



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO Box 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

MATTHEW J. PLATKIN
Attorney General

THERESA HILTON
Director

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Claudia Joy Demitro
Assistant Attorney General
Atty. ID No 021612012
demitroc@njdcj.org

Of counsel and on the Letter Brief

LETTER IN LIEU OF BRIEF AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

The Honorable Judges of the Superior Court of New Jersey Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625

Re: STATE OF NEW JERSEY (Plaintiff-Appellant) v.
RAHMEL BELLE (Defendant-Respondent)
DOCKET NO. A-001234-24T5

Criminal Action: On Leave to Appeal Granted from an Order of
the Superior Court of New Jersey, Law Division, Union County.

Sat Below: Hon. Richard C. Wischusen, J.S.C.

Honorable Judges:

This letter brief and appendix is submitted in lieu of a formal brief on behalf of
the State. See R. 2:6-2(b); R. 2:6-4(a).



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TABLE OF CITATIONS

1T – October 24, 2024, Omnibus Motion Decision Transcript
2T – December 13, 2024 Motion for Reconsideration Transcript
3T – December 19, 2024 Motion for Stay Transcript
Ma – Appendix to this brief
Ca – Confidential Appendix to this brief

STATEMENT OF PROCEDURAL HISTORY

On August 11, 2022, a State Grand Jury returned Indictment No. 22-08-0102-S in this April 23, 2022 carjacking, charging defendant with second-degree conspiracy to carjack; first-degree carjacking; two counts of first-degree robbery; second-degree unlawful possession of a weapon; second-degree possession of a weapon for unlawful purpose; two counts of fourth-degree prohibited weapons and devices; second-degree eluding; two counts of fourth-degree resisting arrest; two counts of third-degree resisting arrest; fourth-degree aggravated assault on a law enforcement officer; and third-degree receiving stolen property. (Ma1 to 16). The receiving-stolen-property charge relates to a cellphone found on the defendant's person that belonged to the victim of a carjacking on April 15, 2022.

On February 28, 2023, a Hudson County Grand Jury returned Indictment No. 23-02-0225-I, charging defendant with the following crimes related to the April 20, 2022 robbery of the BMW M4 and Audi: first-degree armed robbery; conspiracy to commit armed robbery; second-degree unlawful possession of a handgun; and second-degree possession of a firearm for unlawful purpose. (Ma17 to 18). This is the indictment with which the State seeks to join the instant indictment.

On August 12, 2024, the State filed an Omnibus Motion for Joinder and

to Admit Certain Other Crime Evidence. (Ca1 to 33). There, the State sought to join the Hudson County Indictment with the Indictment here. In the alternative, the State sought to admit certain other-crime evidence. Included in the motion were photos taken from defendant's Instagram and phone and police investigative reports that the judge relied on for his decision. (Ca34 to 59).¹

On October 24, 2024, the Hon. Richard C. Wischusen, J.S.C., issued an oral decision denying the motion for joinder and limiting the other crime evidence to be admitted. (1T). He issued an order memorializing his decision on October 28, 2024. (Ma19 to 20).

In denying the joinder motion, the judge rejected the State's argument that the April 20 robbery of the Audi that was used to carjack the victims in this case on April 23 in Elizabeth were similar in nature and proximity. (1T26-2 to 3). Instead of comparing the character and nexus of the crimes, the judge focused on the strength of the evidence of the two cases, finding that the April 23 Elizabeth carjacking was strong, (1T26-6), while the evidence in the April 20

¹ The State includes in its appendix here and cites to its brief below filed in support of the Omnibus Motion before the trial judge because it included evidence presented to the judge, specifically phone and Instagram pictures that the judge relied on in making his decision. See Rule 2:6-1(a)(2) (permitting briefs submitted below to be included in appendix where the brief is referred to in the court's decision). Given the lack of evidentiary hearing for this motion, the State needs to rely on the brief that the trial judge specifically referenced. (1T5-2 to 3; 1T12-1 to 13-25).

Jersey City robbery was not as strong. (1T27-4 to 5). The judge also found the timing of the motion would prejudice defendant. (1T27-24 to T28-5). And the judge found that the same evidence is not required to prosecute each case because “the only connection between that crime and the Armed-Robbery charge is the Audi.” (1T28-20 to 21).

Next, the judge rendered his decision to admit evidence from the April 20 Jersey City incident as 404(b) evidence in this case. The judge went through the analysis under State v. Cofield, 127 N.J. 328 (1992), and found that he would only allow the admission of pictures of the Audi on defendant’s phone without reference to it being stolen. (1T37-23 to 25). Additionally, the judge ruled that he would not allow the State to introduce any other evidence from the April 20 incident, including pictures and videos of the BMW on defendant’s phone and Instagram, because that would necessarily require introduction of prior bad acts. The judge stated:

I don’t find the theft of an Audi is similar in kind to a carjacking. They’re separate charges. It wasn’t as though he carjacked the Audi a day before. The allegation is, is that he robbed the Audi at gunpoint three days earlier. I don’t find the [sic] reasonably close in time, nor do I find that it is substantially the same charge he is facing and that is, the carjacking.

[(1T36-9 to 17)].

