

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003172-23

STATE OF NEW JERSEY, : CRIMINAL ACTION
 :
 Plaintiff-Respondent, : On Appeal from a Judgment of
 : Conviction the Superior Court of
 v. : New Jersey, Law Division, Essex
 : County.
 KHALIL A. HOWARD, :
 :
 Defendant-Appellant. : Ind. No. 22-08-02014-I
 :
 : Sat Below:
 : Hon. Avion M. Benjamin, J.S.C.,
 : and a Jury

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

The defendant, Khalil A. Howard, was repeatedly deprived of a fair trial when the trial court failed to properly instruct the jury and guide it in its deliberations, and when it allowed evidence to be improperly admitted for the jury's consideration. This case concerns an altercation between Howard and two people in which all parties sustained injuries. Howard argued at trial that he acted in self-defense, yet the trial court failed to adequately instruct the jury on all aspects of Howard's self-defense claim. Specifically, the trial court refused defense counsel's request to instruct the jury on self-defense for several counts for which it applied. Consequently, the jury was prevented from considering Howard's main defense at trial, thus materially impacting the jury's verdict.

Further, the court failed to clear up the jury's confusion regarding the difference between aggravated assault causing serious bodily injury and aggravated assault causing significant bodily injury; improperly admitted extremely prejudicial body worn camera footage that lingered on traumatic images of blood; and permitted the jury to hear inadmissible hearsay testimony that was central to establishing whether one of the individuals involved in the altercation was injured. These errors, individually and cumulatively, could have impacted the jury's verdict. Consequently, a reversal of Howard's convictions is required.

PROCEDURAL HISTORY

On August 16, 2022, an Essex County grand jury returned Indictment No. 22-08-02014-I, charging the defendant, Khalil A. Howard, with first-degree attempted murder of S.F., a crime of domestic violence pursuant to N.J.S.A. 2C:25-19 and contrary to N.J.S.A. 2C:5-1a(1), N.J.S.A. 2C:11-3a(1)(2) (count one); fourth-degree unlawful possession of a weapon (knife) contrary to N.J.S.A. 2C:39-5(d) (counts two and five); third-degree possession of a weapon (knife) for an unlawful purpose contrary to N.J.S.A. 2C:39-4(d) (counts three and six); and second-degree aggravated assault of J.M., contrary to N.J.S.A. 2C:12-1b(1) (count four). (Da 1-7)¹

A jury trial commenced on March 20, 2024, before the Hon. Avion M. Benjamin, J.S.C. (1T-6T) On count one, the jury acquitted Howard of attempted murder but convicted him of the lesser included offense of second-degree aggravated assault. (Da 9-11; 6T 8-24 to 9-11) The jury also found Howard guilty of counts two and five (unlawful possession of a weapon), counts three

¹ Da – Defendant’s appendix

1T – March 20, 2024 – 104 Hearings and Trial (Volume 1)

2T – March 20, 2024 – Trial (Volume 2)

3T – March 26, 2024 – 104 Hearing and Trial

4T – March 28, 2024 – Trial (Charge conference, Closing Arguments, and Jury Instructions)

5T – April 1, 2024 – Trial (Jury Deliberations)

6T – April 2, 2024 – Trial (Verdict)

7T – May 28, 2024 – Sentence

and six (possession of a weapon for an unlawful purpose), and count four (aggravated assault). (Da 9-11; 6T 9-12 to 10-21)

On May 28, 2024, Howard was sentenced on count one (amended to aggravated assault) to seven years imprisonment in which he must serve 85% of the sentence pursuant to the No Early Release Act and with three years of parole supervision upon release. (Da 12-14; 7T 33-25 to 34-3) Howard received the same sentence for count four (aggravated assault) to run concurrently to count one. (Da 12-14; 7T 34-4 to 37-1) The remaining convictions merged. (Da 12-14; 7T 36-18 to 20)

Howard filed a Notice of Appeal on June 14, 2024. (Da 15-17)

STATEMENT OF FACTS

On the evening of May 18, 2022, Howard came over to S.F.'s home where she lived with her daughter, Q.L., and her friend J.M. (1T 145-7 to 146-8, 148-2 to 149-1) Howard and S.F. met in 2016 or 2017 and spent a substantial amount of time together, mostly at S.F.'s home. (1T 104-10 to 19, 146-16 to 147-5) Howard even slept at S.F.'s home approximately three times a week. (2T 206-17 to 24) S.F. testified that she and Howard had some form of sexual relationship in the past, but in 2022 they were just friends. (1T 147-6 to 21) Q.L. and J.M. only knew Howard as S.F.'s friend. (1T 93-24 to 94-7, 98-16 to 22, 104-20 to 23)

On May 18, Howard called S.F. after she came home around 8:30 P.M., which S.F. indicated was “normal.” (1T 148-2 to 21) Howard came over at approximately 10 or 11:00 P.M. because he was hungry, so S.F. offered him noodles, which he cooked in the kitchen. (1T 148-25 to 149-19) At approximately 11:00 P.M., Howard and S.F. made their way to her bedroom where S.F. fell asleep, while Howard sat in a chair. (1T 151-14 to 154-17) When S.F. awoke, she asked Howard when he was leaving, and opened the front door of the apartment, but Howard did not leave. (1T 155-12 to 14, 155-23 to 156-18) S.F. testified that she and Howard were not arguing, and in fact Howard was calm the entire time prior to any altercation. (2T 204-23 to 205-2)

When S.F. returned to the bedroom after closing the front door of the apartment, she testified that Howard suddenly attempted to grab her phone out of her hand, which led to them “tussling.” (1T 156-19 to 157-6) S.F. fell to the ground and Howard stood over her, causing S.F. to yell for J.M. (1T 157-17 to 158-21) J.M. testified that, sometime around 11:45 P.M., she heard S.F. call for her and then heard a big boom like someone fell on the ground. (1T 68-17 to 69-10) Q.L. was also home but did not come out of her room at this point in time. (1T 69-11 to 15)

J.M. testified she went to S.F.’s room and saw Howard over S.F., punching her. (1T 69-18 to 22) J.M. intervened and began punching Howard and putting

him in a chokehold. (1T 70-2 to 14, 158-20 to 25) J.M. did not see a knife when she first entered the room, nor did S.F. observe any knife prior to J.M. entering the room. (1T 81-24 to 82-13, 188-22 to 192-1) But after J.M. got involved in the altercation, both women testified that they saw a knife. J.M. testified that she observed a knife coming from Howard's sleeve, and S.F. testified that she saw a silver knife with a black handle on the floor. (1T 70-19 to 71-19, 159-14 to 21) S.F. then testified that she threw the knife under the bed. (1T 159-22, 191-16 to 192-1) Both S.F. and J.M. testified that they did not realize they had any stab wounds and could not pinpoint if or when they were stabbed during the altercation. (1T 82-17 to 21, 187-6 to 188-21)

While S.F. and J.M. were fighting with Howard, Q.L. entered the room. (1T 72-1 to 7, 108-9 to 22) Q.L. testified that she was awake the entire evening but only ran to the room after J.M. was in there. (1T 72-1 to 7, 103-11 to 16, 108-9 to 22) When Q.L. got to the room, J.M. told her to call the police because Howard had a knife. (1T 72-4 to 11, 109-18 to 110-21) Howard was in between S.F. and J.M. after Q.L. left to call the police, but then ran directly out of the home. (1T 72-8 to 18, 110-18 to 25, 192-24 to 193-5) Both J.M. and S.F. testified that the door to S.F.'s room was open during the altercation. (1T 72-19 to 22, 155-7 to 9, 160-23 to 161-1)

After Howard left, S.F. went to the living room and J.M. went into the kitchen; both laid on the floor bleeding. (1T 73-18 to 25, 164-2 to 25) Officer Angelo Gaglioti responded to the 9-1-1 call from Q.L., which was placed at around 12:50 A.M., over an hour after the altercation began. (1T 51-17 to 52-16) Gaglioti arrived about five minutes later where he saw both S.F. and J.M. on the floor with punctured wounds. (1T 38-14 to 18, 52-11 to 16) Gaglioti's body worn camera (BWC) footage was entered into evidence and shown to the jury with no audio.² (1T 39-15 to 40-15, 42-1 to 49-4) About twelve minutes of the BWC was played, which largely showed Gaglioti providing first aid to S.F. until emergency medical services (EMS) arrived. (1T 39-15 to 40-15, 42-1 to 49-4) The portion of the BWC shown to the jury contained continuous images of blood and S.F.'s wounds. (Da 18, 04:27 to 16:43) Gaglioti testified that he personally did not recover a knife from S.F.'s bedroom. (1T 58-6 to 9) Furthermore, Gaglioti's incident report from that evening stated that J.M. "was not aware of Mr. Howard possessing a knife during the incident" and detailed that Howard was 5 feet 4 inches tall and 145 pounds. (1T 57-21 to 25, 58-14 to 24)

After leaving S.F.'s home, Howard went to S.L.'s home, who is the mother of his children. (3T 31-23 to 32-3, 33-1 to 14) S.L. testified that when Howard

² The BWC footage was played for the jury from 04:27 to 16:43 with no audio and only that portion was admitted into evidence. (1T 48-22 to 25; Da 18 04:27 to 16:43)

arrived he was anxious, his hands were completely bloody and cut, and his clothes had blood on them. (3T 33-20 to 34-19, 36-20 to 24) Howard told S.L. that there was an argument at somebody's house that "turned very nasty" after "[o]ne person jumped on his back" and he had to "fight them off." (3T 35-2 to 4, 36-6 to 8) He was then "being attacked by another person" when that person also "jumped on his back." (3T 36-9 to 11) As a result of this altercation where Howard was attempting to fight two people off, Howard told S.L. that the two people got stabbed. (3T 34-25 to 36-12) After helping clean the injuries on Howard's hands, Howard stayed the night at S.L.'s home. (3T 37-4 to 13, 47-23 to 48-21) In the morning, S.L. went to work and spoke with friends who called the police on her behalf. (3T 48-19 to 49-22)

S.F. and J.M. went to the hospital after the incident. (1T 75-22 to 76-8, 166-2 to 24) Dr. Nina Glass, who treated S.F., testified as an expert in the medical field, specifically trauma. (3T 99-6 to 101-12, 103-24 to 104-6) Dr. Glass testified that S.F. was awake and alert when she arrived at the hospital, with her breathing intact. (3T 107-5 to 20) Dr. Glass also observed multiple stab wounds on S.F. and found that S.F. likely lost approximately 40% of her blood. (3T 107-8 to 12, 109-16 to 110-19) S.F. went into surgery because the medical staff was concerned about internal bleeding. (3T 111-14 to 112-14) In surgery, Dr. Glass observed that the stab wounds caused injury to S.F.'s abdomen, kidney,

and ribs, but all other organs were unharmed. (3T 112-18 to 113-20, 114-10 to 15) Despite injury to the kidney, Dr. Glass did not need to remove it. (3T 114-2 to 15, 121-14 to 25) Dr. Glass also testified that S.F. was about 5 feet 8 inches tall and approximately 220 pounds. (3T 128-21 to 129-14) Dr. Glass did not testify concerning whether S.F.'s injuries resulted in any permanent damage.

