

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1104-23
INDICTMENT NO. 22-09-00446

STATE OF NEW JERSEY, : CRIMINAL ACTION
 :
Plaintiff-Respondent, : On Appeal from a Judgment of
 : Conviction of the Superior
v. : Court of New Jersey, Law
 : Division, Somerset County.
SAMUEL COGGINS, :
 :
Defendant-Appellant. : Sat Below:
 :
 : Hon. Peter J. Tober, J.S.C.,
 : and a jury

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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TRANSCRIPT DESIGNATIONS

- 1T – May 3, 2023, pretrial motion
- 2T – June 6, 2023, pretrial motion
- 3T – September 18, 2023, trial
- 4T – September 25, 2023, trial
- 5T – September 26, 2023, trial
- 6T – September 27, 2023, trial
- 7T – September 28, 2023, trial
- 8T – October 2, 2023, trial
- 9T – October 3, 2023, trial
- 10T – November 13, 2023, sentencing

PRELIMINARY STATEMENT

Samuel Coggins was convicted of murder and bias intimidation in connection with an altercation he had with Augustino Garcia on July 14, 2022. In a lengthy recorded statement to police, which the State introduced into evidence, Coggins admitted that he “snapped” and inflicted on Garcia, the serious injuries that ultimately resulted in Garcia’s death. Thus, the question for the jury to decide was whether Coggins was guilty of murder and bias-intimidation or a lesser form of homicide.

The evidence presented at trial established that Garcia and Coggins knew each other for several years and were together that day because Garcia and his roommate were in the process of moving out of their apartment, and Garcia’s roommate asked Coggins to help with the move, which Coggins had done before, earlier in the week. The State’s theory of the case was that while Coggins was at the apartment, packing and moving, he engaged in an “unprovoked” attack on Garcia, with the purpose to kill, because Garcia was an “illegal immigrant” from Honduras and did not speak English.

At no point during or before the assault did Coggins shout ethnic slurs or otherwise signal in any overt way that Garcia’s ethnicity or immigration status was what motivated the assault. The State’s theory was based on Coggins’ references to Garcia as an “illegal immigrant” made after the assault and

Coggins' views on immigration in general, which he openly shared in his statement to the police: that people who live in the United States should speak English and people who are in the country illegally should be deported. However, throughout the statement, Coggins consistently maintained that Garcia's "illegal" immigration status and inability to speak English was not the reason he assaulted Garcia. Coggins explained that he was open with Garcia about his views on immigration and did not have a problem being around Garcia, as long as Garcia was not violent toward him. Moreover, Coggins' account of the assault, much of which was corroborated or unrefuted, made out a compelling case of manslaughter.

Coggins told detectives he "snapped" and "saw red" when Garcia, who was extremely intoxicated and had been violent toward him all week, "sucker punch[ed]" him in the kidney. Coggins reacted by hitting and kicking Garcia to the ground and stomping on him and did not realize in the heat of the moment how seriously he had injured Garcia. He repeatedly told detectives that he never intended for Garcia to die – he wanted only to stop Garcia from hitting him again and admitted that the way he stomped on Garcia was "too much."

Errors committed by the trial court, including the admission of explosive, un-sanitized 404(b) evidence, which the prosecutor improperly used to demonstrate Coggins' propensity to commit acts of violence against Hispanic

immigrants, requires reversal. Coggins' statement to police – much of which was either corroborated or unrefuted – made a strong case for manslaughter. Thus, there exists a strong likelihood that Coggins' convictions for murder and bias-intimidation murder were attributable to the improper admission and/or sanitization of the highly prejudicial 404(b) evidence and other errors made by the trial court. Therefore, Coggins' convictions must be reversed.

PROCEDURAL HISTORY

In September 2022, Somerset grand jury returned Indictment No. 22-09-00446, charging defendant Samuel Coggins with murder by knowingly or purposefully causing the death of Augustine Garcia/inflicting serious bodily injury on Augustine Garcia, resulting in his death, the murder being outrageously or wantonly vile, horrible, or inhuman, involving torture, depravity of mind, or an aggravated assault, contrary to N.J.S.A. 2C:11-3a(1)/(2) and 2C:11-3b(4)(c) (count one); and first-degree bias intimidation under 2C:16-1a(1)/(2) (count two). (Da 1-2)¹

On May 3, 2023, a hearing was held before the Honorable Peter J. Tober, J.S.C., on the State's motion to admit other crimes evidence pursuant to N.J.R.E. 404(b). (1T) On June 6, 2023, Judge Tober entered an order, dated May 9, 2023, granting the State's motion to admit other crimes evidence. (Da 3-4)

On September 18, 2023, Judge Tober heard argument on the State's motion to redact portions of defendant's recorded post-Miranda statement. (3T) In light of the court's 404(b) ruling, defendant opposed the proposed redactions and requested that the recorded statement be played in its entirety. (3T) On the same day, the court issued a written order and accompanying statement of

¹ Da – defendant's appendix

reasons, granting defendant's application to have his recorded statement played in its entirety, in the event it is introduced by the State at trial. (Da 5-7)

Defendant was tried before Judge Tober and a jury on September 26 through October 3, 2023, and convicted as charged. (Da 8-9; 5T-9T)

On November 13, 2023, Judge Tober sentenced defendant to concurrent prison terms: mandatory life without parole for murder and 20 years for bias-intimidation. (Da 10-13; 10T)

Defendant filed a Notice of Appeal on December 11, 2023. (Da 14-16)

STATEMENT OF FACTS

Samuel Coggins was tried for the murder and bias-intimidation of Augustino Garcia, whom Coggins had known for several years. Coggins met Garcia through his friend, Michael Timko. Timko knew Garcia because Timko's girlfriend, Susan Stranzenbach, was Garcia's roommate. (6T 6-16 to 18-10; 6T 32-23 to 36-13; 6T 122-4 to 123-16) The incident that led to the charges occurred in the driveway of a house on North Avenue in Manville, where Garcia and Stranzenbach had been renting an apartment. Coggins was at the house three or four times that week because Stranzenbach and Garcia were in the process of moving out of their apartment, and Timko, who was living in Delaware at the time, hired Coggins to help Stranzenbach and Garcia pack their belongings and move them to storage. On the morning of the incident, Stranzenbach asked Coggins to work another day because there was still more packing and moving to do. (6T 14-6 to 16-25; 6T 33-16 to 39-11; 6T 85-18 to 85-25)

Coggins did not deny that on the day of the incident he "snapped" and lost his temper at Garcia, who was highly intoxicated, and inflicted on Garcia the serious injuries that ultimately resulted in Garcia's death. (6T 135-12 to 136-5; 6T 148-23 to 149-2) Coggins disputed, however, that his conduct constituted murder or bias intimidation; that is, he denied that he killed Garcia because

Garcia was an “illegal immigrant” and Spanish-speaking, as the State alleged.
(8T 8-5 to 30-5)

A. The Circumstances Surrounding the Fatal Assault

Stranzenbach, who was the only person at the house at the time, did not witness the events that caused Coggins to snap, and while 20 seconds of footage from a Ring security camera positioned outside the house across the street captured Coggins assaulting Garcia, it did not clearly show what occurred between the two men immediately before Coggins threw his first punch. (Da 14; 5T 115-2 to 116-7; 5T 139-14 to 140-20)

The footage, which was introduced into evidence, showed a black SUV belonging to Stranzenbach parked in the driveway on the side of the house. The truck was parked back first, so the front of the truck was facing the street, and the driver’s door was open. Although the area between the driver’s side of the truck and the front door of the house was obscured by a large tree, figures can be seen moving behind the tree and around the driver’s side of the truck, and Coggins can be heard saying, “You’re outside. Come here.” One of the figures, wearing a white T-shirt and identified as Garcia, can be seen passing behind the truck and then emerging on the passenger side, with the other figure, wearing a black T-shirt and identified as Coggins, right behind him. In a matter of seconds, Coggins can be seen punching Garcia, causing Garcia to fall to the ground in

front of a chain link fence, and then holding on to the fence while jumping up and down on Garcia. The footage did not capture exactly what occurred behind the truck, before the two men emerged on the passenger side, because the truck was blocking the camera's view and because the recording was interrupted by what was described as a "glitch" or "stutter." (Da 17; 5T 108-5 to 110-3; 5T 115-2 to 116-7; 5T 139-14 to 140-20; 6T 151-6 to 151-9; 6T 155-1 to 160-2)

Stranzenbach who was sitting in the driver's seat of the truck, smoking a cigarette, did not realize what had occurred. Stranzenbach testified that she heard a thud on the passenger side of the truck, but did not think much of it. She then saw Coggins jumping up and down but had no idea that he was jumping on Garcia. (6T 23-4 to 23-24) According to Stranzenbach, when Coggins was jumping, she heard him say "it's complete" or "you're done" or words to that effect. (6T 25-14 to 25-17; 6T 48-13 to 48-22; 6T 53-17 to 54-13) She then heard what sounded like someone choking. When she got out of the truck to look, she saw Garcia lying on the ground and Coggins standing over him. Garcia was bleeding profusely from his mouth and "choking on his blood." (5T 100-15 to 100-23; 6T 25-17 to 25-24) Stranzenbach screamed for someone to call an ambulance. (6T 24-11 to 24-17) Coggins called 9-1-1. (5T 119-21 to 128-5)

In his 9-1-1 call, Coggins reported that he "assaulted [Garcia] good" and that Garcia was unconscious and bleeding. (5T 123-19 to 123-20; 5T 124-2)

Coggins can be heard shouting at Stranzenbach to put Garcia on his side to prevent Garcia from choking. (5T 125-4 to 126-2) Coggins told the operator he assaulted Garcia in “self-defense” because Garcia “attacked” him and had been “hitting” him all week: “Every time I come here, he gets drunk and hits me.” (5T 122-21; 5T 123-2 to 123-16; 5T 127-15 to 127-16)

A neighbor, who also called 9-1-1, testified that she was in her backyard when she heard what sounded like “a fight going on,” and someone scream, “I’m going to kill you.” She then heard what sounded like someone “gasping” and immediately called the police. She did not witness any of the incident. (7T 78-23 to 81-23)

When the police arrived, they began administering CPR because Garcia had stopped breathing. (5T 101-1 to 101-16) Garcia sustained trauma to the head and fractures to his facial bones and ribs and ultimately died from “blunt force injuries of the head.” (7T 47-25 to 54-10; 7T 56-11 to 56-21)

Coggins was arrested and charged with murder and brought to the Somerset County Prosecutor’s Office, where he gave a videotaped statement, which the State introduced at trial. (6T 68-6 to 150-8)

Coggins told police that the day of the incident was “supposed to be the final day of a moving job for . . . Susie,” who was his friend Mike Timko’s girlfriend. Timko, who had recently moved to Delaware, contacted Coggins and

said he would pay him to help Susie move. Coggins agreed and went to Stranzenbach's apartment three times that week to help. (6T 79-9 to 79-13; 6T 85-18 to 86-15)

Coggins said that the first three days of the moving job were "stressful" because Garcia would get drunk and "physically violent" with him. (6T 91-11 to 91-12; 6T 92-21 to 93-3) Garcia would engage in what Coggins described as "sneak attacks," i.e., Garcia would "come up to [Coggins] from behind and punch [him] in the kidney." (6T 93-1 to 93-16) Coggins said that Garcia was an alcoholic and would sometimes get violent with Stranzenbach and Timko, but until that week, had "never been that violent with me." (6T 87-21 to 88-6; 6T 91-14 to 92-2) Coggins believed that Garcia was being aggressive toward him that week because he resented that Coggins was getting paid to help Stranzenbach move and wanted to do all the moving and packing for Stranzenbach himself. (6T 82-12 to 83-9)

Coggins told police that during the first three days of the move, he did not respond with violence when Garcia punched him in the kidney. He "grabbed [Garcia's] wrist a couple of times but never struck him." On one occasion, Coggins said, "I was actually trying give him a hug to calm him down and he hit me." (6T 94-21 to 95-11) Coggins, who had a medical marijuana card, would smoke marijuana before going to Stranzenbach's house. He believed that the

marijuana enabled him to remain calm and walk away when Garcia became aggressive. (6T 100-21 to 100-23; 6T 101-17 to 103-13)

On the morning of the incident, Stranzenbach contacted Coggins and said she needed his help for one more day. Later that morning, Stranzenbach and Garcia picked up Coggins in Stranzenbach's SUV. (6T 96-1 to 97-24) According to Coggins, Garcia was "belligerent" from the moment he got in the truck, and it appeared to Coggins that Garcia had already been drinking.² (6T 96-2 to 97-9; 6T 100-9 to 100-10)

There was no dispute that Garcia was an alcoholic and was "highly intoxicated" on the day of the incident (5T 34-25; 6T 9-12 to 9-17); empty airplane bottles of vodka were found in Garcia's bedroom and pocket (5T 151-5 to 151-10; 5T 163-6 to 163-12; 7T 60-8 to 61-20), and his blood alcohol level was .349, more than four times the legal limit. (7T 69-17 to 76-15)

Although Stranzenbach claimed at trial that Garcia, whom she regarded as her brother, was "a happy drunk" and had never been violent with her or Timko (6T 9-2 to 9-6; 6T 12-4 to 12-5; 6T 22-15 to 22-23; 6T 37-11), she admitted that Garcia became "irate" that morning when he learned that she had

² Coggins told detectives that Stranzenbach said she gave Garcia "a shot" that morning. (6T 85-5 to 85-9) While Stranzenbach denied doing that, she admitted to keeping "nip bottles" in the house "for on those days when [Garcia] needed something" (6T 9-16 to 10-11) and an "emergency bottle" of vodka in her truck. (6T 45-4 to 45-25)

arranged for Coggins to come over without asking him first: “[H]e got irate with me, because he said we didn’t need the help and I overstepped him, decided . . . on my own, I made the decision.” (6T 30-14 to 30-15) According to Stranzenbach, even though she and Garcia were both too “exhausted” and “stressed” to finish the job themselves, Garcia insisted, “we don’t need help today, we could do it ourselves.” (6T 16-17 to 16-20; 6T 40-23) Stranzenbach said that Garcia was so “upset” and “stressed” that he put all his clothes in a bag and “[t]hrew it out the door, the front door, . . . like it was garbage.” (6T 16-14 to 16-20; 6T 19-to 20-8; 6T 50-4 to 50-15)

When they got to the house, Coggins said, he was “trying to be nice, but then Garcia g[ot] drunk and violent again.” (6T 80-9 to 80-10) At one point, Coggins told detectives, he and Stranzenbach heard loud banging coming from Garcia’s room. Stranzenbach, worried that Garcia was damaging the walls, sent Coggins in to check on him. (6T 112-15 to 112-22)

Coggins said he was afraid that things were going to escalate if he stayed in the house with Garcia, because Garcia “was getting violent” – Garcia hit Coggins twice, once in the shoulder and once in the stomach – and the calming effect of the marijuana he smoked before getting to Stranzenbach’s house was wearing off. (6T 125-18 to 128-19; 6T 133-7 to 133-23) Coggins told the detectives he was worried that if Garcia punched him in the kidney, as on

previous days, he would not be able to stop himself from fighting back. (6T 87-21 to 87-14; 6T 128-2 to 128-20) So once he saw that Garcia had not damaged the walls, Coggins went outside to have a cigarette with Stranzenbach, hoping Garcia would “calm down and have a nap.” (6T 80-9 to 80-12; 6T 112-15 to 113-10) But Garcia did not take a nap. Instead, he followed Coggins outside. (6T 121-22 to 121-24; 6T 133-24 to 134-11)

Coggins remembered exchanging words with Garcia when he first saw Garcia outside. (6T 125-9 to 127-20) Then, as he was loading a bag of trash into the trunk of Stranzenbach’s SUV, Coggins said, Garcia “comes behind me and gives me a real hard sucker punch to the kidney. And that hurt.” (6T 113-11 to 113-14)

Garcia then walked to the passenger side of the SUV and Coggins followed, telling Garcia: “[Y]ou put your hands on me, you’re done.” (6T 80-12 to 80-18; 6T 114-7 to 114-15) Coggins hit Garcia “twice in the head and [] kick[ed] him in the chest to ground him.” (6T 80-18; 6T 114-21 to 114) Immediately after Garcia fell, Coggins thought he saw Garcia “make fists and get angry, trying to get up and hurt me,” which caused Coggins to “s[ee] red.” (6T 80-18 to 80-21; 6T 135-12 to 135-20; 6T 140-23- 141-15) He was “so pissed” at that point that he “closed his eyes and just started stomping” on

Garcia. (6T 114-24 to 115-1) Coggins said, “I tried to stomp on his chest, but I don’t think I hit his chest.” (6T 80-18 to 80-21)

While Coggins used the term “self-defense” to describe his actions (6T 132-12; 6T 136-17), he admitted that it took only “a half a second” for him to start stomping on Garcia and his belief that Garcia was “going to get up and start with [him] again” may not have been an accurate assessment of the situation. (6T 140-23- 141-15; 6T 146-12 to 148-11; 6T 148-23 to 149-2) Coggins also admitted that the way he stomped on Garcia “was too much.” (6T 136-5; 6T 146-9 to 146-13) Coggins told police, “I didn’t realize I went as far as I did” and “I didn’t mean to kill him.” (6T 132-7 to 132-8; 6T 135-23 to 135-24) Coggins said, “I feel bad that he died,” and repeatedly stated, “I did not want him dead.” (6T 120-15 to 121-3)

While Stranzenbach testified that she never saw Garcia act violently toward Coggins (6T 29-7 to 29-12; 6T 32-3 to 32-16), she told police that Coggins had made reference to being “sucker punch[ed]” when asked if the two men had been arguing: “[N]ot really arguing, but they were just like -- like, this is going to happen, this is going to happen, and if Augustine would, you know, like a sucker punch.” (6T 31-5 to 31-10) When asked what she meant by that, she responded: “He would, like, push Sam and say, go ahead, I’ll beat you up. I mean, Sam has made -- commented, go ahead, hit me. And Augustine said --

Augustine would just stand there and say, hit me, hit me, go ahead and hit me.”
(6T 31-11 to 31-17)

According to Stranzenbach, Coggins and Garcia would say things to get under each other’s skin (6T 18-7 to 18-16) but had never been violent with each other in the past and got along whenever they were together. (6T 35-19 to 36-5; 6T 51-14 to 51-18) Stranzenbach recalled that earlier that month Coggins helped Garcia activate his new cell phone, and earlier that week Garcia gave Coggins a television he no longer wanted. (6T 32-3 to 32-16; 6T51-20 to 51-25)

B. The Evidence of Motive/Bias-Intimidation

The State’s theory was that Coggins engaged in an “unprovoked” attack on Garcia, with the purpose and intent to kill him, because Garcia, who was from Honduras, did not speak English and was not in the country legally. (5T 36-22; 8T 30-23 to 31-3; 8T 34-8 to 34-9; 8T 55-11 to 55-20) To support its theory, the State introduced remarks Coggins made to a 9-1-1 operator and during his recorded statement to police about Garcia’s status as an “illegal immigrant” and his views on immigration in general. The State was also permitted to admit two prior crimes/bad acts that Coggins committed, pursuant to N.J.R.E. 404(b): (1) a 2019 assault on the driver of a medical transport vehicle; and (2) an alleged assault on Garcia a few weeks before the incident. Both incidents, the State asserted, demonstrated that Coggins, “If not a racist, has certain tendencies,

dislikes, against people who are not in this country legally, against people of a Hispanic background.” (1T 43-19 to 43-23)

i. Coggins’ statements about Garcia’s immigration status and views on immigration in general.

