SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3219-23

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| STATE OF NEW JERSEY, | : | CRIMINAL ACTION |
| Plaintiff-Respondent, | : | On Appeal from a Judgment of Conviction of the Superior Court, |
| v. | : | Law Division, Camden County. |
| ERIC SEDDENS | : | Indictment. 21-10-2814 |
| Defendant-Appellant. | : | Sat Below: |
| | : | Hon. Yolanda C. Rodriguez, J.S.C. Hon. Gwendolyn Blue, J.S.C., and a jury |

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# BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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DEFENDANT IS CONFINED

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## PRELIMINARY STATEMENT

No juror would believe that, in 2018, Eric Seddens brutally hit Ashley Allen in the head at the intersection of Walnut Street and 8th Street in Camden, left her in the street, and drove her car from the scene *but did not* shoot Ashley Allen in the head at the intersection of Walnut Street and 8th Street in Camden, leave her in the street, and drive her car from the scene in 2020. Unless we are willing to accept a very specific variety of propensity evidence – yet still falling short of a signature crime – as an acceptable use of other-crime evidence, the convictions in this case cannot stand because, when the jury learned details of the 2018 incident in defendant's trial for the 2020 homicide, it became impossible to dispassionately assess the State's proofs.

## PROCEDURAL HISTORY

Camden County superseding indictment number 21-10-2814 charged the defendant, Eric T. Seddens, with: first-degree murder, contrary to N.J.S.A. 2C:11-3a(1) and (2) (count one); second-degree unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5b (count two); second degree possession of a handgun for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a (count three); third-degree absconding from parole, contrary to N.J.S.A.29-5b (count four); third-degree theft of an automobile, contrary to N.J.S.A. 2C:20-3a (count five); third-degree aggravated assault on a domestic violence victim, contrary to N.J.S.A. 2C:12-1b(12) (count six); third-degree stalking, contrary to N.J.S.A. 2C:12-10c (count seven); fourth-degree criminal contempt, contrary to N.J.S.A. 2C:29-9b(1) (count eight); and second-degree certain persons not to have weapons, contrary to N.J.S.A. 2C:39-7b(1) (count nine). (Da 1-10)[1]

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[1] The following abbreviations will be used:
Da – appendix to this brief
1T – transcript of June 29, 2022
2T – transcript of January 9, 2024
3T – transcript of January 31, 2024
4T – transcript of March 6, 2024
5T – transcript of March 12, 2024
6T – transcript of March 13, 2024
7T – transcript of March 19, 2024
8T – transcript of March 20, 2024

On June 29, 2022, defendant appeared before the Honorable Yolanda C. Rodriguez, J.S.C., in opposition to the State's motion to admit other-crimes evidence against defendant. At the conclusion of the hearing, Judge Rodriguez granted the State's motion. (1T 38-9 to 49-14)

Trial began before the Honorable Gwendolyn Blue, J.S.C., and a jury on March 6, 2024. On March 22, 2024, the jury returned a verdict convicting defendant of aggravated manslaughter as a lesser-included offense of murder, unlawful possession of a handgun, and theft of an automobile. (10T 34-11 to 36-15; Da 11-16) After the verdict was rendered, the State moved to dismiss the previously severed counts four, eight, and nine. (10T 42-24 to 43-5)[2]

On May 17, 2024, defendant appeared before Judge Blue for sentencing. Judge Blue granted the State's motion for a persistent offender extended term pursuant to N.J.S.A. 2C:44-3a. (11T 46-4 to 47-14) Defendant was then sentenced on the aggravated manslaughter conviction to a 70-year term of imprisonment with an 85% period of parole ineligibility, pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2. Lesser concurrent terms were imposed on the handgun and theft convictions. (11T 47-14 to 51-14; Da 17-20)

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9T – transcript of March 21, 2024
10T – transcript of March 22, 2024
11T – transcript of May 17, 2024

[2] Counts six and seven had been dismissed earlier. (10T 43-6 to 8; 7T 157-21 to 159-22)

A notice of appeal was filed on defendant's behalf on June 19, 2024. (Da 21-23)

## STATEMENT OF FACTS

The State alleged that defendant killed Ashley Allen, the mother of his child, with whom he had a contentious relationship. Prominently factoring into the State's case was the allegation that defendant "brutally beat" Allen in 2018 at the very location her body was discovered two years later, and that the prison sentence he served for that offense provided the motive for the later killing. (4T 28-18 to 31-11) In contrast, defendant maintained his innocence. He highlighted that another man's DNA was found under Allen's fingernails. (8T 40-18) And, the putatively guilty actions defendant took in the aftermath were consistent with an innocent man who would naturally recognize that his prior dealings with Allen would make him the primary suspect. (4T 45-17 to 46-21)

On September 29, 2020, Camden County Police Department officers were dispatched to the intersection of Walnut Street and 8th Street in Camden at about 11:39 p.m. to a report of a female unconscious in the street. (4T 55-8 to 57-2) The female, later determined to be Ashley Allen, was face down on the street, bleeding from the head. (4T 57-13 to 24) Medical personnel were

unable to revive her, and a subsequent autopsy determined that she died from a single gunshot wound to the head.[3] (5T 46-7 to 18)

Detective Matthew Barber of the Camden County Prosecutor's Office was assigned as the lead detective on the case. (4T 79-8 to 80-23) Barber testified that he searched Allen's name in a police database and learned that in 2018 she had a boyfriend named Eric Seddens who lived at 784 Walnut Street. According to Barber, Allen was the victim of an assault that occurred on the 700 block of Walnut Street. Defendant was the alleged perpetrator. He allegedly left her bleeding on the street and drove her vehicle from the scene. (4T 83-3 to 23) Barber testified that there was only about 25 to 30 yards between where the 2018 assault occurred and where Allen's dead body was found. (4T 84-4 to 87-25) Given this history, Barber testified that his investigation focused on defendant, who he tried to locate. (4T 83-24 to 84-3)

Barber testified that he went to defendant's address at 784 Walnut Street and spoke with defendant's father. (4T 88-3 to 9) At trial, the father confirmed that he told police that defendant had come to the house between 10:00 p.m. and 11:30 p.m. on September 29. "He came in and he walked right back out," according to the father. (5T 68-1 to 13)

[3] An examination of Allen's blood revealed methadone, fentanyl, and an active metabolite of fentanyl. (5T 48-24 to 50-1)

Barber determined that Allen drove a white 2002 Mercury Mountaineer. On surveillance video Barber observed a vehicle matching that description on the 800 block of Walnut Street at 11:29 p.m. (4T 89-14 to 93-12) Using the "Find My iPhone" app, Barber determined that Allen's phone had been in Philadelphia, near Temple University, shortly thereafter. However, when he canvassed that area, he found neither Allen's phone nor her vehicle. (4T 93-23 to 94-14) Suspecting that the Mountaineer would have crossed the Ben Franklin Bridge, Barber contacted an officer from the Delaware Port Authority to check surveillance video from the bridge. (4T 95-5 to 96-2) At trial, that officer testified that he spotted a vehicle matching the description crossing the bridge at 11:32 p.m., coming from Interstate 676. (6T 37-14 to 44-17) The officer also obtained a photograph of the suspected vehicle when it passed through a cash toll lane at that time. (6T 56-17 to 57-14) On cross-examination, the officer acknowledged that the driver of the vehicle was not observable in any of the media. (6T 60-5 to 17)

According to Barber, based on defendant's phone records, he believed defendant was in Philadelphia for a couple of days after the homicide and then began heading south. (4T 96-15 to 23) FBI Special Agent William Shute was admitted as an expert in historical cell site analysis, and he provided detailed testimony underlying Barber's belief. (6T 88-1 to 89-5) According to Shute,

cell phone providers keep call detail records that include "timing advance data." By measuring the time it takes for a radio signal to travel from the cell site to the phone and back – and given the known speed at which radio signals travel – it is possible to draw a 78.4 meter wide arc at a given distance from the cell site. Shute testified that this is a "very accurate" and "very reliable" method to place a phone somewhere within that arc. (6T 100-13 to 109-18)

Although Shute could not say who was using defendant's phone at the time, Shute testified that defendant's phone was believed to be somewhere within the arc that included the crime scene between 11:20 p.m. and 11:29 p.m. (6T 113-9 to 123-8) However, given the proximity of the crime scene to defendant's home, the same thing could be said for the home. In other words, the data was not granular enough for Shute to discount the possibility that defendant was merely in his own home at that time. (6T 123-9 to 21; 124-7 to 9; 153-6 to 13) Indeed, Shute acknowledged that the arc is 1/3 of a circle (120 degrees), that it covers an area about 1 ½ blocks by ten blocks, and that the phone could have been anywhere in that area. (6T 149-4 to 153-4)

Shute further testified that his analysis of defendant's call detail records for the night of the homicide suggested his phone went onto Interstate 676, over the Ben Franklin Bridge, and then travelled northbound on 5th or 7th

Street to the Northern Liberties area of Philadelphia. (6T 122-18 to 125-13) Shute did not examine the records beyond about midnight. (6T 125-14 to 15)

More generally, Shute testified that defendant's phone records indicated that his phone was moving around Philadelphia between September 30 and October 2. (6T 125-16 to 126-9) And, beginning in the evening of October 2, the phone began moving south down I-95 into Delaware and then Maryland. The last recorded use of defendant's phone was at 7:10 p.m. in the Abington, Maryland area. (6T 126-10 to 128-13)

Barber testified that he contacted the U.S. Marshal's service for help locating defendant. (4T 97-2 to 14) On October 15, defendant was found in Clearwater, Florida, in a motel room rented under the name "Brandon Stills," who was a childhood friend of defendant. Defendant was arrested, his phone was seized (a different phone than that last used in Maryland), and he was brought back to New Jersey, where he submitted to a buccal swab. (4T 104-6 to 105-14; 5T 163-5 to 168-20)

The DNA recovered from defendant's cheek was compared to, and excluded from, the DNA found under Allen's fingernails. (4T 109-14 to 19) In fact, the DNA under Allen's nails was determined to belong to a man named Andre Campbell. Barber testified that Campbell was dating the victim, and that he had spent the night with her the day before she was killed. (4T 110-1 to

112-1) Barber further testified that he had eliminated Campbell as a suspect because "it was obvious that the DNA got there from them spending the night together," and there was purportedly no other evidence implicating Campbell in the homicide. (4T 112-7 to 14) At trial, Campbell testified that he spent the night with Allen and that she scratched his back with her long nails, as she often did. (5T 140-2 to 141-6) Allen did not tell the police about the backscratching until the second time he was interviewed, which was after he learned that his DNA was found under her nails. (5T 153-8 to 159-7)