No doctor or expert discussed J.M.'s injuries. J.M. testified that she needed cosmetic surgery for an injury to her lip and surgery for a stab wound on her stomach. (1T 76-11 to 13) J.M. testified to what her doctor reported to her including that the knife shifted, there was internal bleeding, and the lingering effects of the wounds were permanent. (1T 76-13 to 17, 79-20 to 80-14) Photos of S.F. and J.M.'s injuries were shown to the jury. (1T 79-10 to 81-4, 171-5 to 172-16) S.F. and J.M. also testified they had scars as a result of the altercation. (1T 80-23 to 81-4, 173-3 to 6)

Detective Isaiah Delossantos testified about his investigation following the incident. (3T 56-5 to 22) When Delossantos arrived at the apartment he observed blood in the bedroom, living room, and kitchen. (3T 57-22 to 58-9) He also observed a silver knife with a black handle with specks of blood on it in the kitchen sink. (3T 58-11 to 13) S.F. testified that she did not know how the knife got into the kitchen. (2T 203-9 to 204-4) Further, Delossantos never found a knife under the bed, even though S.F. testified that she threw the knife there. (1T

159-24, 191-16 to 192-1, 3T 86-6 to 15) Blood was also discovered inside Howard's vehicle, and on his clothes. (3T 68-1 to 4, 73-20 to 76-2) No DNA test was done on any of the blood discovered. (3T 87-14 to 90-10)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT’S FAILURE TO INSTRUCT THE JURY ON SELF-DEFENSE AS APPLIED TO S.F. AND THE WEAPON-POSSESSION OFFENSES DEPRIVED MR. HOWARD OF A FAIR TRIAL. (4T 23-17 to 27-5)

Howard’s central defense at trial was that he acted in self-defense during the incident with S.F. and J.M. Though the trial court instructed the jury on self-defense as applied to J.M., the trial court denied defense counsel’s request that it instruct on self-defense as applied to S.F. Further, the trial court did not adequately instruct on self-defense in regard to any of the weapons charges.

It is well-established that “appropriate proper charges to a jury are essential for a fair trial.” State v. Vick, 117 N.J. 288, 292-93 (1989). Jury instructions are “a road map to guide the jury” and “without an appropriate charge, a jury can take a wrong turn in its deliberations.” State v. McKinney, 223 N.J. 475, 495 (2015). Indeed, “[e]rroneous instructions on matters or issues that are material to the jury’s deliberation are presumed to be reversible error in criminal prosecutions.” State v. Jordan, 147 N.J. 409, 422 (1997); see also State v. Olivera, 344 N.J. Super. 583, 590 (App. Div. 2001) (“Erroneous jury instructions on points crucial to a jury’s deliberations on the guilt of a criminal defendant, are presumed to be reversible error.”). Thus, as the New Jersey

Supreme Court has stated, erroneous jury instructions are “poor candidates for rehabilitation.” Vick, 117 N.J. at 292; Jordan, 147 N.J. at 422.

Further, as to self-defense specifically, the New Jersey Supreme Court has held that “if any evidence raising the issue of self-defense is adduced, either in the State’s or the defendant’s case, then the jury must be instructed that the State is required to prove beyond a reasonable doubt that the self-defense claim does not accord with the facts.” State v. Kelly, 97 N.J. 178, 200 (1984) (emphasis added). Here, the trial court’s failure to provide material self-defense jury instructions, when evidence was presented at trial to support such a defense, deprived Howard of a fair trial. Howard’s convictions must be reversed. U.S. Const. amends. VI, XIV; N.J. Const. art. I, pars. 1, 9, 10; R. 2:10-2.

A. The Trial Court’s Failure to Instruct the Jury On Self-Defense As Applied To S.F. Violated Mr. Howard’s Right To A Fair Trial.

The trial court’s failure to instruct the jury to consider self-defense in connection with S.F. violated Howard’s right to a fair trial because had the jury been properly instructed, it could have found self-defense to be a complete justification to the convictions against both S.F. and J.M. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10.

Howard filed a notice of affirmative defense prior to trial, notifying the court and the State that he would be relying on the theory of self-defense in his case-in-chief. (Da 8) At the final charge conference, Howard argued for a self-

defense instruction to be given to the jury as applied to both victims, S.F. and J.M. (4T 14-7 to 19-16) The State opposed the instruction in full and particularly as applied to S.F. (4T 11-5 to 14-5, 21-3 to 18) After arguments, the trial court ruled that it would give the self-defense instruction but only as applied to J.M. (4T 23-17 to 27-5) The court determined that the evidence presented did not support that there was “a rational basis that [Howard] had to use self defense against [S.F.]” (4T 26-10 to 19) Thus, the court made clear in its final jury instructions that the jury should only consider self-defense in connection with the charges involving J.M. (4T 142-16 to 21)

The Legislature has provided that use of force toward another “is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself.” N.J.S.A. 2C:3-4(a). The use of deadly force may also be justifiable when “the actor reasonably believes that such force is necessary to protect himself against death or serious bodily harm.” N.J.S.A. 2C:3-4(b)(2). Deadly force is not justifiable when the actor is the initial aggressor or when the actor has an opportunity to retreat from the altercation. Ibid.

The New Jersey Supreme Court has held that a self-defense charge “must be given,” so long as the “self-defense charge is requested and supported by some evidence in the record.” State v. Rodriguez, 195 N.J. 165, 174 (2008); see

also Kelly, 97 N.J. at 200 (“[I]f any evidence raising the issue of self-defense is adduced, either in the State’s or the defendant’s case, then the jury must be instructed that the State is required to prove beyond a reasonable doubt that the self-defense claim does not accord with the facts.”). More specifically, if the evidence viewed most favorably to a defendant “provides a rational basis for a self-defense charge” then the instruction must be given. State v. Gentry, 439 N.J. Super. 57, 63 (App. Div. 2015) (quoting Rodriguez, 195 N.J. at 170). Thus, the question is not whether the “trial evidence . . . compel[s] a conclusion that defendant acted in self-defense,” but rather whether when viewing the evidence in the light most favorable to the defendant, a jury could find that the defendant acted in self-defense. Id. at 71.

Here, sufficient evidence that Howard acted in self-defense in response to S.F. was adduced at trial, therefore providing “a rational basis for a self-defense charge” and requiring the trial court to instruct the jury on self-defense as applied to S.F. Gentry, 439 N.J. Super. at 63. S.L.’s testimony of what Howard relayed to her after the incident provides direct support for a self-defense charge. S.L. testified Howard appeared at her home visibly distraught and his hands “were bloody and cut.” (3T 34-15 to 19, 36-23 to 24) Howard then confided in S.L. and told her that he was at S.F.’s home and that there was an argument that

“turned very nasty.” (3T 35-1 to 5) S.L. then described the altercation as follows, based on Howard’s recollection:

One person jumped on his back or something like that and I guess he had to fight them off, and things of that nature. Whoever he was having a dispute with, another person jumped on his back. And so now he was being attacked by another person. And apparently whatever happened those two people got stabbed.

[(3T 36-2 to 12)]

Though J.M. testified that at one point Howard was between S.F. and J.M. and the two of them “were like fighting him off,” S.L.’s testimony reveals that it was Howard who had to fight S.F. and J.M. off, particularly because evidence presented at trial established that Howard was significantly smaller in stature than S.F. (1T 57-21 to 25, 72-16 to 18; 3T 128-21 to 129-14)

Because defense counsel requested the self-defense instruction to be applied to both victims, the trial court’s failure to instruct the jury on self-defense as applied to S.F. must be evaluated for harmless error. State v Cooper, 256 N.J. 593, 607 (2024). An error is not harmless if there is “some degree of possibility that [the error] led to an unjust result.” Ibid. (quoting State v. Baum, 224 N.J. 147, 159 (2016)) Thus, this Court must determine whether the error was “sufficient to raise a reasonable doubt as to whether [the error] led the jury to a verdict it otherwise might not have reached.” Id. at 608 (quoting Baum, 224 N.J. at 159). Here, if the jury was instructed on self-defense as applied to S.F.

then it could have acquitted Howard of the charges involving S.F., therefore such error cannot be deemed harmless.

Further, providing the instruction as applied to J.M. and not S.F. effectively rendered the instruction fruitless as applied to J.M. because the jury was unable to consider S.F.'s active role in the altercation, and the possibility that she was the initial aggressor. The jury was left with no option but to consider Howard as the initial aggressor. And per the charge on self-defense that was given to the jury, deadly force is not justifiable if the person claiming self-defense "incited the use of force against him in the same encounter." (4T 146-21 to 25) In contrast, if the jury was instructed on self-defense as applied to both victims, the jury would have been able to consider the altercation as a whole to determine who the initial aggressor was and whether Howard was forced to act in self-defense when he was fighting off two people. The trial court's decision allowed the court to effectively put its thumb on the scale and likely influenced the jury's consideration of the theory of self-defense.

Had the jury been properly instructed on self-defense as applied to S.F., there is a real possibility that it would have acquitted Howard of all charges. Therefore, the absence of a self-defense jury instruction as applied to S.F. denied Howard a fair trial. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10. Reversal of his convictions is required.