When Coggins called 9-1-1, he told the operator to send an ambulance and “deportation services” and referred to Garcia as “an illegal Honduran alien” and “illegal immigrant.” (5T 122-16 to 122-25; 5T 127-6) Then, in the middle of yelling at Stranzenbach for giving Garcia alcohol that day and trying to get Stranzenbach to roll Garcia on his side, Coggins remarked, “This is what happens to his people when they’re not deported safely.”

[COGGINS]: You’re the one who gave him alcohol today.

[STRANZENBACH]: You’re the one who --

[COGGINS]: You should know better!

[COGGINS]: This is what happens to his people when they’re not deported safely. They –

THE DISPATCHER: Did you get him on his side?

[COGGINS]: No, I’m not allowed near him. He’s going to drown if you don’t get . . . here.

THE DISPATCHER: How about the person -- the other person with you? Can you –

[COGGINS]: She's standing over him and she's preventing me from putting him on his side.

(5T 126-4 to 126-24) (emphasis added)

In his statement to police, Coggins again made reference to Garcia's immigration status and shared his views on immigration in general: people should speak English if they live here and should be deported if they are here illegally.³ Coggins told detectives that he was open with Garcia about his views, and did not have a problem being around Garcia as long as Garcia was not violent toward him, which Garcia had not been, until that week.⁴ Throughout the questioning, Coggins consistently maintained that he was angry that day because Garcia was physically violent toward him, not because Garcia was Spanish-speaking or illegally in the country.

[COGGINS]: He -- I don't know what his situation is, but he's been in here, this country, illegally, in and out, for the past ten years. Never made any attempt to learn English.

[DETECTIVE]: Okay. Does that bother you?

³ When asked if she ever heard Coggins say anything to Garcia "being in this country illegally," Stranzenbach responded: "Not specifically Augustine. I remember him saying it about other people. That they were taking everybody's jobs." (6T 18-21 to 19-5)

⁴ Coggins said that he agreed to help with the move when Timko asked him to because "[H]is girl Susie needs help and -- and he's never been that violent with me before, Augustine." (6T 87-21 to 87-23)

[COGGINS]: A bit. . . . But I think the thing that bothers me is that I'm getting paid for work and he thinks it's his work. He thinks I'm trying to take his job.

[DETECTIVE]: Okay. So, are you saying that since you were hired to do this job, you think that Augustine resented you for being there – when he thought that he should be doing the job himself?

[COGGINS]: He wouldn't mind it if -- I was told not to tell him, by Susie, that I was getting paid.

[DETECTIVE]: Okay. Okay. You think Augustine knew you were getting paid?

[COGGINS]: Toward the end, yeah.

(6T 82-5 to 83-9)

[COGGINS]: You should speak English if you're going to come to the United States.

[DETECTIVE]: That's what you would say to him?

[COGGINS]: That's what me and Susie would say to him.

I told him, maybe you should be deported for hitting people . . . and being an illegal immigrant.

[DETECTIVE]: Okay.

[COGGINS]: And he said, America and South America are the same thing; you're a racist. You're a racist for saying I'm not an American. I'm from South America. It's the same thing.

[DETECTIVE]: Does that make you mad when he called you a racist?

[COGGINS]: Yeah. I'm not a racist, I'm a nationalist.

[DETECTIVE]: Okay. I understand. So, you were open about your views towards him?

[COGGINS]: I was open about tolerating him in the workplace so long as I didn't get physically assaulted by him. . . . Don't hit me, that's fine, I'll work with you. . . . Don't touch me violently, I won't touch you violently. . . . He was very violent with me . . . throughout the whole moving job.

[DETECTIVE]: So, you were upset with him because of –

[COGGINS]: He was violent and drunk, and stupid. That's why I was mad.

(6T 89-17 to 91-24) (emphasis added)

[DETECTIVE]: So, every day you went there the attitude was tense?

[COGGINS]: Yeah. . . . Usually physically violent toward me. . . . Like, he'd come up to me from behind and punch me in the kidney.

[DETECTIVE]: Okay. And how would those situations be handled by you? What -- what would you do? . . .

[COGGINS]: I'd yell at him. . . . And I'd say to Susie, why hasn't he been deported? . . . I grabbed his wrist a couple of times, but . . . the incident is the only time I've ever struck him.

[DETECTIVE]: Does he say anything when he hits you or just hits you?

[COGGINS]: He says, uh, *puta*⁵ America piece of shit asshole!

(6T 92-23 to 95-25)

When asked how he felt about what happened, Coggins replied: “I feel bad that he died. . . . I did not want him dead. I wanted him not hitting me. Maybe a little sore. . . . And deported. . . . I did not want him dead. . . . Deported would have been very sufficient. . . . He could tell other people in Honduras to learn English before they come here.” (6T 120-13 to 121-9)

Detectives followed up by again asking Coggins whether his anger toward Garcia that day was due in part to Garcia’s immigration status:

[DETECTIVE]: Okay. Okay. Do you think that part of your anger towards striking him and hitting him was because he was . . . an illegal immigrant? You think that was part of your anger at that time?

[COGGINS]: No. I think the problem was that he hit me at least eight times during the move. I told him, stop hitting me, I’m going to hurt -- I’m going to -- I’m going to lay you out. . . .

I tried to get away from him. I tried to get away from the situation and he hunted me -- he hunted me into the front -- driveway.

(6T 121-12 to 121-24) (emphasis added)

ii. The 2019 assault on a medical transport driver.

In September 2019, Coggins was indicted in Hunterdon County for committing third-degree aggravated assault against Rosa Nunez-Decanela, an

⁵ Coggins said that *puta* means “bitch” in Spanish. (6T 95-14 to 95-21)

employee of The Galaxy Ambulance Service. In March 2021, Coggins resolved the case by pleading guilty to the amended charge of reckless endangerment, a disorderly persons offense, and was sentenced to credit for time served. (Da 18-21; 1T 37-8 to 37-15) Coggins came into contact with Nunez-Decanela on the day of the incident because she was the driver of the medical transport vehicle sent to pick up Coggins upon his release from Saint Barnabas Hospital.⁶ (Da 18; 1T 37-8 to 37-15) The facts underlying the offense were that Coggins put a “plastic hose” around Nunez-Decanela’s neck while she was driving on the highway. (Da 18-21)

Coggins made several references to the 2019 incident during his recorded statement to the detectives, which the State introduced at trial as evidence of Coggins’ anti-Hispanic bias. Coggins mentioned the prior incident for the first time when detectives asked him how he got to Stranzenbach’s apartment on the morning of the fatal assault: “They wanted me to take a Vamos Taxi. . . . I said

⁶ A sidebar exchange suggests that Coggins had been in the hospital for issues related to his “mental health.” (6T 192-12 to 193-4) At the Rule 104 hearing on the State’s motion to admit the 2019 assault, a Lebanon police officer who responded to the scene in that case, described Coggins’ demeanor that day: “He really couldn't complete a sentence. He was mumbling. Slow, his voice was very slow, monotone. It was very hard to understand him. . . . The only thing I really got out of him was that he was coming from St. Barnabas, Robert Wood Johnson Hospital.” (1T 32-18 to 33-1) The 2019 judgment of conviction for reckless endangerment shows that in sentencing Coggins, the judge found mitigating factor (4), “There were substantial grounds tending to excuse or justify the defendant’s conduct, though failing to establish a defense.” (Da 20)

I'm not going to take a Latino taxi after 2019. A Latino taxi put me in jail for an assault when it should have been a self-defense case.” (6T 83-21 to 84-9) Coggins told detectives he put a “rubber hose” around Nunez-Decanela’s neck because she was driving recklessly and he wanted her to stop the car: “She was driving 85 in a 60. She was stomping on the pedal. She almost killed me three times on the road before I pulled her away from the controls with a rubber hose. There was no body that time. . . . I was in jail for 619 days, plus three months in a psych ward. No trial.” (6T 84-11 to 84-18)

Then, when detectives asked him how he normally gets money, Coggins again brought up the 2019 incident, referring to Nunez-Decanela as an “illegal immigrant”:

I had SSI that just ran out and I was trying to get that fixed, and then they put me in medical taxi with an illegal immigrant driving it and she was needing to be restrained from the controls so that she wouldn't kill me. And then, when the police showed up, she miraculously learned English. She said, help! He try to kill me! He kill me! He kill me! He try to kill me! He try to kill me!

(6T 131-8 to 131-18)

Coggins brought up the incident a third time when detectives asked him if he ever “injured seriously,” or “choked or kicked” anyone before: “There was a -- I wouldn't say seriously. I choked out the taxi driver in 2019, but I was counting. I didn't hold it longer than ten seconds.” (6T 137-23 to 138-7)

In addition to these statements, the State was permitted to call as witnesses Nunez-Decanela and Lebanon Police Officer Adrian Larowe, the responding officer in that case, and to introduce as evidence the 2019 judgment of conviction for reckless endangerment and crime scene photographs taken in connection with the case. (Da 3-4)

Nunez-Decanela testified that after she picked up Coggins, “he wanted [her] to stop the car” and she refused because it was against “company policy” to stop at a location other than the final destination. (6T 189-21 to 189-23; 6T 194-8 to 194-14) Coggins “got a hold of a toothbrush,” broke it and started banging on the window with it. (6T 189-24 to 190-2) He then put something over her head “to kill” her, a long rubber hose, “like what you drink liquid from.” As this was happening, she said, Coggins called her “a fucking immigrant” and “a crazy person.” (6T 190-6 to 190-25; 6T 191-12 to 191-13) She was able to “grab[] a hold of the hose, [a]nd that’s why he wasn’t able to kill me.” (6T 191-4 to 191-5) She stopped the vehicle and called for help, and when the police arrived, “they took me to the hospital in an ambulance.” (6T 190-11 to 190-17) Photographs of the rubber hose and Nunez-Decanela’s injuries – “redness to her cheek” and “redness underneath her neck” – were admitted into evidence. (6T 207-9 to 208-11)

Nunez-Decanela denied that she was talking on a handheld phone and speeding and that that is why Coggins wanted her to get out of the car. (6T 194-15 to 194-24) She also denied that she picked up Coggins from a hospital and never acknowledged that the “taxi” she was operating was a medical transport vehicle. (6T 188-14 to 188-23; 6T 192-12 to 193-24)

The testimony of the responding officer confirmed that Coggins had been picked up from Saint Barnabas Hospital and that Nunez-Decanela was driving a medical transport vehicle with the words “Galaxy Ambulance” written on it. (6T 207-9 to 209-7) The officer also testified that Nunez-Decanela told him she was talking on her phone in Spanish, which “appeared to make, in her words, Mr. Coggins angry.” (6T 209-12 to 209-18)

iii. The incident involving Garcia a week before the fatal assault.

Garcia’s sister Claudia, who lived in Honduras, testified that a week before the incident she was video chatting with her brother when “suddenly a man came out from the kitchen” and “grabbed [Garcia] by the neck.” The man let go “as soon as he realized it was a video call.” (6T 217-8 to 220-24) Claudia said she was “very scared” when she saw the man grab her brother and asked what the man’s name was. Her brother said, “Samuel.” Claudia identified Coggins in court as the man she saw that day. (6T 221-4 to 221-17) When asked

how her brother responded when Coggins grabbed him, Caludia said, “He didn’t do anything.”⁷ (6T 222-7 to 222-10)

C. The Defense Case

Timko, who lived with Stranzenbach and Garcia before moving to Delaware and knew Garcia well, passed away about a year before the trial. Because Timko was unavailable to testify at trial, the defense introduced statements Timko made about Garcia through the testimony of Manville Detective Lieutenant John Crater, who interviewed Timko shortly after the assault. (7T 94-10 to 97-11) Timko told Crater that Garcia had become violent with him in the past and described an occasion on which Garcia kicked down the door to Stranzenbach’s bedroom and struck Timko several times. (7T 95-21 to 96-3)

The jury was charged on self-defense and the lesser forms of homicide.

In summation, Coggins’ attorney argued that Coggins did not commit murder, let alone murder for the purpose of intimidating Garcia because of his ethnicity. Counsel told the jury that what happened “didn’t have to do with race, it had to do with repeatedly being hit.” (8T 22-5 to 23-24)

⁷ At the Rule 104 hearing, Claudia was asked if her “brother express[ed] any concern about Mr. Coggins” and she responded: “No. No, he didn't tell me anything.” (1T 22-6 to 22-8)

Counsel did not argue, however, that Coggins acted in self-defense. As counsel pointed out, while Coggins may have used that term at various points, his account of what occurred – he acknowledged that he lost control and used more force than necessary to defend himself – did not establish a case of self-defense. Rather, counsel argued, it established passion/provocation manslaughter. (8T 8-20 to 16-12 to 19-16; 8T 24-25 to 25-25)

D. The Prosecutor’s Summation

In closing, the prosecutor stressed the importance of the 404(b) evidence on the issue of motive and intent:

Motive and intent. Claudia Garcia, she witnessed her brother being strangled . . . about the neck the very first day of the move. This is a man who wanted Augustine dead. He tried to do it when Augustine was on the phone with his sister, not realizing that it was on video, and he stopped. . . .

Rosa Nuñez, we’ll talk about her. She certainly was strangled by Augustine and she told you how afraid she was, that she thought she was going to die. You had an opportunity to listen to her. She wouldn’t even look at the defendant until she was asked to identify him. That’s how scared, four years later, she still was.

(8T 45-5 to 45-20)

The prosecutor told the jury that it could use Nunez-Decanela’s belief that Coggins was trying “to kill” her “as evidence of Mr. Coggins’ motive and purpose to kill Augustine Garcia in this case.” (8T 55-6 to 55-13)

POINT I

A SLEW OF ERRORS RELATED TO THE IMPROPER ADMISSION AND/OR SANITIZATION OF HIGHLY PREJUDICIAL 404(b) EVIDENCE DEPRIVED COGGINS OF A FAIR TRIAL AND REQUIRES REVERSAL. (Da 6; 1T 51-6 to 58-2)

The trial court committed a number of errors related to the admission of the 404(b) evidence. First, the trial court improperly found that the 2019 incident involving Nunez-Decanela and the prior incident involving Garcia were admissible because they were bias assaults and Coggins was charged with bias murder. In other words, the court erroneously admitted the prior assaults as evidence of Coggins' propensity to commit bias crimes of violence. To make matters worse, the prior incidents were not "bias incidents" in the first place. Second, to the extent that the incident involving Nunez-Decanela was relevant for the non-propensity purpose of demonstrating Coggins' anti-immigrant animus, the court still erred in admitting it because it was cumulative and unnecessary. Alternatively, the court erred in admitting the 2019 assault without sanitization, which was crucially required in this case.