Barber's own analysis of defendant's phone records indicated that on October 1, defendant made four or five calls to businesses that pay cash for junk cars in Philadelphia. (4T 117-15 to 118-6) Barber noted that Allen's vehicle was never recovered, and that there were many garages in North Philadelphia where vehicles could be disposed of. (4T 118-14 to 16; 152-18 to 153-2)

The police also never recovered Allen's phone, but they were able to link to her iCloud account through an older phone that mirrored the data from Allen's phone. (4T 94-18 to 95-1) They extracted that data and organized it into a report. (6T 164-1 to 165-8) They also generated a report from the phone seized from defendant when he was arrested. (6T 177-18 to 180-14) The jury learned that Allen's records showed defendant contacted her on August 9,

2020, which was six days after he was released from prison for the assault he committed against her in 2018. (7T 10-3 to 17) Between that day and September 28, the two exchanged hundreds of text messages that vacillated between mutual expressions of love and mutual antagonism. They also exchanged pictures of their daughter. (7T 11-5 to 67-8) The last message from defendant was sent on September 28 and it informed Allen that defendant would be in Camden "in 45 minutes." He said he wanted to give her shoes that he had bought for their daughter. (7T 67-11 to 68-22) The records also showed that defendant had called Allen's phone about 35 times on September 28, and five times the next day. There were no more texts or calls made after September 29. (7T 75-16 to 76-13)

From defendant's phone, the State introduced search and web history from the time defendant was in Florida, October 3 to October 10. (7T 76-14 to 77-25) That history showed that defendant had visited dozens of web pages pertaining to Camden, Allen's death, and criminal investigations and prosecutions. (7T 78-5 to 101-2)

In summation, defense counsel argued that the evidence showed defendant was not motivated by revenge for going to prison for the 2018 assault because he and Allen had exchanged messages for about two months after his release, and many of those messages suggested that they had resumed

romantic relations. (8T 20-6 to 24-15) Counsel noted that the information obtained from defendant's phones – both location and substance – was to be expected on the phone of anyone who would recognize himself to be a suspect, not necessarily the perpetrator. (8T 31-9 to 34-18) Perhaps Campbell killed Allen when he learned that she and defendant had rekindled their relationship. (8T 37-1 to 42-20) Or maybe Allen was involved in a bad drug deal, which found support in the toxicology report showing multiple drugs in her system, counsel offered. (8T 42-21 to 43-12) In response, the State argued that the 2018 incident – in which he "savagely beat her" – occurred mere feet from defendant's home and mere feet from where Allen's body was discovered. (8T 50-4 to 51-1) And, in both cases, the State alleged that defendant stole Allen's vehicle and fled from the scene. (8T 51-3 to 4) "You don't run unless you are guilty," the State argued. (8T 57-17)

## LEGAL ARGUMENT

## POINT I

**DEFENDANT WAS DENIED A FAIR TRIAL BY THE INTRODUCTION OF OTHER-CRIME EVIDENCE WHOSE UNDUE PREJUDICE WAS INSURMOUNTABLE. U.S. Const. amends. V and XIV; N.J. Const. art. I, pars. 1, 9, and 10. (1T 38-9 to 49-14)**

The jury learned that defendant was convicted of – and went to prison for – the "brutal beating" of Allen two years prior, in the same location where her body was found in 2020. And like the current charges, after that assault, he was alleged to have stolen her car to flee from the scene. The jury was instructed that it could only consider the prior allegations in assessing motive and identity of the perpetrator. But while this evidence may have had some probative value on those questions, the risk that the jury would use the evidence improperly was all but guaranteed. Given the violence and similarities in the crimes, the jury very likely concluded not just that defendant had violent tendencies, but that he had violent tendencies specifically toward Allen. Indeed, viewed through that lens, the permissible purpose of "identity" was little more than an invitation for the jury to conclude that he had done it before, so he did it again. Therefore, the admission and failure to sanitize the

prior incident denied defendant his rights to due process and a fair trial and require reversal of the convictions.

The admissibility of evidence at trial is left to "the sound discretion of the trial court." State v. Willis, 225 N.J. 85, 96 (2016). A trial court's evidentiary ruling is therefore reviewed on appeal for abuse of discretion. State v. Rose, 206 N.J. 141, 157 (2011). Therefore, admissibility rulings regarding other-crimes evidence made pursuant to N.J.R.E. 404(b) are reversed "[o]nly where there is a clear error of judgment." Id. at 157-58 (alteration in original) (quoting State v. Barden, 195 N.J. 375, 391 (2008)). However, that deferential approach is inappropriate when the trial court failed to properly apply N.J.R.E. 404(b) to the evidence at trial. Id. at 158. When that occurs, "an appellate court may engage in its own 'plenary review' to determine ... admissibility." Ibid. (quoting Barden, 195 N.J. at 391).

It is widely recognized that there is a risk that juries may use evidence of another crime to conclude that a defendant has a criminal propensity. State v. P.S., 202 N.J. 232, 254-55 (2010). "The underlying danger of admitting other-crime evidence is that the jury may convict the defendant because he is 'a "bad" person in general.'" State v. Cofield, 127 N.J. 328, 336 (1992) (quoting State v. Gibbons, 105 N.J. 67, 77 (1987)).

Accordingly, N.J.R.E. 404(b)(1) bars "evidence of other crimes, wrongs, or acts . . . to prove a person's disposition in order to show that on a particular occasion the person acted in conformity with such disposition." However, such "evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute." N.J.R.E. 404(b)(2). The New Jersey Supreme Court has established four factors to weigh when deciding if crimes or evidence of bad acts are admissible under N.J.R.E. 404(b):

> 1. The evidence of the other crime must be admissible as relevant to a material issue;
>
> 2. It must be similar in kind and reasonably close in time to the offense charged;
>
> 3. The evidence of the other crime must be clear and convincing; and
>
> 4. The probative value of the evidence must not be outweighed by its apparent prejudice.
>
> [Cofield, 127 N.J. at 338.]

Under the first prong, the "proffered evidence must be 'relevant to a material issue genuinely in dispute.'" State v. Gillispie, 208 N.J. 59, 86 (2011) (quoting State v. Darby, 174 N.J. 509, 519 (2002)). A relevancy "inquiry should focus on 'the logical connection between the proffered evidence and a fact in issue.'" Darby, 174 N.J. at 519 (quoting State v. Hutchins, 241 N.J.

Super. 353, 358 (App. Div. 1990)). Such a logical connection is established "if the evidence makes a desired inference more probable than it would be if the evidence were not admitted." State v. Garrison, 228 N.J. 182, 195 (2017) (quoting State v. Williams, 190 N.J. 114, 123 (2007)).

As for the second prong, "[a]lthough relevant in Cofield, ... similarity and temporality are not applicable in every case." Green, 236 N.J. at 83. As our Supreme Court explained:

> In Cofield, ... the State sought to introduce evidence establishing the defendant's constructive possession of drugs during an illegal-drug street encounter that occurred subsequent to the drug incident that was the subject of the prosecution.... The State sought to admit that similar and close-in-time other-crimes evidence as relevant to prove the defendant's possession of drugs in the charged offense, an element that was hotly contested.... The test that the Court ultimately fashioned included an aspect that plainly addressed the specific drug evidence at issue in Cofield. The requirement set forth as prong two of Cofield, however, is not one that can be found in the language of [N.J.R.E.] 404(b). Cofield's second prong, therefore, need not receive universal application in Rule 404(b) disputes. Its usefulness as a requirement is limited to cases that replicate the circumstances in Cofield.
>
> [Williams, 190 N.J. at 131.]

The third prong requires the prosecution "establish that the other crime 'actually happened by clear and convincing evidence.'" Green, 236 N.J. at 83 (quoting Rose, 206 N.J. at 160). "[T]here must be some showing that the

person against whom the evidence is being used actually committed the other crime or wrong." Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 8.3 on N.J.R.E. 404 (2024-2025) (citing Burbridge v. Paschal, 239 N.J. Super. 139 (App. Div. 1990)).

The fourth prong is "the most difficult to overcome." Rose, 206 N.J. at 160. It "requires an inquiry distinct from the familiar balancing required under N.J.R.E. 403: the trial court must determine only whether the probative value of such evidence is outweighed by its potential for undue prejudice, ... not whether it is substantially outweighed by that potential as in the application of Rule 403." Green, 236 N.J. at 83-84 (emphasis in original). "[I]f other less prejudicial evidence may be presented to establish the same issue, the balance in the weighing process will tip in favor of exclusion." Rose, 206 N.J. at 161 (quoting State v. Barden, 195 N.J. 375, 392 (2008)). "Therefore, Rule 404(b) is viewed 'as a rule of exclusion rather than a rule of inclusion.'" Green, 236 N.J. at 84 (quoting State v. Reddish, 181 N.J. 553, 609 (2004)). "[T]he inherently prejudicial nature of other-crime evidence 'casts doubt on a jury's ability to follow even the most precise limiting instruction.'" Ibid. (quoting Reddish, 181 N.J. at 611).

Here, the trial court conducted a Cofield analysis, determining that the assault was relevant to the material issues of motive and identity, that the two

incidents were similar in kind and reasonably close in time, that there was clear and convincing evidence that the other crime occurred, and that the probative value was not outweighed by the prejudicial impact. (1T 44-17 to 49-14) Although the analysis of the first three Cofield prongs finds some support in the record, the last determination evinces "a clear error of judgment." Barden, 195 N.J. at 391.

The evidence does not pass the simple probative/prejudicial balancing test required of the N.J.R.E. 404(b) rule of exclusion because both the enormities and the commonalities of the two crimes would obliterate for the jury "the fine distinction to which it is required to adhere." State v. Marrero, 148 N.J. 469, 495 (1997) (quoting Cofield, 127 N.J. at 341). Indeed, in rejecting the defense argument that the 2018 incident had to be sanitized if it was admitted, the trial court acknowledged the gruesome similarities:

> The Court is not persuaded by that argument due to the underlying facts of that case being significant to this current case in the parallels and similarity of the facts. The point of introducing that evidence of the aggravated assault of June 29, 2018 also is to be able to introduce those -- the fact that there are so many similar facts such as convincing or luring the victim to come to Camden to that very street offering to give a gift for their daughter so that the victim comes to Camden to Walnut Street, the victim being, in both instances, severely injured to the head, in both instances, the -- the victim is left on that same street with wounds to the head, left bleeding there. So the Court is not convinced

> that it should be sanitized and will go through the Cofield factors.
>
> [(1T 43-20 to 44-10)]

On the one hand, it might be argued that these similarities provided strong evidence for the second Cofield factor, that it be "similar in kind and reasonably close in time to the offense charged." But the second factor is not particularly relevant here because this case does not "replicate the circumstances in Cofield," concerning whether defendant constructively possessed drugs he had earlier actually possessed. Williams, 190 N.J. at 131. Moreover, it was never argued, for example, that these were signature crimes – that they must have been the handiwork of only one man. See, e.g., State v. Inman, 140 N.J. Super. 510, 517 (App. Div. 1976) ("The admissibility of such evidence is generally limited to those situations where 'a crime has been committed by some novel or extraordinary means or in a peculiar or unusual manner,' and there is proof of recent similar acts or crimes by the accused committed by the same means or in the same manner.") (citation omitted).