B. The Trial Court Failed to Specifically Instruct The Jury On Self-Defense As Applied To The Unlawful Possession Of A Weapon Offenses.

The trial court additionally did not adequately instruct on self-defense as applied to the unlawful possession of a weapon offenses Howard was charged with, despite defense counsel arguing and pointing to evidence that supported a finding that Howard spontaneously armed himself with a knife that J.M. brought into the altercation. Because the evidence provided a rational basis for a self-defense charge, the trial court was required to adequately administer one for both unlawful possession of a weapon offenses, and the trial court's failure to do so requires reversal of those convictions. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10.

N.J.S.A. 2C:39-5(d) provides that “[a]ny person who knowingly has in his possession any other weapon under circumstances not manifestly appropriate for such lawful uses as it may have is guilty of a crime of the fourth degree.” The purpose of Section 5(d) is to “protect[] citizens from the threat of harm while permitting the use of objects such as knives in a manner consistent with a free and civilized society.” State v. Lee, 96 N.J. 156, 162 (1984).

Our Supreme Court has considered self-defense in relation to a violation of N.J.S.A. 2C:39-5(d). In State v. Harmon, 104 N.J. 189, 208-09 (1986), the Court held that self-defense does not excuse the possession of a weapon under

N.J.S.A. 2C:39-5(d) except “in those rare and momentary circumstances where an individual arms himself spontaneously to meet an immediate danger.” For instance, in State v. Kelly, the defendant had an abusive relationship with the victim, and the victim threatened the defendant not to walk by a specific corner. 118 N.J. 370, 372 (1990). As a result, the defendant armed herself with a razor in case she needed it to defend herself against the victim. Ibid. When the defendant walked past the corner the victim threatened her of, the victim began to punch the defendant and in response the defendant “slashed him with the razor.” Ibid. Subsequently, among other charges, the defendant was charged with unlawful possession of a weapon. Ibid. Relevant to the theory of self-defense, the Court found that because the defendant possessed a razor “in anticipation of a confrontation,” a self-defense instruction did not apply to the unlawful possession offense. Id. at 372, 386. However, the Court acknowledged that if the defendant “seized the weapon spontaneously and used it to defend herself against a life-threatening attack, then, she would have not possessed the weapon for a manifestly inappropriate purpose.” Id. at 385.

As our Supreme Court has long recognized, appropriate and proper jury charges are essential to a fair trial. Vick, 117 N.J. at 292-93. A jury charge “constitutes ‘a road map to guide the jury and without an appropriate charge a jury can take a wrong turn in its deliberations.’” State v. Savage, 172 N.J. 374,

387 (2002) (quoting State v. Martin, 119 N.J. 2, 15 (1990)). Further, a trial court has an independent responsibility to ensure that the jury is charged appropriately. See Cooper 256 N.J. at 608 (“A trial court has an ‘independent duty . . . to ensure that the jurors receive accurate instructions on the law as it pertains to the facts and issues of each case, irrespective of the particular language suggested by either party.’” (quoting State v. Reddish, 181 N.J. 553, 613 (2004)))

Howard’s trial defense counsel raised the issue of self-defense as applied to both S.F. and J.M., but though the trial court provided the jury with an instruction on self-defense in connection generally with the charges against J.M., the trial court did not specify that the self-defense instruction applied to the unlawful possession of a weapon offense specifically, even though the Model Jury Charges provide an opportunity to include a self-defense instruction for such offense. (4T 14-7 to 19-16, 142-16 to 32); see Model Jury Charges (Criminal), “Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5(d))” (rev. Nov. 13, 2023) (noting toward the conclusion of the jury charge that “where self-defense is asserted as justification charge as appropriate.”). Instead the trial court stated that the self-defense charge was only for the jury’s “consideration regarding the charges involving [J.M.]” but then immediately went on to only

identify the aggravated assault charge involving J.M. when discussing self-defense. (4T 142-16 to 24)

The trial court's failure to specify that the self-defense instruction as applied to J.M. applied to the unlawful possession of a weapon offense could have led the jury to conclude that self-defense was not relevant for that charge. Thus, the absence of specific self-defense instruction as applied to the unlawful possession of a weapon offense involving J.M. was harmful error. See State v. Oguta, 468 N.J. Super. 100, 111 (App. Div. 2021) (finding that the failure to give a self-defense instruction as applied to an unlawful possession of a weapon charge was harmful error and "capable of producing an unjust result" because "[t]he jury had been properly instructed that self-defense was applicable to the charges of aggravated assault and possession of a weapon for an unlawful purpose," thus "[b]y not giving that same instruction in connection with the charge of unlawful possession of a weapon, the jury could have reasonably concluded that self-defense was not relevant."); see also State v. Montalvo, 229 N.J. 300, 323-24 (2017) (finding that an erroneous self-defense instruction applied to an unlawful possession of a weapon charge was plain error because the erroneous instruction was clearly capable of prejudicially impacting the jury's verdict)

Further, the trial court did not provide a self-defense instruction as applied to any of the charges involving S.F. (4T 23-17 to 27-5) As stated above, if the evidence viewed most favorably to a defendant “provides a rational basis for a self-defense charge” then the instruction must be given. Gentry, 439 N.J. Super. at 63. Here, there was enough evidence presented at trial to support a jury finding that Howard spontaneously possessed the knife to defend himself, and did not possess it for a manifestly inappropriate purpose. As highlighted in summation, S.F. and J.M. both testified that they saw the knife only after J.M. entered the room. (4T 39-7 to 40-4) There was no evidence presented at trial that Howard possessed the knife upon entering S.F.’s home or the room where the incident took place. In fact, defense counsel argued in summation that J.M. “brought the knife into the bedroom” the night of the incident and “started the attack.” (4T 38-15 to 19) Notably, Howard was also injured after the incident with bleeding cuts on his hands. (3T 36-20 to 24)

These facts and circumstances warranted the jury’s consideration of self-defense specifically as applied to the unlawful possession of a weapon offenses because the jury could have reasonably concluded that Howard spontaneously possessed the knife after J.M. brought it to the altercation. The jury charge for the unlawful possession of a weapon offenses did not include an instruction on self-defense, thereby precluding Howard from presenting his complete defense

and resulting in harmful error. As a result, Howard was deprived of his right to a fair trial, and this Court is urged to reverse the convictions below and remand for a new trial with proper jury instructions.

C. The Trial Court Failed To Instruct The Jury On The Specific Self-Defense Instruction As Applied To The Charges Of Possession Of A Weapon For An Unlawful Purpose.

Relatedly, the trial court's failure to instruct the jury on whether Howard had a "protective purpose" for possessing the knife during the altercation equally deprived Howard of a fair trial and requires reversal of his convictions for possession of a weapon for an unlawful purpose. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10. Under N.J.S.A. 2C:39-4(d), "[a]ny person who has in his possession any weapon . . . with a purpose to use it unlawfully against the person or property of another is guilty of a crime." In other words, a conviction for possession of a weapon for an unlawful purpose "requires proof not only that the accused intended to use the weapon, but that he intended to use it to accomplish a criminal purpose." Harmon, 104 N.J. at 203; see also Model Jury Charges (Criminal), "Possession of Weapon with a Purpose to Use it Unlawfully Against the Person or Property of Another (N.J.S.A. 2C:39-4d)" (rev. June 16, 2003) (listing the elements of the offense as (1) item in question is a weapon; (2) "[d]efendant possessed the weapon;" (3) "[d]efendant possessed the weapon

with the purpose to use it against the person;” and (4) “[d]efendant’s purpose was to use the weapon unlawfully” (emphasis added)).

Notably, the theory of self-defense acts differently as applied to the charge of possession of a weapon for an unlawful purpose because “[u]nlike traditional notions of ‘self-defense,’” evidence related to self-defense is admitted “to defeat the State’s proof of the elements of the offense in the first instance.” State v. Williams, 168 N.J. 323, 333 (2001). This is so because if an individual’s possession of a weapon “is motivated honestly by a self-protective purpose, then his conscious object and design may remain not to do an unlawful act, and a material element of a 39-4[] violation has not been met.” Harmon, 104 N.J. at 207. In other words, if an individual’s purpose for possession of the weapon is lawful, i.e., for self-protection, then a defendant cannot be guilty of possession of a weapon for an unlawful purpose because the State fails to prove a critical element of the offense – that the defendant’s purpose to use the weapon, was to use it unlawfully. See Model Jury Charges (Criminal), “Possession of Weapon with a Purpose to Use it Unlawfully Against the Person or Property of Another (N.J.S.A. 2C:39-4d)” (rev. June 16, 2003).

Importantly, even if a defendant had an “honest but unreasonable belief in the need to use force for protective purposes,” that evidence can still be used to “controvert the State’s proof of the intent element of N.J.S.A. 2C:39-4[]” even

if the belief would not satisfy a traditional self-defense claim against the substantive offense at hand. Williams, 168 N.J. at 335, 338 (emphasis added). The protective purpose standard is different from the traditional self-defense standard because self-defense requires a “reasonable belief” for the need to self-defend. Id. at 339. Thus, when a court fails “to explain that a reasonable belief in the need to defend another is required for justification, but that only an honest, though unreasonable, belief is sufficient to negate a purposeful mental state, the judge le[aves] the jury to speculate about the applicable law.” Ibid. In fact “[w]here . . . state of mind is an essential or material element of the offense, a defendant may not be deprived of the opportunity to assert a mistaken belief that could negate the mental state required to convict. Indeed, the Sixth Amendment affords a defendant that right.” Id. at 333 (emphasis added).

The Model Criminal Jury Charge for possession of a weapon for an unlawful purpose reflects these principles and provides that a trial court should instruct the jury on the following when applicable:

If you find that the defendant had a lawful purpose, for example, to use the (name weapon) to protect himself/herself or another against the use of unlawful force, or to protect his/her property, or if you have a reasonable doubt as to the defendant’s purpose, then the State has failed to carry its burden of proof on this element beyond a reasonable doubt. I instruct you that for purposes of this offense, if defendant honestly believed that he/she needed to use a (name weapon) to protect (himself/herself/another/property), the law does

not require that this belief be reasonable. In other words, if defendant had an honest though unreasonable belief that he/she needed to use the weapon to protect (himself/herself/another), this negates the purposeful mental state required for this offense.