And the judge ruled that admission of evidence of the Audi theft would be

prejudicial to defendant and a limiting instruction to a jury would not cure that prejudice. (1T37-15 to 20).

On November 17, 2024, the State filed a motion for reconsideration and offered an alternative way for the judge to admit the April 20 evidence sanitized. (Ma21). The State proposed that the judge advise the jury at trial that on April 20, 2022, in Jersey City, possession of an Audi with license plate [REDACTED] and a yellow BMW M4 was transferred to a different person or persons, both at the same time, and permit the evidence of the BMW to be admitted. The judge heard argument and denied the motion orally on December 13, (2T), issuing an order on December 17, (Ma22). The judge found that he was unable to sanitize the evidence without prejudicing defendant. (2T17-2 to 25).

On December 16, 2024, the State filed a motion for a stay of the start of trial, (Ma23 to 24), which was denied on December 19, 2024. (Ma25).

On December 19, the State filed an Application for Permission to File an Emergent Motion with this Court, which was granted the same day. (Ma26 to 38). The State then moved for leave to appeal from the October 24, 2024 decision, which was granted by this Court on December 31, 2024. (Ma39).

STATEMENT OF FACTS

The Hudson Armed Robbery

On April 20, 2022, at 10:40 p.m., Jersey City Police (JCPD) Officers E.

Hernandez and R. Aguilera responded to the parking lot at 143 Christopher Columbus Drive for a report of a motor vehicle theft. (Ca48). The parking lot attendant, Kamal Hashem, told officers that two black males and one Hispanic male entered the parking lot at 10:37 p.m. (Ca48). One of the suspects brandished a handgun after removing it from his waistband and ordered Hashem out of the booth and into another booth. (Ca48). Once inside the second booth, the gunman forced Hashem to the ground and took his phone and wallet. (Ca48).

As this occurred, the two other suspects emptied out the cash register in the booth and took three sets of car keys. (Ca48). Moments later, the gunman left the booth and entered the passenger side of a yellow BMW M4 bearing NJ license plate [REDACTED], which then fled the area. (Ca48). Investigation revealed the gunmen also stole a second car, a 2018 Audi Q5 bearing registration NJ-[REDACTED]. (Ca49). These events were captured on video. (Ca46). One of the suspects wore a glossy dark colored bubble jacket, dark colored hoodie, and dark colored pants with white stripes down the side. (Ca55). Another suspect had a bubble jacket with a hoodie and ripped black pants. (Ca55). The third wore a dark jacket and pants. (Ca76). The entire incident lasted approximately two minutes and neither car was immediately recovered. (Ca46).

As responding officers broadcasted these events over the radio, JCPD Cease Fire Detective Jeison Martinez monitored public Instagram accounts.

(Ca44). Det. Martinez came across defendant's account "rahgzz.120," which showed defendant posted a story (a temporary video) of a BMW M4 being driven at high speed. (Ca44).²

The Union Carjacking and Pursuit

On April 23, 2022, at 7:33 p.m., Michael Salas and Angie Toro parked their red Mercedes-Benz E350 bearing NJ registration [REDACTED] ("Mercedes") at the Parador Rojo restaurant on Morris Avenue in Elizabeth to pick up a food order. (Ca34). While waiting, the black Audi Q5 stolen on April 20 ("Audi") pulled up in front of their vehicle, blocking them in. (Ca34). Two males wearing masks and hoods exited the Audi and ordered Salas and Toro out of their vehicle at gunpoint. (Ca34). They demanded the victims' car, their cell phones, and their belongings. The victims turned over two cell phones and \$1704. (Ca34 to 35). One of the suspects entered the driver's seat of the

² Although not cited in the State's Omnibus Motion below, an additional police report, which was provided to defense in discovery, states that detectives also observed a photograph posted on Belle's Instagram account showing Belle standing on a bench on the MLK Drive/Virginia Avenue Light Rail Station wearing the same clothing as during the robbery. A subsequent review of CCTV footage showed three individuals wearing the same clothing as the actors from the armed robbery at a station, approximately one-half mile from the parking lot where the robbery occurred, approximately 30 minutes before the robbery. The CCTV recorded in color and provided a better view of the actors' clothing, including the distinct red and black sneakers defendant posted in several Instagram stories. (Ca44).

Mercedes as the other got in the driver seat of the Audi and left the parking lot, heading southbound on Morris Avenue. (Ca35). Salas and Toro called 911 and Elizabeth police officers responded to the scene. (Ca34 to 43).

A multi-jurisdictional investigation resulted. Police monitored the Mercedes as it drove erratically, ending up in Jersey City at 10:30 p.m. Jersey City police responded to the area where defendant abandoned the Mercedes. (Ca34 to 35). Officer Joaquin Rodriguez saw a dark-skinned male wearing all black and a ski-mask. (Ca51). The male was holding his waistband and jogging away from the area where the red Mercedes was reportedly located. Officer Moreano told the male to stop. (Ca51).

At this point, the male began to run away. While officers pursued him, they saw him reach into his waistband and observed a handgun in his possession. Shortly thereafter, they found the suspect, now identified as defendant, Rahmel Belle. (Ca51).