Even more important, however, is that the court's observations underscore the insurmountable prejudice in the jury hearing a detailed account of the prior crime. Caselaw strongly supports the proposition that the gratuitous detail about the prior crime can itself render a trial unfair. In State v. Darby, 174 N.J. 509, 513-15 (2002), for example, the Court overturned an

armed-robbery conviction because the defendant's accomplice had been permitted to testify not only that he and the defendant committed the armed robbery defendant was on trial for, but also that they had participated in the armed robbery of another store eleven days later. The State's main argument in support of the other-crime evidence was that it corroborated the testimony of the accomplice that he and defendant committed the charged crime. Id. at 520-21. In reversing the conviction, the Court stated that even if the other three Cofield prongs had been met, where "the other-crime evidence informed the jury that not only did the defendant have the propensity to commit robberies, but that he used the same gun eleven days later to commit another robbery," the prejudicial effect of that evidence far outweighed its probative value. Ibid. There, the purpose and effect of the admission was neither to show a true "signature crime" or identify a particular weapon, but rather to bolster the credibility of the testifying accomplice. Ibid.

Here, too, the evidence of the 2018 assault informed the jury not only that defendant had prior dealings with Allen at that particular street corner near his home, which might be admissible for identity if properly sanitized. But with its accompanying details, the jury learned from the incident that defendant had a propensity for violence. He brutally beat her and stole her car from the very location the State alleged he shot her and stole her car. The jury

also learned that he served substantial time in prison for the assault. This level of prejudicial detail far exceeds what would be necessary for the minimal probative value the 2018 assault had to the questions of motive and identity. See, e.g., State v. Gillispie, 208 N.J. 59, 91-92 (2011) (finding that the court erred in admitting "unduly prejudicial evidence of the details" of a different robbery, because "[t]he fact that the gun used in the ... shooting was the same gun used in [other] murders, coupled with [defendant's] admission to its possession while in custody ..., would have sufficed to prove identity ...."); State v. Hardaway, 269 N.J. Super. 627, 629-31 (App. Div. 1994) (holding defendant's use of gun in robbery three weeks after charged crime was relevant to proving identity, but State did not need testimony from victims to describe details of crime).

For obvious reasons, our appellate courts have repeatedly emphasized that trial courts must "sanitize the evidence when appropriate." Barden, 195 N.J. at 390 (citing Collier, 316 N.J. Super. at 185). Yet, the trial court's reasons for denying sanitization here supported precisely the opposite conclusion it reached: if it could not be sanitized then it should not be admitted. Indeed, no limiting instruction could possibly cure the prejudice of learning that defendant brutally beat Allen and stole her vehicle from the very place she was killed and had her vehicle stolen two years later. Some limited explanation that

defendant had an incident with Allen at that location two years prior might have passed muster. But informing the jury that he had assaulted her at the very same location and took her car was like the gun in Darby, Gillispie, and Hardaway, burdened with extraneous detail that went well beyond the purpose and spirit of N.J.R.E. 404(b). Like in those cases, because the evidence of the prior incident was far more detailed and prejudicial than was needed to serve any limited legitimate purpose the evidence might have served, the convictions must be reversed.

## POINT II

**DEFENDANT WAS DENIED HIS RIGHT TO AN IMPARTIAL JURY BY THE EMPANELING OF AN UNSERIOUS JUROR WHO SOUGHT A QUICK RESOLUTION OF THE CASE SO THAT HE COULD RETURN TO WORK. U.S. Const. amends. VI and XIV; N.J. Const. art. I, par. 10. (10T 25-8 to 31-14)**

Defendant's rights to trial by a fair and impartial jury were denied by the court's failure to excuse a juror who had a conflict with his work schedule and otherwise showed an unwillingness to engage in the deliberative process. Whether or not this juror should have been excused at the outset, during deliberations it became clear that the juror was not impartial. Accordingly, the convictions must be reversed.

It is well settled that criminal defendants have the constitutional right to be tried before an impartial jury. U.S. Const. amends. VI, XIV; N.J. Const. art. I, par. 10; State v. Little, 246 N.J. 402, 414 (2021); State v. Loftin, 191 N.J. 172, 187 (2007); State v. Fortin, 178 N.J. 540, 575 (2004); State v. Williams, 113 N.J. 393, 409 (1988); State v. Bey, 112 N.J. 45, 75 (1988). Jury voir dire is a key component to safeguarding that right. Fortin, 178 N.J. at 575; State v. Tyler, 176 N.J. 171, 181 (2003); State v. Papasavvas, 163 N.J. 565, 584 (2000). "The voir dire should be probing, extensive, fair and balanced." Papasavvas, 163 N.J. at 585. "'The purpose of voir dire is to ensure an impartial jury' by detecting jurors who cannot fairly decide a matter because of partiality or bias." State v. O'Brien, 377 N.J. Super. 389, 412 (App. Div. 2004) (quoting State v. Martini, 131 N.J. 176, 210 (1993)).

Nevertheless, "a trial court's decisions regarding voir dire are not to be disturbed on appeal, except to correct an error that undermines the selection of an impartial jury." State v. Winder, 200 N.J. 231, 252 (2009). The conduct of voir dire is left to the broad discretion of the trial court, and the court's exercise of its discretion generally will not be disturbed on appeal. Little, 246 N.J. at 413; State v. Wakefield, 190 N.J. 397, 496-97 (2007); State v. Simon, 161 N.J. 416, 466, 475 (1999); State v. DiFrisco, 137 N.J. 434, 459 (1994); Williams, 113 N.J. at 410; State v. Singletary, 80 N.J. 55, 62 (1979). "The wide

latitude afforded trial courts in the determination of a prospective juror's qualifications stems from the inability of appellate courts to appreciate fully the dynamics of a trial proceeding." DiFrisco, 137 N.J. at 459; Simon, 161 N.J. at 466. Yet, "[w]hile ... the trial judge possesses 'broad discretionary powers in conducting voir dire ... [,]' our Supreme Court has also indicated that it will not 'hesitate[ ] to correct mistakes that undermine the very foundation of a fair trial – the selection of an impartial jury.'" State v. Tinnes, 379 N.J. Super. 179, 184 (App. Div. 2005) (quoting Fortin, 178 N.J. at 575).

Here, at the end of jury selection, juror nine approached the court and asked to be released from serving on the jury because it interfered with his work schedule. (10T 15-12 to 16-9) The prosecutor observed the juror to be "smirking" and "laughing" when leaving the courtroom. (10T 16-11 to 12) However, defense counsel was then out of peremptory challenges and the court refused to excuse him for cause. (10T 15-21 to 23)

Later, the parties' concerns about juror nine were realized during deliberations, after the jury had "been deliberating for a good day and a half." (10T 16-21 to 22). The jury sent the court a note indicating, "The jury has an issue with number 9 juror being part of our process." (10T 8-15 to 23) The prosecutor observed that "the rest of the jurors, a lot of them, specifically, 1, 2, 3, 4, 5 – juror number 5 looked very upset." (10T 16-13 to 15) The court

observed that juror "number 9 sat halfway in his chair, as if he wanted to say something … to the Court at least twice" (10T 17-4 to 16) In a very brief voir dire of the foreperson, the court learned that the jury believed juror nine had "inattention to the matter at hand," and that "He doesn't seem to want to be involved." (10T 21-9 to 22-21)

The court then conducted a voir dire of juror nine. He said his concern was that he was "missing work a lot." (10T 26-15) He explained that he tried to make up hours on the weekends but he has to compete with high school students for hours and those shifts are "not promised every time." (10T 27-3 to 10) Despite these reservations, juror nine told the court that he could follow the court's instructions to resume deliberations. (10T 27-11 to 28-8) The entire jury was reread the standard charge on further deliberations. Model Jury Charge (Criminal), "Judge's Instructions on Further Jury Deliberations" (Approved 1/14/13). (10T 29-7 to 21) The jury was then sent to lunch until about 1:30 p.m., at which point it began its deliberations and returned a verdict at 2:45 p.m. (10T 28-24 to 33-18)

In other words, the jury rendered a verdict in this complex murder case after a mere hour and fifteen minutes of deliberations following the jury note informing the court that juror nine was uninvolved in the deliberative process. Clearly, juror nine recognized that his work conflict would not release him

from jury duty, and that a fast resolution of the case was the only way to be done. Standing alone, this short passage of time is suspicious. But a rush through deliberations is the only way to explain the verdict that was rendered. The jury acquitted defendant of murder, yet convicted him of aggravated manslaughter. It acquitted him of possession of a weapon for an unlawful purpose, yet convicted him of unlawful possession of a weapon. (Da 12-15) The former finds nearly no factual support in the record, and the latter is simply illogical. To be clear, the verdicts are not invalid based on these inconsistencies. See State v. Banko, 182 N.J. 44, 54 (2004). They do, however, demonstrate that juror nine focused on concluding the case as quickly as possible after his repeated attempts to be excused were rebuffed. See State v. Figueroa, 190 N.J. 219, 242 (2007) ("The reference to the possibility that deliberations might continue through the remainder of the week and into the weekend had the capacity to coerce the jury into reaching a verdict that it might not otherwise have reached.")

Under these unique circumstances, allowing juror nine to continue to deliberate violated the trial court's fundamental duty to ensure that "the deliberative process ... must be insulated from influences that could warp or undermine the jury's deliberations and its ultimate determination." State v. Corsaro, 107 N.J. 339, 346 (1987). The convictions should be reversed.

## POINT III

**THE FAILURE TO EXCISE NUMEROUS DRUG REFERENCES FROM THE TEXT MESSAGES BETWEEN DEFENDANT AND ALLEN DENIED DEFENDANT HIS RIGHT TO DUE PROCESS. U.S. Const. amends. V and XIV; N.J. Const. art. I, pars. 1, 9, and 10. (Not Raised Below).**

The text messages between defendant and Allen were replete with references to defendant's drug sales. This uncharged criminal conduct served no legitimate purpose, was not cured by a limiting instruction, and tended to portray defendant as a bad person, in general. Accordingly, its erroneous admission denied defendant his rights to due process and a fair trial and was "clearly capable of producing an unjust result." R. 2:10-2. The convictions should be reversed.