[Model Jury Charges (Criminal), “Possession of Weapon with a Purpose to Use it Unlawfully Against the Person or Property of Another (N.J.S.A. 2C:39-4d)” (rev. June 16, 2003).]

Here, the trial court failed to instruct the jury on the above critical portion of the model jury instructions, even though Howard’s main defense at trial was that he acted in self-defense during the altercation with J.M. and S.F. Based on S.F. and J.M.’s testimony, the knife did not appear in the room until J.M. arrived, supporting the position that Howard did not engage in any premeditated attack, but that Howard’s actions were a response to an initial act of aggression from S.F. that then escalated once J.M. brought a knife to the altercation. (1T 70-19 to 71-9, 81-24 to 82-13, 159-14 to 21) Defense counsel in summation thus argued that it was J.M. and S.F. who started the attack with the knife and that Howard only acted in self-defense. (4T 43-1 to 5) Defense counsel raised the theory of self-defense prior to the court instructing the jury, and the trial court had an independent responsibility to ensure the jury was charged appropriately. See Cooper 256 N.J. at 608 (“A trial court has an ‘independent duty . . . to ensure that the jurors receive accurate instructions on the law as it pertains to the facts and issues of each case, irrespective of the particular language suggested by

either party.’” (quoting State v. Reddish, 181 N.J. 553, 613 (2004)) Thus, the omission of the protective purpose charge must be evaluated for harmful error. Id. at 607-08.

This Court evaluated a similar case in State v. Rodriguez, 392 N.J. Super. 101 (App. Div. 2007), aff’d, 195 N.J. 165 (2008). There, the trial court did not instruct the jury on protective purpose for possession of a weapon for an unlawful purpose, even though self-defense was the central issue at trial. Rodriguez, 392 N.J. Super. at 103, 115. Though the defendant’s trial counsel did not request such an instruction, this Court found that “the absence of the appropriate charge was prejudicial error” and reversed the conviction for possession of a weapon for an unlawful purpose because if the jury was properly instructed then it could have acquitted the defendant of the offense. Id. at 115-16.

Here, the absence of the instruction on self-defense as it relates to possession of a weapon for an unlawful purpose constitutes harmful error and requires reversal of both convictions for possession of a weapon for an unlawful purpose. The jury was not instructed that an essential element of the offense can be negated if the jury finds that Howard used the knife for the lawful purpose of self-defense, regardless of whether his belief that he needed to use the knife was reasonable or not. Such error violates Howard’s Sixth Amendment right to a fair

trial and requires reversal of his convictions for possession of a weapon for an unlawful purpose. See Williams, 168 N.J. at 333.

POINT II

THE AGGRAVATED ASSAULT CONVICTIONS MUST BE REVERSED BECAUSE THE TRIAL COURT FAILED TO ADEQUATELY ANSWER THE JURY'S QUESTIONS THAT INDICATED THEY DID NOT UNDERSTAND THE DIFFERENCE BETWEEN SERIOUS VERSUS SIGNIFICANT BODILY INJURY. (Not raised below)

The trial court failed to clearly and accurately answer jury questions posed during deliberations, thus violating Howard's right to a fair trial, and requiring reversal of both of his aggravated assault convictions. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10. The jury asked multiple substantive questions during deliberations concerning the difference between aggravated assault causing serious bodily injury and aggravated assault causing significant bodily injury. The trial court did not respond with an adequate explanation of the differences, leaving the jury confused regarding an essential element of the offenses and how to distinguish between the two different degrees of aggravated assault. Such error was clearly capable of producing an unjust result. R. 2:10-2.

Howard was originally charged in the indictment for first-degree attempted murder of S.F. and second-degree aggravated assault causing serious bodily injury to J.M. (Da 1-7) However, the trial court instructed the jury of

multiple lesser-included offenses for both attempted murder and second-degree aggravated assault. (Da 9-11; 4T 104-25 to 118-21, 132-19 to 139-19) First, as to the attempted murder charge, the trial court instructed the jury of two lesser-included offenses: aggravated assault causing serious bodily injury and aggravated assault causing significant bodily injury to a victim of domestic violence. (4T 104-25 to 118-21) Next, for the aggravated assault causing serious bodily injury charge as applied to J.M., the trial court instructed the jury on the lesser-included offense of aggravated assault causing significant bodily injury. (4T 132-19 to 139-19)

Following the instructions, and during deliberations, the jury asked multiple questions that generally focused on the aggravated assault offenses described in the jury instructions and listed on the verdict sheet. For the attempted murder charge, the verdict sheet was organized as follows:

COUNT ONE:
ATTEMPTED MURDER

1a. On May 18, 2022, in the City of Newark, in the County of Essex, the defendant did purposely attempt to cause the death of [S.F.].

Our verdict is:

Not Guilty _____ Guilty _____

If you find the defendant GUILTY move on to Count Two, if you find him NOT GUILTY then move to Question 1b.

Aggravated Assault – Cause/Attempted to Cause Serious Bodily Injury

1b. On May 18, 2022, in the City of Newark, in the County of Essex, the defendant purposely or knowingly caused or attempted to cause serious bodily injury to [S.F].

Our verdict is:

Not Guilty _____ Guilty _____

If you find the defendant GUILTY move on to Count Two, if you find him NOT GUILTY then move to Question 1c.

Aggravated Assault – Significant Bodily Injury to a Victim of Domestic Violence

1c. On May 18, 2022, in the City of Newark, in the County of Essex, the defendant attempts to cause or purposely or knowingly, causes significant bodily injury to [S.F.], a former romantic partner.

Our verdict is:

Not Guilty _____ Guilty _____

Regardless of your verdict to Question 1c, move to Count Two.

[(Da 9-10)]

In reviewing count one, the jury first asked: “If this was a domestic relation, do we have to go to 1(c)?” (5T 4-2 to 5) The trial court answered this question as follows: “[Y]ou will only get to 1(c) if you found him not guilty on

question 1(a) and question 1(b).” (5T 7-17 to 19) The second question the jury asked was: “Does relationship status define 1(b) versus 1(c)?” (5T 4-25 to 5-3) The trial court answered this question similarly as the first question and stated:

Again, I’m go[ing] [to] give you the same instruction. You should only be at 1(c) if you found him not guilty on 1(a) and 1(b). If you’re considering 1(b), you just have to consider that question for what it is, which is cause or attempt to cause serious bodily injury.

[(5T 8-3 to 10)]

The jury then asked a question in relation to the aggravated assault charge as applied to J.M. The verdict sheet for this count was organized as follows:

COUNT FOUR:

Aggravated Assault – Cause/Attempted to Cause Serious Bodily Injury

4a. On May 18, 2022, in the City of Newark, in the County of Essex, the defendant purposely or knowingly caused or attempted to cause serious bodily injury to [J.M.].

Our verdict is:

Not Guilty _____ Guilty _____

If you find the defendant GUILTY move on to Count Five, if you find him NOT GUILTY then move to Question 4b.

Aggravated Assault – Significant Bodily Injury

4b. On May 18, 2022, in the City of Newark, in the County of Essex, the defendant attempts to cause or

purposely or knowingly, causes significant bodily injury to [J.M.].

Our verdict is:

Not Guilty _____ Guilty _____

Regardless of your verdict, move to Count Five.

[(Da 10-11)]

The jury asked squarely: “What is the distinction between 4(a) and 4(b)?” (5T 5-19 to 20) In response to this question, the trial court first reminded the jury that the court explained in the instructions that some counts have lesser included offenses. (5T 8-13 to 17) But instead of elaborating further on what lesser included offenses mean, and how they apply to the jury’s question, the trial court stated

in your charges I explain what serious bodily injury is. If you find him guilty on the question, you don’t go to 4(b). . . If you find him not guilty then you would move to 4(b) and the difference with 4(b) is significant bodily injury. Remember so there’s two different charges, and referring to the charges that you have in the back, what constitutes serious bodily injury and what constitutes significant bodily injury. So, 4(b) you would only get to that question if you found him not guilty on 4(a).

[(5T 8-18 to 9-7)]

These questions from the jury illustrate that the jury was confused regarding the differences between the two different aggravated assault offenses charged to the jury, specifically the differences between serious versus

significant bodily injury, which is a critical determination when deciding whether Howard was guilty of aggravated assault and to what degree.

The New Jersey Supreme Court has recently reemphasized that “[w]hen a jury requests clarification, a trial judge ‘is obligated to clear the confusion.’” State v. Berry, 254 N.J. 129, 145-46 (2023) (quoting State v. Savage, 172 N.J. 374, 394 (2002)). The trial court is “obliged to answer jury questions posed during the course of deliberations clearly and accurately and in a manner designed to clear its confusion, which ordinarily requires an explanation beyond rereading the original charge. The court’s failure to do so may require reversal.” Id. at 146 (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 7 on R. 1:8-7 (2023)). Any supplemental instructions should be adequate enough “to guide the jury in the course of its deliberations.” Savage, 172 N.J. at 395.

Further, it is well-established that a trial court is responsible for delivering “appropriate proper charges to a jury” in order to ensure a fair trial. See Vick, 117 N.J. at 292-93. This responsibility also encompasses “the duty to clarify statutory language that prescribes the elements of a crime when clarification is essential to ensure that the jury will fully understand and actually find those elements in determining the defendant’s guilt.” State v. Alexander, 136 N.J. 563, 571 (1994). Therefore, to carry out its responsibility courts are able to and have “commonly clarif[ied] statutory language to give more precise meaning to

statutory terms to effect the legislative intent and to make sure that juries carry out that intent in determining criminal culpability.” Id. at 571-72.