Given the number and nature of the errors committed by the trial court in its handling of the 404(b) evidence, no limiting instruction, let alone the deficient instruction given here, could mitigate the prejudice that Coggins suffered from the improper admission and/or sanitization of the highly

prejudicial 404(b) evidence admitted against him at trial. These errors deprived the Coggins of a fair trial and require reversal of his convictions. U.S. Const., Amends. V, VI, XIV; N.J. Const., Art. I, Pars. 1, 9, 10.

Under N.J.R.E. 404(b), “[e]vidence of other crimes, wrongs or acts is not admissible to prove the disposition of a person in order to show that he acted in conformity therewith.” This limitation is essential to guard against the risk “that the jury may convict the defendant because he is a ‘bad’ person in general” and not because the evidence adduced at trial establishes guilt beyond a reasonable doubt. State v. Cofield, 127 N.J. 328, 336 (1992). For this reason, evidence of other crimes/bad acts is admissible only if offered as proof of a matter such as motive, intent, or common scheme or plan - and only if the matter is relevant to a material issue in dispute. N.J.R.E. 404(b).

Due to the inherently prejudicial nature of 404(b) evidence, the court, when considering its admissibility, is required to conduct “a more searching inquiry” than the general evaluation needed under N.J.R.E. 403(a), which precludes evidence only if the risk of undue prejudice substantially outweighs the probative value. State v. Reddish, 181 N.J. 553, 608 (2004). “With respect to other-crimes evidence, ... the potential for undue prejudice need only outweigh probative value to warrant exclusion.” Ibid. Thus, “the primary focus of [N.J.R.E. 404(b)], when examined in conjunction with [N.J.R.E. 403], is to

view it as a rule of exclusion rather than a rule of inclusion.” Ibid. (internal quotation marks omitted) (alterations in original). That is, “it will be the exceptional, and not the usual, case where the evidence of other bad acts is substantially relevant for reasons other than proof of criminal character.” Cofield, 127 N.J. at 337.

Thus, when the State seeks to use 404(b) other crimes evidence at trial, it must provide notice and “identify the specific, non-propensity purpose” for which it seeks to admit the evidence. State v. Rose, 206 N.J. 141, 181 (2011). And to ensure that such evidence will be used only for an appropriate and limited purpose and not to demonstrate the defendant's propensity to commit crime, the evidence must satisfy the four prongs of the Cofield test for admissibility: (1) it must be relevant to a material issue in dispute; (2) it must be similar in kind and reasonably close in time to the offense charged; (3) it must be clear and convincing; and, (4) its probative value must not be outweighed by its apparent prejudice. Cofield, 127 N.J. at 338.

A. The Hearing on the State’s Motion to Admit 404(b) Evidence

At the Rule 104 hearing, the State called Garcia’s sister Claudia to establish the prior assault on Garcia. Her testimony at the hearing was substantially the same as her trial testimony. (1T 17-13 to 30-1) With respect to the 2019 assault against Nunez-Decanela, the State called as a witness Officer

Larowe and presented the same documentary evidence it did at trial: the 2019 judgment of conviction for reckless endangerment, and photographs of the rubber hose and Nunez-Decanela's injuries. (1T 31-14 to 40-20) It did not call Nunez-Decanela as a witness. Instead, it presented Nunez-Decanela's hearsay account of what occurred between her and Coggins through Larowe. While the trial court permitted the State to rely on hearsay evidence at the hearing, it warned the State that it would have to call Nunez-Decanela as a witness if it wanted to introduce the 2019 assault at trial.

The State asserted that the two prior incidents were admissible under Rule 404(b) because they established a motive to commit murder – animus toward Spanish-speaking immigrants – and to rebut any claim of self-defense.

With regard to motive evidence, it is a material issue here. And that is because the defendant has filed a notice of self-defense. The State's argument is that this is not a self-defense case. This is a case that has been charged as first-degree bias intimidation, first degree murder. It is the State's argument that Mr. Coggins, if not -- might as well say it. If not a racist, has certain tendencies, dislikes, against people who are not in this country legally, against people of a Hispanic background.

(1T 43-24 to 44-4) The State reasoned that the prior incidents were relevant to motive because they were "bias incidents" and Coggins was on trial for a "bias crime":

Mr. Coggins is charged with a bias crime. And these two other incidents are bias incidents and they go to show his motive in killing Mr. Garcia here. Mr. Garcia is of Honduras origin. He is in this

country illegally. Throughout Mr. Coggins's post-Miranda statement he repeatedly talks about how the victim is not in this country legally, that he is Hispanic, that he needs to follow the laws. . . .

These are parts of evidence that tend to show to the jury what the defendant's motive is here in the present case.

So for those reasons, Your Honor, these two incidents should be admitted into evidence.

(1T 44-18 to 45-9) (emphasis added)

The State's characterization of the 2019 case as a "bias incident" was based on the theory that Coggins assaulted Nunez-Decanela because she was speaking Spanish to her daughter on her cell phone and Coggins did not like that. (1T 45-1 to 45-4) In support, the prosecutor elicited the following testimony from Larowe:

Q: While she was driving Mr. Coggins, she was speaking Spanish on her phone. Is that correct?

A: That's correct.

Q: It's your understanding that Mr. Coggins didn't like that?

A: That's correct.

Q: Did Miss Nunez tell you what happened while she was driving Mr. Coggins?

A: Yes. –

Q: What happened?

A: She was driving. She was talking with her daughter on the phone speaking Spanish. They got into a – Coggins and the victim got into a verbal altercation. Coggins ended up strangling – or pulling on her hair, then found the plastic tube in his back pack and started to strangle Nunez while she was driving.

Q: What was the cause of the [dis]agreement between Mr. Coggins and Ms. Nunez?

A: It was due to the fact that she was speaking Spanish.

Q: And Mr. Coggins didn't like that?

A: That's correct.

(1T 37-19 to 38-16)

With respect to the prior incident involving Garcia, the State did not explain how it was a “bias incident.” Nor did Claudia’s testimony establish that Coggins was motivated by anti-Hispanic bias when he put his hands around Garcia’s neck. Claudia did not say that Coggins uttered any words during the incident, let alone anti-Hispanic slurs or epithets, and when Claudia asked her brother if he had concerns about Coggins, he did not express any. (1T 22-6 to 22-8)

Nevertheless, the trial court found that the testimony of Claudia and Larowe established that both assaults were committed because of ethnicity and “couldn’t be more relevant.” The court agreed with the State’s assertion that the prior bias assaults are relevant because the main issue in the case is whether the defendant committed bias murder. The court stated:

Here the basic issue in the case is going to be did Mr. Coggins stomp on the head of Augustine Garcia and cause his death and did he do so because of Mr. Garcia's race, ethnic origin, or background. And I think that the incident involving Miss Nunez-Decanela, who's of Hispanic origin, who's -- the proffer is that Mr. Coggins was upset by her speaking Spanish, that he attempted to strangle her with a rubber hose.

He has a different version of events. He said he tried to stop her because she was driving unsafely. His counsel can raise that during cross-examination. He can cross-examine Miss Nunez. . . . State has to locate Nunez and bring her in to testify.

But in terms of a 404 evidentiary ruling, the Court here finds that . . . there's no doubt that there's a great deal of prejudice to Mr. Coggins, but the prejudice -- the probative value is so high. These almost go right -- all these issues go right to the idea of bias. It's a similar modus of operandi. It resulted in a very different end. There was no death. But someone was assaulted because they were Spanish. Someone was assaulted because they were speaking Spanish. The video call showed the victim's own sister observing a prior assault. It couldn't be more relevant.

(1T 55-15 to 56-19) (emphasis added)

B. Contrary to the State's Assertion and the Trial Court's Ruling, Rule 404(b) Does Not Permit the Admission of Prior Bias Assaults to Show That a Defendant Committed Bias Murder.

Permitting the State to introduce evidence that Coggins committed a bias crime in the past as evidence that he committed a bias crime in this case is precisely what Rule 404(b) prohibits. The State's theory of bias-intimidation murder was that Coggins committed knowing/purposeful murder with the purpose to intimidate Garcia based on his Hispanic ethnicity, i.e., that Coggins murdered Garcia because of his ethnicity. See State v. Pomianek, 221 N.J. 66

(2015) (“‘with purpose to intimidate’ penalizes a defendant who ‘selects a victim because of the victim’s group identification or inherent characteristics.’”)(first emphasis in original, second emphasis added) (quoting State v. Mortimer, 135 N.J. 517, 534-35 (1994)).

There is no doubt that Coggins acted with extreme anger when he stomped on Garcia. Coggins did not deny that. The material issue in dispute was the source of the anger that motivated the fatal assault. The State maintained that the source of Coggins’ anger was his animus toward Hispanic immigrants. Coggins maintained that his anger toward Garcia stemmed from being repeatedly hit by Garcia that week and sucker punched in the kidney that day.

The introduction of 404(b) evidence for the limited purpose of showing that Coggins had displayed animus or anger toward Hispanic immigrants in the past would have been an appropriate non-propensity purpose. Under that scenario, the purpose of the evidence is not to show that Coggins has a general propensity to commit violent crimes or the specific propensity to commit violent crimes against Hispanic immigrants. Rather, the purpose of such evidence is to show that Coggins has the animus and anger toward Hispanic people that, the State alleges, motivated the fatal assault in this case. See State v. Crumb, 307 N.J. Super. 204 (App. Div. 1997) (holding that racist writings of defendant, showing defendant’s animus toward Black people, were relevant to defendant’s

motive for murder of Black victim). But the State did not seek to introduce the prior assaults for that limited non-propensity purpose.

Here, the prior assaults were not admitted to establish Coggins' anti-Hispanic animus. Instead, they were admitted for the purpose of showing that Coggins assaults people because of his anti-Hispanic animus. Put simply, the evidence demonstrated more than animus toward people who are Hispanic; it demonstrated a propensity to assault people who are Hispanic. And that is precisely how the State wanted the jury to use it. In his opening statement, the prosecutor told the jury:

You'll also learn during the course of this trial Mr. Coggins has assaulted Hispanic people in the past. In fact, the week before - - I think it was the first day of this move -- you'll learn that Mr. Coggins wrapped his arms -- his hands around Garcia's neck, strangling him. You'll learn that in 2019 Mr. Coggins strangled an Hispanic woman because he thought that she was in this country illegally and because she was speaking Spanish. And at the end of this trial you'll hear from Judge Tober, who will instruct you that you can use evidence of those prior acts as proof of Mr. Coggins' purposeful intent and his motive to kill Augustine Garcia.

(5T 38-2 to 38-14)

C. The Court's Error in Admitting the 2019 Assault Against Nunez-Decanela as Evidence of Coggins' Propensity to Commit Bias Crimes Was Magnified by the Fact That Nunez-Decanela's Trial Testimony Failed to Establish That the Assault Was a Bias Crime in the First Place.

At the Rule 104 hearing, Officer Larowe testified in no uncertain terms that Coggins assaulted Nunez-Decanela because she was speaking Spanish on

her phone while driving and he did not like that. (1T 37-19 to 38-16) Based on Larowe's testimony, the trial court found that Nunez-Decanela was assaulted because she was speaking Spanish. (1T 56-15 to 56-19) At trial, however, Nunez-Decanela did not testify that Coggins assaulted her because she was speaking Spanish on her phone. In fact, Nunez-Decanela maintained that she was not talking on her phone when Coggins became aggressive. According to Nunez-Decanela, Coggins' became aggressive when he told her to stop the car and she refused. She further testified that Coggins did not immediately assault her when she refused to stop. Instead, he broke a toothbrush and started banging on the window. It was only after he banged on the window and she still refused to stop that he assaulted her. (6T 189-21 to 190-2; 6T 194-8 to 194-14)

While Coggins expressed anti-immigrant sentiment during the assault, calling Nunez-Decanela "a fucking immigrant," it was clear from Nunez-Decanela's account that Coggins did not assault her because he believed she was an immigrant. (6T 190-6 to 190-25; 6T 191-12 to 191-13) Rather, her testimony established that he assaulted her because he wanted her to stop the car, and she refused. Indeed, with respect to the 2019 offense, Coggins did not plead guilty to a bias crime. Nor was he indicted for a bias crime. Nor does the judge's statement of reasons contained in the 2019 judgment of conviction mention bias as motive for the offense. (Da 18-21) Therefore, the State should not have been

permitted to characterize the assault against Nunez-Decanela as a “bias incident,” let alone introduce the assault as evidence of Coggins’ propensity to assault Hispanic immigrants.

D. To the Extent the Anti-Immigrant Sentiment Expressed by Coggins During the 2019 Assault Was Relevant to Show Bias, Its Admission Was Unnecessary in Light of All the Other Evidence of Bias. Alternatively, the Trial Court Erred in Failing to Sanitize the Evidence Before Admitting It.

As previously discussed, evidence of a defendant’s anti-Hispanic animus may be admitted for the purpose of showing motive. To the extent the anti-immigrant statements that Coggins shouted at Nunez-Decanela were relevant to motive, they were unnecessary because Coggins openly discussed his views on immigration and his negative feelings toward people who are in the country illegally and do not speak English. Stranzenbach also testified that Coggins did not like that “illegal immigrants” take jobs away from American citizens. Evidence that Coggins made anti-immigrant statements to a driver in 2019 should not have been admitted because it was needlessly cumulative. N.J.R.E. 403(b).

More importantly, the evidence was admitted without any sanitization. “[W]here the other-crimes evidence is otherwise admissible but involves inflammatory and other unduly prejudicial facts, the judge is obliged to require the evidence to be sanitized to the extent necessary to accommodate both the

State's right to establish a fact in issue and the defendant's right to a fair trial.” State v. Collier, 316 N.J.Super. 181, 185 (App.Div.1998), aff'd o.b., 162 N.J. 27, 738 A.2d 369 (1999). The “evidence must be sanitized so that only those facts are admitted that are reasonably necessary to advance the probative purpose for which the evidence is proffered.” State v. Sheppard, 437 N.J. Super. 171, 196 (2014).

Here, the evidence probative of motive was the two anti-immigrant statements Coggins shouted at Nunez-Decanela. Therefore, the State should not have been permitted to introduce any details regarding the 2019 incident beyond those two statements. Id. at 191-92 (reversing conviction where court failed to limit 404(b) evidence to “the single anti-Hispanic comment” probative of motive and allowed the jury to hear evidence of defendant’s drunken and belligerent behavior, vandalism, possession of firearms, etc.).

The court should never have permitted the State to present to the jury the following evidence: that Coggins became belligerent, broke a toothbrush and tried to break the window when Nunez-Decanela would not stop the car; that Coggins pulled Nunez-Decanela’s hair and assaulted her with a rubber hose when she continued driving; photos of the rubber hose; photos of Nunez-Decanela’s injuries; other crime scene photos; and the judgement of conviction. Nor should the prosecutor have been permitted to elicit from Nunez-Decanela

that she believed Coggins was trying “to kill” her, and her ability to “grab[] a hold of the hose” was the only reason “he wasn’t able to kill [her].” (6T 190-6 to 191-5)

Nor should the prosecutor have been permitted to argue in summation that Nunez-Decanela “thought she was going to die” and, “four years later,” was still so “scared” of Coggins that she “wouldn’t even look at [him] until she was asked to identify him.” (8T 45-5 to 45-20) And the prosecutor should not have been permitted to tell the jury that it could use Nunez-Decanela’s belief that Coggins was going to kill her as “as evidence of Mr. Coggins’ motive and purpose to kill Augustine Garcia in this case.” (8T 55-6 to 55-13)

E. No 404(b) Charge, Let Alone the One Given Here, Could Mitigate the Prejudice Resulting from the Errors Committed by the Trial Court. Therefore, Coggins’ Convictions Must Be Reversed.

To minimize the inherently prejudicial impact of 404(b) evidence, the court must not only sanitize the evidence, it “must instruct the jury concerning its limited relevance,” State v. Stevens, 115 N.J. 289, 304 (1989), at the time the evidence is introduced and again in the final jury charge. State v. Gillispie, 208 N.J. 59, 93 (2011). As courts and commentators have recognized, “such a ‘limiting’ instruction is an extraordinarily difficult task for the average juror.” Stevens, 115 N.J. at 304. “As one commentator observed, ‘The theory of “limited use” under which such explosive evidence is put before the jury fails to

correspond to the actual effect of the evidence even in the minds of the most sober and conscientious jurors.” Ibid. (citation omitted).

For that reason, a 404(b) limiting instruction should not merely parrot the Rule. Rather, it “should be formulated carefully to explain precisely the permitted and prohibited purposes of the evidence, with sufficient reference to the factual context of the case to enable the jury to comprehend and appreciate the fine distinction to which it is required to adhere.” Ibid. Additionally, the instruction must provide the jury with a clear understanding that it may not infer from the evidence that the defendant has a propensity to commit the crimes for which he is on trial. State v. Reddish, 181 N.J. 553, 610-611 (2004).