Officer Rodriguez arrested defendant and searched him incident to arrest. During the search, officers recovered the key fob for the Mercedes, a cellphone and \$1744 in currency. (Ca51). Nearby, Jersey City Police found an HK 9mm handgun, Model: VP9, bearing serial number 224-256719 on defendant's flight path from Officers Moreano and Rodriguez. (Ca51). The handgun was gray, equipped with a large capacity ammunition magazine and a green laser

attachment affixed to the barrel, matching the description of the handgun provided by the victims to Elizabeth police. (Ca51).

Later that day, JCPD officers were notified that the Audi in their April 20th case was used as the drop-off and getaway car in the Mercedes carjacking. (Ca55). After defendant was apprehended and the Mercedes was recovered, officers saw a jacket inside the abandoned carjacked Mercedes Benz. (Ca55). This jacket matched the description of the jacket worn by one of the individuals that stole the BMW M4 and Audi.³

A review of defendant's cellphone and Instagram pursuant to warrants revealed photographs of the gun, the Audi, the Mercedes, and a more thorough timeline. Right after the Elizabeth carjacking, there was a video and photos on defendant's phone of the interior and exterior of a Mercedes, including photos of the license plate, model (E350), and Trim (4Matic). (Ca6 to 7 (Exhibit A; Exhibit C-1, 2, and 3)). Additional videos are stored around the same time showing a tour of the car, including the exterior and interior.

Evidence of the Audi that brought defendant and his co-conspirators to the Elizabeth carjacking are also on the phone, including a screenshot of the

³ Although not cited in the State's Omnibus Motion below, an additional police report, which was provided to defense in discovery, reveals that on April 26, the Audi was recovered abandoned in Jersey City. Inside the vehicle, officers recovered the cellphones belonging to Salas and Toro.

digital Owner's Manual for a 2018 Audi Q5. (Ca8 (Exhibit D)). At 7:07 a.m. on April 23, a video is saved in defendant's phone showing an individual wearing gray sweat pants and what appear to be red and black shoes driving an Audi. (Ca9 (Exhibit E)).

Just after midnight on April 21, defendant uploaded two photographs of a black Audi Q5 to his Instagram Account, sending them to another Instagram user while discussing selling the Audi.⁴ (Ca10 (Exhibits F and G)). On April 23 at 9:25 p.m., approximately two hours after the carjacking incident, defendant uploaded videos to his Instagram filmed from within the carjacked Mercedes. (Ca11 (Exhibits H and I)). A story posted at 3:45 p.m. under the Instagram account shows defendant wearing the same red-and-black Nike shoes in which he was arrested later that day and that he wore at the light rail station on his way to the Hudson armed robbery. (Ca12 (Exhibit J)).

A number of Instagram stories and posts shows the same gray handgun with green laser attachment, posted at approximately 5:36 a.m., and the day prior, shows defendant pointing a handgun with an extended magazine and green laser at the camera. (Ca13 (Exhibit K)). Another photo posted the day prior shows the last four digits of the serial number of the gun, ending in 6719. The

⁴ Later in the direct messaging exchange with this Instagram user, the defendant also tried to sell the Mercedes to the user.

gun is displayed in front of the steering wheel of an Audi and defendant is wearing gray sweat pants.

The yellow BMW M4 stolen at the same time as the Audi also appears on defendant's Instagram Account. It first shows up on April 20 at approximately 11:00 p.m., where defendant shows off the front exterior and interior of a yellow BMW M4. (Ca14 (Exhibit L)). He then posts additional stories of a BMW later that night and again two nights later. On the morning of the April 23 carjacking, defendant posted a video on Instagram showing the BMW M4 doing donuts in a parking lot. (Ca15 (Exhibit M)). These videos also appear in defendant's cellphone.⁵

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRONEOUSLY DENIED THE STATE'S MOTION FOR JOINDER AND TO ADMIT CERTAIN OTHER CRIME EVIDENCE. (1T; 2T; MA19 to MA20; MA22).

The judge erred below in denying the State's joinder motion and limiting the other-crime evidence from the April 20 robbery. The April 20 robbery of

⁵ Although not cited in the State's Omnibus Motion below, there is a story on defendant's Instagram account showing the BMW with its license plate clearly visible. This story was discovered as the State continued to examine its evidence in preparation for trial.

the Audi in Jersey City that was used to carjack the Mercedes in this case must be joined to this case. It was one continuing course of conduct, and the unique nature of the Audi and yellow BMW as stolen just three days prior is what identifies defendant where identity is a central issue in the case. The judge abused his discretion when he decided that three days was not close in time, and the theft of one vehicle used to commit the theft in the second was not similar in kind.

A. Joinder.

New Jersey courts favor the joinder of offenses when possible, and an appellate court should reverse a trial court's decision denying joinder if there is an abuse of discretion. State v. Chenique-Puey, 145 N.J. 334, 341 (1996).