From the jury’s questions pertaining to the charges involving S.F., it is clear that the jury was attempting to decipher what the critical distinction was between questions 1b and 1c, asking essentially whether the distinction between the two offenses in 1b and 1c was simply if a domestic violence relationship existed or not. However, though that was a difference between 1b and 1c, another critical difference was the fact that 1b required the jury to find that S.F. suffered from serious bodily injury, while 1c required the jury to find that S.F. suffered from significant bodily injury. (Da 9-10) Yet, the trial court did not provide any explanation regarding this critical difference between 1b and 1c and instead just instructed the jury that it should not reach 1c until it makes a finding on 1b. Such response did not clear the jury’s confusion. The jury’s confusion regarding the differences between the aggravated assaults was made even more apparent when it asked the question with regards to the offenses as applied to J.M. The jury plainly asked what the distinction was between 4a and 4b, indicating it did not understand the differences between serious bodily injury and significant bodily injury.

As provided by statute and included in the Model Jury Charges, serious bodily injury is defined as “bodily injury which creates a substantial risk of

death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” N.J.S.A. 2C:11-1(b); Model Jury Charges (Criminal), “Aggravated Assault – Serious Bodily Injury (N.J.S.A. 2C:12-1b(1))” (rev. Jan. 9, 2012). In contrast, significant bodily injury is defined as “bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.” N.J.S.A. 2C:11-1(d); Model Jury Charges (Criminal), “Aggravated Assault – Significant Bodily Injury (N.J.S.A. 2C:12-1(b)(7))” (rev. March 11, 2019). Aggravated assault causing serious bodily injury is a crime of second-degree, while aggravated assault causing significant bodily injury generally or to a domestic violence victim is a crime of third-degree. N.J.S.A. 2C:12-1. Critically, to find a defendant guilty of aggravated assault, the State must prove beyond a reasonable doubt that a defendant indeed caused or attempted to cause the level of bodily injury that a defendant is charged with.

Our Supreme Court has recognized that “under the Code’s definition of ‘serious bodily injury’ not every stabbing will result in such injury.” State v. Sloane, 111 N.J. 293, 298 (1988). The Court highlighted that jurors may conclude that a wound causes serious harm to a victim, but that the wound does not meet the statutory definition of serious bodily injury. See ibid. In an attempt to rectify “the problem of classifying certain types of assault which fall between

simple assault and aggravated assaults where the victim suffers serious bodily injury,” the Legislature adopted aggravated assault causing significant bodily injury “to provide an intermediate level of assault which is more serious than simple assault and yet may not result in serious injury.” State v. James, 343 N.J. Super. 143, 147 (App. Div. 2001) (quoting Assembly Judiciary, Law and Public Safety Committee, Statement to Senate, No. 504 [L. 1995, c. 307 § 2] (April 12, 1995)). Thus, it is clear from the Legislature’s intent that serious bodily injury “is to be distinguished from” significant bodily injury. State v. Kane, 335 N.J. Super. 391, 397-98 (App. Div. 2000).

Though the trial court defined serious bodily injury and significant bodily injury in its original instructions to the jury, the jury’s questions during its deliberations indicated that it was left confused following the instructions regarding the differences between serious and significant bodily injury. (4T 106-11 to 16, 112-6 to 12) The New Jersey Supreme Court emphasized that a trial court’s obligation to clear confusion among the jury “ordinarily requires an explanation beyond rereading the original charge.” Berry, 254 N.J. at 145-46 (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 7 on R. 1:8-7 (2023)). However, despite the apparent confusion among the jury, the trial court did not even reread the original charge and did not provide further explanation of the differences such as emphasizing that serious bodily injury requires that

the State prove that the injury resulted in “permanent disfigurement, or protracted loss” while significant bodily injury requires the State prove “a temporary loss of the function of any bodily member or organ.” N.J.S.A. 2C:11-1(b), (d). Instead, the trial court vaguely made reference to its discussion of lesser-included offenses without applying such discussion to the question at hand and referred the jury back to the jury instructions.

Even though defense counsel did not object to the trial court’s responses to the jury questions, the responses constituted plain error because they were clearly capable of producing an unjust result. R. 2:10-2; see, e.g., Savage, 172 N.J. at 394-95 (finding that the trial court’s “failure to inquire further into” a jury’s ambiguous note and “to re-explain the accomplice charge in the context of the facts was plain error”) The jury was never provided adequate information to clear its confusion on the essential elements of the aggravated assault offenses. Without clarification from the trial court, the jury was left to speculate on how to distinguish the two different degrees of aggravated assault. Thus, Howard’s convictions for aggravated assault must be reversed and the matter remanded for a new trial.

POINT III

THE ADMISSION OF HEARSAY TESTIMONY ABOUT WHAT A DOCTOR TOLD J.M. ABOUT HER INJURIES WAS PLAIN ERROR. (Not raised below)

Howard's conviction for aggravated assault as applied to J.M. must be reversed because the conviction was premised upon inadmissible hearsay from J.M. when she testified to multiple statements made by her treating physician. Such admission of impermissible hearsay was clearly capable of producing an unjust result, thus depriving Howard of a fair trial. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10; R. 2:10-2.

Hearsay is “a statement that . . . the declarant does not make while testifying at the current trial or hearing; and . . . a party offers in evidence to prove the truth of the matter asserted.” N.J.R.E. 801(c). Hearsay is generally inadmissible unless an exception applies. N.J.R.E. 802; State v. Sweet, 195 N.J. 357, 368 (2008). The hearsay rule “shields a party from damning out-of-court statements, which are offered for their truth but are not subject to the truth-testing rigors of cross-examination.” State v. Branch, 182 N.J. 338, 342 (2005).

N.J.R.E. 803(c)(4) is an exception to the hearsay rule and provides for the admission of a statement that “(a) is made in good faith for purposes of, and is reasonably pertinent to, medical diagnosis or treatment; and (b) describes medical history; past or present symptoms or sensations; their inception; or their

general cause” may be admissible. However, the New Jersey Supreme Court recognized that this rule is “directed at patients and cannot be used to introduce hearsay statements by physicians.” State v. Gonzalez, 249 N.J. 612, 636 (2022) (quoting Biunno, Current N.J. Rules of Evidence, cmt. on N.J.R.E. 803(c)(4)(2021)) (emphasis added); see also In re Commitment of G.G.N., 372 N.J. Super. 42, 56-57 (App. Div. 2004) (noting that “the hearsay exception for statements made for purposes of medical diagnosis or treatment, N.J.R.E. 803(c)(4), is directed at statements made by the patient not the doctor or therapist”).

J.M. testified to multiple statements that her treating physician made while J.M. was in the hospital that clearly constituted hearsay. First, the State asked what treatment J.M. received while in the hospital. (1T 76-9 to 10) J.M. responded that “I believe the doctor said from her feeling it, the knife was shifted three times, and it punctured my fascia the lining of my stomach and it caused internal bleeding.” (1T 76-13 to 16) (emphasis added). Further, J.M. testified that “around 4 o’clock in the morning . . . the doctor had told my mom that I was suffering from internal bleeding.” (1T 80-12 to 14) (emphasis added) Thus, J.M. reiterated multiple times what the physician told her about her wounds, without the physician ever testifying at trial.

Next, J.M. stated that her bowel movements were irregular to which the State asked “did the doctors inform you that that’s a permanent situation?” J.M. responded “[y]es.” (1T 79-24 to 80-4) Again, the State elicited hearsay testimony from J.M. concerning what her physician informed her, in order to establish that J.M.’s circumstances following the incident are indeed permanent. Then, the State once more elicited hearsay testimony when it asked J.M. the following: “the doctors informed you that you had been stabbed; correct?” To which J.M. responded “[y]es.” (1T 81-5 to 7)

All of these statements constituted hearsay and should have been deemed inadmissible at trial. Although defense counsel did not object to the admission of the statements, the statements were clearly capable of producing an unjust result because they went to the critical question of whether J.M.’s injuries were serious, significant, or neither.³ Without that testimony, the only evidence to establish J.M.’s level of injury was photos of the injuries, which did not indicate how severe the stab wounds were or the lasting effects of the stab wounds. (1T 78-20 to 79-18, 80-23 to 81-4) Importantly, serious bodily injury is not established by how bad an injury looks, but whether it “creates a substantial risk of death or . . . causes serious, permanent disfigurement, or protracted loss or

³ Aggravated assault causing serious bodily injury is a crime of second-degree, while aggravated assault causing significant bodily injury is a crime of third-degree. N.J.S.A. 2C:12-1.

impairment of the function of any bodily member or organ[.]” N.J.S.A. 2C:11-1(b).

Thus, it is extremely likely that the jury relied on J.M.’s hearsay testimony to find Howard guilty of second-degree aggravated assault. Consequently, the admission of the hearsay testimony had a capacity to create an unjust result and Howard’s conviction for aggravated assault as applied to J.M. must be reversed and a new trial must be granted that does not include any hearsay testimony from J.M.’s physician.

POINT IV

THE TRIAL COURT ERRED IN ADMITTING A TWELVE-MINUTE VIDEO LINGERING ON TRAUMATIC SCENES OF BLOOD IN VIOLATION OF RULE 403. (1T 9-12 to 23, 42-1 to 47-17)

The trial court’s admission of the twelve-minute graphic body worn camera (BWC) footage of S.F. receiving treatment from police officers on the scene of the incident was unduly prejudicial and harmful error. Therefore, Howard was denied his right to a fair trial. U.S. Const. amends. V, VI, XIV; N.J. Const. art. 1, ¶¶ 1, 10.

Prior to the beginning of trial, the State sought to admit approximately twelve minutes of Officer Gaglioti’s BWC that shows him rendering aid to S.F.

(1T 3-21 to 5-19) Defense counsel objected to the length of the video, arguing that the BWC

lingers on and on . . . on images of blood for an extended period which could have the effect . . . [of] being unfairly prejudicial from the jury's view point against Mr. Howard by lingering on a graphic image for excessive period of time once the facts of consequences are already established by the video.

[(1T 6-12 to 25)]

The trial court overruled defense counsel's objection and allowed the twelve minutes of BWC to be shown to the jury. (1T 9-12 to 23, 42-1 to 47-17) Because trial counsel objected to the length of the video, this Court must review the admission of the twelve-minute BWC footage for harmless error. Cooper, 256 N.J. at 607.