As noted in Point I, above, "[t]he underlying danger of admitting other-crime evidence is that the jury may convict the defendant because he is 'a "bad" person in general.'" Cofield, 127 N.J. at 336 (quoting Gibbons, 105 N.J. at 77). For that reason, admission is subject to a rigorous test under Cofield. And if the evidence is deemed admissible, there must be a carefully crafted jury instruction advising the jury of the limited purposes of the evidence and cautioning against its use as propensity evidence. Marrero, 148 N.J. at 495. Here, none of that occurred.

For no legitimate reason, the jury heard:

> (In apparent reference to a photograph of pills): How much this go for? I can't read it. Is that A-M? M-15. It go for 15 but people charging an extra $5. O.K. [Where you at] can I see y'all? I'll call you back. (7T 15-17 to 24)
>
> OK. You sold that lean?[4] No. OK. I got them babe they just in[.] [M]y people had to order them. (7T 23-21 to 24)
>
> OK. Can't wait to see and feel you. I need some fives. I don't know where to get any. My mom also wants some too but they don't have to be fives. (7T 25-24 to 26-2)
>
> Yes. I should be but I'm riding around with my mom trying to find her something for the pain. OK. Give her that lean if you still got it and she want it. (7T 30-23 to 31-1)
>
> Just got back from running around grabbing something for my mom. Now I'm cool. (7T 31-22 to 23)
>
> Can you see if anyone wants P-S? … What kind? 30s? Yes. R-P 30s. (7T 42-23 to 25)
>
> I'll sell them for 35 each. And she will need her hair done but she's still looking good. Give it a few more days. OK. I'll make some moves. Give me a minute…How many you got? … My boy was talking 30 but you G-D?...Yeah. I know they said 30 cause the R-Ps are generic. (7T 43-5 to 16)

[4] "Lean or purple drank (known by numerous local and street names) is a polysubstance drink used as a recreational drug. It is prepared by mixing prescription-grade cough or cold syrup containing an opioid drug and an anti-histamine drug with a soft drink and sometimes hard candy." Available at: https://en.wikipedia.org/wiki/Lean_(drug) (last visited 8/13/25).

> How may you have and how much you want? 73 dollar sign a piece. Oh no. Can't do that. They go two for five. Not around here. They go one for five but I appreciate you Imma get them all… (7T 50-18 to 24)

This evidence was prejudicial because it portrayed defendant as a drug pusher, yet no attempt was made to link the evidence to a permissible purpose under N.J.R.E. 404(b). So, the jury learned not only that he had previously "brutally beat[en]" Allen, but that he sold drugs apparently routinely, and even urged Allen's mother to take "lean." This error was plain error because it went to the core of the jury's assessment of defendant. R. 2:10-2. Especially without a limiting instruction, the risk that the jury would conclude that defendant was a "bad person" predisposed to commit crime was too great to allow the convictions to stand.

## POINT IV

**RESENTENCING IS REQUIRED BECAUSE SENTENCING DEFENDANT TO AN EXTENDED TERM AS A PERSISTENT OFFENDER VIOLATED HIS FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS. (Not Raised Below).**

The trial court granted the State's motion to find defendant eligible for a discretionary persistent offender extended term and imposed a sentence in the extended term range for the aggravated manslaughter conviction: 70 years with an 85% parole disqualifier pursuant to NERA. (11T 36-8 to 47-17) The court's finding that defendant was a persistent offender violated his Fifth, Sixth, and Fourteenth Amendment rights because judicial fact-finding increased his sentence above the prescribed 30-year statutory maximum for aggravated manslaughter. U.S. Const. amends. V, VI, XIV.

In its recent decision in State v. Carlton, 480 N.J. Super. 311, 327 (App. Div. 2024), this Court held that, per Erlinger v. United States, 602 U.S. 821 (2024), it is a violation of a defendant's Fifth and Sixth Amendment rights "when the trial judge, rather than a jury, made factual findings regarding [the defendant's] extended-term eligibility beyond the fact of his prior convictions." This Court found that "Erlinger is the latest in a series of Supreme Court decisions explaining that, under the Apprendi doctrine, a jury

must find the facts necessary for sentencing enhancements." Id. at 323 (citing Apprendi v. New Jersey, 530 U.S. 466, 490 (2000)). The Carlton Court specifically held that Erlinger applies to New Jersey's persistent offender sentencing enhancement, requiring a jury to determine all the "fact-sensitive" elements of the persistent offender statute, including that the "defendant committed the prior crimes on separate occasions," the defendant's age at time of commission of prior and present crimes, and whether the latest of the prior crimes falls within the ten-year window prescribed by the statute. Id. at 327 (quoting N.J.S.A. 2C:44-3(a)) This Court held that Erlinger, "abrogates . . . State v. Pierce, 188 N.J. 155 (2006)," "necessitates a significant change to New Jersey practices and procedures for imposing a persistent-offender extended term of imprisonment under N.J.S.A. 2C:44-3(a)," and applies with "pipeline" retroactivity." Id. at 317.

The Carlton Court further held that harmless error analysis does not apply when factual findings regarding extended term eligibility are found by a trial judge instead of a jury, noting that "the Erlinger majority explicitly rejected the argument that a jury verdict is not required when the predicate facts for an enhanced sentence are so '"straightforward" that sending it to a jury would be pointlessly inefficient.'" Id. at 334 (citing Erlinger, 602 U.S. at 839). This Court held that applying harmless error analysis to the Erlinger rule

would have the effect of eviscerating the rule in most pipeline cases. Id. at 318. Thus, the Carlton Court vacated the extended term sentence imposed on the defendant, and remanded "to have a jury determine whether defendant is eligible for enhanced punishment as a persistent offender" or for the State "to forego pursuing an extended term." Id. at 355-56.

Here, sentencing defendant to an extended term as a persistent offender violated his Fifth, Sixth, and Fourteenth Amendment rights because, as in Carlton, it was the sentencing judge, and not the jury, who made the relevant "factual findings regarding extended-term eligibility beyond the fact of [the defendant's] prior convictions." Id. at 327. Thus, Defendant's extended term sentence must be vacated and remanded for resentencing.

## CONCLUSION

The convictions must be reversed because defendant was denied his right to due process and a fair trial by the introduction of evidence of the 2018 incident and excessive references to drug-dealing activity. In addition, the convictions must be reversed because defendant was denied his right to an impartial jury by the empaneling of a juror who was conflicted by his work priorities. In the alternative, the matter must be remanded for resentencing because the persistent offender extended term was unconstitutionally imposed.

Respectfully submitted,

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Dated: August 18, 2025

# Superior Court of New Jersey

## APPELLATE DIVISION
## DOCKET NO. A-003219-23

| | | |
|---|---|---|
| STATE OF NEW JERSEY, | : | Criminal Action |
| Plaintiff-Respondent, | : | On Appeal from a Final Judgment of Conviction of the Superior Court of New Jersey, Law Division, Camden County. |
| v. | : | |
| ERIC T. SEDDENS, | : | Sat Below: Hon. Yolanda C. Rodriguez, J.S.C., Hon. Gwendolyn Blue, J.S.C. |
| Defendant-Appellant. | : | |

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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October 14, 2025

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## PRELIMINARY STATEMENT

In September 2020, defendant lured his ex-girlfriend to his Camden neighborhood with the promise of a gift for their child before shooting her in the head and leaving her for dead in the street as he stole her car. Less than two months earlier, defendant had been released from prison for assaulting the same woman in 2018. During that assault, defendant similarly lured her to the same Camden location with the promise of a gift for their child before beating her and then leaving her bleeding from the head in the street as he stole her car. Evidence of that 2018 assault was admitted during defendant's murder trial to permissibly establish, primarily, motive and identity, pursuant to long-standing precedent deeming admissible such other-crime evidence of prior violence between a defendant and a homicide victim. This is the subject of defendant's primary argument for reversal, which contravenes that long-standing precedent and must be rejected. Defendant's additional arguments—concerning (1) a juror who expressed some concern over missed work, and (2) unobjected-to references to drugs in text messages between defendant and his victim that were used only by the defendant to bolster the baseless notion that a random drug dealer may have instead killed his victim—are likewise without merit. In short, this Court should affirm defendant's deserved convictions.

## COUNTER-STATEMENT OF PROCEDURAL HISTORY

On October 27, 2021, a Camden County Grand Jury returned Indictment No. 21-10-02814-I charging defendant, Eric T. Seddens, with first-degree Murder, in violation of N.J.S.A. 2C:11-3(a)(1) and (2) (Count One), second-degree Unlawful Possession of a Weapon (Handgun), in violation of N.J.S.A. 2C:39-5(b)(1) (Count Two), second-degree Possession of a Weapon (Handgun) for an Unlawful Purpose, in violation of N.J.S.A. 2C:39-4(a) (Count Three), third-degree Escape (Absconding from Parole), in violation of N.J.S.A. 2C:29-5(b) (Count Four), third-degree Theft of an Automobile, in violation of N.J.S.A. 2C:20-3(a) (Count Five), third-degree Aggravated Assault on a Domestic Violence Victim, in violation of N.J.S.A. 2C:12-1(b)(12) (Count Six), third-degree Stalking, in violation of N.J.S.A. 2C:12-10(c) (Count Seven), fourth-degree Criminal Contempt, in violation of N.J.S.A. 2C:29-9(b)(1) (Count Eight), and second-degree Certain Persons Not to Have Weapons, in violation of N.J.S.A. 2C:39-7(b)(1) (Count Nine). (Da1 to 10).

On June 29, 2022, defendant appeared before the Honorable Yolanda C. Rodriguez, J.S.C., on the State's motion to admit certain other-crimes evidence against him at trial. (1T). Judge Rodriguez granted the motion that same day. (1T38-9 to 49-14).

Over seven days from March 6 through 22, 2024, defendant was tried before the Honorable Gwendolyn Blue, J.S.C., and a jury. (4T to 10T). On March 22, 2024, the jury returned a verdict convicting defendant of Aggravated Manslaughter as a lesser-included offense of Murder (Count One), Unlawful Possession of a Weapon (Handgun) (Count Two) and Theft of an Automobile (Count Five). (10T34-11 to 36-15; Da11 to 16). Following the verdict, the State moved to dismiss the previously severed Counts Four, Eight and Nine. (10T42-24 to 43-5). The remaining Counts Six and Seven had already been dismissed. (7T157-21 to 159-22; 10T43-6 to 8).