New Jersey Court Rule 3:7-6 ("Joinder of Offenses") provides:

Two or more offenses may be charged in the same indictment or accusation in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

In State v. Manney, 26 N.J. 362, 366 (1958), our Supreme Court explained that absent "substantial" prejudice to a defendant's right to a fair trial, a joinder of offenses was desirable. "It, of course, is true that a joinder of offenses has the potential of prejudice, but if separate offenses were required to be tried

separately in all circumstances, the multiplicity of trials would disserve the State and defendant alike.” Ibid. As our Court discussed, our court rules “are designed to promote economy and efficiency and to avoid a multiplicity of trials, where these objectives can be achieved without substantial prejudice to the right of defendants to a fair trial.” Ibid. (quoting Daley v. United States, 231 F.2d 123, 125 (1st Cir.), cert. denied, 351 U.S. 964 (1956)).

Furthermore, there is a presumption that jurors can and will respect and follow court instructions to give separate consideration to each charge. State v. Modell, 260 N.J. 227, 246 (App. Div.), certif. denied 133 N.J. 432 (1993); State v. Coruzzi, 189 N.J. Super. 273, 301 (App. Div.), certif. denied, 94 N.J. 531 (1983). Analogously, where N.J.R.E. 404(b) would permit the introduction of the same evidence at each trial, severance is inappropriate because the defendant will not suffer any more prejudice, if any exists, in a joint trial than he would in separate trials. See e.g., State v. Morton, 155 N.J. 383, 451-52 (1998); Chenique-Puey, 145 N.J. at 341.

The court must assess whether prejudice is present, and the test is “whether, assuming the charges were tried separately, evidence of the offenses sought to be severed would be admissible under N.J.R.E. 404(b) in the trial of the remaining charges.” Ibid. N.J.R.E. 404(b) requirements must be met. State v. Cofield, 127 N.J. 328, 338 (1992). The evidence of other crimes or bad acts

must be “relevant to prove a fact genuinely in dispute and the evidence is necessary as proof of the disputed issue.” State v. Darby, 174 N.J. 509, 518, (2002).

Conduct before or after a crime may be relevant and admitted into evidence. For example, in State v. Pitts, 116 N.J. 580 (1989), a murder case in which the Supreme Court affirmed the conviction but reversed the death sentence, an issue arose concerning the denial of defendant’s motion to sever charges that arose from events days prior to the homicides. Threats, which occurred on the earlier dates, were relevant to the homicides, as evidence of defendant’s jealousy, intent, state of mind and motive for the murders. In finding no abuse of discretion regarding the joinder of the offenses, the Supreme Court said, “A critical inquiry is whether, assuming the charges were tried separately, evidence of the offenses sought to be severed would be admissible under Evidence Rule 55 in the trial of the remaining charges.” Id. at 601-02. The Court explained that if the evidence of the offenses sought to be severed were nevertheless admissible, then the alleged prejudice to the defendant resulting from a joinder of offenses for trial would be lessened. Id. at 602 (citing State v. Coruzzi, 189 N.J. Super. at 299).

In State v. Urcinoli, 321 N.J. Super. 519, 542 (App. Div.), certif. denied 162 N.J. 132 (1999), the court explained that in exercising its discretion to

determine severance or joinder of offenses, a trial court should consider whether the jury could arrive at a decision on each charge separately and irrespective of the evidence concerning guilt on the other charges. State v. Hines, 109 N.J. Super. 298, 306 (App. Div.), certif. denied, 56 N.J. 248, cert. denied, 400 U.S. 867 (1970).

Central to deciding whether joinder is prejudicial is “whether, assuming the charges were tried separately, evidence of the offense sought to be severed would be admissible under Evidence Rule 55 [now N.J.R.E. 404(b)] in the trial of the remaining charges.” State v. Oliver, 133 N.J. 141, 151 (1993) (quoting State v. Pitts, 116 N.J. 580, 601-02 (1989)). If the evidence would be admissible at both trials, then the trial court may consolidate the charges because “a defendant will not suffer any more prejudice in a joint trial than he would in separate trials.” State v. Coruzzi, 189 N.J. Super. 273, 299 (App. Div.), certif. denied, 94 N.J. 531 (1983).

Here, the trial judge abused his discretion in finding that the two thefts were not similar in kind and close in time. The April 20 robbery of the Audi in Jersey City that was used to carjack the Mercedes in this case must be presented to a jury as one continuing course of conduct. And the unique nature of the Audi as stolen just three days prior is what identifies defendant where identity is a central issue in the case. In addition, defendant’s Instagram includes pictures of

the yellow BMW stolen at the same time as the Audi in Jersey City, the clothes, and the gun with the laser. These are other pieces of evidence that are needed to link the Audi to defendant and identify him. Thus, joinder is appropriate because the Jersey City evidence would be admissible as material to identity.

Additionally, the Judge failed to appreciate the similar nature of the crimes themselves. In both cases, three masked men, one of whom brandished a handgun, stole at least one luxury vehicle from a parking lot. Moreover, the defendant displayed the Audi and BMW on his Instagram account just like he did with the Mercedes three days later, including attempting to sell both the Audi and Mercedes through Instagram posts and communications. (Ca10 (Exhibit F and G)). That the Audi and BMW were not stolen directly from their owners should not detract from the glaring similarities in the cases.