In this case, the trial court did not give a limiting instruction when the evidence was admitted. Instead, the day after Nunez-Decanela and Claudia testified, the court gave a short instruction that did little more than parrot the Rule. (7T 34-9 to 34-22) And while the limiting instruction at the end of the case appears to track the model charge, it contains little tailoring. (8T 77-21 to 79-3) However, the issue here is not whether the limiting instruction was adequate to overcome the natural temptation of the average juror to infer propensity from “explosive” 404(b) evidence. That is because the explosive, un-sanitized 404(b) evidence was admitted in this case for that precise purpose: to show Coggins’ propensity to assault “illegal” Spanish-speaking immigrants. Given the nature

and number of the errors related to the 404(b) evidence, no limiting instruction could have mitigated the prejudice that Coggins suffered.

The magnitude of the prejudice resulting from the trial court's erroneous handling of the 404(b) evidence is manifest. The State's case was far from overwhelming and Coggins' statement made out a compelling case for passion/provocation or another lesser form of homicide. Moreover, much of Coggins' version – that he erupted in anger because Garcia had been violent all week and again that day – was either unrefuted or corroborated. There was no dispute that Garcia was drunk. That Garcia was “irate” because Coggins was coming over to pack was unrefuted. That Garcia threw all his clothes in the street was unrefuted. There was no dispute that when questioned by police on the day of the incident, Stranzenbach said that Coggins had mentioned being “sucker punched.” There was no dispute that Coggins called 9-1-1 and was trying to have Garcia turned on his side to prevent him from choking. That Coggins helped Garcia with his cell phone earlier that month is unrefuted. That Garcia gave Coggins a television earlier that week is unrefuted. There is no dispute that Timko told police that Garcia had been violent with him in the past. There was no dispute that the Ring video had a stutter and failed to record the moments before the fatal assault.

Coggins' convictions must be reversed.

POINT II

BY ERRONEOUSLY INCLUDING IN ITS FINAL CHARGE AN INSTRUCTION ON IMPEACHMENT BY EVIDENCE OF PRIOR CONVICTION, THE TRIAL COURT CREATED THE INESCAPABLE DANGER THAT THE JURY IMPROPERLY CONSIDERED COGGINS' CONVICTION FOR RECKLESS ENDANGERMENT IN ASSESSING THE CREDIBILITY OF HIS STATEMENT. (Not Raised Below)

As part of its final charge, the trial court instructed the jury that it was permitted to use Coggins' disorderly persons conviction for endangering in determining the credibility or believability of his testimony, because it has "the right" to consider whether a person who has been convicted of violating the law is more likely to violate the oath to tell the truth.

You've also heard evidence that Samuel Coggins has previously been convicted of an offense. This offense may . . . only be used in determining credibility or believability. You may not conclude that the Mr. Coggins committed the crime charged in this case or is more likely to have committed the crime charged here simply because he committed another offense on another occasion.

A jury has a right, however, to consider whether a person who has previously failed to comply with society's rules, as demonstrated through a disorderly persons conviction, whether they would be more likely to ignore the oath regarding [sic] truthfulness on the witness stand than a person who has never been convicted of any crime. You may consider this in determining this issue, the nature and degree of the prior conviction and when it occurred.

Now, our law permits a conviction to be received in evidence only for the purpose of affecting the credibility of the defendant and for no other purpose. You're not, however, obligated to change your

opinion as to the credibility of the defendant simply because of the prior conviction. You may consider such evidence, along with all the other factors we previously discussed in determining the credibility.

(8T 70-24 to 72-1)

This instruction should not have been given for two reasons: (1) Coggins did not testify at trial, and (2) under N.J.R.E. 609, only convictions for crimes – not for disorderly persons offenses – may be admitted to impeach a witness’s credibility.

Although Coggins did not testify at trial, the jury was sure to have thought that the charge applied to Coggins’ lengthy videotaped statement, the truthfulness of which he affirmed under oath.⁸ After all, the instruction on impeachment by prior evidence of conviction was read immediately after the instruction on defendant’s election not to testify. Naturally, then, a reasonable juror would have concluded that the instruction was meant to assist them in

⁸ At the conclusion of the statement, the detective told Coggins: “Okay. I’m going to swear you to the truthfulness of your statement as a county detective with Somerset County,” and administered the following oath:

[DETECTIVE]: . . . So, do you swear -- or you affirm that the -- the statement that you provided is the truth and the whole truth and nothing but the truth, that you’ve told me everything?

SAMUEL COGGINS: Yeah. . .

[DETECTIVE]: Okay.

SAMUEL COGGINS: I affirm that.

(6T 145-25 to 149-20)

assessing the credibility of Coggins' out-of-court "testimony" given to the detectives, which in many ways resembled typical in-court testimony: in addition to being subject to an oath, the video statement was given in a question-and-answer format that the jury was able to watch, albeit on a screen and not in real time. Indeed, in his opening statement, the prosecutor repeatedly referred to Coggins as someone who would be providing testimony at trial: "Samuel Coggins. Take a good look at him, because you will be hearing from him throughout this trial." (5T 32-5 to 32-7) "Now, you're also going to hear from Mr. Coggins' words about his claim of self-defense." (5T 38-15 to 38-16) "[A] phrase that you'll hear from Mr. Coggins later." (5T 33-10 to 33-13)

There is virtually no doubt that the jury interpreted the judge's instruction on impeachment by evidence of prior conviction as applicable to Coggins' statement to police. Thus, the judge's charge error created an inescapable danger that the jury improperly used Coggins' endangering conviction as a basis to find his statement incredible. Because, as previously discussed, Coggins' defense hinged on the credibility of his statement, the trial court's error was clearly capable of producing an unjust result. R. 2:10-2. Accordingly, Coggins' convictions must be reversed.

POINT III

COGGINS’ CONVICTION FOR BIAS-INTIMIDATION MUST BE REVERSED BECAUSE THE TRIAL COURT FAILED TO INSTRUCT THE JURY THAT IT MUST UNANIMOUSLY AGREE AS TO WHICH OF THE CONCEPTUALLY DISTINCT SUBSECTIONS OF BIAS-INTIMIDATION HE VIOLATED. (Not Raised Below)

The bias-intimidation statute, N.J.S.A. 2C:16-1a, provides three conceptually distinct ways in which a person commits bias-intimidation:

a. Bias Intimidation. A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.2C:28-4; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-5,

(1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or

(3) under circumstances that caused any victim of the underlying offense to be intimidated and the victim, considering the manner in which the offense was committed, reasonably believed either that (a) the offense was committed with a purpose to intimidate the victim

Subsection (a)(1) focuses on defendant’s state of mind. “A defendant is prohibited from acting with the purpose to commit bias intimidation.”

Pomianek, 221 N.J. at 91. Thus, under this section, even if the defendant's conduct is not overtly racist – e.g., the defendant did not shout epithets or slurs – they are still guilty of bias-intimidation if they purposely targeted the victim based on the victim's race or ethnicity. Subsection (a)(2) focuses on the defendant's conduct. "A defendant is prohibited from acting with . . . the knowledge that his conduct constitutes bias intimidation." Id. at 91-92. Under this section, the defendant is guilty of bias-intimidation if their conduct is so overtly racist that the defendant's bias motive is evident from conduct itself. Subsection (a)(3), which focuses on the victim's belief that they are being targeted based on race or ethnicity, was struck down as unconstitutionally vague. Id.

In this case, the indictment charged Coggins under subsections (a)(1) and (2), and the trial court read the model charge that pertains to each subsection. It did not, however, instruct the jury that unanimity was required as to each subsection. Nor did the verdict form require the jury to return a separate verdict as to each subsection. Thus, it is unclear from the jury's verdict whether it was unanimous as to at least one of the subsections.

The federal constitution requires unanimous verdicts in criminal cases. State v. Tindell, 417 N.J. Super. 530, 555 (App. Div. 2011) (citing the Sixth and Fourteenth Amendments). Our state constitution also "presupposes a

requirement of a unanimous jury verdict in criminal cases.” State v. Parker, 124 N.J. 628, 633 (1991) (citing N.J. Const., art. I, par. 9). Our Court Rules similarly require that the “verdict shall be unanimous in all criminal actions.” Ibid. (quoting R. 1:8-9). The “unanimous jury requirement” in all criminal trials is as “indispensable” as the separate “reasonable doubt standard.” Ibid. (analogizing to In re Winship, 397 U.S. 358, 364 (1970)).

The unanimity principle requires “jurors to be in substantial agreement as to just what a defendant did.” State v. Frisby, 174 N.J. 583, 596 (2002) (citing United States v. Gipson, 553 F.2d 453, 457 (5th Cir. 1977)). “Requiring the vote of twelve jurors to convict a defendant does little to insure that his right to a unanimous verdict is protected unless the prerequisite of jury consensus as to the defendant’s course of action is also required.” Ibid. (citing Gipson, 553 F.2d at 458).

The trial court’s failure to instruct the jury on the unanimity required in connection with the bias-intimidation count deprived Coggins of a fair trial, U.S. Const., Amends. V, VI, XIV; N.J. Const., Art. I, Pars. 1, 9, 10, and was clearly capable of producing an unjust result. R. 2:10-2.

CONCLUSION

For the reasons set forth in Points I and II above, defendant's convictions for murder and bias-intimidation must be reversed. For the reasons set forth in Point III above, defendant's conviction for bias-intimidation must be reversed.

Respectfully submitted,

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Dated: April 23, 2025

*THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION*

DOCKET NO. A-001104-23
INDICTMENT NO. 22-09-0044-6

STATE OF NEW JERSEY, :
 :
Plaintiff-Respondent, :
 :
v. :
 :
SAMUEL COGGINS, :
 :
Defendant-Appellant. :

CRIMINAL ACTION

On Appeal from a Final Judgment
of Conviction of the Superior
Court of New Jersey,
Law Division, Somerset County.

Sat Below:
Hon. Peter J. Tober, P.J.Cr.,
and a jury

BRIEF AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

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COUNTER-STATEMENT OF PROCEDURAL HISTORY

For the purposes of this appeal, the State adopts the defendant, Samuel Coggins', recitation of the procedural history. (Db4-5).¹

COUNTER-STATEMENT OF FACTS

A. FACTS OF THE CRIME

In the afternoon of July 14, 2022, officers were dispatched from the Manville Police Department to 42 North 12th Avenue, for a report of an assault, with an unconscious person at the scene. (5T:49-15 to 54-7). Upon their arrival, the responding officers saw how much of an understatement that was; the victim, Augustine Garcia, was laying on his back with severe facial injuries. He had a cardboard box under his head and was bleeding profusely from his mouth and nose. His face had clearly been subject to a severe traumatic injury. Defendant and Susan Stranzenbach were there as well, standing behind the prone Mr. Garcia. Ms. Stranzenbach was trying to help Mr. Garcia by helping him sit up more and drain the massive volume of blood in his mouth and nose, so that he could breathe. The officers immediately began trying to render medical aid in the form of CPR, and had Ms. Stranzenbach step back. Ibid.

While Mr. Garcia was still breathing, as the officers assessed his condition, his pulse began to weaken. Ibid. Officers attempted CPR for

¹ The State adopts defendant's citation conventions. (Dbvi).

approximately five minutes, though they were frequently stopped by Mr. Garcia's condition. Specifically, his mouth and nasal passages were filling with blood so rapidly that he would begin to choke on his own blood. The officers would have to turn Mr. Garcia onto his side to drain the blood and allow him to breathe. As additional officers arrived, they rendered aid as well, bringing gauze to try and stop the bleeding, a defibrillator, and oxygen. In the meantime, the officers had already called for the Robert Wood Johnson Rescue Squad to come and render assistance, and they took over life-saving measures once they arrived. At that point, defendant was detained, and officers began canvassing the area. Ibid. Mr. Garcia was not armed upon police arrival. (5T:62-10 to 23).

During this canvass, officers approached the home across the street from the scene. (5T:57-17 to 21). This home appeared to have a video camera pointing towards the area of the assault. Ibid. That camera is activated when it senses motion. (5T:75-17 to 22).

On the day of the murder, defendant and Mr. Garcia's movements activated that camera. (Pa1, Pa2).² In that video, defendant is shown to be working with something in a car parked on the driveway. (Pa1, 0:00:01-0:00:10;

² Pa1 is a disc containing the zoomed-in video footage of the murder, entered into evidence below as S-71. (6T:152-17 to 153-10). Pa2 is a disc containing the footage of the murder with no zoom, entered into evidence below as S-5. (5T:107-13 to 108-9). There is no dispute as to who the individuals shown are.

Pa2, 14:54:56-14:55:02). Mr. Garcia then comes out to the driveway, and defendant can be heard saying “You’re outside. Come here.” (Pa1, 0:00:11-0:00:20; Pa2, 14:55:03-14:55:10); (5T:108-11 to 19). Mr. Garcia moves to the other side of the vehicle, away from defendant, but defendant pursues him. (Pa1, 0:00:11-0:00:20; Pa2, 14:55:03-14:55:13).

Defendant punches Mr. Garcia in the face, causing Mr. Garcia to fall onto his back in the narrow space between the car and the fence dividing the driveway from the property next door. Ibid. Defendant is not finished, however; immediately after Mr. Garcia falls prone to the ground, defendant braces himself with one hand on the car, and one on the fence to jump up and then land with both feet onto Mr. Garcia’s head with his full weight. Ibid. Defendant does not stop—he then turns to brace himself with both hands on the fence to continue stomping on Mr. Garcia’s face while using the fence as leverage, hard enough that the camera across the street picks up the heavy stomping sounds. Ibid. At no point did Mr. Garcia make any aggressive moves. Ibid.

Notably, Mr. Garcia was a small man; he was between five-two and five-four in height, and weighed 110 pounds. (6T:10-12 to 19). Defendant, by contrast, was considerably larger than Mr. Garcia – Mr. Garcia was a foot and a half shorter, reaching only defendant’s chest-level at maximum. (6T:13-23 to 14-5).

After the assault, defendant himself called 911, and the following exchange took place:

THE DISPATCHER: Nine one one, where is your emergency?

SUSAN STRANZENBACH: I told you I don't know!

SAMUEL COGGINS: I'm calling the cops.

SUSAN STRANZENBACH: What (indiscernible screaming).

THE DISPATCHER: Where are you, sir?

SAMUEL COGGINS: Can you send an ambulance, deportation services to 42 North 12th Avenue in Manville?

THE DISPATCHER: Okay. And what's wrong that you need –

SAMUEL COGGINS: I was attacked –

THE DISPATCHER: -- an ambulance?

SAMUEL COGGINS: -- by an illegal Honduran alien. I kicked him in the ground and stomped on him a little.

(5T:122-9 to 25) (emphasis added). Defendant goes on to say during the 911 call

that he had been assaulted “multiple times” and that he “self...defensed him.”

(5T:123-4 to 16). Ms. Stranzenbach was there trying to render aid to Mr. Garcia,

and refused to allow defendant near Mr. Garcia again:

THE DISPATCHER: And where is the person -- where is the person who assaulted you?

SAMUEL COGGINS: He's on the floor bleeding, unconscious.

SUSAN STRANZENBACH: He's choking on his own blood.

THE DISPATCHER: He's unconscious?

SAMUEL COGGINS: Choking on his own blood. Because I –

THE DISPATCHER: Okay. Is he breathing?

SAMUEL COGGINS: -- assaulted him good.

THE DISPATCHER: Can -- can you put him on his -- is he breathing?

SAMUEL COGGINS: Let me roll him on his side.

SUSAN STRANZENBACH: Get away from him. You get away from me and get away from him.

SAMUEL COGGINS: They don't want me helping. I just don't want to get beaten up.

(5T:123-17 to 124-9) (emphasis added). Ms. Stranzenbach was very close with Mr. Garcia; though they were not blood-relations, they had essentially been siblings. (6T:6-17 to 7-4). He had never been violent with her in the 16 years she had known him – indeed, when Ms. Stranzenbach had been hit by a car, it was Mr. Garcia who took care of her while she recovered. (16T:8-25 to 9-6).

Defendant had more to say, however. On top of his false allegations of being attacked first, he started to announce his opinions about deportation policy

to the 911 dispatcher:

SAMUEL COGGINS: This is what happens to his people when they're not deported safely. They –

THE DISPATCHER: Did you get him on his side?

SAMUEL COGGINS: -- talk with Americans.

...

SUSAN STRANZENBACH: -- had him on his side. He's on my leg. (Indiscernible)

SAMUEL COGGINS: I don't know. She's got -- his chest is rotated on -- now about 90 degrees. Her illegal immigrant hit me and I said no. Yeah, I don't –

THE DISPATCHER: The police are –

SAMUEL COGGINS: -- (indiscernible) –

THE DISPATCHER: The police there?

SAMUEL COGGINS: They're on the line now.

THE DISPATCHER: The police are there?

SAMUEL COGGINS: This guy started getting violent with me. And now this happens. This isn't the first time. Every time I come here he gets drunk and hits me. No, I don't usually hang around drunks.

(5T:126-1 to 127-17) (emphasis added). This was not the first time defendant had spoken about his disdain for illegal immigrants generally. While Ms. Stranzenbach had not seen defendant speak to Mr. Garcia about it, he had frequently complained that, in general, illegal immigrants were taking jobs away

from Americans. (6T:18-18 to 19-5).