On May 17, 2024, Judge Blue granted the State's motion for a persistent-offender extended term under N.J.S.A. 2C:44-3(a) and then sentenced defendant on Count One to seventy years in prison with an eighty-five-percent period of parole ineligibility, pursuant to N.J.S.A. 2C:43-7.2 (No Early Release Act). (11T; Da17 to 20). The court imposed concurrent ten-year terms with five years of parole ineligibility on the remaining convictions and further imposed appropriate assessments and penalties. Ibid.

Defendant filed his Notice of Appeal with this Court on June 19, 2024. (Da21 to 23).

## COUNTER-STATEMENT OF FACTS

This appeal arises from defendant's conviction for the 2020 murder of his ex-girlfriend, Ashley Allen, who was also the mother of his child. As established at trial, after luring Allen to his neighborhood in Camden to pick up a gift of new shoes he claimed to have bought for their daughter, defendant shot her in the head and left her lying in the street as he drove away in her vehicle.

More specifically, at about 11:39 p.m. on September 29, 2020, Camden police responded to the report of an unconscious woman in the roadway at Eighth and Walnut streets in Camden. (4T56-10 to 58-3; 4T81-5 to 83-13). There, officers found the woman, later identified as Allen, lying face-down and bleeding from the head. Ibid. Medical personnel responded but could not revive her. Ibid. Her cause of death was later determined to be a single "through and through gunshot wound to the head," with the manner of death being homicide. (5T46-3 to 47-1).

During the investigation that followed, detectives learned that in 2018 Allen had been assaulted in the same location by a former boyfriend, defendant, who also lived in that vicinity at 784 Walnut Street. (4T83-17 to 87-25). On that prior occasion, defendant had similarly left Allen in the street bleeding from the head as he drove her car from the scene. Ibid. The distance

between the site of that assault and that of the 2020 shooting was only about 25 to 30 yards. Ibid.

Given this history, detectives focused their investigation on defendant, whom they then sought to locate. (4T88-3 to 22). They went to defendant's nearby Walnut Street address where they found his father, who told them defendant had been at the residence between 10:00 and 11:30 p.m. the night of the incident. (Ibid.; 5T64-2 to 68-13). According to the father, defendant had entered the house and then "walked right back out." (5T64-2 to 68-13).

Surveillance footage from the neighborhood showed a vehicle that appeared to be Allen's, a white 2002 Mercury Mountaineer, on the 800 block of Walnut Street at 11:29 p.m. the night of the incident heading toward Route 676, which leads to the Benjamin Franklin Bridge and into Philadelphia. (4T89-21 to 96-10). Detectives then used the "Find My iPhone" application to determine that Allen's phone had been in Philadelphia near Temple University shortly thereafter. Ibid. A canvas of that area yielded no results, so detectives obtained surveillance footage for the Benjamin Franklin Bridge, which they believed Allen's vehicle likely would have crossed from Camden to Philadelphia. Ibid. The footage confirmed their suspicions, showing that Allen's vehicle did cross the bridge at about 11:32 p.m., although the vehicle's driver was not readily visible in the video. (Ibid.; 6T33-7 to 59-11).

According to defendant's cell phone records, he apparently remained in Philadelphia for a couple of days after the murder before then moving south through Delaware and into Maryland. (4T89-21 to 96-10). The records also showed defendant's phone to have been in the area of the murder at the time of the murder, and to have thereafter moved from Camden to Philadelphia, as did Allen's. (Ibid.; 6T122-8 to 130-9).

Detectives next contacted the U.S. Marshal's service for assistance in locating defendant, which occurred about two weeks later. (4T104-6 to 113-5). He was found on October 15, 2020, in a Clearwater, Florida motel room obtained under the name, "Brandon Stills" (the name of one of defendant's childhood friends). Ibid. Defendant was arrested and then extradited to New Jersey. (Ibid.; 5T175-15 to 176-19).

Detectives at that point obtained a buccal swab from defendant for a DNA sample, but it did not match DNA found under Allen's fingernails. (4T104-6 to 113-5). The sample found on Allen instead belonged to her boyfriend at the time of her murder, Andre Campbell, with whom she had spent the night the day before her death. (Ibid.; 5T108-14 to 117-4). Detectives, however, had previously eliminated Campbell as a suspect, having no other evidence implicating him in the murder and believing his DNA on

Allen had resulted from her scratching him with her long nails, which she apparently often did. (4T104-6 to 113-5; 5T140-18 to 141-6; 5T146-12 to 23).

Further analysis of defendant's cell phone records showed calls made on October 1 to a handful of businesses that pay cash for junk vehicles in Philadelphia. (4T117-15 to 118-16). Although detectives identified several such businesses in the North Philadelphia neighborhood where defendant had been at the time, they could not locate Allen's car. Ibid.

Detectives likewise could not locate Allen's cell phone. Ibid. They were, however, able to obtain data from her iCloud account showing defendant had contacted her on August 9, six days after his release from prison for the 2018 assault (on Allen). (7T9-17 to 68-22; 7T74-19 to 76-13). Between August 9 and September 28, 2020, defendant and Allen exchanged hundreds of text messages that ranged in tone from friendly to aggressive and argumentative, with defendant repeatedly asking her for money while accusing her of "trickin" and various other promiscuous behavior. Ibid. The last message from defendant was sent on September 28, the day before the murder, and informed Allen that he wanted to give her shoes he had bought for their daughter and would be in Camden in forty-five minutes. (7T68-1 to 22). Defendant had also called Allen thirty-five times that same day and five more

times on September 29, at which time all such communication between the two ended. (7T75-21 to 76-13).

Detectives also recovered data showing defendant's cell phone use while in Florida. That data revealed how defendant had visited dozens of websites concerning Allen's death, Camden and criminal investigations and prosecutions there. (7T76-14 to 101-2).

Defendant elected not to testify at trial. (7T142-4 to 145-6). Ultimately, the jury convicted him of aggravated manslaughter, unlawful possession of a handgun and automobile theft. (10T34-11 to 36-15; Da11 to 16). This appeal follows.

## LEGAL ARGUMENT

### POINT I

THE TRIAL COURT PROPERLY ADMITTED OTHER-CRIME EVIDENCE OF DEFENDANT'S PRIOR ASSAULT OF THE SAME WOMAN—HIS EX-GIRLFRIEND—WHOM HE LATER MURDERED FOR THE LIMITED PERMISSIBLE USE OF ESTABLISHING, PRIMARILY, MOTIVE AND IDENTITY.

In 2018, defendant used the promise of a gift for their child to lure his ex-girlfriend to his Camden neighborhood, where he assaulted her and then left her bleeding from the head in the street as he drove away in her car. In 2020, shortly after his release from prison for that assault, defendant again used the promise of a gift for their child to lure the same woman to the same place, where he again assaulted her—this time shooting her in the head—before again leaving her bleeding in the street as he again stole her car. As the trial court reasoned, and as this Court has held, evidence of violence between a defendant and a homicide victim has long been admissible as important evidence of motive. And given the close factual parallels between the two incidents, this evidence only shed further light on the array of other permissible uses under N.J.R.E. 404(b), but particularly identity and opportunity. In properly admitting this evidence, the trial court correctly found its probative value not outweighed by its prejudicial impact, and this Court should affirm.

In granting the State's motion to admit other-crime evidence, primarily of defendant's June 2018 aggravated assault of the same victim, the court properly conducted the four-prong analysis under State v. Cofield, 127 N.J. 328 (1992). (1T38-15 to 49-14). The court found such evidence relevant to material issues, particularly motive, opportunity, intent, plan and identity. (1T45-8 to 15). Citing State v. Castagna, 400 N.J. Super. 164 (App. Div. 2008) and State v. Engel, 249 N.J. Super. 336 (1991), the court further observed that "[e]vidence of arguments or violence between a defendant and a homicide victim have long been admitted. . . as important evidence of motive." Ibid. The court found this evidence "certainly reasonably close in time" and similar in kind given how "the facts have a number of parallels." (1T45-22 to 47-1). And the court found that evidence to be clear and convincing, considering that defendant was convicted and incarcerated for that prior 2018 assault. (1T47-2 to 22). Finally, the court found the probative value of this evidence not outweighed by the prejudicial impact on defendant, especially considering the "safeguard" of a properly constructed jury charge to explain the limited permissible use of such evidence. (1T47-23 to 49-9).

In so ruling, the court also rejected defendant's argument that, if admitted, the evidence of the prior conviction must be sanitized because of the "parallels and similarity" of the underlying facts between the two matters.

(1T43-18 to 23). According to the court, the very point of introducing evidence of the prior 2018 assault was to show

> that there are so many similar facts such as convincing or luring the victim to come to Camden to that very street offering to give a gift for their daughter so that the victim comes to Camden to Walnut Street, the victim being, in both instances, severely injured to the head, in both instances, [] the victim is left on that same street with wounds to the head, left bleeding there.
>
> [(1T44-1 to 10).]

Trial court decisions concerning the admission of other-crime evidence are afforded great deference, subject to an "abuse of discretion" standard of review and reversed only when reflective of a "clear error of judgment." State v. Gillispie, 208 N.J. 59, 84 (2011) (citing State v. Barden, 195 N.J. 375, 390-91 (2008)). This highly deferential standard acknowledges that "[t]he trial court, because of its intimate knowledge of the case, is in the best position to engage in this balancing process." State v. Marrero, 148 N.J. 469, 483 (1997) (quoting State v. Ramseur, 106 N.J. 123, 266 (1987)) (internal quotations and additional citations omitted).

Rule 404(b) generally prohibits the use of other crimes, wrongs or acts as evidence "to prove a person's disposition in order to show that on a particular occasion the person acted in conformity with such disposition." Such evidence, as such, cannot be used "to prove that the defendant is in general disposed toward criminal acts or wrongful behavior or that he or she is

a 'bad person' who must be guilty of the crime charged." Castagna, 400 N.J. Super. at 175 (citing State v. Reddish, 181 N.J. 553, 608 (2004) (additional citation omitted). But "other-crime" evidence may be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute." N.J.R.E. 404(b)(2).

In determining the admissibility of other-crime evidence, a court should apply the four-prong test first enumerated in Cofield and later reaffirmed in Marrero. In so doing, the court must find that:

> 1. The evidence of the other crime must be admissible as relevant to a material issue;
>
> 2. It must be similar in kind and reasonably close in time to the offense charged;
>
> 3. The evidence of the other crime must be clear and convincing; and
>
> 4. The probative value of the evidence must not be outweighed by its apparent prejudice.
>
> [Marrero, 148 N.J. at 483 (citations omitted).]