The overlap in evidence is overwhelming⁶ and it is imperative that the State be able to prove defendant was one of the masked carjackers on April 23

⁶ In fact, the Hudson case currently has a suppression motion scheduled that is identical to the issues presented in a suppression motion that the defendant filed in this case, which was denied on May 7, 2024. The State in the Hudson case filed a motion to estop the defendant's suppression motion, arguing issue preclusion. The Hudson judge denied the State's estoppel motion, and scheduled the suppression motion, identical to this case, for February 14, 2025. The Hudson County Prosecutor filed an emergent application to this Court, which was denied on January 29. (Ma40 to 41). A conflicting decision in the Hudson case on identical suppression facts and issues would create confusion and potentially undermine finality of the Union Court's suppression decision.

by admitting the evidence that he stole the Audi-getaway car three days prior, along with evidence of the BMW stolen at the same time and the sneakers worn during both incidents. That evidence cannot fairly be limited to just a few pictures of an Audi on defendant's phone and Instagram without any mention of the April 20 incident or the other corroborative evidence of defendant's involvement in it. This is because the picture of the Audi on defendant's phone does not show the license plate or any other unique identifiers. So the defense will be able to defeat the evidence by arguing that it is a different Audi, and in no way connects defendant to the Elizabeth carjacking. And the visible license plate of the Audi will leave the jury with the impression that the registered owner of the Audi—in actuality a victim of the theft—should be considered as a suspect and the police did not do a thorough investigation into a potential suspect.

A lot of the evidence in this case is necessary in the Hudson case to show that defendant had the stolen Audi three days after it was taken, resulting in two separate overlapping trials—a lack of judicial economy. Even worse, if the cases are not joined, the victims in this case will likely have to testify again in the Hudson case to show that the car used to carjack their car was an Audi, identify their stolen Mercedes, and that the jacket inside did not belong to them. It will require a second revictimization of this violent crime for our victims.

When the judge below found that “the only connection between that crime

and the Armed-Robbery charge is the Audi,” (1T28-20 to 21), the court left out the other overlapping evidence between the incidents, such as the yellow BMW (which tends to prove that the Audi was the Audi from the April 20 robbery), the sneakers worn by the defendant in both incidents, or the jacket found in the Mercedes.⁷ The jacket inside the carjacked Mercedes that defendant abandoned in this case matched the description of one of the individuals that stole the BMW M4 and Audi, and thus links the identity of defendant to both crimes.

B. Other Crimes Evidence.

In addition, the trial judge incorrectly limited the State’s seeking of admitting the April 20th robbery of the Audi as certain “other crimes” evidence. The standard of review of the admissibility of prior bad acts or other-crimes evidence is under the abuse of discretion standard. State v. Darby, 174 N.J. 509, 518 (2002) (citing State v. Marrero, 148 N.J. 469, 483 (1997)).

Except as otherwise provided by Rule 608(b), evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to

⁷ Another place the judge erred was when he found that the co-defendant in the Hudson County case, Brandon Bunch (who has pled guilty and has been sentenced) “was charged with several prior crimes, Mr. Belle was not connected to those prior crimes.” (1T27-12 to 14). This is incorrect. Bunch and defendant were charged with the same four counts in the Hudson County indictment, all stemming from the April 20 conduct. The State attempted to correct the judge’s misunderstanding of the Hudson County case, but was rejected. (1T9-20 to 1T10-14).

show that such person acted in conformity therewith. Such evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute. N.J.R.E. 404; State v. Stevens, 115 N.J. 289, 300-02 (1989); State v. Harvey, 121 N.J. 407, 433 (1990), cert. denied, 499 U.S. 931 (1991). Moreover, other-crimes evidence may be admitted, not only to prove issues specifically listed in the rule, but also to prove other non-specified facts in issue. Stevens, 115 N.J. at 300-01; State v. Frost, 242 N.J. Super. 601, 620 (App. Div. 1990). The rule is intended to provide for the discretionary admission of such evidence where it is relevant to any substantial issue in the case. Stevens, 115 N.J. at 301; see also State v. Nance, 148 N.J. 376 (1997).

In Marrero, 148 N.J. at 482-93, the New Jersey Supreme Court reiterated the scores of cases that have found other-crime evidence admissible as probative of intent and motive. The Marrero Court quoted Stevens to explain that “in determining the probative worth of other-crime evidence, ‘a court should consider . . . whether its proffered use in the case can adequately be served by other evidence.’” Id. at 482 (quoting Stevens, 115 N.J. at 303). Once it is determined that the other-crime evidence is material to a fact genuinely in issue and that the other-crime evidence is necessary, “the probative value of the

proffered evidence [must] be carefully balanced against the danger that it will create undue prejudice against the defendant.” Ibid.

The Marrero Court relied upon the four-part test set forth in Cofield for considering extrinsic evidence of prior bad acts:

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.

[Marrero, 148 N.J. at 483 (quoting Cofield, 127 N.J. at 338).]

Here, as discussed, the evidence of the stolen Audi is relevant to identifying defendant. The judge abused his discretion when he decided that three days was not close in time, and the thefts of high-end vehicles, one used to the commit the theft in the second were not similar in kind. And the evidence in the Jersey City theft is clear and convincing. Defendant posted the BMW to his Instagram account shortly after it was stolen, and the jacket he wore during the Jersey City carjacking was found inside the Mercedes carjacked in Elizabeth. Any prejudice defendant might face is outweighed by the highly probative nature of the evidence to his identity.

