary) for the years 2017 and 2018 is not outweighed by its apparent prejudice. Castagna, 400 N.J. Super. at 175. Here, defendant's financial status during those years – including what he stood to lose if Keith's plan came to fruition – is highly probative of his motive for killing Keith and Keith's family. As discussed above, Keith's future plan would have the effect of cutting off two significant sources of defendant's revenue—his salary from the businesses and his "income" from the Trust account. The fact that defendant was collecting [redacted] insurance made the situation all the more dire because it would prevent him from having the ability to replace lost income with outside employment. This fact is highly probative of defendant's motive as it could lead a jury to reasonably infer that defendant murdered Keith and his family in order to prevent and/or mitigate the financial loss he would otherwise sustain. Thus, the probative value of this evidence is high.

Any potential prejudice that would arise from the jury learning that defendant collected [redacted] payments while also receiving a salary from the businesses is minor in comparison to its probative value stated above. This is especially true considering the relative gravity of defendant's other charges compared to the State's proffered "other acts" evidence. To be sure, defendant's charged conduct includes four counts of first-degree murder—two of them involving defendant's 11-year-old nephew and his 8-year-old niece, who the jury

will learn, were repeatedly stabbed and left bleeding to death and inhaling smoke. As such, the "other acts" evidence the State seeks to offer pales in comparison and is not unfairly prejudicial. Given the seriousness of the charges in this case, and all of the evidence supporting same, the fact that defendant collected [redacted] payments while also receiving a salary does not create a significant likelihood that a jury will convict on the basis of the uncharged conduct.

Based on the foregoing, the State submits that the State's proffered "other acts" evidence is admissible pursuant to N.J.R.E. 404b.

POINT II

KEITH'S STATEMENTS TO DEFENDANT AND OTHERS REGARDING HIS FUTURE INTENT ARE SUBSTANTIVELY ADMISSIBLE UNDER THE STATE OF MIND HEARSAY EXCEPTION N.J.R.E. 803C(3) AND CALLEIA

The State's presentation of motive will include out-of-court statements Keith made to defendant and others in the months, days, and hours preceding the murders.[12] These statements include communications about his future financial plans; his desire to sever business ties with defendant; his intent to move on from the businesses and obtain employment in the workforce; his intent to remove defendant as Trustee; his desire to potentially cash out his life insurance policy; pushing for the sale of Ecostar; questioning defendant about shortages in the Trust account; demanding access to the Trust account and the location of money that should have been but was not paid to the life insurance premiums. Most, if not all, of these statements will be offered in the form of electronic communications as well as video/audio recordings of the November 19, 2018 phone calls to defendant. The State submits that these statements are admissible under N.J.R.E.

[12] Some of these statements were outlined in Point I, supra.

803c(3), the State of Mind hearsay exception, and Calleia, supra. The State further submits that these statements do not implicate the Confrontation Clause.

The Confrontation Clause applies to "testimonial" hearsay, barring its admission at trial absent an opportunity by the defendant to cross-examine the declarant regarding the statement. State v. Cabbell, 207 N.J. 311, 329 (2011). Hearsay that is testimonial in nature is inadmissible where the declarant does not testify, even if it satisfies a recognized hearsay exception. State v. Kuropchak, 221 N.J. 368, 386 (2015). Conversely, hearsay that satisfies a recognized exception to the hearsay rule and is non-testimonial will not offend the Confrontation Clause. State v. Weaver, 219 N.J. 131, 151 (2014). To determine whether an out-of-court statement is testimonial, a court will evaluate whether the "primary purpose" of the evidence was to establish or prove past events potentially relevant to a later criminal prosecution. State v. Wilson, 227 N.J. 534, 551 (2017).

"In a criminal context, formal statements to government officers constitute testimony in a sense that a person's casual remark to an acquaintance does not." Kuropchak, 221 N.J. at 387; State v. Sweet, 195 N.J. 357, 373 (2008). Thus, in State v. Buda, 195 N.J. 278, 304 (2008), the Court held that a three-year-old's statement to his mother that the defendant "beat me" was non-testimonial, as it was spontaneous and not made to a government official. Accord State v. Coder, 198 N.J. 451, 469 (2009) (statement made to family member, for purpose other than evidence preservation or collection, was not testimonial); see also United States v. Lee, 374 F.3d 637, 644-45 (8th Cir. 2004) (statements coconspirator made to his brother and mother were non-testimonial), cert. denied, 545 U.S. 1141 (2005).