Defendant here focuses mainly on the fourth prong, which courts have acknowledged as the "most difficult part of the test." Gillispie, 208 N.J. at 89-90 (quoting Barden, 195 N.J. at 389) (internal quotations omitted). Given the "inherently prejudicial nature" of other-crime evidence, courts must be

"careful and pragmatic" in determining "whether the probative worth of the evidence is outweighed by its potential for undue prejudice" while considering "the availability of other evidence that can be used to prove the same point." Gillispie, 208 N.J. at 89-90 (citation omitted). But "[c]onversely, if there is no other less prejudicial evidence equally probative on the same issue, the evidence is admitted subject to the Cofield test." Castagna, 400 N.J. Super. at 181 (citing Marrero, 148 N.J. at 489). And the other-crime evidence should be excluded "only when its probative value is 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 in the case." State v. Koskovich, 168 N.J. 448, 486 (2001).

Defendant essentially asserts that evidence of the prior assault should have been excluded or at least sanitized because the "level of prejudicial detail [admitted at trial] far exceed[ed] what would be necessary for the minimal probative value the 2018 assault had to the questions of motive and identity" regarding the 2020 murder. (Db20). But in so asserting, he mistakenly relies on such cases as Gillispie and State v. Darby, 174 N.J. 509, 513-15 (2002), neither of which involved the type of other-crime evidence—of prior threats, abuse, assaults and violence perpetrated by the defendant against his victim—

that is involved here and has long been ruled admissible in this context by our courts.

In Darby, the Court reversed the defendant's robbery conviction based on the erroneous admission at trial of (1) prosecution-witness testimony concerning that defendant's commission of a subsequent robbery for which he was not on trial and (2) video evidence of that second robbery in which the robbers were both masked and unidentifiable. 174 N.J. at 513-15. The Court determined that the prejudicial effect of such evidence far outweighed any probative value it may have possessed. Ibid. Similarly, in Gillispie, during the defendants' trials for a robbery and double homicide, the Court found error in the admission of evidence of a separate robbery of a barbershop twenty days earlier involving the use of the same gun. 208 N.J. at 66. The Court there determined there that instead of merely permissibly informing jurors that the same gun was used on both occasions, the State through multiple witnesses admitted extensive details that should have been sanitized concerning the planning and commission of the otherwise unrelated incident that were "unduly prejudicial and [] not outweighed by any probative value." Id. at 91-92. Nevertheless, the Court ultimately found such error "harmless given the overwhelming evidence of guilt independent of the other-crime evidence." Id. at 93.

Defendant also mistakenly relies on State v. Hardaway, 269 N.J. Super. 627 (App. Div. 1994), where this Court reversed the defendant's aggravated manslaughter conviction given the State's use of evidence that that defendant was found in possession of the murder weapon, a handgun, less than three weeks after the killing. Although this Court found such facts were permissible as evidence that defendant was present at the subject shooting, they should have been limited to the testimony of officers who later arrested him with the weapon. Id. at 629-30. Additional testimony that he had been using that weapon at the time during a separate incident, a robbery, and from the victims of that otherwise unrelated offense was considered too inherently prejudicial. Ibid.

Meanwhile, defendant overlooks applicable and more analogous cases, such as State v. Engel, 249 N.J. Super. 336 (App. Div.), certif. denied, 130 N.J. 393 (1991), where this Court ruled as admissible evidence of prior abuse and assaults by the defendant husband against his victim wife, whose murder he had procured. This Court considered such evidence there "highly relevant with respect to the issue of motive and that its probative value far outweighed its potential for undue prejudice," while further noting "that evidence of arguments or violence between a defendant and a homicide victim has long been admitted." Id. at 373-74 (citing cases). See also State v. Nance, 148 N.J.

376 (1997) (evidence of prior jealous conduct by defendant toward his former girlfriend admissible to show his motive for shooting her male friend).

Likewise, in State v. Castagna, 400 N.J. Super. 164 (App. Div. 2008), where the defendant former police chief conspired to murder his wife and committed arson by setting fire to her home, this Court considered admissible an array of Rule 404(b) other-crimes and bad-acts evidence. There, the State's case asserted that the defendant had conspired to commit arson and kill his wife because she had earlier filed a domestic violence complaint against him that resulted in a restraining order and then later filed criminal charges that resulted in his suspension, conviction, sentence and finally forfeiture of his public office. Supporting evidence as to motive considered admissible by this Court included that the defendant had lost his office after being previously convicted for the disorderly persons offense of harassment, which had been downgraded from the charge of domestic violence and violation of a restraining order (that had arisen from conduct toward his wife, which included speaking to his uncle about hurting the wife if she caused him to lose his job and pension). Id. at 188.

Motive is obviously a material issue in dispute when a defendant, as here, asserts innocence. See State v. Amodio, 390 N.J. Super. 313, 330 (App. Div.), certif denied, 192 N.J. 477 (2007). Moreover, "as with all 404(b)

evidence, greater leeway is given when the evidence is proffered on the issue of motive, and there must be a 'very strong' showing of prejudice to exclude evidence of a defendant's motive." Castagna, 400 N.J. Super. at 180 (citing State v. Covell, 157 N.J. 554, 570 (1999); Nance, 148 N.J. at 389; Engel, 249 N.J. Super. at 372-74.

Such evidence was correctly admitted here, where defendant basically twice attacked the same person, the mother of his child, in the same manner and at the same location. In 2018, he lured Allen to his Camden neighborhood with the promise of a gift for their daughter and then assaulted her and left her in the street bleeding from the head as he stole her car. In 2020, barely two months after his release from prison for that assault, defendant again lured Allen to his Camden neighborhood, again with the promise of a gift for their daughter, and then again assaulted her—this time shooting her in the head—before leaving her again bleeding in the street as he again stole her car.

Particularly in light of defendant's defense—essentially that he was not the killer, that it was instead Allen's current boyfriend or perhaps some random unidentified drug dealer—this other-crime evidence spoke directly to identity, motive, opportunity and plan, all permissible uses under Rule 404(b). And as in the various cases cited above, the probative value of this evidence far outweighed any potential for undue prejudice given the history of violence

between defendant and this homicide victim, which is why such evidence has long been considered admissible by our courts in such matters.

Moreover, the court properly and at length instructed the jury on the limited permissible uses of this evidence and that it could not be considered or used "to show that [defendant] has a disposition or tendency to do wrong and therefore, must be guilty of the charged offenses." (See 8T128-18 to 130-17; see also 5T22-20 to 25-5). And jurors are presumed to follow the court's instructions. See State v. Burns, 192 N.J. 312, 335 (2007) (describing such presumption as "[o]ne of the foundations of our jury system").

In short, the trial court correctly determined this other-crime evidence to be admissible and this Court should affirm.

## POINT II

### DURING DELIBERATIONS, THE TRIAL COURT PROPERLY DECLINED TO DISCHARGE A JUROR WHO HAD MERELY INDICATED A CONCERN ABOUT MISSING SOME HOURS AT WORK.

On the second day of deliberations, the court learned from the jury of "an issue" with juror nine, who did not "seem to want to be involved" or be "part of [the] process." When the court then inquired directly of that juror whether he had any concerns, he indicated only that he was "missing work a lot." So the court provided the Model Jury Instruction on further deliberations and the duties of jurors to consult with one another and deliberate with a view toward reaching an agreement. And the juror indicated his understanding of the instruction and that he could follow it. As such, finding no lawful basis to excuse the juror and receiving no objection from either the State or the defense, the court had the juror rejoin the jury to complete its deliberations. Defendant's suggestion now on appeal that this somehow compromised or rushed the proceedings, prompting the subject juror to simply seek a "quick resolution of the case so he could return to work," is pure—and flawed—speculation that finds no support in the record whatsoever. In short, there was no error.

More specifically, late morning on the second day of deliberations, the jury sent the court a note indicating it had "an issue with Number 9 Juror being

part of our process." (10T8-15 to 11-20). In response, after brief discussion with both counsel, the court proposed reading to the jurors the model instruction "that talks about their duty to consult with one another," and to then provide them a short break before bringing in the foreperson and asking whether they still had any concerns. Ibid. Neither the State nor the defense posed any objection. Ibid. At that point, the court had the jurors return to the courtroom, provided the Model Criminal Jury Charge on further deliberations based on State v. Czachor, 82 N.J. 392 (1980) (the "Czachor Charge") and then provided them a short break. (10T11-21 to 13-23); see also Model Jury Charge (Criminal), "Judge's Instructions on Further Jury Deliberations" (Jan. 14, 2013).

Before the jury returned, as the court conferred with both counsel, the State pointed out that juror nine was the juror who, during jury selection, had advised the court he did not want to be a juror and asked to be released. (10T15-5 to 20-23). The court responded that "he didn't say he didn't want to be a juror," but instead just expressed concerned about his hours working at a movie theater. Ibid. The State also pointed out how, as juror nine was leaving the room, he was "smirking, laughing," and some of the other jurors "looked very upset." Ibid. The court responded that that was "not unusual," but that it would not "draw an inference about the visual appearance of the jurors." Ibid.

The court further noted not seeing juror nine smirking, but that he had been sitting "halfway in his chair, as if he wanted to say something." Ibid.

Acknowledging that "no one has sent a note out saying that they cannot reach a verdict," the court advised it would conduct a "limited inquiry" of the foreperson on the matter. Ibid. During that inquiry, asked of the concerns about juror nine, the foreperson replied, "Inattention to the matter at hand. . . He doesn't seem to want to be involved." (10T21-5 to 22-25). The court next similarly conducted a colloquy of juror nine himself, asking whether he had any concerns he wanted to raise that were unrelated to the verdict. (10T25-2 to 31-14). The juror simply indicated that he was "missing work a lot." Ibid. The court responded that this had been discussed when he was first selected to serve on the jury—that he lived with his parents, worked at a movie theater and had indicated his hours could be shifted. Ibid. The court then asked whether he could follow its instructions, to which he responded affirmatively. Ibid. And the court then reminded him of the previously provided Czachor instruction on further deliberations, which the juror indicated he understood and could follow and deliberate. Ibid.

The court next had the remaining jurors return to the courtroom and once more provided the Czachor instruction before releasing them for lunch. At that point, the court remarked:

> Counsel, I've heard no reason to excuse any jurors. It's not unusual that the jurors have to take a break from one another. I'm giving them a break. I've again emphasized that charge again as [to] their duty as jurors but I heard absolutely nothing that says that juror should be excused.
>
> [(10T31-17 to 23).]