This Court must reverse Howard's convictions because admitting the twelve minutes of BWC footage was overwhelmingly prejudicial that outweighed any probative value in violation of N.J.R.E. 403. Such admission was not harmless error because due to the extremely prejudicial nature of the video, there is a real risk that "the jury was led to a verdict it otherwise might not have reached." Cooper, 256 N.J. at 608.

N.J.R.E. 403 provides that "relevant evidence may be excluded if its probative value is substantially outweighed by the risk of . . . [u]ndue prejudice." To qualify as unduly prejudicial, the probative value of the evidence must be "so

significantly outweighed by [its] inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation of the issues.” State v. Cole, 229 N.J. 430, 448 (2017) (quoting State v. Thompson, 59 N.J. 396, 421 (1971)). The inquiry is therefore “whether the risk of undue prejudice was too high.” State v. Trinidad, 241 N.J. 425, 449 (2020).

Furthermore, the New Jersey Supreme Court has held that “evidence of an inflammatory nature must be excluded under Evidence Rule 403 if probative, non-inflammatory evidence on the same point is available.” State v. Wilson, 135 N.J. 4, 20 (1994). The Court further recognized that, “[b]ecause of the indelible impressions that are likely to result from videotaped and other filmed evidence, such evidence must be subject to careful scrutiny.” Id. at 20-21. For instance, in State v. Lockett, this Court held that gruesome photos of the victim of a car collision “were offered to inflame the jury,” particularly because other relevant evidence was admitted to prove the facts of the case. 249 N.J. Super. 428, 432-33 (App. Div. 1991). The Court determined that “[a]dmission of these photographs into evidence was an abuse of the trial judge’s discretion because their tenuous relevance was overwhelmed by their inherently prejudicial nature.” Id. at 433.

The BWC footage shown to the jury here was unnecessarily long and extensive, lingering on scenes of blood and graphic images that were inflammatory and superfluous. Other evidence was presented to establish S.F.'s injuries following the incident, including photographs and testimony from her treating physician. The footage shown was needlessly extensive and "offered to inflame the jury." Lockett, 249 N.J. Super. at 432-33. The video did not need to go on and on, lingering on traumatic visuals of blood and S.F.'s wounds, when other evidence was presented to support the State's position. The twelve-minute BWC footage was unduly prejudicial, and was harmful error. As the New Jersey Supreme Court emphasized, video evidence must be carefully scrutinized because of its impressionable impact on a jury. Wilson, 135 N.J. at 20-21. Seeing traumatic images of blood is extremely inflammatory, therefore raising the passions of the jury and limiting their ability to fairly evaluate all of the evidence presented. Thus, the admission of the extensive BWC footage resulted in Howard receiving an unfair trial and requires reversal of his convictions.

POINT V

THE CUMULATIVE EFFECT OF THE LEGAL ERRORS DENIED MR. HOWARD OF A FAIR TRIAL.

Even if this Court does not agree that the errors merit reversal individually, it should reverse Howard's convictions because their cumulative

effect fundamentally impacted the jury’s verdict. See, e.g., State v. Sanchez-Medina, 231 N.J. 452, 469 (2018) (“Even if an individual error does not require reversal, the cumulative effect of a series of errors can cast doubt on a verdict and call for a new trial.”). Several instructional errors prevented the jury from being able to fairly evaluate and consider Howard’s central defense at trial: that he acted in self-defense. The jury’s ability to fairly evaluate the evidence was further undermined by the jury viewing extensive prejudicial BWC footage that had the capacity to inflame the passions of the jury, and with the jury listening to inadmissible hearsay testimony from J.M.’s doctor which was used to prove an essential element of an offense. Then, compounding the trial errors even further was the fact that the jury was left confused during deliberations regarding the differences between aggravated assault causing serious bodily injury and aggravated assault causing significant bodily injury; such understanding of the differences was necessary to obtain a valid verdict.

As a result of the cumulative impact of these errors, Howard’s convictions must be reversed and remanded for a new trial. U.S. Const. amends. VI and XIV; N.J. Const. art. I, ¶¶ 1, 9, and 10.

CONCLUSION

For the reasons set out above, Mr. Howard's trial convictions must be reversed, and the matter must be remanded for a new trial.

Respectfully submitted,

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August 6, 2025

LETTER BRIEF ON BEHALF OF THE STATE

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-Respondent) v.
Khalil A. Howard (Defendant-Appellant)
Docket No. A-003172-23 Team 03

Criminal Action: On Appeal from a Judgment of Conviction, entered in
the Superior Court of New Jersey, Law Division, Essex County.

Sat Below: Hon. Avion M. Benjamin, J.S.C., and a Jury

Honorable Judges:

Pursuant to R. 2:6-2(b), please accept this letter in lieu of a formal brief
on behalf of the State.

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Counterstatement of Procedural History

For purposes of this appeal, the State adopts the defendant's Statement of Procedural History. The State adopts the defendant's transcript designation codes. See (Db 2, n. 1).

Counter-statement of Facts

S.F. testified that on May 18, 2022, she lived in Newark with her daughter Q.L. and her friend J.M. (1T 145:7 to 146:8). On that day, the defendant called her and then came over to her place. (1T 148:18 to 149:6). When she later asked him to leave, he refused and they started fighting. (1T 155:10 to 158:7). S.F. yelled for her friend J.M., who came to her aid. (1T 158:8 to 159:3). After a brief fight, the defendant fled the apartment. (1T 163:16-23).

After the defendant left S.F.'s apartment, he went to his co-parent's apartment. (3T 31:15 to 33:14). He was covered in blood and told her that he had stabbed two people. (3T 33:17 to 35:12).

Police arrived and after some time an ambulance brought S.F. and J.M. to the hospital. (1T 163:21 to 166:24). S.F. had a punctured kidney that required surgery as well as stab wounds to her arm and stomach. (1T 167:10 to 173:6). She spent about a week in the hospital. (1T 173:7-9). J.M. had stab

wounds to the face and stomach that required stitches to her lip and emergency surgery to her abdomen. (1T 76:4 to 80:14).

Legal Argument

Point I

The trial court properly instructed the jury on self-defense.

A. The self-defense instruction was properly given as to J.M, but not S.F.

At trial, the defendant’s attorney requested that the jury be instructed on self-defense as to both S.F. and J.M. The State objected, and the trial court instructed the jury on self-defense as to J.M., but not as to S.F. This was the proper decision.

A jury must be instructed on self-defense if “the evidence provides a rational basis” for the charge. State v. Rodriguez, 195 N.J. 165, 200 (2008). A close examination of the evidence shows why the jury was properly charged. S.F. testified that the confrontation started when the defendant “charged” her. (1T 156:19-25). J.M. testified that when she entered the bedroom, the defendant was on top of S.F., punching her. (1T 69:16-22). When J.M. intervened, the defendant attacked her. (1T 70:9-22). Salina Lockwood, the defendant’s co-parent, testified that the defendant told her that one person

“jumped on his back” and attacked him. (3T 36:2-12). The defendant did not testify.

The only evidence that provides a rational basis for self-defense is Ms. Lockwood’s testimony that the defendant said someone had attacked him, referring to J.M. There was no evidence that S.F. attacked the defendant or started any altercation with the defendant. The trial court therefore instructed the jury on self-defense as to J.M. but no rational basis existed to charge self-defense as to S.F.

B. The trial court properly declined to instruct the jury on self-defense as applied to the unlawful possession of a weapon charges.

“[A] jury charge on self-defense is largely inapplicable in the context of section 5d offenses.” State v. Kelly, 118 N.J. 370, 381 (1990). “If a person possesses an instrument for a legitimate purpose and makes immediate use of that instrument as a weapon in order to fight off an impending threat, then, and only then, is self-defense a justification to a section 5d offense.” Id.

Such is not the case here. There was no evidence adduced at trial that the defendant possessed the knife for any legitimate purpose. S.F. testified that she did not recognize the knife and that it did not come from her house. (1T 160:3-16; 2T 210:19-25). Thus, the instruction was not necessary.

As discussed above, there was no evidence that the defendant acted in self-defense with regard to S.F., and therefore no evidence that he possessed or used a weapon against S.F. in self-defense. With regard to J.M., the jury found that self-defense did not apply to the aggravated assault charge and would therefore not have found that self-defense applied to the weapons charges even if it was instructed. As such, any error was harmless. R. 2:10-2.

C. The trial court properly declined to instruct the jury on self-defense as applied to the unlawful purpose charges.

The justification of self-defense applies to an unlawful purpose charge if the possession of the weapon is “motivated honestly by a self-protective purpose.” State v. Harmon, 104 N.J. 189, 207 (1986). There was no evidence in this case that the defendant possessed the knife for any self-protective purpose. The evidence showed that the defendant brought the knife with him to the apartment, possessed the knife, and stabbed two people with the knife. The evidence also showed that the defendant started the altercation with S.F., which eventually led to the altercation with J.M. The evidence did not support any instruction on self-defense as applied to the unlawful purpose charges.

Point II

The trial court properly responded to the jury's questions.

During deliberations, the jury sent a note to the court with three questions. The attorneys for both parties agreed with the court's proposed answers to the questions and the judge read those answers to the jury.

The first question posed by the jury sought to clarify the domestic violence nature of the assault against S.F. The questions referenced the first charge on the verdict sheet and asked, "If this was a domestic relation, do we have to go to 1(c)?" (5T 4:2-5). The trial judge discussed the response with the parties, who both agreed on the response: the jury should only move on to question 1(c) if they answered "not guilty" on questions 1(a) and 1(b). (5T 4:2-24). After providing the jury with the answer, the trial judge said, "So, I hope that answers that first question. Don't say anything. If it doesn't, you could go back in the room and send something back out." (5T 7:17-22).

First, it is worth noting that the trial judge properly instructed the jury on attempted murder, aggravated assault, serious bodily injury, and significant bodily injury. (4T 100:22 to 118:21). Nothing in the judge's answer changed anything in the jury instructions. The judge's answer merely reiterated how to proceed through the verdict sheet.