Ms. Stranzenbach was the first to try and render aid, and she observed the extent of the injuries to Mr. Garcia first-hand. (6T:25-1 to 28-10). The three of them had mutual friends and acquaintances (both defendant and Mr. Garcia knew Ms. Stranzenbach's boyfriend), and they were all there to help move Ms. Stranzenbach and Mr. Garcia, who lived together, out of the Manville home. (6T:14-9 to 16-25). She had been sitting in the car smoking a cigarette to take a break, and defendant had gone outside to do the same. (6T:22-4 to 25-13).

Mr. Garcia had come out at one point, at which time the assault occurred. Inside the car, Ms. Stranzenbach heard a "clunk" as defendant approached, and she thought it was from hitting the side view mirror. Ibid. However, she then saw defendant jumping up and down – what she later discovered was the assault taking place – and could not figure out what defendant was doing. Ibid.

After three to five full minutes of defendant jumping up and down, he said, "it's complete," and Ms. Stranzenbach suddenly heard choking and gagging sounds. (6T:25-1 to 28-10). When she exited the car, she saw the damage done to her dear friend. Ibid. She saw his orbital bones were smashed, and she could see the gray matter of his brains. Ibid. He was coughing up clots of blood, and since Ms. Stranzenbach was an EMT, she began clearing his airway and trying to get him into a better breathing position. Ibid. At one point,

Mr. Garcia was holding on to her to try and turn and breathe. Ibid. She had never seen Mr. Garcia and defendant argue or even push each other before. (6T:29-7 to 12). Mr. Garcia died as a result of defendant's brutal stomping.

When Mr. Coggins was later taken into custody, photographs were taken of his person, his clothes, and his belongings; these photos were entered into evidence at trial as well. (5T:169-5 to 171-1). While these photos were being taken, the police photographer did not observe any injuries on Mr. Coggins' person, nor did Mr. Coggins complain of any pain or injury. (5T:171-12 to 172-24). Mr. Coggins' shoes were visibly stained with blood as well. Ibid.

Notably, this was not the first time defendant had been violent with Mr. Garcia. On July 7, 2022, mere days before the murder, Mr. Garcia was on a video call with his sister in Honduras. (6T:219-22 to 222-15). His sister could see Mr. Garcia sitting in a chair or couch, and then suddenly, defendant appeared in the frame and grabbed Mr. Garcia around the throat with his hands. Ibid. However, once defendant saw that Mr. Garcia was on a video call, he let go. Ibid. Mr. Garcia's sister was scared, asking who that was, but Mr. Garcia did not react to his throat being grabbed and just told his sister that the man's name was Samuel. Ibid.

B. DEFENDANT'S STATEMENT

In his subsequent statement to police, defendant doubled down on his

claim that he had been attacked first, claiming that Mr. Garcia had given him a “sneak shot at me in the kidney from behind.” (6T:79-9 to 81-23). He claimed that he had gone outside to get away from Mr. Garcia, who was drunk and violent, during their packing work. Ibid. He also said that he had asked Ms. Stranzenbach, “I asked Susie why hasn’t he been deported or arrested? And she says, every time he just goes to the Hunterdon Medical Center for detox and he comes back drunker and angrier the next day.” (6T:80-2 to 5).

He then claimed that, after Mr. Garcia hit him in the kidney, unprompted, he moved away from defendant. (6T:80-14 to 81-23). Defendant claimed he was then entitled to retaliate, and not even Ms. Stranzenbach is safe from defendant’s disdain:

[SAMUEL COGGINS]: So, I move from the door to the front of him. I tell him, you put your hands on me, you’re done. I hit him twice, I kick him, and then I see him make fists and get angry, trying to get up and hurt me, so I closed my eyes and I tried to stomp on his chest, but I don’t think I hit his chest.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: And I saw there was blood on his nose and I thought, oh, he’s fucked, he’ll be down for a few minutes, and he might need to go to the hospital afterwards.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: And I tell Susie, listen, Susie, I’m sorry about what happened, but he hit me again.

This is like the eighth time this week.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: And then she gets out of the car. And now there's more blood. And she starts screaming at me to put him on his side, and I say okay. And then she screams, get away from him, don't touch him. And I say, well, you're old, crippled, disabled, you got hit by a car and you're not going to put him on his side, let me put him on his side. She screams at me, no, you're not touching him; you're just -- you'll just beat him up like an animal. I said, well, Susie, he's acting like an animal. What did you expect me to do?

DET. M. GROSSO: Okay.

SAMUEL COGGINS: The police aren't here to help us. Police have come before. They just take him to the Hunterdon Medical Center for detox. They don't deport him, they don't arrest him, they let him use alcoholism again to get away with assault.

(6T:80-16 to 81-23). When asked what led to the kidney shot, in that the detective asked what had transpired to lead to that, defendant answered:

SAMUEL COGGINS: He -- I don't know what his situation is, but he's been in here, this country, illegally, in and out, for the past ten years. Never made any attempt to learn English.

DET. M. GROSSO: Okay. Does that bother you?

SAMUEL COGGINS: A bit.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: But I think the thing that bothers me is that I'm getting paid for work and he thinks it's

his work. He thinks I'm trying to take his job. . . . He wants to do all the moving and he doesn't want me around. He wants to do all the packing for Susie.

(6T:82-5 to 19). Defendant also mentioned that Mr. Garcia and Ms. Stranzenbach picked him up from his hotel that morning later than they were meant to, because they had initially asked him to take a "Vamos Taxi." (6T:83-21 to 84-15). He refused to do so, and elaborated as to why, unprompted:

SAMUEL COGGINS: I said I'm not going to take a Latino taxi after 2019. A Latino taxi put me in jail for an assault when it should have been a self-defense case.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: She was driving 85 in a 60. She was stomping on the pedal. She almost killed me three times on the road before I pulled her away from the controls with a rubber hose. There was no body that time.

(6T:84-6 to 15). Defendant was redirected back to the issue at hand, and explained that he had endured a week of Mr. Garcia screaming at him, hitting him, and speaking Spanish. (6T:89-1 to 16). Defendant said that some of their arguments were about how "You should speak English if you're going to come to the United States. . . . We would say, people in America do things right so we don't destroy our country and need to move to another one. That's something Susie would say. . . I told him, maybe you should be deported for hitting people . . . and being an illegal immigrant." (6T:89-17 to 90-8). Mr. Garcia would call

him a racist, which defendant took issue with: “I’m not a racist, I’m a nationalist.” (6T:90-21 to 22).

However, defendant insisted that the reason for his anger at the time of the assault was because “he was very violent with me with the – throughout the whole moving job,” (6T:91-11 to 12), and “And then I tell Susie, I’m sorry, I had to beat him up, because he was hitting me again,” (6T:115-12 to 14).

Moreover, he described Mr. Garcia as:

SAMUEL COGGINS: He was violent, and drunk, and stupid. That’s why I don’t -- I was mad.

DET. M. GROSSO: He gets violent, and he gets drunk,
--

SAMUEL COGGINS: And stupid.

DET. M. GROSSO: -- and he wasn’t speaking English,
which aggravated you a little bit and made you upset?

SAMUEL COGGINS: If you’re going to talk to me,
talk to me in English.

(6T:91-23 to 92-7). To sum up his feelings about the incident, the defendant said the following:

DET. M. GROSSO: Well, now that we’re here, how do you -- how do you feel about the whole situation?

SAMUEL COGGINS: I feel like I got ripped off and I’m going to lose at least 25 years of my life, because I -- I -- I -- I accidentally killed someone in a moving job after they got violent with me.

DET. M. GROSSO: Okay. Do you -- do you feel bad about what --

SAMUEL COGGINS: I feel bad that he died.

DET. M. GROSSO: Yeah.

SAMUEL COGGINS: I did not want him dead. I wanted him not hitting me. Maybe a little sore.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: Not dead.

DET. M. GROSSO: Yeah.

SAMUEL COGGINS: Not dead. Maybe a little sore.

DET. M. GROSSO: Yeah.

SAMUEL COGGINS: And deported.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: Not dead. I did not want him dead.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: Deported would have been very sufficient.

DET. M. GROSSO: All right.

SAMUEL COGGINS: He could tell other people in Honduras to learn English before they come here.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: They'll do better.

DET. M. GROSSO: Okay. Okay. Do you think that part of your anger towards striking him and hitting him was because he was an immig -- an illegal immigrant? You think that was part of your anger at that time?

SAMUEL COGGINS: No. I think the problem was that he hit me at least eight times during the move. I told him, stop hitting me, I'm going to hurt -- I'm going to -- I'm going to lay you out.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: I tried to get away from him. I tried to get away from the situation and he hunted me - - he hunted me into the front -- driveway.

(6T:120-5 to 121-24).

Again, unprompted, defendant also added more detail about the previously-mentioned taxi incident as well:

DET. M. GROSSO: How do you normally get money?

SAMUEL COGGINS: Usually I go to Social Sec -- and even if -- when in 2019 I had SSI that just ran out and I was trying to get that fixed, and then they put me in medical taxi with an illegal immigrant driving it and she was needing to be restrained from the controls so that she wouldn't kill me. And then, when the police showed up, she miraculously learned English. She said, help! He try to kill me! He kill me! He kill me! He try to kill me! He try to kill me! And I'm in jail for 619 days.

DET. M. GROSSO: Okay.

SAMUEL COGGINS: And those three months of the psych ward.

(6T:131-6 to 21) (emphasis added). When asked about whether he had ever hurt someone seriously before, defendant again brought up the taxi situation, saying that “I wouldn’t say seriously. I choked out the taxi driver in 2019, but I was counting. I didn’t hold it longer than ten seconds.” (6T:138-4 to 7). He claimed to have used the “correct amount of force that time,” but she was “playing a lot when she was choking herself to make me look bad.” (6T:138-9 to 13). Defendant finished his statement by saying there was a picture of Mr. Garcia from his time in the Honduras Army, that defendant believed was not actual army membership, but cartel membership. (6T:144-7 to 23).

C. FACTS OF THE TAXI DRIVER STRANGULATION

In investigating the claims Defendant made during his statement, the taxi driver victim was found, and her testimony was provided at trial. Ms. Rosa Nuñez-Decanela was a taxi driver in 2019. (6T:188-13 to 191-17). She had been sent to pick up a fare, specifically defendant, on July 10, 2019. Ibid. Her company’s policy was to bring the passenger directly from point A to point B, with no spontaneous or extra stops in between. Ibid. However, defendant wanted to stop midway through the ride. Rosa refused, and defendant became irate:

Then he got hold of a toothbrush. He broke it. The part of the stick fell down under the seat. Then he got his -- he lifted his arm and started to do this against the window.

When I saw him acting that way, I grabbed my

phone. And I started recording it to have some evidence.

And then he got something plastic. I think it was something to drink water or juice. I was watching him through the rearview mirror and I saw him, like, when he lifted it and threw it, and I got the rubber part, the thick part that -- that he took against me, and so I -- I turned off the car as it was running and with this hand I was able to open the door.

I started calling for help. Some people stopped and they called the police.

(6T:189-24 to 190-15). The plastic item was a rubber hose, like one would use to drink from a reservoir in a backpack. (6T:190-18 to 191-17). She had grabbed the hose with one hand, and “that’s why he wasn’t able to kill me.” Ibid. Defendant also hit her in the face and neck, and pulled her hair. Ibid. She pulled out her phone to record the incident to have evidence, as well. Ibid. While he was assaulting her, defendant was saying “In the little I was able to understand from my language -- or the little I was able to understand of English, I was a fucking immigrant, that I was a crazy person, and I don’t remember one, because they were in English and I don’t speak much of English.” Ibid.

When police responded to the scene, Rosa had a bruise on her neck and a bruise on her right cheek. (6T:205-24 to 208-7). The rubber hose in question was still in the taxi as well. Ibid. She also told police that she had been speaking to her daughter on the phone in Spanish, which had seemed to anger defendant. (6T:209-12 to 18).

LEGAL ARGUMENT

POINT I

All 404(b) evidence was properly admitted and all required limiting instructions were given to the jury; evidence of a racial bias as motive was an essential element the State was required to prove.

Samuel Coggins is a racist—that much is beyond dispute. Whether he characterizes himself as a nationalist or not, it is clear to anyone with eyes that defendant has a problem with Spanish-speaking immigrants, particularly if he thinks they are illegally in the country. However, what defendant now fails to understand is that evidence of being a bigot generally does not satisfy the elements of bias intimidation—the State must prove that the murder itself was motivated by that bias directly, beyond a reasonable doubt.

This necessitates that the State present a case to prove that allegation, and no evidence can better do so than a pattern of behavior showing why the crime was, in fact, racially motivated – and not, as defendant asserted, the result of being attacked physically. To be sure, these prior events paint the defendant in a poor light. This is unsurprising, as being a racist is embarrassing. However, the primary concern when admitting prior bad acts to the jury is whether the probative value of those acts outweighs the prejudice they simultaneously present.

It is also unsurprising that defendant now wishes his prior acts of violent

racism had not been admitted as motive evidence, because it tends to prove his guilt of bias intimidation. That is not the test, and for the court below to have done so would have been completely inappropriate. In short, the mere fact that a prior bad act is damning, and makes him look like the racist he is in stark detail is not enough to outweigh the fact that it directly cuts to the heart of what the defendant's motives were. The trial court gave sufficient limiting instructions to the jury, ensuring the motive evidence was properly used, and there is no possible way this defendant can now claim any reversible error. A racist is as a racist does—and what this defendant did was a brutal, senseless, unprovoked act of hatred. In this context, his complaint of prejudice against him rings hollow, is completely tone-deaf, and exemplifies his own lack of empathy. This Court should affirm the convictions below.

Appellate courts give “substantial deference” to a trial court’s evidentiary rulings. State v. Morton, 155 N.J. 383, 453 (1998), cert. denied, 532 U.S. 931 (2001). Thus, “the decision of the trial court must stand unless it can be shown that the trial court palpably abused its discretion, that is, that its finding was so wide of the mark that a manifest denial of justice resulted.” State v. Carter, 91 N.J. 86, 106 (1982).

Admission of other bad conduct evidence is also afforded “great deference” by appellate courts. State v. Goodman, 415 N.J. Super. 210, 228

(App. Div. 2010). “Only where there is a ‘clear error of judgment’ should the ‘trial court’s conclusion with respect to that balancing test’ be disturbed.” State v. Marrero, 148 N.J. 469, 483 (1997) (quoting State v. DiFrisco, 137 N.J. 434, 496–97 (1994), cert. denied, (1996)).

Under State v. Cofield, there is a four-prong test for admitting evidence of other crimes or bad acts. 127 N.J. 328, 338 (1992). Those prongs are:

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.

Ibid.

Relevant material issues include “‘a common scheme or plan . . . [and] motive.” Id. at 336 (emphasis added) (quoting State v. Weeks, 107 N.J. 396, 406-07 (1987)), see also State v. Torres, 183 N.J. 554, 569 (2005) (citing a parade of national authority admitting gang expert testimony to establish motive, though Torres did not reach that specific question); State v. Jenkins, 178 N.J. 347 (2004) (“It is true that when motive or intent is at issue, we generally admit a wider range of evidence.”) State v. Erazo, 126 N.J. 112, 130–31 (1991) (prior

conviction and sentence admissible to show motive in murder trial); State v. Stevens, 115 N.J. 289, 305–06, (1989) (other-crime evidence admissible to prove “existence of an integrated plan, of which the other crimes and the indicted offense are components”). The Supreme Court reemphasized that “the material issue must be genuinely disputed.” Cofield, 137 N.J. at 336 (citing Stevens, 115 N.J. at 301.). State v. Williams, 190 N.J. 114, 131, (2007), established that the second prong “need not receive universal application,” as it was not found in the language of R. 404(b).

In relevant part, N.J.S.A. 2C:16-1 criminalizes bias intimidation with the following language:

a. Bias Intimidation. A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; N.J.S.2C:28-4; N.J.S.2C:33-4; N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-5,

(1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

In addition, the statute contemplates what can be used as a permissive inference

by the trier of fact in evaluating such a case:

b. Permissive inference concerning selection of targeted person or property. Proof that the target of the underlying offense was selected by the defendant, or by another acting in concert with the defendant, because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity shall give rise to a permissive inference by the trier of fact that the defendant acted with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

N.J.S.A. 2C:16-1b. The reason for this is clear—it is not typical for a bigot to explicitly announce that he is committing a crime against a person in a protected class because of their status within that protected class. Thus, the jury is permitted to make reasonable inferences as to a defendant’s intent in his choice of victim from surrounding acts and circumstances.

In that vein, State v. Powell is instructive. 469 N.J. Super. 345, 355 (Law Div. 2020). In that case, which revolved around a grand jury presentation for bias intimidation, the court held that “the State is not required to produce witnesses to testify to a defendant’s state of mind at the time of a particular act.” Id. at 355. Rather, like the statute permits, a jury is able to “make reasonable inferences about a defendant's state of mind based upon evidence presented by the State.” Ibid. In that case, such evidence included posts on the victim’s meetme.com page, and using the terms “mutt,” “mongrel,” and “spic” when

referring to the victim and her biracial daughter. Id. at 354. Moreover, he had made comments that he was “trolling the internet,” making such posts, because of his distaste for interracial relationships, and the children of those relationships. Id. at 354. He claimed he was merely “trying to be an asshole.” Ibid.