An alternative for this Court would be to allow the State to introduce

evidence of the Audi and the BMW and instruct the jury that on April 20, 2022, in Jersey City, possession of an Audi with license plate [REDACTED] and a yellow BMW M4 was transferred to a different person or persons, both at the same time.

CONCLUSION

For the foregoing reasons, the State requests this Court reverse the October 28, 2024 order denying the State's motion for joinder and to admit certain other crime evidence.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-APPELLANT

BY: /s/ Claudia Joy Demitro
Claudia Joy Demitro
Assistant Attorney General
demitroc@njdcj.org



PHIL MURPHY
Governor

TAHESHA WAY
Lt. Governor

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Appellate Section
ALISON PERRONE
Deputy Public Defender
31 Clinton Street, 9th Floor, P.O. Box 46003
Newark, New Jersey 07101
Tel. 973-877-1200 • Fax 973-877-1239

JENNIFER N. SELLITTI
Public Defender

March 12, 2025

SCOTT M. WELFEL
ID. No. 084402013
Assistant Deputy Public Defender
Scott.Welfel@opd.nj.gov

Of Counsel and
On the Letter-Brief

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1234-24 (AM-211-24)

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Appellant,	:	On Appeal From An Interlocutory Order
	:	Of the Superior Court of New Jersey
v.	:	Criminal Division, Union County
RAHMEL BELLE,	:	Indictment No. 22-08-00102-S
	:	Sat Below:
Defendant-Respondent.	:	Hon. Richard C. Wischusen, J.S.C
	:	

Your Honors:

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

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PROCEDURAL HISTORY

Rahmel Belle relies on the State's Procedural History. (Sb1-4)¹

STATEMENT OF FACTS

Defendant relies on the State's Statement of Facts. (Sb4-10)

¹ The following abbreviations are used:

1T – Oct. 24, 2024 (Joinder and 404(b) Motions)

2T – Dec. 13, 2024 (Motion for Reconsideration)

3T – Dec. 19, 2024 (Motion for Stay)

Sb – State's Brief

Ma – State's Appendix

Ca – State's Confidential Appendix

LEGAL ARGUMENT

POINT I

BECAUSE THE TRIAL COURT APPLIED THE CORRECT LEGAL TEST AND DID NOT ABUSE ITS DISCRETION, THIS COURT MUST DEFER TO THE TRIAL COURT AND SHOULD AFFIRM THE ORDER DENYING THE STATE’S MOTION TO CONSOLIDATE THE APRIL 20 ROBBERY WITH THE APRIL 23 CARJACKING AND DENYING THE STATE’S MOTION TO ADMIT EVIDENCE OF THE APRIL 20 ROBBERY AT THE TRIAL FOR THE APRIL 23 CARJACKING.

Before the trial court, the State moved to join a Hudson County indictment, charging Rahmel Belle with an April 20 armed robbery of a black Audi Q5 and a yellow BMW M4 that occurred in Jersey City, with the Union County indictment in this case, charging Mr. Belle with a carjacking of a red Mercedes Benz on April 23 in Elizabeth. In the alternative, if the court determined not to join the cases, the State moved to admit evidence of the April 20 robbery in Mr. Belle’s trial for the April 23 carjacking. The trial Court applied the correct analysis under N.J.R.E. 404(b) for both applications and denied both motions. Because the Court applied the correct legal standard and did not abuse its discretion, the standard of review requires this Court to defer to the discretion of the trial court and affirm the judgment below.

Although the interests of judicial economy counsel a “preference for

joinder, Rule 3:15-2(b) vests a trial court with discretion to order separate trials if joinder would prejudice unfairly a defendant.” State v. Chenique-Puey, 145 N.J. 334, 341 (1996) (citing State v. Oliver, 133 N.J. 141, 150 (1993)). “The decision whether to sever an indictment rests in the sound discretion of the trial court,” ibid., “is entitled to great deference on appeal.” State v. Brown, 118 N.J. 595, 603 (1990) (emphasis added). In other words, “absent an abuse of discretion,” appellate courts must “defer to the trial court’s decision” to sever or join counts or cases. Chenique-Puey, 145 N.J. at 341.

When a defendant objects to the State’s motion to join offense and claims that such joinder would be prejudicial, the court must assess “‘whether, assuming the charges were tried separately, evidence of the offenses sought to be severed would be admissible under [N.J.R.E. 404(b)] in the trial of the remaining charges.’” Ibid (quoting State v. Pitts, 116 N.J. 580, 601-02 (1989)). “If the evidence would be admissible at both trials, then the trial court may consolidate the charges because ‘a defendant will not suffer any more prejudice in a joint trial than he would in separate trials.’” Ibid. (emphasis added) (quoting State v. Coruzzi, 189 N.J. Super. 273, 299 (App. Div. 1983)). Under N.J.R.E. 404(b), evidence of another crime or bad act “is admissible only if it is relevant to prove a fact genuinely in dispute ‘and the evidence is necessary as proof of the disputed issue.’” State v. Darby, 174 N.J. 509, 518

(2002) (emphasis added) (quoting State v. Hernandez, 170 N.J. 106, 118-19 (2001)). The Court must evaluate the evidence of the charges for which joinder is proposed against the four-part test set forth in State v. Cofield, 127 N.J. 328, 338 (1992):

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.