Second, the judge's answer to the jury question was a completely appropriate response. When a jury requests clarification, a trial judge is obligated to clear the confusion. State v. Berry, 254 N.J. 129, 145-146 (2023). The judge did exactly that in this instance: the jury asked whether they had to move on to 1(c) if they found that the victim and the defendant were in a relationship that qualified as a domestic relationship. The judge told them they only move on to 1(c) if they found the defendant not guilty on 1(a) and 1(b). The jurors did not pose any follow-up questions and did not reach question 1(c) on the verdict sheet.

In addition, all parties agreed on the response given by the judge. Even if there was any error in the judge's answer, there was no possibility that it could lead to an unjust result in the case and was therefore a harmless error. R. 2:10-2; see State v. Galicia, 201 N.J. 364, 387 (2012)(noting that when the jury is correctly charged on the law, errors in the verdict sheet may be deemed harmless).

The second question from the jury also dealt with the domestic violence nature of the crime against S.F. The question was, "Does relationship status define 1(b) versus 1(c)?" (5T 4:25 to 5:3). The question again referred to the first charge on the verdict sheet. In response, the trial judge cautioned the jury that they should only reach 1(c) if they answered "not guilty" on questions 1(a)

and 1(b). (5T 8:1-10). The judge said that if that did not answer the question, they could ask for further explanation. (5T 8:8-10).

Just as with the first question, there was no error in the judge's response. The response was an accurate instruction of how to proceed through the verdict sheet. The response was agreed upon by all parties. The response did not contain any inaccurate statement of the law. Galicia, 210 N.J. at 387. There was no error in the judge's response.

The third question posed by the jury related to the aggravated assault charge against J.M. The question was, "What is the distinction between 4(a) and 4(b)?" (5T 5:19-20). In response, the trial judge referred the jury back to the instructions and pointed out that the instructions would explain "what constitutes serious bodily injury and what constitutes significant bodily injury." (5T 9:2-5). The trial judge also said that if she did not answer the question to their satisfaction, they could "feel free to send out another note." (5T 9:7-9).

It is again worth noting that the trial judge properly instructed the jury on the definitions of serious bodily injury and significant bodily injury. The defendant does not contest that. The jury asked the difference between two charges on the verdict sheet and the judge merely instructed them that there were different degrees of injury involved. The difference between the two

types of injuries were explained in the jury instructions. Both parties agreed that this was the appropriate response to the jury's question.

Because the trial judge properly responded to all of the jury's questions and there was no error in any of the responses, the defendant's argument fails.

Point III

The hearsay statements admitted at trial did not constitute plain error; at worst, they were harmless error.

At trial, J.M. testified as to some comments that her doctor made to her in the hospital while being treated for stab wounds. The defendant's attorney did not object, so the plain error standard applies – “that is error possessing a clear capacity to bring about an unjust result and which substantially prejudiced the defendant's fundamental right to have the jury fairly evaluate the merits of his defense.” State v. Taylor, 350 N.J. Super. 20, 32 (App. Div. 2002)(citation omitted). Although the comments were hearsay, it is clear that the admission of the statements was not plain error. At worst, any error was harmless error when the statements are viewed in the context of the trial. See R. 2:10-2.

The first statement was contained in the following exchange:

Q. Can you -- to the best of your knowledge what -- what -- what treatment did you receive?

A. I had to go through cosmetic surgery to stitch up my lip. And also I had to go through surgery because of the stab mark for my

stomach. I -- I believe the doctor said from her feeling it, the knife was shifted three times, and it punctured my fascia the lining of my stomach and it caused internal bleeding. For me to go through emergency surgery at 4 o'clock that morning.

Q. And to your knowledge, earlier you described that he punched you three times; is that correct?

A. Yes, three times in the stomach and two times to the face.

Q. Do you believe that's when the times that he stabbed you?

A. Yes.

[(1T 76:9-24).]

Although J.M. mentioned something the doctor said about the knife shifting, the fleeting comment was part of a larger description of her treatment and the injuries she sustained. J.M. said she needed stitches to her lip and emergency surgery after the defendant stabbed her three times.

No plain error occurred here. J.M.'s testimony about being stitched up was properly admitted. Her testimony about being stabbed three times was properly admitted. Her testimony about being sent to emergency surgery was properly admitted. In light of that overwhelming evidence of serious bodily injury, the admission of the hearsay statement from J.M.'s doctor was not capable of producing an unjust result in this case.

Later, J.M. testified about the reason for her emergency surgery:

Q. Do you know why they had to put you into emergency surgery?

A. Because my stomach started bloating and blood started to fill my stomach. And at around 4 o'clock in the morning that's when the doctor had told my mom that I was suffering from internal bleeding.

[(1T 80:9-14).]

J.M. testified that her stomach was filling with blood as a result of the stab wounds. Her additional statement that the doctor told her mom that she had internal bleeding was merely cumulative. Even if it had been stricken from the record, her first statement was not hearsay and essentially said the same thing. The defendant's attorney did not object to the testimony and it was not plain error to admit it.

J.M. also testified about the lasting effects of her injuries:

Q. Okay, and as a result of these injuries do you have any lingering effects now?

A. Yes.

Q. What are they?

A. My bowel movements is irregular. I don't go to the bathroom normally how everyone else do, it's delayed.

Q. Okay and did the doctors inform you that that's a permanent situation?

A. Yes.

[(1T 79:20 to 80:4).]

Again, when the context of the hearsay statement is considered, the impact of the statement is clearly minimal. The defendant stabbed J.M. on May 18, 2022. The trial took place in March of 2024, almost two years later. When J.M. testified that her bowel movements were irregular almost two years later as a result of the attack, it was evidence of serious bodily injury. The additional statement of how the doctors told her that it was a permanent

condition was merely cumulative and was not capable of producing an unjust result.

Finally, the defendant points to the following exchange from the trial:

Q. Ms. [M.] is this a picture of yourself?

A. Yes.

Q. And again this scar here that I just circled is that the scar you were -- is that the injury you were referring to earlier?

A. Yes.

Q. Okay, and the doctors informed you that you had been stabbed; correct?

A. Yes.

[(1T 80:23 to 81:4).]

Just as with the previously discussed testimony, this one simple question and answer was not plain error. J.M. had previously testified that the defendant stabbed her multiple times. This one exchange was merely cumulative evidence that did not have the capability of producing an unjust result in the trial.

Point IV

The trial court properly admitted body camera footage from the responding officers.

The defendant erroneously asserts that the trial attorney admitted the body camera video from responding officers showing the crime scene. The video was relevant evidence was not unduly prejudicial.

The admissibility of evidence showing the victim of a crime rests in the discretion of the trial court, and the exercise of its discretion will not be reversed in the absence of “palpable abuse.” State v. Thompson, 59 N.J. 396, 420 (1971) (where photograph of victim lying on her back with sizable bloodstains close by and a can of mace, with which she supposedly tried to stop her attacker, just inches from her hand was properly admitted). The evidence must be considered in the context of the overall evidence in the case. State v. Moore, 113 N.J. 239, 296 (1988) (where photographs of a corpse wrapped in plastic and tape were properly admitted because they had probative value, corroborated the testimony, and could not have prejudiced the jury given the overall evidence of brutality in the case).

The video showed during trial, starting at 4:23 and ending at 16:43, is hardly the horror scene described in the defendant’s brief. The video, (Da 18), shows Officer Gaglioti identifying S.F.’s injuries and holding gauze on the injuries to help stop the bleeding until EMS arrives. Officer Gaglioti identifies the stab wounds on S.F.’s arm, side, and thigh and then holds gauze and paper towels over the wounds. This was clearly relevant evidence to show the wounds to S.F.’s body caused by the defendant. The audio, during which S.F. describes the defendant and says that he stabbed her, was redacted and not played for the jury. The later portion of the video showing EMS taking over

treatment was not played for the jury. The portion of the video played for the jury was not unduly prejudicial when viewed in the context of the evidence introduced at trial. The probative value was not “significantly outweighed” because there was no “inflammatory potential” in the video evidence and thus the video was properly admitted at trial. Thompson, 59 N.J. at 421.

Point V

The error in the defendant’s trial was minor and does not require reversal of his conviction.

The defendant’s assertion that cumulative error requires reversal of his conviction is without merit. The only error in the defendant’s trial was the harmless admission of hearsay discussed above in Point III.

A defendant is entitled to a fair trial, not a perfect one. Lutwak v. United States, 344 U.S. 604, 619 (1953); State v. R.B., 183 N.J. 308, 334 (2005). Since criminal trials are vigorously contested, protracted, and sometimes involve subtle and difficult legal issues, it is virtually assured that in the course of the proceedings, some errors and imperfections may occur. State v. Marshall, 123 N.J. 1, 169 (1991), cert. denied, 507 U.S. 929 (1993). Trial judges, unlike appellate judges, make their rulings in the heat of trial, without the opportunity for deliberative review, and not even the most experienced and conscientious trial judges can be perfect. Ibid.

The right to a fair trial “does not mean that the incidental legal errors, which creep into the trial but do not prejudice the rights of the accused or make the proceedings unfair, may be invoked to upset an otherwise valid conviction[.]” State v. Orecchio, 16 N.J. 125, 129 (1954). To grant a new trial under such circumstances “would be grossly unjust to the State and its people . . .” Ibid. Only when the cumulative impact of errors prejudiced the fairness of defendant’s trial and cast doubt on the propriety of the jury verdict, a new trial may be warranted. Ibid.

This is not such a case. The admission of hearsay statements was harmless and did not impact the outcome of the trial. There were no other errors, let alone so many that this Court must upset the jury’s verdict, and so defendant’s claim of cumulative error fails.

Conclusion

The defendant received a fair trial and no basis exists to disturb his conviction.

Respectfully submitted,

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003172-23
INDICTMENT NO. 22-08-02014-I;

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KHALIL A. HOWARD,

Defendant-Appellant.

: CRIMINAL ACTION

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

:
: Sat Below:

: Hon. Avion M. Benjamin, J.S.C. and a jury

DEFENDANT IS CONFINED

Your Honors:

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

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REPLY PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Khalil A. Howard relies on the procedural history and statement of facts from his initial brief. (Db 2-9)¹

LEGAL ARGUMENT

Howard relies on the legal arguments from his initial brief, adding the following:

POINT I

THE EVIDENCE AT TRIAL PROVIDED A RATIONAL BASIS FOR A SELF DEFENSE JURY INSTRUCTION AS APPLIED TO ALL THE CHARGES AGAINST MR. HOWARD.