Thus, even when a general, non-person-specific intent to target minority groups does exist, the State is still not required to call any witness who would testify to a defendant’s state of mind at the time of a particular incident with a particular person. What matters are the surrounding facts and circumstances, no matter how poorly they paint the defendant’s moral character. This makes sense, as well—the State is generally not permitted to allow a third party to guess or assume at the mental state of another in any regard. Lay opinion testimony in this regard must be “based on, and supported by testimony about, [the witness's] personal perception and observation.” State v. McLean, 205 N.J. 438, 459 (2011). Testimony “on a matter ‘not within the witness’s direct ken and as to which the jury is as competent as he to form a conclusion’” is impermissible. Ibid. (quoting Brindley v. Firemen's Ins. Co., 35 N.J. Super. 1, 8 (App. Div. 1955)).

Moreover, our caselaw has made it clear that merely being a bigot, alone, is not enough to satisfy the elements of bias intimidation. For example, in State

v. Dixon, this Court determined that victimizing someone who happens to be of a protected class is not enough. 396 N.J. Super. 329, 341 (App. Div 2007). “That is, to be guilty of bias intimidation, a defendant must know that the victim is handicapped and must intentionally choose to victimize that person because of the person's handicap. Victimizing someone who happens to be handicapped, but without choosing the victim because of the handicap, is not a violation of the bias intimidation statute.” Ibid.

The perception of the victim is also not enough to indicate guilt under the statute. In State v. Pomianek, our Supreme Court held that a former subsection of the bias intimidation statute was unconstitutionally vague. 221 N.J. 66, 88-89 (2015). That section made a defendant guilty of bias intimidation, so long as the victim felt targeted, regardless of what the defendant intended. Ibid. Our Supreme Court explained why this overstepped the bounds of propriety:

...defendant here could not readily inform himself of a fact and, armed with that knowledge, take measures to avoid criminal liability. Defendant was guilty of a crime under N.J.S.A. 2C:16-1(a)(3) even if he had no intent to commit bias intimidation, so long as the victim reasonably believed that defendant targeted him on account of his race or color. Of course, a victim's reasonable belief about whether he has been subjected to bias may well depend on the victim's personal experiences, cultural or religious upbringing and heritage, and reaction to language that is a flashpoint to persons of his race, religion, or nationality. A tone-deaf defendant may intend no bias in the use of crude or insensitive language, and yet a victim may reasonably

perceive animus. The defendant may be wholly unaware of the victim's perspective, due to a lack of understanding of the emotional triggers to which a reasonable person of that race, religion, or nationality would react. Nothing in the history of the bias-intimidation statute suggests that the Legislature intended to criminalize conduct through the imposition of an amorphous code of civility or criminalize speech that was not intended to intimidate on the basis of bias.

Ibid. (emphasis added). Thus, simple ignorance, insensitivity, and/or generalized offensiveness are not enough to convict a person for bias intimidation. As the Supreme Court states, there is no legislative intent to impose a code of civility upon the populace. In short, it is not a crime to be a racist. The opinions of peers and the public may be negative as a result, but there is no jail time for being a bigot. It is a crime to move those beliefs out of your own head, and intentionally inflict them upon another. That intentional act is what the State must prove.

It is with this legal backdrop that defendant splits hairs to take issue with the admission of the 2019 taxi incident, claiming it was not admitted to show motive, but a propensity to strangle Hispanic people. Defendant also claims the prior assault on Mr. Garcia was not centered on his race, and thus, could not show motive and was not in any way relevant to the issues at hand. Defendant claims that even if he is wrong about all of that, the 2019 incident was unnecessary in light of the other evidence showing he was a racist, and the

information should have been better sanitized. Finally, he claims that no jury charge could mitigate the prejudice he was subject to.

Defendant is incorrect. The Cofield factors were more than satisfied to allow the entry of these pieces of evidence, and defendant suffered no undue prejudice from them in the way they were entered. Again, it is not enough for the State to prove that defendant had some racist ideas when there was a theory of self defense, absent any racial animus, presented to the jury as motive. Moreover, defendant may not simply deem relevant evidence “unnecessary” due to its unflattering nature. Defendant forgets, entirely, that he himself expressly described the assault on the taxi driver, including the victim’s race, statements of “he kill me,” the rubber hose details, and the strangulation. In light of this, the evidence and the jury charges given were more than enough to balance his rights with the State’s.

A. The prior bad acts were properly admitted.

There is little doubt as to the relevancy of the prior assaults committed by defendant—one was against the same victim days prior, and one was motivated by the exact same racial animus as the present offense. As the trial court aptly found, there were two different theories as to defendant’s motive for killing Mr. Garcia. (1T:55-15 to 56-19). Defendant’s theory was that he had been antagonized for days, was punched in the kidney, and finally fought back against

his abuser. This has nothing to do with race at all. The State’s theory was that defendant targeted Mr. Garcia because of his race, ethnic origin, and background. This has everything to do with race. The discrepancy is motivated by a clear hope on defendant’s part to persuade the jury that he only demanded Mr. Garcia “come here” and stomped on Mr. Garcia’s head for five minutes straight to defend himself from an invisible kidney punch, and not because he disliked the fact that Mr. Garcia was a South American illegal immigrant.

Thus, the State bears the burden of proving that racial animus beyond a reasonable doubt. The question of motive could not possibly be more squarely at issue, satisfying the first prong of Cofield entirely. 127 N.J. at 338 (“the evidence of the other crime must be admissible as relevant to a material issue”). Indeed, our law has contemplated motive as just such a relevant issue. Id. at 336; see also Weeks, 107 N.J. at 406-07 Torres, 183 N.J. at 569 (citing a parade of national authority admitting gang expert testimony to establish motive, though Torres did not reach that specific question); Jenkins, 178 N.J. 347 (“It is true that when motive or intent is at issue, we generally admit a wider range of evidence.”) Erazo, 126 N.J. at 130–31 (prior conviction and sentence admissible to show motive in murder trial); Stevens, 115 N.J. at 305–06.

The second prong, that “the other crime must be “similar in kind and reasonably close in time to the offense charged,” Cofield, 127 N.J. at 338, “need

not receive universal application,” as it was not found in the language of R. 404(b). Williams, 190 N.J. at 131. Nonetheless, the trial court here made adequate findings—findings the defendant does not refute in its brief—that both events were close in time and similar in kind. (1T:53-14 to 25). In that finding, the trial court notes that the 2019 taxi incident was recent enough at the time of the murder that defendant brought it up freely in his statement. Ibid. As for the incident days before the murder, defendant grabbed the throat of the same victim he ultimately killed. This is obviously closer in time and similar in ways nothing else could be.

Factor three, that the “evidence of the other crime must be clear and convincing” is also present here for both events. Cofield, 127 N.J. at 338. For both, the court correctly found that there was clear and convincing evidence of the events. (1T:53-17 to 54-24). Defendant does not address this factor, likely because both events have eye witnesses and/or victims present and ready to testify. At the motion hearing, the 2019 taxi victim did not testify, but an eyewitness to her injuries, along with pictures of those injuries, were submitted. (1T:54-2 to 24). In addition, the responding officer credibly testified about the fact that the victim was speaking Spanish, leading to the assault. Ibid. Mr. Garcia’s sister, the eye-witness to the throat-grabbing, also testified at the motion hearing, and her testimony was corroborated by cell phone records.

(1T:53-2 to 13).

Thus, we arrive at the only true factor in dispute here: “[t]he probative value of the evidence must not be outweighed by its apparent prejudice.” Cofield, 127 N.J. at 338. Defendant repeatedly claims that these events were admitted to show that he “committed bias murder.” (Db33-35). Essentially, that the evidence came in as pure propensity evidence of defendant’s violent nature, and that if he assaulted a Hispanic person in the past, he would do it again. Ibid. Defendant could not be more mistaken.

The jury was given specific, thorough instructions as to the purpose of the evidence, and how they were and were not supposed to use it. At the beginning of the day after the taxi driver and Mr. Garia’s sister testified, the trial court instructed the jurors how to use their testimony:

So, normally, under our rules, evidence that would prove other crimes, other wrongs, or other acts, is not permitted under our rules of evidence. Our rules specifically exclude evidence that a defendant has committed other crimes, wrongs, or acts when it is offered only to show that he has a disposition or a tendency to do wrong and therefore must be guilty of the charged offense in the instant trial. Before you can give any weight to such other crime, wrong, or act evidence, you must be satisfied that the defendant, Mr. Coggins, committed the other crime, wrong, or act. If you are not so satisfied, you may not consider it for any purpose.

However, our rules do permit evidence of other crimes, wrongs, or acts when the evidence is used for

specific, narrow purposes. . . .

The state has offered proof of other crimes, wrongs, or acts also during the testimony of Ms. Rona -- Rosa Nuñez-Decanela, the taxi driver. They've issued -- they've offered evidence through that witness and the testimony of Officer Adrian Larowe of the Lebanon Township Police. They offer that evidence to show motive and purposeful intent of Mr. Coggins as it would relate to the instant charges that you're considering today. Again, our rules permit such evidence when it's used for specific narrow purposes. The state is offering it for those purposes, motive and purposeful intent. You are to consider them only for that purpose.

(Extended pause)

THE COURT: Counsel, anything further on that 404(b) charge?

[PROSECUTOR]: That also applies to Claudia Garcia's testimony, as well.

THE COURT: [DEFENSE COUNSEL]?

[DEFENSE COUNSEL]: Your Honor, that's -- that's accurate.

THE COURT: Okay. Claudia Garcia, if you will recall, was the sister -- is the sister of the victim. The testimony that she gave regarding seeing Mr. Coggins in the background with hands around the neck of the victim is also offered by the state to show motive and purposeful intent of the crimes he's charged with in the trial before you. You are considered -- you are to consider that evidence, her testimony, only for that limited purpose.

(7T:32-22 to 35-14). This was in addition to the limiting instruction the court

gave the jurors before their deliberations began on the next court day. (8T:77-21 to 79-3). That final instruction reads as follows:

Now, the state has introduced evidence that Mr. Coggins was convicted of a disorderly persons offense in an incident with Rosa Nuñez-Canelo [sic], a taxi driver. The evidence has been offered by the state to show Mr. Coggins' motive and personal -- purposeful intent to commit the crimes of murder and bias intimidation.

You should consider this evidence, along with all the other evidence in the case, in determining whether or not the state has [proven] beyond a reasonable doubt that the defendant is the person who committed the crime of bias intimidation. And murder. Whether this evidence does in fact demonstrate Mr. Coggins' motive and personal -- and purposeful intent is for you to decide. You may decide that the evidence does not demonstrate motive and personal -- purposeful intent and is not helpful to you at all. In that case, you must disregard the evidence. On the other hand, you might decide that the evidence does demonstrate motive and personal -- purposeful intent and use it for that specific purpose.

However, you may not use this evidence to decide that Mr. Coggins has a tendency to commit crimes or that he is a bad person. That is, you may not decide that just because the defendant has committed other crimes, wrongs, or acts, he must be guilty of the present crimes. I have admitted the evidence only to help you decide the specific question of motive and purposeful intent. You may not consider it for any other purpose and you may not find the [defendant] guilty now simply because the state has offered evidence that he committed other crimes, wrongs, or acts.

Ibid. (emphasis added). Defendant claims, however, that this limiting instruction

was not enough to save him from the way his prior acts made him look. (Db39-41). Specifically, he claims that this instruction merely “parrots” the rule, and does not give specific instructions for how the evidence may or may not be used in this case. Ibid.

Even a cursory reading of the instruction shows this claim to be unfounded. The trial court forbade the jury from using the evidence to simply decide that defendant was a bad person, or that he has a tendency to commit crimes: “you may not decide that just because the defendant has committed other crimes, wrongs, or acts, he must be guilty of the present crimes....you may not find the [defendant] guilty now simply because the state has offered evidence that he committed other crimes, wrongs, or acts.” (8T:78-17 to 79-3). The court went on to describe what the evidence could be considered for: “only to help you decide the specific question of motive and purposeful intent,” (8T:78-23 to 24), and nothing else. Indeed, they were instructed to disregard the evidence if it did not help them at all in deciding the specific question of motive and purposeful intent. (8T:78-7 to 16).

The defendant’s claim is not a new one, and it has long-since failed—for nearly 30 years, our Courts have placed great faith in New Jersey jurors’ ability to follow limiting instructions faithfully. Indeed, even in cases as serious as those that once involved the death penalty “[w]e have long relied upon the

ability of jurors to faithfully follow a trial judge's instructions in deliberating on a defendant's guilt, and, in the capital context, the appropriate sentence." State v. Muhammad, 145 N.J. 23, 52 (1996) (citing State v. Manley, 54 N.J. 259, 270 (1969) ("[I]n administering the criminal law, the courts must rely upon the jurors' ability and willingness to follow the limiting instruction[s] without cavil or question.")); accord State v. Obstein, 52 N.J. 516, 527 n. 1 (1968); State v. Cormier, 46 N.J. 494, 508, 218 A.2d 138 (1966).

"While there is no way to assure that a jury adheres scrupulously to the mandate of a limiting instruction, there is no reason to believe that jurors will not act responsibly in performing their duty....Although limiting instructions cannot eliminate the possibility that jurors will misuse victim impact evidence, that concern 'does not justify a prophylactic, constitutionally based rule that this evidence may never be admitted.'" Muhammad, 145 N.J. at 52 (quoting Payne v. Tennessee, 501 U.S. 808, 831 (1991), (O'Connor, J., concurring)); See, e.g., Terrell, 452 N.J. Super. at 263-64 (rejecting defendant's argument that his convictions were based solely on gang testimony's presence, when voir dire screened for bias and judge gave proper limiting instructions); Goodman, 415 N.J. Super. at 231 (noting voir dire screening for gang bias, as well as limiting instructions during the jury charge satisfies Cofield). "We presume jurors to be rational and intelligent." State v. Daniels, 182 N.J. 80, 99 (2004).

Thus, defendant's claim fails. The jurors, who we presume to be intelligent enough to follow directions and limiting instructions, and who we trust to carry out their duties, were properly instructed on the use of the evidence.

Moreover, these events – the taxi driver and the sister's story – were both unable to be substituted with any other testimony. See Goodman, 415 N.J. Super. at 230-31 (“We know of no other evidence that could have been substituted for the gang-related testimony.”); Jenkins, 178 N.J. at 365 (“It is true that when motive or intent is at issue, we generally admit a wider range of evidence. Nevertheless, in deciding whether prejudice outweighs probative value, a court must consider the availability of other evidence that can be used to prove the same point.” (internal quotation marks and citations omitted)).

Defendant certainly announced many racist beliefs in his statement, but notably, he denied any racial motivation behind his actions at all. He claimed that despite his beliefs, he was willing to work with Mr. Garcia peaceably until he was abused and was forced to fight back. Absent these other contextual events, wherein defendant grabbed Mr. Garcia's throat while he spoke to his sister – in Spanish – days before the murder, and called a Hispanic taxi driver a “fucking immigrant” while strangling her in 2019, the State would be left to insinuate that all racists who commit crimes against a person, when that person happens to be of that minority, are doing so due to racial motivation.

This, of course, would also cause much ire amongst the defense as it paints with overbroad strokes, and requires the State to make the connection between being a bad person (a racist) and a propensity to commit crimes (being a racist means you will violently target people of that race on purpose and for no other reason). Showing a pattern of actual behavior is not only better evidence, but the only evidence that can competently allow a jury to infer intent, per the statute.

Indeed, the bias crime statute expressly allows for proof of intent, from which the jury can infer a racial motivation. N.J.S.A. 2C:16-1b. What proof would that possibly be, if not evidence of racial motives in the past? The relevance and probative value here are manifest. “‘Relevant evidence’ means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action.” N.J.R.E. 401. “The true test [for relevance] is the logical connection between the proffered evidence and a fact in issue, i.e., whether the thing sought to be established is more logical with the evidence than without it.” State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990) (emphasis added).

Such is the exact case here, and such is why defendant’s claim that the prior event evidence is “unnecessary” given defendant’s statement’s general racism fails. (Db37-39). These prior events have a clear, logical connection to

the issue at hand, better prove intent, and more competently prove intent, than the statement alone. Our burden is beyond a reasonable doubt, the highest level of review possible, and the State is required to present a complete case.

Defendant has intertwined prejudice period, with undue prejudice. “The purpose of [an N.J.R.E.] 403 balancing is to determine whether the risk of prejudice to defendant in admitting the ... evidence outweighs its probative worth.” State v. Long, 173 N.J. 138, 161 (2002); see also Brenman v. Demello, 191 N.J. 18, 34-35 (2007); State v. Sheppard, 437 N.J. Super. 171, 192 (App. Div. 2014). That a piece of evidence is unflattering is nearly inevitable, and thus, that is not the test. Our supreme court summarized it succinctly:

The evidence’s use for state of mind purposes is permitted under Rule 404(b) and any prejudicial concern about predisposition is outweighed by the probative value of the evidence. The fact that the evidence casts defendant in an unflattering position is not reason enough to exclude it.

In these circumstances we conclude that this relevant information should not be kept from the jury. Defendant may provide the jury with alternative explanations for his post-shooting acts. The jury may well reject the State’s view of the evidence. ... That determination, however, is for the jury.