The court then asked whether there were any objections, to which both the State and the defense responded no. (10T31-23 to 32-1). The jury reached its verdict later that day, the second full day of deliberations, shortly before 3:00 p.m. (10T32-18 to 33-18).

To be sure, defendants are constitutionally entitled to be tried "before an impartial jury." State v. Loftin, 191 N.J. 172, 187 (2007). See also U.S. Const. amends. VI, XIV; N.J. Const. art. I, par. 10. As such, "[o]ur case law consistently endorses voir dire questions that 'probe the minds of the prospective jurors to ascertain whether they hold biases that would interfere with their ability to decide the case fairly and impartially.'" State v. Little, 246 N.J. 402, 417 (2021) (quoting State v. Erazo, 126 N.J. 112, 129 (1991)). Trial court determinations concerning the conducting of such voir dire are subject to a deferential standard of review. Little, 246 N.J. at 413. And a "trial court's decisions regarding voir dire are not to be disturbed on appeal, except to correct an error that undermines the selection of an impartial jury." Ibid. (quoting State v. Winder, 200 N.J. 231, 252 (2009)).

The record here merely indicates one juror expressing some—not uncommon—concern about missing work, but further that he was capable of following the court's instructions and would fully and impartially participate in the deliberative process. The record otherwise shows no indication or evidence of possible bias on the part of this or any juror, nor that the jury was encountering difficulty in reaching a unanimous verdict, let alone deadlocked. In that respect, defendant's reliance on State v. Figueroa, 190 N.J. 219 (2007), which involved a deadlocked jury and a "coercive" instruction that the jurors would be forced to continue deliberating through the rest of the week and then the weekend if necessary, is entirely misplaced. See also State v. Nelson, 304 N.J. Super. 561, 564-66 (App. Div. 1997) (finding court's supplemental charge instructing juror, who refused to discuss facts, to deliberate was permissible, but court's further providing forty-five-minute deadline for completion of deliberations was coercive).

Moreover, had the trial court here replaced juror nine with an alternate juror, defendant might now instead just be asserting—perhaps legitimate—alternative grounds for reversal, considering cases where reversal has resulted from jurors being replaced during the course of deliberations. See State v. Corsaro, 107 N.J. 339, 349 (1987) ("The reconstitution of the jury by the

substitution of a new juror in the course of the jury's deliberations can destroy the mutuality of the jury's deliberations."

> It is not enough that 12 jurors reach a unanimous verdict if 1 juror has not had the benefit of the deliberations of the other 11. Deliberations provide the jury with the opportunity to review the evidence in light of the perception and memory of each member. Equally important in shaping a member's viewpoint are the personal reactions and interactions as any individual juror attempts to persuade others to accept his or her viewpoint. The result is a balance easily upset if a new juror enters the decision-making process after the 11 others have commenced deliberations.
>
> [Ibid. (quoting People v. Collins, 552 P.2d 742 (Cal. 1976)).]

Beyond that, that the jury acquitted defendant of murder but convicted him of aggravated manslaughter, and then acquitted him of possession of a weapon for unlawful purpose but convicted him of unlawful possession of a weapon, is of no moment. Defendant opines this "illogical" result only further evidences a rushed and somehow compromised deliberative process. (See Db25). Yet he simultaneously, and correctly, acknowledges that "verdicts are not invalid based on these inconsistencies." Ibid. In that sense, "absent an incomplete or misleading jury instruction, there is to be no speculation on the reasons for a jury's verdict," and a reviewing court need only satisfy itself that there is sufficient evidence to support the charge for which the defendant is convicted. State v. Banko, 182 N.J. 44, 53-56 (2004) (detailing reasons for permitting inconsistent verdicts). See also State v. Grunow, 102 N.J. 133, 148

(1986) (citing "tradition of the common law" that "does not permit us to speculate upon the foundations of a jury verdict").

Unfounded speculation can never be the basis for overthrowing a valid and well-founded jury verdict. There was no error and this Court should affirm.

## POINT III

THE READING INTO THE RECORD OF NUMEROUS UNREDACTED TEXT MESSAGES BETWEEN DEFENDANT AND HIS VICTIM DURING THE WEEKS BEFORE HER MURDER INVOLVED NO ERROR, NOR DID IT EVEN PROMPT ANY OBJECTION. (Not Raised Below).

Within days of his release from prison for his 2018 assault of Allen, defendant initiated a lengthy series of volatile text messages with her that regularly and randomly shifted from friendly to aggressive, complimentary to insulting, and solicitous of getting together to condemningly accusatory of her alleged drug use and sexual promiscuity. The messages, which completely ceased the day before her murder, reflected a pattern of anger and aggressivity toward Allen that spoke to motive and identity, among other permissible uses under Rule 404(b). See Point I, supra. The inclusion therein of a few scattered references to narcotics, if error, was surely harmless if not invited, as drugs had nothing to do with the State's case and the prosecutor made no reference to the same during opening and closing arguments. It was actually defense counsel who not only raised no objection whatsoever on this basis, but also elicited testimony concerning toxicology results showing narcotics in the deceased victim before later asserting she could have been murdered by some random unidentified drug dealer in Camden. There was no error, and this Court should affirm.

Generally, a defendant's failure to object at trial concerning error alleged only later on appeal requires the untimely complaint to be reviewed under the plain error standard to determine whether it "is of such a nature as to have been clearly capable of producing an unjust result." R. 2:10-2; State v. Brown, 190 N.J. 144, 160 (2007); State v. Gaines, 377 N.J. Super. 612, 623 (App. Div.), certif. denied, 185 N.J. 264 (2005). But it is well settled that such an untimely objection should be flatly barred on appeal where, as here, the defense itself elicited or predominantly relied on such previously unobjected-to trial "error." See State v. Williams, 219 N.J. 89, 100 (2014) ("invited-error doctrine is intended to prevent defendants from manipulating the system and will apply when a defendant in some way has led the court into error while pursuing a tactical advantage that does not work as planned"); State v. Kemp, 195 N.J. 136 (2008) (applying invited error doctrine where defense objected on appeal to testimony it agreed to at trial); Spedick v. Murphy, 266 N.J. Super. 573, 593 (App. Div.) ("party who consents to, acquiesces in, or encourages an error cannot use that error as the basis for an objection on appeal"), certif. denied, 134 N.J. 567 (1993).

Between August 9 and September 28, 2020, the day before the murder, defendant and Allen exchanged hundreds of text messages that regularly vacillated between friendly and hostile. (7T9-17 to 68-22; 7T74-19 to 76-13).

The messages, which were read into the record by the prosecutor and a detective witness, mostly concerned defendant's desire to get together with Allen, defendant's request for pictures of their daughter, money and, particularly, defendant's repeated accusations regarding Allen's alleged sexual promiscuity and involvement in prostitution. Ibid. References to narcotics were limited, vague and mainly involved defendant accusing Allen of using them. (See, e.g., 7T48-2 to 24). No objections were raised. And notably, at one point when the subject of drugs briefly arose in the messages, defendant actually informed Allen, "I've been sober for two years. I can't touch that stuff my tolerance is low. I need more of you." (7T19-8 to 10). Moreover, the court even noted for the record, in addressing defense counsel with specific reference to that particular message, that "[t]here was no objection to that being put before the jury." (8T5-14 to 21). Defense counsel confirmed having no objection. Ibid.

Defendant now describes these limited references to narcotics as "other-crime" evidence that the court should have subjected to a "rigorous test under Cofield" and further, if admitting such evidence, should have instructed the jurors on the limitations of its use. (Db26). Here, no such analysis was conducted of this particular evidence, ostensibly because defendant never objected to this testimony on this basis, at least not prior to his present appeal.

See State v. R.B., 183 N.J. 308 (2005) (observing that failure to object not only suggests defense counsel did not believe comments prejudicial at the time they were made, but also deprived the court opportunity to take possible curative action). See also State v. Nelson, 173 N.J. 417 (2002) (failure to object to testimony permits an inference that any error in admitting the testimony was not prejudicial).

And again, it should be emphasized that it was the defense, not the State, that incorporated the subject of narcotics into its case. On cross-examination, defense counsel questioned the medical examiner regarding the victim's toxicology results, eliciting testimony that Allen had Methadone, Fentanyl and Norfentanyl in her system when she died. (5T49-3 to 50-1). Counsel later in summation made use of such evidence to argue that someone other than defendant had killed her. As defendant's brief even acknowledges, after suggesting the murderer could have been Allen's then-boyfriend, Campbell, acting out of jealousy, counsel went on to argue alternatively that "maybe Allen was involved in a bad drug deal, which found support in the toxicology report showing multiple drugs in her system." (Db11) (citing 8T42-21 to 43-12).

Admission of this evidence elicited no objection and resulted in no error. And even if it could be construed as such, defendant himself only invited if not

exacerbated the same. In any event, even if reviewed under the plain-error standard, given the strength of the State's case, such error would have been de minimis and could not have possibly led the jury to a verdict it otherwise would not have reached. This Court should affirm.

## POINT IV

THE TRIAL COURT SENTENCED DEFENDANT, A PERSISTENT OFFENDER WITH AN EXTENSIVE CRIMINAL HISTORY, WITHIN THE PERMISSIBLE EXTENDED-TERM RANGE WITH REFERENCE TO JUDICIAL FACTFINDING THAT WOULD HARDLY GIVE RISE TO PLAIN ERROR.

Despite the overwhelming and undisputed evidence of his persistent-offender status under N.J.S.A. 2C:44-3(a), defendant argues that he is entitled to a windfall sentence reduction in the ordinary first-degree range, presumably because his case was on appeal when Erlinger v. United States, 602 U.S. 821 (2024), and State v. Carlton, 480 N.J. Super. 311 (App. Div. 2024), certif. granted, 260 N.J. 478 (2025), were decided. To the contrary, the error in the judge, rather than a jury, finding the predicate facts for a persistent-offender extended term sentence was harmless.[1]

In that respect, this Court in Carlton acknowledged the recent United States Supreme Court decision holding "that a jury, not the sentencing judge, must decide the existence of the facts necessary to establish the grounds for a sentence enhancement based on prior convictions for offenses committed on separate occasions." 480 N.J. Super. at 322 (citing Erlinger, 602 U.S. at 849).

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[1] Defendant was sentenced in May 2024. The decision in Erlinger and this Court's decision in Carlton were issued, respectively, in June and December 2024. Carlton was argued before the Supreme Court on September 25, 2025. That decision is still pending.