Just like a trial court's decision whether to join or sever multiple offenses based on prejudice to the defendant, "[d]eterminations on the admissibility of other-crime evidence are left to the discretion of the trial court." State v. Marrero, 148 N.J. 469, 483 (1997). "The trial court, because of its intimate knowledge of the case, is in the best position to engage in this balancing process. Its decisions are entitled to deference and are to be reviewed under an abuse of discretion standard." State v. Ramseur, 106 N.J. 123, 266 (1987).

Here, the trial court applied the correct legal test and appropriately denied the State's motions to: (1) join the April 20 Jersey City robbery with the April 23 Elizabeth carjacking; and (2) in the alternative, to admit evidence of the April 20 robbery at the trial for the April 23 carjacking. Although the

Court considered these motions sequentially, the Court correctly applied the same legal test for both motions and reached the same conclusion.

The Court noted State's arguments that the "similarity of the offenses weigh in favor of joinder" but did not find it persuasive. (1T 25-10 to 26-3) The Court found that the evidence connecting Mr. Belle to the carjacking of the Mercedes was "fairly strong" because Mr. Belle was seen jogging from the location where the Mercedes was abandoned Jersey City shortly after it was abandoned, had the Mercedes key fob on his person, and a handgun with a green laser matching the description given by the victims was found in Mr. Belle's flight path from the Mercedes. (1T 26-5 to 26-22, 28-19)

However, the Court found that the evidence connecting Mr. Belle to the robbery of the Audi and the BMW "doesn't rise even close to that level" as the only description of the suspects of the robbery was a clothing description—no witness identified any of the suspects. (1T 27-3 to 9; 2T 15-19 to 20) Assistant Prosecutor Magliulo agreed with the Court that although there was evidence from Mr. Belle's phone of a black Audi Q5 between the April 20 robbery and the April 23 carjacking, the photo did not depict the license plate and so there was no proof that this Audi Q5 was the same Audi that was used in the carjacking. (1T 28-22 to 29-25) Thus, the Court found that the State had not presented clear and convincing evidence that Mr. Belle committed the April 20

robbery. (1T 36-21 to 37-13)

Because the Court found that the evidence connecting Mr. Belle to the April 20 robbery was weak and tenuous, when weighing the purported relevance of that evidence against the prejudice, the Court concluded that the State was trying to bootstrap the weaker April 20 robbery case by trying it with the April 23 carjacking and joinder would prejudice Mr. Belle. (1T 27-15 to 22) The Court found that even the clearest cautionary or limiting instruction could not cure this prejudice. (1T 37-19 to 20)

The Court found that the allegation that the Audi Q5 was stolen was not relevant to prove whether Mr. Belle was in the Audi Q5 that was used to carjack the Mercedes on April 23 and thus was not admissible; however, the Court found that the evidence on Mr. Belle's phone suggesting he was in possession of an Audi similar to the one used in the carjacking was relevant and the State would be permitted to introduce that evidence. (1T 35-20 to 36-6)

The Court found that the timing of the State's motion prejudiced Mr. Belle because the State filed it after Mr. Belle had already litigated and lost a motion to suppress evidence and when trial was scheduled to start in just over two months. (1T 27-23 to 28-5; 2T 18-3 to 4) Thus, the Court denied the State's joinder motion and denied the alternate motion to admit evidence of the April 20 Jersey City robbery during the trial for the April 23 Elizabeth carjacking. (1T

30-2, 37-21 to 25)

However, the Court held that the State would be permitted to introduce evidence from Mr. Belle's phone suggesting he was in possession (in the few days leading up to April 23) of an Audi similar to the one used in the April 23 carjacking so long as the State did not mention that a similar Audi was stolen on April 20. (1T 35-20 to 36-6) The Court also held that the State would be permitted to introduce into evidence a photograph of Mr. Belle showing him in possession of a black handgun with a green laser which matched the description of the gun given by the victims of the April 23 carjacking and looked similar to the gun recovered near where Mr. Belle was arrested. (1T 41-21 to 45-18)

Because the Court correctly applied Cofield and balanced the alleged probative value of the April 20 robbery against its prejudicial impact, this Court should defer to the sound reasoning of the Court. The standard of "deference is in recognition that the admissibility of extrinsic evidence of other crimes or wrongs is best determined by the trial judge with more intimate knowledge of the case who is therefore in the best position to weigh the probative value versus potential prejudice of the proffered evidence. State v. Castagna, 400 N.J. Super. 164, 182-83 (App. Div. 2008).

