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February 27, 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 to Admit Testimony
Returnable: February 28, 2025

Dear Judge Lemieux:

Please accept this letter in conjunction with the State's Proffer of Testimony, which offers a summary of anticipated testimony from State's witnesses regarding surveillance video relevant to the prosecution of this defendant. The State would respectfully note from the outset, however, that this is a proffer of testimony anticipated as of this date; the State continues to review same and will likely discover other relevant portions of this evidence as it continues its preparation for trial.

Recently, in State v. Watson and a companion case, State v. Allen, the Court considered testimony surrounding the narration of surveillance video by a law enforcement witness. State v. Watson, 254 N.J. 558 (2023); State v. Allen, 254 N.J. 530 (2023). In Watson, while the Court held that the narration evidence in that case ran afoul of the evidence rules, which do not allow for continuous running commentary on video evidence by someone who has merely studied a recording,

Watson, 254 N.J. at 569, the Court nevertheless acknowledged that an investigator's specific comments can assist a jury in determining facts in issue, with the aforementioned admonition against continuous, running commentary. Ibid. As such, the Court identified certain safeguards to underscore the limited use of narration evidence: investigators should give focused responses to specific questions; they can provide objective, factual comments but not subjective interpretations; they may not comment on facts that are reasonably in dispute, which should be left for the jury to decide; and they should not offer testimony based on inferences drawn from other evidence. Ibid. Finally, the Court set forth a specific mechanism that the parties should follow where video evidence is expected: a party that intends to present narration evidence should provide opposing counsel a written summary of the proposed testimony before trial. The parties can then ask the Court to address any disputed areas at a N.J.R.E. 104 hearing.

As such, the State has included a proffer of testimony, which would likely be elicited from Detective Ryan Mahony, Lieutenant Patrick Petruzzello and Captain Brian Weisbrot, all of the Monmouth County Prosecutor's Office. In accordance with the instructions provided by Watson, the State would expect the defendant to advise the State with specificity as to that which is in dispute prior to the Court needing to become involved. See Watson, 254 N.J. at 605 (instructing that after a proffer of testimony is provided, counsel "should then confer among themselves to try to narrow areas of disagreement" and "[f]or items that remain in dispute, the proponent of the evidence should file a motion in limine to introduce the narration testimony). That being said, while the State understands that the Court has already set a date for a N.J.R.E. 104 hearing, the State would submit that the necessity of this date depends on the defendant's position, as Watson provides a "trial court, in its

discretion, may conduct a R. 104 hearing to resolve any outstanding issues.” Ibid. (emphasis added). The State submits, however, that testimony at any potential N.J.R.E.104 hearing would not be required under the holding in Watson, given the Court’s edict requiring a proffer of testimony to be provided in advance. The State, however, provides the relevant legal analysis in the event that determinations become necessary.

The admissibility of lay opinion testimony is governed by N.J.R.E. 701, which sets forth two preconditions for admissibility: 1.) The testimony “is rationally based on the witness’s perception;” and 2.) The testimony “will assist in understanding the witness’ testimony or determining a fact in issue.” See also State v. Watson, 254 N.J. 558, 591 (2023); State v. Allen, 254 N.J. 530, 544; State v. Singh, 245 N.J. 1, 14 (2021); State v. Sanchez, 247 N.J. 450, 466 (2021); State v. Brooks, 2025 N.J. Super. Unpub. LEXIS 132, *1.

Watson seemingly makes clear that, under the first prong of the analysis, an investigator who has carefully reviewed a video a sufficient number of times prior to trial can therefore satisfy the rules’ “perception” and “personal knowledge” requirements as to what the video depicts, as in United States v. Begay, 42 F.3d 486, 502-03 (9th Cir. 1994) (an officer who had watched a recording more than 100 times and had prepared an enhanced version of portions of the video “had sufficient personal knowledge” to narrate the enhanced video) and United States v. Torralba-Mendia, 784 F.3d 652, 659 (9th Cir. 2015) (an officer who “had watched each video roughly fifty times” could provide narration). Watson, 254 N.J. at 601. The Court continued in its holding by acknowledging that the Rule contains a critical limiting requirement: “a lay witness may only present testimony that will be helpful to the jury;” “whether narration testimony is ‘helpful’ depends heavily on the nature of the

recording and the proposed comments.” Ibid. In sum, they held, whether narration evidence is helpful turns on the facts of each case. Ibid. The Court was clear that “[e]ven though it is for the jury to determine what a recording depicts, there are times when narration testimony can help jurors better understand video evidence and aid them in ‘determining a fact in issue.’” Watson, 254 N.J.at 601, citing N.J.R.E. 701(b).