State v. Williams, 190 N.J. 114, 133 (2007).

Defendant makes two final points in an effort to claim that these items of evidence were not permissible. The first is that the taxi driver’s testimony at

trial was that she was not talking on the phone at all, and she instead claimed that he was mad at her for refusing to pull over. (Db35-37). Thus, defendant claims that because that crime was not definitely a bias intimidation crime at the time of trial, it compounded the possible prejudice. Ibid. However, what defendant fails to realize is that this helped his point, that he took issue with her driving, not her race. Additional prejudice is thus impossible.

Lastly, defendant claims State v. Sheppard dictates that the event with the taxi should have been sanitized more to avoid undue prejudice. (Db37-39); 437 N.J. Super. at 191-92 (“to show defendant's alleged motive, the jury could have been apprised of his single anti-Hispanic comment without any reference to his drunk and disorderly conduct, his accusations of police vandalism and theft, his adult videos, or his possession of firearms and willingness to use them against police.”). Specifically, the only things the trial court should have allowed the jury to hear from Ms. Nuñez-Decanela were the racial epithets, and nothing else – no details of how defendant strangled her with a rubber hose, broke a toothbrush, no pictures of her injuries, no judgment of conviction, and no testimony that she felt she was going to die. Ibid.

What defendant forgets is that this information was not new to the jury by the time the driver testified—indeed, defendant himself had volunteered all of

this himself in his statement.³ Defendant was the one who first told police, and the jury, that he strangled her with a rubber hose. (6T:84-6 to 15). Defendant was the one who first told police, and the jury, that he went to jail for assault when there was “no body that time.” Ibid. It was Defendant who first told the police, and the jury, that she accused him of trying to kill her, and that she thought she was going to die: “She said, help! He try to kill me! He kill me! He kill me! He try to kill me! He try to kill me! And I’m in jail for 619 days.” (6T:131-6 to 21).

There was, thus, nothing to sanitize—the information had already been presented to the jury. In fact, the testimony corroborated defendant’s own statement. The only other details were the photographs of the injuries, which are always included when accusations of strangulation occur, and that the defendant broke a toothbrush, and banged on a window, neither of which have any bearing on anything. The photographs were of redness and bruising as well—far from the gruesome photographs of what happened to Mr. Garcia. Thus, there is no prejudice.

Therefore, the evidence was relevant and probative as to motive and intent, an issue hotly contested at trial, and any potential prejudice was

³ Defendant does not argue at any point against the admissibility of his statements to police, or any portion thereof.

successfully mitigated by the court’s limiting instructions. The probative value of the evidence was more than sufficient to outweigh any residual prejudice that may have remained. Defendant’s motive was squarely at issue, the proffered evidence did not add any more information to the events than defendant himself had already volunteered, and the evidence was of the exact type of permissible inference evidence the statute contemplates. Thus, defendant’s convictions should be affirmed.

POINT II

The jury charge below was sound, and impeachment by evidence of a prior conviction was unobjected to for a reason—he specifically asked the charge go in the way it did.

Defendant next complains that a limiting instruction, forbidding the jury from considering his prior disorderly persons offense against him for any reason other than for credibility, was improper. (Db42-44). Defendant claims that because he did not testify directly at trial, and because a disorderly persons offense is not a real “crime,” the instruction prejudiced him. Ibid.

To be sure, had the trial court not given such an instruction, the claim would be just the opposite—that because defendant’s own words in his statement announced his prior conviction for assault, the limiting instruction should have been given to protect his rights. Indeed, defendant specifically requested that the charge be given, and his requests for specific tailoring for a

disorderly persons offense were granted. (7T:116-14 to 118-11). Thus, the charge went in exactly as he asked it to. (8T:70-24 to 72-1). He cannot have been prejudiced by an asked-for tailoring of a charge to remove all reference to him being convicted of a crime, and changing it to the more accurate “offense” terminology.

Because this issue was never raised below, and defendant “thus deprive[d] the trial judge of the opportunity to ameliorate any perceived errors, he must establish that the comments made constitute plain error under Rule 2:10-2. Plain error must be ‘sufficient [to raise] a reasonable doubt as to whether the error led the jury to a result that it otherwise might not have reached.’” State v. Feal, 194 N.J. 293, 312 (2008) (quoting State v. Daniels, 182 N.J. 80, 102 (2004); State v. Macon, 57 N.J. 325, 336 (1971)). See State v. Papasavvas, 163 N.J. 565, 625 (2000) (“Generally, if no objection was made to the [purportedly] improper remarks, the remarks will not be deemed prejudicial. Failure to make a timely objection indicates that defense counsel did not believe the remarks were prejudicial at the time they were made. Failure to object also deprives the court of the opportunity to take curative action”). If no objection is made, “there is a presumption that that the [comment] was not error and was unlikely to prejudice the defendant’s case.” Singleton, 211 N.J. at 182.

At the outset, even if there was error here—which the State maintains

there was not—that error was wholly invited. Trial errors that ““were induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal....” State v. A.R., 213 N.J. 542, 561 (2013) (citation omitted). The doctrine “is grounded in considerations of fairness, and is meant to prevent defendants from manipulating the system.” Id. at 561-62 (internal markings and citations omitted). The doctrine is implicated “when a defendant in some way has led the court into error....” Id. at 562 (internal markings and citations omitted). When the doctrine applies, reversal is only appropriate where the error “cut mortally into the substantive rights of the defendant [causing] a fundamental miscarriage of justice....” Ibid. (internal markings and citations omitted).

No such reversal is warranted here. The following colloquy occurred during the charge conference, which is included here for the Court’s convenience:

THE COURT: Credibility, prior conviction of a defendant, that stays in.

[DEFENSE COUNSEL]: Your Honor, it stays in. The -- it raises some interesting and more wild issues related to this 404(b). It reads: You have heard evidence that Samuel Coggins has been previously convicted of a crime or crimes.

THE COURT: I was going to put an offense, because it’s –

[DEFENSE COUNSEL]: It -- I believe --

THE COURT: -- a disorderly persons offense.

[DEFENSE COUNSEL]: -- it's an offense at this point.

THE COURT: Right. And so I --

[DEFENSE COUNSEL]: I --

THE COURT: -- already have that as written.

[DEFENSE COUNSEL]: Okay.

THE COURT: You don't have that in what's before you, but that was my thought.

[DEFENSE COUNSEL]: Okay.

THE COURT: So, strike bracketed A, bracket S, and insert "has previously been convicted of an offense." And then we should make every reference to crime in that paragraph offense; correct?

[DEFENSE COUNSEL]: I believe so, --

[PROSECUTOR]: Yes.

[DEFENSE COUNSEL]: -- Your Honor. I don't mean to do that, but yes.

THE COURT: All right. Through -- I'm just going to say -- would you be -- in the second paragraph where it says "failed to comply with society's rules as demonstrated through a criminal conviction" -- as demonstrated through a criminal offense? Or can you not say criminal offense, can you just say --

[PROSECUTOR]: Through a disorderly persons?

THE COURT: Offense?

[DEFENSE COUNSEL]: Or even disorderly persons conviction?

THE COURT: Yeah, that -- I could do that. I could do that.

[PROSECUTOR]: That's fine.

THE COURT: Strike criminal and add disorderly persons. Okay. Through a DP conviction. And then I'll use "it" and singular on the top of the next page. Okay. All right. I think that gets it.

(7T:116-14 to 118-11). (emphasis added). The defendant thus directly asked for the charge to go in as it did, in order to protect his rights as much as possible. This is, of course, because the jury was asked to choose one of two things: believe the State's version, that Mr. Garcia's murder was racially motivated, or believe defendant's version, that he was attacked and reacted to being attacked.

This version of events was presented through defendant's own words, in his statement. Defendant was also the one who alerted the jury to his prior conviction in the same statement. This charge was thus completely necessary to give, regardless of the fact that he did not testify on the stand.⁴ The jury was asked to believe him, and thus, his credibility was at issue. Even if he affirmed he was telling the truth in the statement (Db43), the jury is still entitled to assess

⁴ Defendant cites to no caselaw mandating this distinction matters when it comes to inclusion of the limiting instruction.

the credibility of the statement.

Thus, there is no prejudice here, no error, and any possible impropriety was clearly invited by defendant. His conviction should remain undisturbed.

POINT III

There is no concern over an impermissibly fragmented verdict in this case, and the jurors were properly instructed as to unanimity.

Defendant finally claims that the jury charge risked a fragmented verdict in that there was no additional charge directing the jury to be unanimous on which subsection of bias intimidation they convicted under. (Db46-47). Defendant is mistaken—the two subsections were both fully explained to the jury, and the jury was explicitly told they must be unanimous as to each charge.

“A reviewing court must evaluate any alleged error in a portion of a jury charge in the context of the entire charge.” State v. Marshall, 173 N.J. 343, 355 (2002) (citing State v. Simon, 161 N.J. 416, 477 (1999); State v. Harris, 156 N.J. 122, 195 (1998)). “Also, a reviewing court must assume that the jury followed the instructions delivered by the trial court. Id.; State v. Manley, 54 N.J. 259, 271 (1969). “Correct charges are essential for a fair trial.” State v. Martin, 119 N.J. 2, 15 (1990); State v. Collier, 90 N.J. 117 (1982); State v. Green, 86 N.J. 281, 287 (1981).

Jury charges provide the jurors with a “road map,” without which a jury’s

deliberations can be led astray. Martin, 119 N.J. at 15. “Thus, the court must explain the controlling legal principles and the questions the jury is to decide.” Id.; Green, 86 N.J. at 288. “So critical is the need for accuracy that erroneous instructions on material points are presumed to be reversible error.” Martin, 119 N.J. 2, 15; State v. Grunow, 102 N.J. 133, 148 (1986); Collier, 90 N.J. at 123.

There was no objection to the charge below, and thus, this Court reviews for plain error. See R. 1:7–2; State v. Wakefield, 190 N.J. 397, 473 (2007) (“[T]he failure to object to a jury instruction requires review under the plain error standard.”). “Pursuant to Rule 1:7–2, a defendant is required to challenge instructions at the time of trial or else waives the right to contest the instructions on appeal.” State v. Belliard, 415 N.J. Super 51, 66 (App. Div. 2010) (citing State v. Adams, 194 N.J. 186, 206–07 (2008)). Where there is a failure to object, reviewing courts presume the instruction was “not error” and “unlikely to prejudice the defendant’s case.” State v. Singleton, 211 N.J. 157, 182 (2012).

“The Supreme Court has said that our state constitution ‘presupposes a requirement of a unanimous jury verdict in criminal cases.’” State v. Fair, 469 N.J. Super. 538, 555 (App. Div. 2021) (quoting State v. Parker, 124 N.J. 628, 633 (1991)); see also R. 1:8-9. Jurors must “be in substantial agreement as to just what a defendant did before determining...guilt or innocence.” State v. Frisby, 174 N.J. 583, 596 (2002) (quoting United States v. Gipson, 553 F.2d

453, 457 (5th Cir. 1977)).

A general unanimity instruction is often not sufficient to ensure a jury is aware that their verdict must be unanimous as to all facts:

[F]or example, [when] “a single crime can be proven by different theories based on different acts and at least two of these theories rely on different evidence, and [when] the circumstances demonstrate a reasonable possibility that a juror will find one theory proven and the other not proven but that all of the jurors will not agree on the same theory.” ... “[W]here the facts are exceptionally complex, or where the allegations in a single count are either contradictory or only marginally related to one another, or where there is a variance between the indictment and the proof at trial, or where there is a tangible indication of jury confusion. In these instances, the trial court must give an augmented unanimity instruction.

Parker, 124 N.J. at 635-36 (citations omitted).

Recently, in State v. Fair, this Court applied this reasoning to a situation involving terroristic threats under several possible theories of liability. 469 N.J. Super. at 555-58. The defendant in that case was charged with terroristic threats for statements he made directly to an officer about giving him a “head shot,” and for several subsequent Facebook posts promising retribution for his perceived persecution. Id. at 542-45. This Court determined, aside from the fact that part of the terroristic threats statute was unconstitutional, there was no confidence that the jury had reached a unanimous verdict as to the theory of Fair’s guilt. Id. at 548.

The defendant in that case had been charged confusingly: that he had violated “N.J.S.A. 2C:12-13(a) and/or (b).” This was never rectified. At the jury charge, the judge told the jury they could find defendant guilty under subsection (a), “A person is guilty of a crime if he threatens to commit any crime of violence with the purpose to terrorize another or in reckless disregard of the risk of causing such terror,” and that the State had to prove beyond a reasonable doubt that Fair had “threatened to commit a crime of violence.” Id. at 546. “The second element was described in alternatives, requiring the jury to determine whether the threat: ‘was made with the purpose to terrorize another’ or was made ‘in reckless disregard of the risk of causing such terror.’” Ibid.

Additionally, the judge charged that “[t]here's another form of terroristic threats that applies to this case,” referring to N.J.S.A. 2C:12-3(b).” Id. at 546-48. “As for this part of the charge, the judge described for the jury the three elements the State needed to prove beyond a reasonable doubt in order to convict, namely: (1) ‘[t]hat defendant threatened to kill another person’; (2) ‘[t]hat the threat was made with the purpose to put the person in imminent fear of death’; and (3) ‘[t]hat the threat was made under circumstances which reasonably caused the person to believe that the threat was likely to be carried out.’” The judge then gave a general unanimity charge, and provided the jury with a verdict sheet that listed the purposeful or reckless requirements of

subsection (a), and the three elements of subsection (b) under one paragraph. The jury did not have the ability, on the verdict sheet, to specify whether they found Fair guilty under (a) or (b), or if under (a), whether it was under the reckless or purposeful theories. Ibid.

The jury was confused and sent out a question regarding whether they had to find Fair guilty under both (a) and (b) or just one or the other. Ibid. The judge answered that “the prosecution had ‘two alternative theories of terrorist threats,’ and he again described the elements of those theories. At the conclusion of his remarks, the judge added: ‘So, yes, the answer [to the jury's question] is it could be...one or the other, but in either event it has to be proven beyond a reasonable doubt to your satisfaction.’” Ibid.

This Court found that, while the “reckless” section of the statute was constitutionally overbroad and warranted reversal on its own, and thus, “defendant must be given a new trial because the manner in which the jury was asked to publish their verdict does not reveal whether it found defendant guilty under the “reckless disregard” standard. We also agree with the argument that the judge's instructions did not ensure that the jury was unanimous on whatever portion of N.J.S.A. 2C:12-3 it may have convicted defendant of committing.” Ibid. Specifically:

[T]here was a potential for some jurors to conclude it was only the “head shot” statement that was

the terroristic threat, while others could have found the “yu will pay” and “we will have tha last laugh...waitonit” postings to be the terroristic threats, or some segment of jurors could have found only the “I kno wht yu drive & where yu motherfu\$kers live at” was the terroristic threat. This is not mere conjecture. The video of the confrontation between defendant and Healey does not provide overwhelming proof that the “head shot” comment was enough to provide the “terror” required by subsection (a) or the “imminent fear of death” required by subsection (b) because the officers took no immediate action in response at the scene; they simply departed. In some jurors’ minds, the head shot comment might not have been enough to terrorize or put Healey in imminent fear of death and it was only the later posted comments that suggested a true intent to threaten harm.

Id. at 557 (emphasis added). In addition, in response to the jury’s clear confusion, the judge did not instruct that all jurors had to agree on whether they convicted under subsection (a) or (b). Thus, “[t]he jury was not entitled to render a fragmented verdict in which one group found a violation of subsection (a) and another group, or even just a single juror, found only a violation of subsection (b). Without an instruction that would have made that clear to the jury, we can have no confidence that the jury did not produce an impermissibly fragmented verdict...” Ibid.

Defendant claims this case is like his own, and warrants a reversal because some jurors could have thought he was guilty via the “purposeful” language of subsection (a)(1), while others believed he was guilty via the “knowing”

language of (a)(2). (Db45-46); N.J.S.A. 2C:16-1. Defendant claims that the first subsection criminalizes only the racist state of mind of the defendant, regardless of whether he was overtly racist in the act. Ibid. Defendant also claims that the second subsection criminalizes conduct that is so overtly racist on its own that racist intent can be presupposed, and thus, the jury here could have been confused or fragmented on the modality of guilt. Ibid. Defendant does not argue that there was no general unanimity charge given here, as there was. (8T:116-9 to 117-10). This charge was given immediately after the model charge for N.J.S.A. 2C:16-1(a)(1) and (a)(2) were given. (8T:104-18 to 115-9). There is no allegation of impropriety there by defendant.

As previously discussed ante, defendant is wrong, as bias intimidation always requires proof of targeting with racist or bigoted intent. The State is not suddenly absolved of that requirement because the defendant shouted a slur mid-attack, with nothing else. Defendant also cites to no caselaw to bolster this reading of the statute. Secondly, many key aspects of Fair do not exist in his own case.