On appeal, the State first complains that "the trial judge abused his discretion in finding that the two thefts were not similar in kind and close in

time.” (Sb14) Even if the State were correct in this contention, the Supreme Court has made clear that the second-prong test should be limited to Cofield-type situations and need not be given “universal application.” State v. Williams, 190 N.J. 114, 131-134 (2007). Prong two—similarity—is the least weighty prong of Cofield and is rarely dispositive. See, e.g., State v. Koskovich, 168 N.J. 448, 483-485 (2001). And it was clearly not dispositive in this case. The trial court here placed the most emphasis on the fact that the State had not proven with clear and convincing evidence that Mr. Belle had committed the April 20 robbery and without strong evidence connecting him to that robbery the minimal (if any) probative value was outweighed by its prejudice. Thus, even if the trial court erred in its finding with respect to prong two of Cofield, this would have no bearing on the soundness of the Court’s ultimate decision to deny joinder and bar introduction of evidence of the April 20 robbery into the April 23 carjacking.

The State quarrels with the trial court’s balancing of prejudice and probativity, arguing that “it is imperative that the State be able to prove defendant was one of the masked carjackers on April 23 by admitting the evidence that he stole the Audi-getaway car three days prior.” (Sb16) But the trial court appropriately found that there was not sufficient evidence linking Mr. Belle with the April 20 robbery. The State argues that the judge erred in finding that “the only connection between [the April 23 carjacking] and the

[April 20] Armed-Robbery charge is the Audi” because the “jacket inside the carjacked Mercedes that defendant abandoned in this case matched the description of one of the individuals that stole the BMW M4 and Audi, and thus links the identity of defendant to both crimes.” (Sb16-17; 1T28-20 to 21) The State’s assertion is incorrect.

The trial court did consider the State’s assertions regarding the jacket, noting that the State’s motion brief asserted that the jacket found inside the Mercedes matched the description of one of the individuals that stole the BMW M4 and the Audi. (1T 12-16 to 25, 25-16 to 25, 27-6 to 9) But after reviewing all the evidence the State submitted, the Court was not persuaded by the State’s argument. (1T 25-16 to 26-3, 27-6 to 19) It does not appear that the State submitted any surveillance video to the Court to review; rather, the State simply relied on police reports. (Ca34-59) On appeal, the State did not support its assertion that the “jacket inside the abandoned carjacked Mercedes Benz . . . matched the description of the jacket worn by one of the individuals that stole the BMW M4 and Audi” with any citation to the record below. (Sb8, 17) The one page of the report authored by Investigator Steve Gerges that is cited in the preceding sentence of the State’s brief, which contains descriptions of various articles of clothing of various actors, does not claim that the jacket found in the Mercedes matched the jacket worn by a perpetrator of the April

20 robbery. (Ca55-56) Thus, the trial court appropriately considered and rejected the State's contention that the jacket found in the Mercedes after Mr. Belle was apprehended strongly linked Mr. Belle to the April 20 robbery.

Separately, the State complains that because the evidence from Mr. Belle's phone showing him in possession of a similar Audi does not show the license plate—and thus cannot be definitively identified as the Audi used in the carjacking, the defense will be able to argue that the Audi on Mr. Belle's phone "is a different Audi, and in no way connects defendant to the Elizabeth carjacking." (Sb16) The defense will indeed be able to make this argument (1T 32-14 to 23), but this argument does nothing to erase the very strong evidence connecting Mr. Belle with the carjacking of the Mercedes—Mr. Belle was spotted running from the location where the Mercedes was abandoned shortly after it was abandoned, the Mercedes key fob was found on his person, and a handgun matching the gun described by the victims was found in his flight path.

The State also raises a concern that "defendant will be able to argue to the jury that the registered owner of the Audi—in actuality a victim of the theft—should be considered as a suspect instead of him." (Sb16) But the trial court could easily prevent this by telling defense counsel that any such argument would open the door to allow the State to introduce evidence that the

Audi was stolen on April 20.


Finally, the State argues that “if the cases are not joined, the victims in this case will likely have to testify again in the Hudson case to show that the car used to carjack their car was an Audi, identify their stolen Mercedes, and that the jacket inside did not belong to them. It will require a second revictimization of this violent crime for our victims.” (Sb16) While it is certainly true that there is a preference for joinder because “joint trials . . . spare witnesses and victims the inconvenience and trauma of testifying about the same events two or more times,” “the interest in judicial economy cannot override a defendant's right to a fair trial.” State v. Sanchez, 143 N.J. 273, 282, (1996).

CONCLUSION

In sum, the trial court applied the correct standard of law and reached a reasonable conclusion after balancing the relevance and prejudice of the April 20 robbery that was firmly within the court's discretion. The Court reached a reasonable conclusion to allow the State to admit evidence from Mr. Belle's phone (1) showing Mr. Belle possessing a handgun that matched the gun described by the victims of the April 23 carjacking and (2) in possession of a Audi Q5 that looked similar to the Audi used in the April 23 carjacking, but denying the State's motion to present evidence of the April 20 robbery of the Audi Q5. Because the balancing of the probative and prejudicial nature of evidence is always firmly committed to the discretion of the trial court, this Court should defer to the trial court and affirm the order denying the State's motions (1) to join the two indictments and (2) to admit evidence of the April 20 robbery in the trial for the April 23 carjacking.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Respondent

By: 
SCOTT M. WELFEL
Assistant Deputy Public Defender
ID. No. 084402013

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