Keith's statements the State seeks to admit were made to defendant, his brother, a non-law enforcement officer. The purpose of these statements was not to create evidence that could later be used in the prosecution for Keith's and his family's murders; at the time the statements were communicated, Keith did not know that he and his family would be murdered. No indicia

whatsoever indicate that Keith's statements to defendant qualify as testimonial. Thus, the Confrontation Clause is not implicated, and the statements are admissible in evidence so long as they satisfy a hearsay exception. Weaver, 219 N.J. at 151.

"Hearsay" is an extrajudicial statement that "is offered in evidence to prove the truth of the matter asserted." N.J.R.E. 801(c). Hearsay is inadmissible unless it falls within an exception under the rules. N.J.R.E. 802; State v. Williams, 169 N.J. 349, 358 (2001). N.J.R.E. 803(c)(3), provides in relevant part, "The following statements are not excluded by the hearsay rule ... [w]hether or not the declarant is available as a witness ... [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), but not including a statement of memory or belief ..." "The state of mind exception to the hearsay rule has long been recognized and approved notwithstanding the fact that the right to cross-examination is denied." State v. Downey, 206 N.J. Super. 382, 390 (App. Div. 1986). "Particularly where the declarant is deceased, the rule is rooted in necessity and justified upon the basis that the circumstances provide a rational substitute for the benefit of cross-examination." State v. McGuire, 419 N.J. Super. 88, 136-37 (App. Div.), certif. denied, 208 N.J. 335 (2011).

"[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 295-297. "When a victim's projected conduct permits an inference that defendant may have been motivated by that conduct to act in a 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 803c(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 Keith, imbedded in the State's motive evidence, are admissible. All of the imbedded hearsay statements establish Keith's intent, in one form or another, to take action to extricate defendant from his business and financial life, and also to find out what happened to his missing Trust account money. The effect of Keith's intended future conduct on defendant would likely mean financial ruin, and inferably, other potential consequences with regard to learning of defendant's thefts from the Trust account. Defendant did not want to accept Keith's plan, nor did he want his thefts to be disclosed. This motivated him to kill the victims. Importantly, defendant was aware of Keith's intent to perform such future conduct, as Keith communicated same directly to him multiple times over the course of the months, days, and hours preceding the murders. The State has both direct and circumstantial evidence to prove defendant's knowledge of Keith's intent, specifically by way of electronic communications and recorded phone calls to and with defendant. At a bare minimum, the above evidence raises "an inference of why defendant may have engaged in [the] criminal conduct" with which he is charged; as such, it is relevant to prove motive. Id. at 294, 296.

The November 19th phone calls detailed elsewhere in this brief warrant special mentioning here. The victims had a security/surveillance system inside their home with audio and visual capabilities.[13] The system stopped working once power was cut to the residence, immediately prior to the murders. But, as indicated, telephone conversations that Keith had several hours prior to the murders – in the evening of November 19, 2018, from his home office and kitchen – were captured by this system. These recordings show the all of the victims' last hours, alive and speaking in real time. With regard to the phone calls, they capture Keith's voice, emotions, and his spirit more than any witness's testimony or written communication could. The State anticipates this evidence will

[13] Wyze cameras

be extremely impactful in both content and form. The content of these phone calls establishes both Keith's state of mind, as well as defendant's motive for the ensuing crimes and their timing: the reason the murders were committed that night, within hours of defendant's learning of Keith's discovery and desire to find out where the missing money had gone.

Because Keith's statements satisfy the requirements of the state of mind exception; they are non-testimonial and thus do not implicate the confrontation clause; they are highly relevant to prove the defendant's motive; and, they are not unduly prejudicial, the State's motion to admit them as evidence at defendant's trial should be granted.

CONCLUSION

For the foregoing reasons and authorities cited herein, the State respectfully requests its motion be Granted.

Respectfully submitted,

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