First, the indictment was not confusingly worded here; there was no and/or language between the two subsections. (Da2); (8T:104-18 to 105-12). Indeed, as read to the jury, the indictment reads as follows:

Count two of the indictment charges the defendant with the crime of bias intimidation. The indictment reads, in

pertinent part, as follows: “The Grand Jurors of the State of New Jersey for the County of Somerset, upon their oaths, present that Samuel Coggins, on or about the 14th day of July, 2022, in the Township of Manville, County of Somerset, and within the jurisdiction of this Court did knowingly commit the crime of murder with the purpose to intimidate an individual or group of individuals because of race, color, national origin, or ethnicity, or, knowing that the conduct constituting murder would cause an individual or group of individuals to be intimidated because of their race, color, national origin, or ethnicity, contrary to the provisions of N.J.S.A. 2C:16-1(a)(1) and (2), and against the peace of this state, the government, and dignity of the same.”

(8T:104-18 to 105-12). There is no confusing “and/or” anywhere in that passage.

The indictment and the charge mirror the statute language. N.J.S.A. 2C:16-1(a)(1-2).

Additionally, there was no indication of jury confusion as to bias intimidation here. There was no jury question as to this charge, or how to find him guilty of it throughout deliberations – and, we know the jury was fully cognizant of the fact that they could ask for clarification if they needed it. They asked a question as to the mens rea requirement of a lesser-included offense for murder. (8T:127-19 to 128-3).

Moreover, there was no alternative factual circumstance that could have led to differing results. In Fair, part of the jury could have believed the Facebook threats to be the terroristic threats, while others believed it was only the “head

shot” comment. Finally, the evidence in the case was not compelling enough to definitively show which theory the jury applied, because several different interpretations using the video, the Facebook posts, or a combination thereof could have led to defendant’s guilt under either theory. Thus, different evidence and different acts supported different theories of guilt for a single crime, and the jury was clearly and explicitly confused. See Parker, 124 N.J. at 635-36. Unanimity charges should have been given in that case, and reversal was doubly warranted.

By contrast, here, there is only one set of facts, corroborated by both testimony, defendant’s statement, and video evidence. Those facts show that defendant, through video evidence and testimony, told Mr. Garcia to “come here,” unprovoked, and stomped on Mr. Garcia’s head for five minutes. Defendant’s own words immediately after the crime, that deportation services should be called, and “this is what happens to his people when they’re not deported safely,” are undisputed facts, as are the many racist remarks he made during his statement.

So, calling for deportation services, saying “this is what happens to his people when they’re not deported safely,” and his racial animus in his statement, constitute evidence of a purposeful targeting of Mr. Garcia. The same evidence also constitutes evidence of knowing his conduct would cause Mr. Garcia, and

those like him, to be intimidated based on their protected status. Either would have been appropriate, and both are satisfied by the same set of facts and proofs. This is a single set of acts under either theory of guilt.

Thus, more applicable is State v. Kornberger, 419 N.J. Super. 295 (App. Div.), certif. denied, 208 N.J. 368 (2011). That case has more utility to the one at bar. That case involved an attempted sexual assault with one set of very clearly defined and credible facts. Id. at 298-99. The victim was waking home one night when a man, Kornberger, suddenly attacked her with a tire iron, breaking her hand and injuring her. When she fell to the ground, he pulled her legs out straight, straddled her body, and began to unbutton his pants. The victim then grabbed the tire iron herself from where he had discarded it and began to hit Kornberger with it, stopping the attack. She had a good view of his face since they were facing each other. Ibid.

Kornberger later confessed to the same event, describing how he chose his victim, came up behind her, and hit her with a tire iron in an attempt to rape her. Ibid. He said he abandoned the rape after the victim fought back. Additionally, after his confession, Kornberger told the police where the tire iron was, and it was recovered. His DNA was found on the tire iron. Ibid.

Kornberger's jury charge erroneously included all three types of criminal attempt under N.J.S.A. 2C:5-1a, instead of just the "substantial step" theory as

it should have. Id. at 301-305. The three types of attempt, as defined by this court, are as follows:

Type a(1) concerns a completed crime which fails of its purpose because the facts are not as defendant believes them to be. See State v. Condon, 391 N.J. Super. 609, 616...(App. Div.) (citing as an example, performing an illegal abortion on a woman who turns out not to be pregnant), certif. denied, 192 N.J. 74...(2007). Type a(2) involves a situation ““where the criminal act is very nearly complete and requires one more step either beyond the actor's control or not requiring his control for completion.”” Id. at 615–16, 919 A.2d 178 (quoting Cannel, New Jersey Criminal Code Annotated, comment 2 on N.J.S.A. 2C:5–1 (2006)). Type a(3) requires that the actor, with intent to commit the crime, takes a substantial step toward its commission. Id. at 616, 919 A.2d 178.

Kornberger, 419 N.J. Super. at 302. Obviously, the first type was completely inapplicable to Kornberger’s facts, and a conviction based upon that theory would have been improper.

However, this Court declined to call this plain error, despite Kornberger’s claim of a possible fragmented verdict. Id. at 303-305. This Court reasoned that “this case presented no complexity whatsoever” as to the theory of Kornberger’s guilt, and that a conviction under the correct standard was “virtually inevitable.” Additionally, “despite his initial mistake in adding inapplicable definitions of attempt, the judge clearly explained to the jurors how the instructions he was giving them related to the evidence presented. Additionally, the parties did not

present conflicting theories on the attempt issue, such that an error in that portion of the charge would likely prove prejudicial.” Therefore, because there was no “realistic likelihood” that, for unknown reasons, the jury would have acquitted Kornberger under the other theories, there was no plain error. Ibid. The Kornberger Court specifically noted that State v. Wilder, 193 N.J. 398, 415–18 (2008), cautioned against overturning jury verdicts based on speculation about the jury's reasoning, where substantial evidence supports the conviction. Id. at 304. This Court should also decline to speculate in the same way, in the face of the overwhelming evidence against defendant.

The jury here had one set of facts to consider, which applied equally to the two kinds of bias intimidation theories given. Under either theory, defendant would be guilty. Moreover, a fragmented verdict is not a worry when the facts are so clear-cut, damning, unconvoluted, and there is no jury confusion. There is “no likelihood that the errors in the charge led the jury to convict defendant when they might otherwise have acquitted him and, therefore, no basis to conclude that the error in the charge had ‘the clear capacity to produce an unjust result.’” Kornberger, 419 N.J. Super. at 295, 304-05 (quoting R. 2:10–2); see also Wilder, 193 N.J. at 415–18 (overruling State v. Christener, 71 N.J. 55 (1976), and cautioning against overturning jury verdicts based on speculation about the jury's reasoning, where substantial evidence supports the conviction).

Defendant certainly received a fair trial in this case. His jury charges were sound, and tailored expressly to the facts and circumstances of his indictment and his case. The clear, convincing evidence was aptly admitted, and no error existed that could have prejudiced him unduly. Again, defendant painted himself in a bad light, to be sure—but that evidence was so pertinent, probative, and relevant that the potential harm was vastly outweighed, and the limiting instructions given were more than adequate. Thus, defendant’s convictions must be affirmed.

CONCLUSION

For the above reasons and authorities cited in support thereof, the State respectfully urges this Court to affirm the conviction and sentence entered below.

Respectfully submitted,
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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1104-23
INDICTMENT No. 22-09-00446-I

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of
v.	:	Conviction of the Superior
SAMUEL COGGINS,	:	Court of New Jersey, Law
Defendant-Appellant.	:	Division, Somerset County.
	:	Sat Below:
	:	Hon. Peter J. Tober, J.S.C., and a jury

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

DEFENDANT IS CONFINED

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Samuel Coggins relies on the procedural history and statement of facts from his initial brief. (Db 6-26)¹

¹ This brief uses the same abbreviations as Coggins' initial brief. In addition, "Db" refers to Coggins' initial brief and "Sb" refers to the State's brief.

LEGAL ARGUMENT

Coggins relies on the legal arguments from his initial brief and adds the following:

POINT I

THE EVIDENCE OF THE 2019 ASSAULT AGAINST THE “TAXI DRIVER” WAS IMPROPERLY ADMITTED AND REQUIRES REVERSAL.

The State asserts that the assault on the “taxi driver” was properly admitted as evidence of “a common scheme or plan . . . [and] motive.” (Sb 19) (internal quotation marks omitted, alteration in original) The State argues that in a bias prosecution, “the State bears the burden of proving [the defendant’s] racial animus beyond a reasonable doubt” and “showing a pattern” of “violently target[ing]” Hispanic immigrants “is the only evidence that can competently allow a jury to infer intent, per the [bias] statute”:

. . . Defendant’s theory was that he had been antagonized for days, was punched in the kidney, and finally fought back against his abuser. This has nothing to do with race at all. The State’s theory was that defendant targeted Mr. Garcia because of his race, ethnic origin, and background[,] . . . because he disliked the fact that Mr. Garcia was a South American illegal immigrant.

Thus, the State bears the burden of proving that racial animus beyond a reasonable doubt. . . .

(Sb 25-26) (emphasis added)

Defendant certainly announced many racist beliefs in his statement, but notably, he denied any racial motivation behind his actions at all. He claimed that despite his beliefs, he was willing to work with Mr. Garcia peaceably until he was abused and was forced to fight back. Absent these other contextual events, wherein defendant grabbed Mr. Garcia's throat while he spoke to his sister – in Spanish – days before the murder, and called a Hispanic taxi driver a “fucking immigrant” while strangling her in 2019, the State would be left to insinuate that all racists who commit crimes against a person, when that person happens to be of that minority, are doing so due to racial motivation.

This, of course, would also cause much ire amongst the defense as it paints with overbroad strokes, and requires the State to make the connection between being a bad person (a racist) and a propensity to commit crimes (being a racist means you will violently target people of that race on purpose and for no other reason). Showing a pattern of actual behavior is not only better evidence, but the only evidence that can competently allow a jury to infer intent, per the statute.

(Sb 33-34) (emphasis added)

The State's argument is flawed for a number of reasons. First, the assault of the taxi driver was not admitted at trial as evidence of “a common scheme or plan.” It was admitted as evidence of motive or intent. Nor did it qualify for admission as evidence of a common plan or scheme, as the State seems to suggest on appeal. (Sb 19) It is well-settled that a common scheme or plan “refers to instances in which the other-crime evidence proves the existence of an integrated plan, of which the other crimes and the indicted offense are components.” State v. Stevens, 115 N.J. 289, 305-306 (1989). The assault

against the “taxi driver” and the assault against Garcia were not components of an integrated plan.

Second, the State was not required to “prove racial animus beyond a reasonable doubt.” (Sb 26) “Racial animus” is not an element of a bias crime. Rather, a bias crime requires proof beyond a reasonable doubt that the defendant targeted the victim because of their race. State v. Pomianek, 221 N.J. 66, 81-82 (2015). Whether Coggins had “racial animus” toward Hispanic immigrants was not the critical issue; the critical issue was whether Coggins acted with a bias motive or intent, i.e., whether Coggins targeted Garcia because Garcia was a Hispanic immigrant. While a defendant’s “racial animus” is not the critical issue, evidence of “racial animus” is probative of the critical issue.

Third, “a pattern” of violence against Hispanic immigrants is not “the only evidence that can competently allow a jury to infer intent, per [the bias] statute.” (Sb 34) As just discussed, evidence of a defendant’s racial animus is relevant to the critical question: whether defendant acted with a bias motive or intent. Because evidence of a person’s racial animus is highly relevant to the issue of intent, the probative value of such evidence outweighs its potential for prejudice. Thus, evidence of a defendant’s racial animus is competent, admissible evidence of intent or motive. See State v. Sheppard, 437 N.J. Super. 171, 191 (2014)

(finding defendant’s anti-Hispanic comments “plainly relevant to show both defendant’s anti-Hispanic motive for stabbing and to counter defendant’s asserted claim of self-defense”); State v. Crumb, 307 N.J. Super. 204 (App. Div. 1997) (holding that racist writings of defendant, showing defendant’s animus toward Black people, were relevant to defendant’s motive for murder of Black victim); State v. Powell, 469 N.J. Super. 345, 355 (Law Div. 2020) (finding defendant’s use of racial epithets and distaste for interracial couples was relevant to whether he acted with requisite bias intent).

Evidence that a defendant had previously assaulted someone of the same race or ethnicity as the alleged victim is a different story. The State’s argument that the assault against Garcia was part of “a pattern” of violence against Hispanic people is essentially another way of saying that Coggins has a propensity to commit crimes of violence against Hispanic people. Thus, whatever marginal probative value the prior assault may have had was certainly outweighed by the clear potential for prejudice that such evidence presents.

As the Court warned in State v. Willis, 225 N.J. 85 (2016), “great care must be taken to assure that state-of-mind evidence does not become the vehicle for communicating to the jury that the defendant has a propensity to commit the type of offense for which he is being tried.” Id. at 88. In Willis, defendant was charged with sexually assaulting K.M., a young woman with a drug problem

who sometimes engaged in prostitution to support her drug habit. According to K.M., she was walking home at night when the defendant pulled up in his car and asked if she was “working.” K.M. said that she was not but accepted the defendant’s offer to give her a ride home; K.M. thought she recognized the defendant as someone she knew from the neighborhood. After she got in the car, K.M. said, defendant drove her to a poorly lit street and violently raped her. At the first opportunity, K.M. jumped out of the car and immediately screamed “rape.” The defendant did not deny having sex with K.M. but claimed it was consensual. Id. at 88-91.

Prior to trial, the State moved to introduce “evidence of an attempted rape against another young woman, N.J., that had occurred three years before the alleged sexual assault against K.M.” Id. at 89. The assault against N.J. was similar to the alleged assault against K.M.: the defendant pulled up to N.J., who was walking home after her car broke down, and offered N.J. a ride. Defendant then drove N.J. “to a secluded location, choked her, groped her, and attempted to sexually assault her.” Ibid. The State maintained that “N.J.’s experience provided relevant and probative evidence of defendant’s intent when he encountered K.M.” Ibid. The trial court permitted the State to introduce the prior attempted assault. The court found that “N.J.’s testimony was relevant, and that the acts alleged by N.J. were similar in kind and reasonably close in time to the

incident involving K.M.” Ibid. The trial court further found “that the probative value of her testimony outweighed any prejudice to defendant.” Ibid.

The Supreme Court reversed the trial court’s ruling. The Court acknowledged that “when a defendant claims the victim consented, the State may introduce evidence to disprove that the defendant had that state of mind.” Id. at 98 (internal quotation marks omitted). However, when the State seeks to “illuminate a defendant's state of mind” by introducing evidence of prior crimes or bad acts, “great care must be taken . . . to assure that such evidence cannot be used, even inadvertently, by a jury as evidence of a propensity to commit criminal acts. To that end, the logical connection between the prior bad act and the contested issue must be clear and strong.” Id. at 100.

Although “the assaults of K.M. and N.J. had certain common elements,” the Court found that “the logical relationship” between the two assaults was “marginal at best.” Ibid. The Court further found that the manner in which the prior assault was presented resulted in a degree of prejudice that “overwhelmed its marginal probative value.” Id. at 101. The Court noted that one day of the one-week trial was devoted to the testimony of N.J. and two officers who assisted her. “In other words, the other-crime evidence permitted in this trial consumed almost as much time as the evidence of the State's case-in-chief. . . . In a very real sense, N.J.’s other-crime evidence became a trial on N.J.’s

allegation of attempted sexual assault by defendant within the trial of K.M.’s sexual assault.” Ibid.

As in Willis, the “the logical relationship” between the 2019 assault on the “taxi driver” and the 2022 homicide was “marginal at best.” Id. at 100. Additionally, the prejudice resulting from the amount of time and evidence dedicated to the 2019 assault – the emotional testimony of the taxi driver, the testimony of the responding officer, the photograph of the taxi driver’s injuries, the photograph of the rubber hose – “overwhelmed its marginal probative value.” Id. at 101. As in Willis, the evidence of the 2019 assault essentially became a trial on the State’s theory that Coggins attacked the driver because she was speaking Spanish within the trial on the 2022 homicide. Ibid.

In this case, the trial court erred by allowing the State to use the 2019 assault as a “vehicle for communicating to the jury that the defendant has a propensity to commit the type of offense for which he is being tried.” Id. at 88. Evidence of the 2019 assault should not have been put before the jury through witness testimony, documentary evidence or through Coggins’ statement to police.² The prejudice that Coggins suffered from the erroneous admission of this propensity evidence requires reversal of his convictions.

² The State argues that even if it had not introduced witness testimony and photographs pertaining to the 2019 assault, the jury was aware of the 2019 assault because Coggins talked about it his statement. (Sb 36-37) Naturally,

POINT II

**INCLUSION OF THE CHARGE ON
IMPEACHMENT BY EVIDENCE OF PRIOR
CONVICTION WAS WRONG AND REQUIRES
REVERSAL.**

Coggins relies on the arguments made in Point Two of his initial brief.

POINT III

**THE RISK OF A FRAGMENTED VERDICT
REQUIRES REVERSAL OF COGGINS'
CONVICTION FOR BIAS INTIMIDATION.**

Coggins relies on the arguments made in Point Three of his initial brief.

any references to inadmissible 404(b) evidence contained in Coggins' statement should have been redacted.

CONCLUSION

For the reasons set forth here and in defendant's initial brief, defendant's convictions must be reversed.

Respectfully submitted,

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Dated: November 20, 2025