In this context, the Court discussed general characteristics of video evidence, including discussing the idea that certain recorded events are not easy to follow and how “it is unrealistic to think jurors can absorb that type of content when a video is played at trial, or that they will repeatedly play a video during deliberations and trace individual movements from frame to frame.” Ibid. In discussing this issue, the Court noted that, “[b]ut whether a narrator is needed is not the critical question... Rule 701(b) asks whether evidence is helpful, not whether it is necessary.” Ibid.

The State submits that much of the video in this case depicts events that occur during the darkness of night. Much of this video required hours of review in order to find that which was relevant. Testimony accompanying these videos will be helpful to provide context and also to objectively point out things that took police a significant time to find from within hours of video. The Watson Court took note of considerations such as length and clarity of video and how that can affect how helpful narration testimony can be. In this regard, the Court stated that “[a]n investigator who has carefully analyzed a video and can draw a jury’s attention to particular spots can be quite helpful to the finder of fact... [t]he jury can then ‘make its own evaluation.’” Ibid.; quoting State v. Watson, 472 N.J. Super. 381, 465 (App. Div. 2021). As to clarity, the Court indicated that if “footage is unclear or grainy, but not reasonably in dispute, testimony from investigators might help the jury. The opposite is true if a video is so unclear that it is difficult to decipher and the parties dispute its

contents.” Watson, 254 N.J. at 602. “Narration testimony may not be helpful if a video is clear and not otherwise hard to follow or grasp.” Watson, 254 N.J. at 602; See also Sanchez, 247 N.J. at 473.

As stated supra, whether narration testimony is helpful is a case by case determination. The State submits that the proffer provided to defense and for the Court’s review, makes clear that this testimony would be helpful to a jury who must make these determinations for themselves. Again, much of the relevant footage occurs between the hours of approximately 2:00 a.m. and 5:00 a.m. in complete darkness on November 20, 2024. Much of the relevant footage involves the travel of defendant’s vehicle between Ocean Township and Colts Neck. The State submits that the jury needs the objective context that the detectives can provide after painstaking analysis of the video, which they reviewed during the early parts of the investigation, for weeks thereafter and, more recently, in preparation for trial. Without testimony from the detectives, the jury would lack the necessary context to make any sense of what they will be viewing for the first time. Testimony from the detectives will provide relevant context without which the jury would be lost. For example, as discussed in the State’s proffer of testimony, footage was obtained from 19 Oxford Drive in Ocean Township. For long periods of time, essentially only darkness can be seen. During the course of the video, however, there are periods of time when relevant flashes of light are observed. Without the context of simple testimony about the fact that the cameras are depicting the rear of 27 Tilton Drive, i.e., the defendant’s home, it would make little sense. To further this point, one needs to know that Camera 5 depicts the rear of the home with a portion of the frame covering the area of Paul Caneiro’s driveway – which ultimately allows someone watching to see that vehicle lights appear and that a vehicle in the driveway backs

out and down the driveway at approximately 2:06 a.m. on November 20, 2018. Context and painstaking review then enable these experienced detectives to explain the chronology of camera locations [REDACTED] detailing how the vehicle from the driveway leaves the area and then returns approximately two hours later, re-entering the aforementioned Camera 5, showing the vehicle returning to 27 Tilton Drive at approximately 4:08 a.m. via observations of lights within the driveway area.

The review of this video also requires testimony explaining how fire can be observed in different areas (or points of origin) on different cameras from [REDACTED] Drive – the aforementioned Camera 5, as well as Camera 7, which depicts the fire first becoming visible at approximately 4:55 a.m., while Camera 5 shows a large flash in the driveway area at approximately 4:57 a.m., which will assist the jury in evaluating the origin and cause of the fire at 27 Tilton Drive -- which ultimately was determined to have three points of origin.

The State submits that the above are just some basic examples of why limited, objective narration testimony is necessary. The experienced Major Crimes detectives will explain that, in their experience, they see new, relevant evidence each and every time they watch the same video. The process never really stops. To this end, it is unreasonable to believe that their testimony -- pointing out relevant light flashes, patterns of tail lights and break lights, which direction the camera is facing, etc., provides helpful information that a juror could easily miss or misunderstand without proper context.

The State would also note that recently in State v. Knight, the Court indicated, in line with Watson, that slowing down or pausing video evidence is generally permissible without expert testimony, as it does not constitute altering the evidence,

but instead a basic adjustment to assist juror understanding. 259 N.J. 407 (2024). In its rationale, the Knight Court agreed with the Appellate Division that “playing a video in slow motion is a commonplace technique that does not distort or alter the admitted evidence, similar to allowing a jury to use a magnifying glass to view a photograph, which was previously permitted in Boland v. Davis.” Ibid. The Court added that the Appellate Division was correct in distinguishing between techniques that merely assist in understanding evidence versus those that impermissibly alter or add new meaning to the evidence. Basic adjustments like changing playback speed do not require expert testimony. Ibid. In line with this holding, the State submits it is necessary and proper for it to use such techniques, especially in light of the fact that these experienced detectives needed to use them during their investigation in order to give meaning to much of this video.