The State’s position that the evidence at trial did not support a rational basis for a self-defense jury instruction as applied to the offenses involving S.F. and all the weapon-related offenses must be rejected. (Sb 4-6) As articulated in detail in his initial brief, because Howard requested a self-defense instruction and there was sufficient evidence in the record that Howard acted in self-defense in response to S.F. and J.M.’s actions, a self-defense charge was necessary as applied to each offense Howard was charged with. (Db 10-26)

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

When determining whether to grant a defendant's request for a self-defense charge, a trial court must view the evidence most favorably to a defendant and determine whether it "provides a rational basis for a self-defense charge." State v. Gentry, 439 N.J. Super. 57, 63 (App. Div. 2015) (quoting State v. Rodriguez, 195 N.J. 165, 170 (2008)). Importantly though, the question is not whether the "trial evidence . . . compel[s] a conclusion that defendant acted in self-defense," but rather when viewing the evidence in the light most favorable to the defendant, a jury could find that the defendant acted in self-defense. Id. at 71.

First, as to offenses involving S.F., the State's contention that "[t]here was no evidence that S.F. attacked the defendant or started any altercation with the defendant" is unsupported by the record developed at trial. (Sb 5 (emphasis added)) S.L., the mother of Howard's children, testified at trial and stated that when Howard came to her home after the altercation at issue, he told her that he got into an argument that "turned very nasty" after "[o]ne person jumped on his back" and he had to "fight them off." (3T 35-2 to 4, 36-6 to 8) He was then "being attacked by another person" when that person also "jumped on his back." (3T 36-9 to 11) Thus, S.L. testified that two different people jumped on Howard's back during the altercation, and despite the State's assertion, there was no indication from S.L.'s testimony that she was only referring to J.M. (Sb

5) Therefore, S.L.'s testimony, especially when viewed most favorably to Howard, provides a rational basis that Howard had to act in self-defense after two people attempted to jump on his back and attack him, and thus the self-defense charge as applied to S.F. should have been given. See also State v. Kelly, 97 N.J. 178, 200 (1984) (holding that "if any evidence raising the issue of self-defense is adduced, either in the State's or the defendant's case, then the jury must be instructed that the State is required to prove beyond a reasonable doubt that the self-defense claim does not accord with the facts." (emphasis added))

Further, there was adequate evidence in the record to support a rational basis for a self-defense charge as applied to the unlawful possession of a weapon offenses. This is so because S.F. and J.M. both testified that they only saw the knife after J.M. entered the room and no evidence was presented that Howard possessed the knife upon entering S.F.'s home. (1T 81-24 to 82-13, 188-22 to 192-1) Therefore, based on this evidence, the jury could have found, if properly instructed, that Howard did not enter the room with the knife, but spontaneously took hold of the knife sometime after he was attacked. See State v. Harmon, 104 N.J. 189, 208-09 (1986) (articulating that self-defense can excuse the unlawful possession of a weapon if "an individual arms himself spontaneously to meet an immediate danger.")

Moreover, the State’s assertion that because the jury did not find that self-defense applied to the aggravated assault charge involving J.M., it would “not have found that self-defense applied to the weapons charges even if it was instructed,” must be rejected. (Sb 6). First, as discussed in Howard’s initial brief, providing the self-defense instruction as applied to J.M. and not S.F., likely rendered the instruction ineffective as to J.M. because the jury was left with little options but to consider Howard as the initial aggressor. (Db 15) And per the charge on self-defense that was given to the jury, deadly force is not justifiable if the person claiming self-defense “incited the use of force against him in the same encounter.” (4T 146-21 to 25)

Second, it is not a foregone conclusion that just because the jury found self-defense did not apply to the aggravated assault offense involving J.M. that it would have found that self-defense did not apply for the unlawful possession of a weapon offense involving J.M. if properly instructed. That is because “[i]nconsistent verdicts are accepted in our criminal justice system.” State v. Banko, 182 N.J. 44, 53-55 (2004). Our Supreme Court has acknowledged the existence of inconsistent verdicts and its limited “power to prevent them.” Id. at 54. Thus, the State’s claim that the lack of self-defense instruction as applied to the unlawful possession of a weapon offense involving J.M. was harmless simply because the jury found self-defense did not apply to the aggravated

assault offense does not take into the consideration that inconsistent verdicts occur and are accepted by our courts. (Sb 6)

Lastly, the State's assertion that there was no evidence that Howard possessed the knife for any self-protective purpose must similarly be rejected. (Sb 6) S.L.'s testimony, as outlined above, supports the position that S.F. started the altercation between herself and Howard. (3T 35-2 to 4, 36-6 to 11) Then, according to both S.F. and J.M.'s testimony, the knife did not seem to appear in the room until J.M. arrived. (1T 81-24 to 82-13, 188-22 to 192-1) Further, S.F. could not testify whether she was stabbed prior to J.M.'s arrival. (1T 187-6 to 188-21) Thus, there is sufficient evidence to support a rational basis that Howard did not possess the knife prior to his arrival for an unlawful purpose but rather utilized it after J.M. brought it into the room in order to protect himself. And importantly, as outlined in Howard's initial brief, even if Howard had an "honest but unreasonable belief in the need to use force for protective purposes," that evidence can still be used to "controvert the State's proof of the intent element of N.J.S.A. 2C:39-4[]" even if the belief would not satisfy a traditional self-defense claim against the substantive offense at hand. State v. Williams, 168 N.J. 323, 335, 338 (2001).

As outlined above and in Howard's initial brief, there was sufficient evidence presented at trial to support a self-defense charge as applied to all of

the offenses Howard was charged with. (Db 10-26) The trial court's failure to provide the material self-defense jury instructions deprived Howard of a fair trial and requires reversal of his convictions. U.S. Const. amends. VI, XIV; N.J. Const. art. I, pars. 1, 9, 10; R. 2:10-2.

POINT II

**THE TRIAL COURT'S FAILURE TO
ADEQUATELY ANSWER THE JURY'S
QUESTIONS DURING DELIBERATIONS
CONSTITUTED PLAIN ERROR.**

Contrary to the State's assertions, the trial court left the jury confused regarding how to distinguish between the two different degrees of aggravated assault when it failed to adequately answer the jury's questions. Such error was clearly capable of producing an unjust result. R. 2:10-2. As discussed in Howard's initial brief, the jury's questions during deliberations revealed that it did not understand the difference between serious bodily injury and significant bodily injury. (Db 26-35) A trial court's obligation is to mitigate jury confusion and to answer questions "in a manner designed to clear its confusion, which ordinarily requires an explanation beyond rereading the original charge." State v. Berry, 254 N.J. 129, 146 (2023) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 7 on R. 1:8-7 (2023)). Thus, even though the jury was properly instructed on the definitions of serious bodily injury and significant bodily injury in the original jury charge, the trial court was still required to provide an

“explanation beyond rereading the original charge” if the jury expresses confusion, as it did here. Further, despite the State’s assertion, the trial court did not squarely instruct the jury in its response that serious versus significant bodily injury are “different degrees of injury involved.” (Sb 9) It instead focused on guiding the jury through the verdict sheet and referred the jury back to the original charge. (5T 8-13 to 9-7)

Lastly, even though both parties may have agreed to the trial court’s responses, it is ultimately the trial court’s obligation to clear the jury’s confusion. Berry, 254 N.J. at 145-46; see also State v. Jenkins, 178 N.J. 347, 359-60 (2004) (noting the trial court’s acknowledgment that it has an independent obligation to determine whether to instruct on lesser-included offenses, and holding that in this case the trial court’s decision must be reviewed for plain error particularly because it was made “independently of any invitation or encouragement by defendant.”) The trial court’s failure to satisfy its obligation here and clarify an essential element of the aggravated assault offenses constituted plain error, requiring reversal of Howard’s aggravated assault convictions.

POINT III

**J.M.'S ADMITTED HEARSAY STATEMENTS
CONSTITUTED PLAIN ERROR.**

The State concedes that J.M.'s testimony about statements made by her doctor constituted hearsay but argues that its admission was harmless error. But J.M.'s improper testimony about her doctor's statements was not harmless and was clearly capable of producing an unjust result because it was critical evidence in determining whether J.M.'s injuries were serious, significant, or neither. (Sb 10) The State contends that J.M.'s non-hearsay statements made concerning her injuries provided "overwhelming evidence of serious bodily injury;" however that is not the case. (Sb 11)

As discussed in Howard's initial brief, serious bodily injury is defined as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." N.J.S.A. 2C:11-1(b). In contrast, significant bodily injury is defined as "bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses." N.J.S.A. 2C:11-1(d). Contrary to the State's assertions, the non-hearsay statements J.M. made about her injuries provide little support in characterizing her injuries as "serious," particularly because "not every stabbing will result in" serious bodily injury. State v. Sloane, 111 N.J. 293, 298 (1988). More

specifically, the hearsay statements made likely could have provided support that J.M.'s injuries were "permanent" and caused "protracted loss or impairment" of an organ, while her non-hearsay statements, at best, only supported the fact that she may have experienced "temporary loss of the function of any bodily member or organ."

For instance, as outlined in the State's response, J.M. made the non-hearsay statement indicating that the "lingering effects" of her injuries include irregular bowel movements and irregular use of the bathroom. (Sb 12) Such statement may offer support that she suffers "temporary loss" of function of an organ but does not clearly support a "permanent" loss of function. (Sb 12) However, her hearsay statement indicated that these side effects are permanent. (Sb 12) This testimony illustrates how the admission of J.M.'s hearsay statements likely impacted the jury's consideration of the aggravated assault charges and the level of injury J.M. may have suffered.

Thus, J.M.'s improper hearsay testimony was clearly capable of leading the jury to find Howard guilty of second-degree aggravated assault, requiring reversal of Howard's conviction for aggravated assault as applied to J.M.

CONCLUSION

For the reasons set out in Howard's initial brief and this reply, Howard's trial convictions must be reversed, and the matter must be remanded for a new trial.

Respectfully submitted,

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