The State understands that [n]arration testimony must also comply with N.J.R.E. 403. The Rule guards against the risk of “[u]ndue prejudice, confusion of issues,... misleading the jury,... [and] needless presentation of cumulative evidence.” As the Court stated in Watson, “[p]lacing appropriate limits on narration testimony can help avoid those problems.” 254 N.J. at 602. The State understands and appreciates the Court’s ruling in Watson. In line with same, the State will ask focused questions and be guided by the four (4) “principles” provided as “additional guidance both to emphasize the limited nature of narration and to ensure that the testimony does not improperly intrude on the jury’s domain.” See Watson, 254 N.J. at 603. The State will address these four principles in order.

First, the State acknowledges and understands that “neither the rules of evidence nor the case law contemplates continuous commentary during a video by an investigator whose knowledge is based only on viewing the recording. The Court

specifically notes that, “[t]o avoid running commentary, counsel must ask focused questions designed to elicit specific, helpful responses.” Ibid. The State will be guided accordingly.

Second, Watson indicates that investigators can describe what appears on a video but may not offer opinions about the content. In other words, they can present objective, factual comments, but not subjective interpretations. Ibid. See also Boyd v. Commonwealth, 439 S.W.3d 126, 132 (Ky. 2014); Begay, 42 F.3d at 503; N.J.R.E. 403. The Court notes that the “individual opened the door with his elbow” can be allowed if not reasonably disputed; he did so “to avoid leaving fingerprints” cannot. Watson, 254 N.J. at 603, quoting Watson, 472 N.J. Super. at 462. The State certainly understands this edict; “[t]he former comment appropriately sets the stage for the factfinder to reach its own conclusion.” Ibid.

Third, investigators may not offer their view on factual issues that are reasonably disputed. Ibid., quoting Watson, 472 N.J. Super. at 467-68. So a witness cannot testify that a video shows a certain act when the opposing party reasonably contends that it does not; the Court, however, was clear that “we include a reasonableness requirement to prevent a party from disputing all facts in a recording in a manner that does not reflect good faith.” Ibid. The State can only assume that defendant will respond to its proffer in good faith.

Fourth, Watson concludes that “although lay witnesses generally may offer opinion testimony under N.J.R.E. 701 based on inference, investigators should not comment on what is depicted in a video based on inferences or deductions, including any drawn from other evidence. Ibid. Interestingly, the Court stated that “[t]hat type of comment is appropriate only for closing argument.” Id. at 604. The State, as referenced in its proffer of testimony, does mention the connection of video to other

evidence, i.e. chronologically relevant video offering a route of travel on the morning in question, in conjunction with photographs taken of the Porsche Macan at 27 Tilton Drive and after it was seized and searched pursuant to a search warrant, etc. While the State intends to utilize this other evidence to solidify what the video shows, it intends to refrain from offering opinions based upon these inferences or deductions. However, in order to appropriately offer fair comment in summation, the State would suspect that it must be allowed to elicit testimony which supports this fair comment. Assuming the State is permitted to elicit appropriate relevant and probative testimony, it is confident that it can connect the dots in summation.

Importantly, the Watson Court specifically indicated that “[c]onsistent with those principles, an investigator who carefully reviewed a video in advance could draw attention to a distinctive shirt or a particular style of car that appear in different frames, which a jury might otherwise overlook.” Watson, 254 N.J. at 604. The Court, however, did note that an investigator should not say, “that’s the same blue car” if those facts were disputed. Ibid. The State is unaware at this time of whether the identity of defendant’s White Porsche Macan loaner vehicle is disputed or not; once the State is made aware of what will be disputed, it will be in a better position to decide exactly what “focused questions” will be asked. See Id. at 603.

The State would also note in this regard that in Watson’s companion case of State v. Allen, the Court specifically referenced the Court’s holding in State v. Singh, 245 N.J. 1, 17-18 (2021) and says that, in Singh, we reaffirmed the admission of an arresting officers lay opinion that the sneakers worn by the suspect in surveillance video looked similar to sneakers worn by the defendant at the time of his arrest, given the officer’s direct observation of the defendant’s sneakers. Allen, 254 N.J. 530, 543 (2023). While holding that the officer’s reference to the suspect in the video as “the

defendant” was improper in light of the dispute about the identity of the suspect, the Court felt this remark was “fleeting” and did not amount to plain error. Singh, 245 N.J. 17-18. Given the propriety of the testimony in Singh regarding the sneakers, the State suspects that the proffered testimony regarding the vehicle would be in line with same, i.e., that the vehicle in Paul Caneiro’s driveway (Porsche Macan) looked similar to the vehicle captured on various surveillance video, in light of the fact that these detectives all made observations of the Porsche Macan either when parked in defendant’s driveway after police responded to the fire and/or after it was seized. Given the Singh holding the State believes “looked similar” with explanation would be wholly proper when elicited by focused questioning.

As noted in the Proffer of Testimony, the State does not intend to offer identification testimony relating to the video which is discussed. As indicated therein, however, this is with a limited exception. The State does expect that Captain Weisbrot will identify (as he did in his investigative report) the defendant, Paul Caneiro, when he was captured on camera 3 entering his own garage, turning on the light and then focusing his attention on the area where the DVR system was located. This occurs at 2:29 a.m. Given that the DVR system was determined to be one hour fast, the actual time was 1:29 a.m. It was determined that the DVR stopped recording at 2:30 a.m. (actual time 1:30 a.m.). The Court should also note that Captain Weisbrot will also identify Paul Caneiro in the area of his basement work area via a photograph contained in an email sent to Paul Caneiro via [REDACTED] at 1:42 a.m. on November 20, 2018. This email was designed to alert him that his Basement (Work Area) camera in 27 Tilton Drive is offline and that it disconnected at 1:31 a.m. Both of these identifications, however, are of defendant in his own home.

Given the holding of Watson, the State has provided “a written summary of proposed narration testimony,” which will be given to the defense and the Court. The State would also note that if defendant intends to utilize an investigator to testify about any video, they must do the same and are, therefore, on notice of this requirement. Ibid. The Court further indicated that “counsel should confer among themselves to try to narrow areas of disagreement... for items that remain in dispute, the proponent of the evidence should file a motion in limine to introduce narration testimony.” Id. at 605. Given the Court’s prior instructions and in the interests of judicial economy, the State will deviate slightly and provide the summary document and file a motion in limine concurrently. The State would note, however, that it is yet unaware of whether some proposed testimony will be in dispute. If there is dispute, “the trial court, in its discretion, may conduct a N.J.R.E. 104 hearing to resolve any outstanding issues.” Ibid. Again, the State notes there is no requirement that a 104 hearing be testimonial in nature, and submits any objections to the State’s proffer may be appropriately decided on the proffered statements on their face.

The State submits that narration testimony from the witnesses listed in the State’s proffer, who went spent large amounts of time reviewing video surveillance would certainly be helpful to a finder of fact. As indicated previously, the majority of the relevant video captures nighttime scenes; therefore, specific answers to focused questions regarding the video and certain movements of lights and characteristics of the vehicle in question is necessary in order to allow the jury to decide for themselves what is depicted therein. The State understands and appreciates the mandates of Watson, Allen and Brooks, the latter two of which were tried in Monmouth County and will be guided accordingly, in line with the proffer of

testimony that was provided, subject to the resolution of any disputes. Accordingly, the State will ask this Court to admit narration testimony at trial.

For the reasons and authorities set forth supra, the State respectfully requests this Court grant its motion in limine to admit narration testimony.

Respectfully submitted,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR



By: Christopher J. Decker
Deputy First Assistant Prosecutor

c: Victoria Howard, Esq.
Monika Mastellone, Esq.

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SUPERIOR COURT OF NEW JERSEY
COUNTY OF MONMOUTH
CRIMINAL DIVISION
INDICTMENT NO.: 19-02-0283
CASE NO.: 18-4915

STATE OF NEW JERSEY	:	NOTICE OF MOTION
v.	:	TO ADMIT NARRATION
	:	TESTIMONY PURSUANT
PAUL CANEIRO,	:	TO N.J.R.E. 701

To: VICTORIA HOWARD & MONIKA MASTELLONE, ESQUIRES
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COUNSEL:

PLEASE TAKE NOTICE that on the 3rd day April, 2025, at nine-o'clock in the morning, or as soon thereafter as counsel may be heard, the Monmouth County Prosecutor's Office shall move before the Honorable Marc C. Lemieux, A.J.S.C., for entry of an Order admitting narration testimony pursuant to N.J.R.E. 701.

In support of its motion, the Monmouth County Prosecutor's Office shall rely upon its letter brief and Proffer of Testimony.


Respectfully submitted,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR



By: Christopher J. Decker
Deputy First Assistant Prosecutor

I hereby certify that a copy of the within Notice of Motion and accompanying documents was served upon Victoria Howard and Monika Mastellone, Esquires, on the 28th day of February, 2023.



Christopher J. Decker
Deputy First Assistant Prosecutor