But this Court's subsequent holding in Carlton, that Erlinger error is for all intents and purposes structural, was wrongly decided. As concurring and dissenting opinions in Erlinger noted, such violations are subject to harmless-error review. Erlinger, 602 U.S. at 850 (Roberts, C.J., concurring); id. at 859-61 (Kavanaugh, J., dissenting). The Carlton panel's contrary decision breaks with precedent applying harmless-error review, see Washington v. Recuenco, 548 U.S. 212, 220-22 (2006), and plain-error review, see United States v. Cotton, 535 U.S. 625, 632-33 (2002), to Apprendi violations, and diverges from nearly every court to have addressed the issue, e.g., United States v. Brown, 136 F.4th 87, 93-99 (4th Cir. 2025); United States v. Curry, 125 F.4th 733, 738-42 (5th Cir. 2025); State v. Porter, 560 P.3d 943, 945-46 (Ariz. Ct. App. 2024), review denied, 567 P.3d 1287 (Ariz. 2025). As an Erlinger error "is merely a type of Apprendi error," these courts reason that the error—like other errors under Apprendi and its progeny—is not structural. See Brown, 136 F.4th at 95.

No plain error occurred here when the court found defendant qualified as a "persistent offender" after considering his lengthy record.[2] In imposing

[2] A "persistent offender" is "a person who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at least 18 years of age, if the latest in time of these crimes or the date of the defendant's last release from confinement, whichever is later, is

sentence, the court noted defendant's criminal history began in 1999 and included twelve municipal and seven indictable convictions as an adult, among others: possession of a controlled dangerous substance (CDS) and aggravated assault in 2005; receiving stolen property in 2010; another aggravated assault in 2012 (involving the pointing of a gun in 2011); resisting arrest in 2013; obstructing passage in 2015; joyriding and CDS possession in 2016; and aggravated assault on a domestic violence victim in 2019 (concerning the prior 2018 assault of defendant's instant convictions' victim). (11T36-8 to 51-14). Defendant, who was born on June 25, 1982, was forty-one years old at sentencing, over eighteen when he committed the prior crimes noted above and over twenty-one when he committed the subject September 2020 offenses. See Da17.

Even defense counsel at sentencing acknowledged defendant's eligibility for extended-term sentencing as a persistent offender. As counsel stated, "as far as the extended terms, the law is based on whether the convictions do exist. And—and there's not any argument that we can present as far as the convictions. They do—they do exist." (11T33-12 to 19).

within 10 years of the date of the crime for which the defendant is being sentenced." N.J.S.A. 2C:44 3a.

In granting the State's motion for an extended term, the court acknowledged the criteria set forth in N.J.S.A. 2C:44-3[3] before reasoning:

> What's before the Court is seven prior convictions that this Defendant has. If you look at his conviction[s] going back ten years, 9/11/2011, that aggravated assault, the pointing of a firearm, you look at that subsequent conviction, resisting arrest on 5/15/13, I find that those two convictions, certainly when looking at what that statute calls for, qualifies him for an extended term sentence.
>
> [(11T47-2 to 11).]

As no reasonable jury could find otherwise, the judicial factfinding was not "clearly capable of producing an unjust result." R. 2:10-2. And the court thus imposed an extended-term seventy-year sentence with an eighty-five-percent parole ineligibility period under N.J.S.A. 2C:43-7.2, the No Early Release Act, for defendant's manslaughter conviction, while running the ten-year sentence on his additional convictions concurrently. (11T47-12 to 50-23).

At any rate, Carlton properly construed the statute to permit a jury to find the persistent-offender predicate facts on remand. 480 N.J. Super. at 347-53. Double jeopardy would not be implicated by this procedure because sentencing enhancements are not additional "offenses" that create "new

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[3] A first-degree manslaughter conviction typically carries a prison term of 10 to 30 years. N.J.S.A. 2C:11-4(c). The persistent offender statute, N.J.S.A. 2C:44-3(a), however, grants the court discretion to impose an extended term—up to life imprisonment for such offense—upon application from the State, and when it finds that "[t]he defendant has been convicted of a crime of the first, second or third degree and is a persistent offender."

jeopardy." Monge v. California, 524 U.S. 721, 728 (1998) (citations omitted) (holding double jeopardy does not bar retrial of facts pertaining to sentence enhancement in non-capital cases); see also United States v. Shaw, 26 F.3d 700, 701 (7th Cir. 1994) (finding use of prior conviction to enhance another sentence was "not a 'second punishment for the first crime,'" but rather "punishment for the new crime, tailored to the offender's circumstances"). Even in capital cases, where a defendant's rights were at their zenith, our Supreme Court found no double-jeopardy obstacle in remanding solely for a new sentencing phase trial where the error occurred at sentencing and the evidence was sufficient. See State v. Biegenwald, 106 N.J. 13, 68-70 (1987); see also Sattazahn v. Pennsylvania, 537 U.S. 101, 110-11 (2003) (finding double jeopardy had not attached when jury deadlocked at capital sentencing proceeding with no findings on aggravating or mitigating circumstances). It follows that double jeopardy is not implicated by remanding for a new jury to cure error occasioned by judicial factfinding that defendant's prior crimes were committed at different times.

In sum, defendant's sentence should be affirmed because the error was harmless. In the alternative, the matter should be remanded to afford the State the opportunity to let a jury decide the persistent-offender factual predicates. And even if the statute could not be applied, defendant would be subject to a

full resentencing on all counts, insofar as the court's decision to impose concurrent sentences was shaped by its "real time" consideration of the 70-year sentence for manslaughter. See State v. Thomas, 195 N.J. 431, 435 (2008) (holding double jeopardy not implicated when defendant appeals sentence and new sentence does not exceed original).

## CONCLUSION

Based on the foregoing, the State urges this Court to affirm defendant's convictions and sentence.

Respectfully submitted,

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**SUPPLEMENTAL LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A- 3219-23
IND. NO. 21-10-2814

| | | |
|---|---|---|
| STATE OF NEW JERSEY, | | CRIMINAL ACTION |
| Plaintiff-Respondent, | : | On Appeal from a Final Judgment |
| | : | of Conviction of the Superior |
| v. | : | Court of New Jersey, Law |
| | | Division, Camden County. |
| ERIC SEDDENS, | : | |
| | | Sat Below: |
| Defendant-Appellant. | : | Hon. Yolanda C. Rodriguez, J.S.C. |
| | | Hon. Gwendolyn Blue, J.S.C., and a |
| | | jury |
| | | DEFENDANT IS CONFINED |

Your Honors:

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

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## STATEMENT OF PROCEDURAL HISTORY AND FACTS

Defendant adopts the procedural history and statement of facts as set forth in his brief filed August 18, 2025, and adds the following: by way of "eCourts Appellate Communication" submitted on March 2, 2026, this Court "request[ed] supplemental letter-briefs, not to exceed five (5) pages, addressing the specific issue of whether and when Rule 404(b) 'other crimes' evidence involving the same victim can be admitted as proof of the identity of the current perpetrator."

## LEGAL ARGUMENT

### POINT I

### THE INTRODUCTION OF EVIDENCE OF A PRIOR ASSAULT WAS REVERSIBLE ERROR IN THIS CASE.

In New Jersey, it should be the rare case where the State is permitted to prove the identity of the perpetrator of a homicide by reference to an earlier assault committed by that perpetrator against the same victim. State law imposes a more stringent test for the admission of other-crime evidence than most jurisdictions, and the availability of less inflammatory alternatives to prove identity must be considered. Thus, the use of other-crime evidence to prove identity will tend to require a highly unique, signature-type crime to survive the probative versus prejudicial weighing process. And, even then, great care must be taken to sanitize the evidence. Because the evidence admitted in this case contravened each of these concerns, the convictions

should be reversed.

As discussed in the prior brief, the Cofield test for determining admissibility of other-crime evidence is well-established. Most relevant here, the fourth prong of the test has been recognized as "the most difficult to overcome." State v. Rose, 206 N.J. 141, 160 (2011). It "requires an inquiry distinct from the familiar balancing required under N.J.R.E. 403: the trial court must determine only whether the probative value of such evidence is outweighed by its potential for undue prejudice, ... not whether it is substantially outweighed by that potential as in the application of Rule 403." State v. Green, 236 N.J. at 83-84 (emphasis in original). "[I]f other less prejudicial evidence may be presented to establish the same issue, the balance in the weighing process will tip in favor of exclusion." Rose, 206 N.J. at 161 (quoting State v. Barden, 195 N.J. 375, 392 (2008)). "Therefore, Rule 404(b) is viewed 'as a rule of exclusion rather than a rule of inclusion.'" Green, 236 N.J. at 84 (quoting State v. Reddish, 181 N.J. 553, 609 (2004)).

This is a critical point that distinguishes all five of the cases brought to the attention of the parties by the Court. In each of those cases, the foreign court was applying a test different from New Jersey's "rule of exclusion." See, e.g., United States v. Lewis, 780 F.2d 1140, 1142 (4th Cir. 1986) ("After relevance is determined, the court must consider whether the probative value of the evidence is substantially outweighed by its prejudicial effect.") (emphasis added); Brim v. State, 624 N.E.2d 27, 34 (Ind. Ct. App. 1993)

(Thus, in determining whether evidence of the prior acts of misconduct may be admitted at trial, the trial court must … determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.") (emphasis added); State v. Enoch, 820 S.E.2d 543, 557 (N.C. Ct. App. 2018) (rejecting defendant's argument that that the challenged evidence "provided only a 'slight' value when compared to the 'substantial prejudice engendered by the testimony'").

Indeed, language from some of these opinions suggests a rule nearly the opposite of what New Jersey courts would countenance. For example, the court in United States v. Yellow, 18 F.3d 1438, 1441 (8th Cir. 1994), observed:

> This circuit views [R]ule 404(b) as one of inclusion, permitting admission of other crimes, wrongs, or bad acts material to an issue at trial, unless the evidence tends to prove only the defendant's criminal disposition.
>
> [Id. at 1441 (quoting United States v. Estabrook, 774 F.2d 284, 287 (8th Cir. 1985).]

Similarly, the 10th Circuit in United States v. Veneno, 107 F.4th 1103 (10th Cir. 2024), cert. denied, 146 S. Ct. 52, 223 L. Ed. 2d 220 (2025), noted that "Rule 404(b) is considered to be an inclusive rule, admitting all evidence of other crimes or acts except that which tends to prove only criminal disposition." Id. at 1116 (emphasis in original) (internal quotation marks and citations omitted). The Veneno court was not troubled that evidence admitted "under Rule 404(b) may involve a kind of propensity inference." Ibid. So long as the "evidence is relevant," the "potential impermissible side effect of

allowing the jury to infer criminal propensity" was no bar to admission. Ibid. (citation omitted).

The better rule – the rule that comports with a large body of New Jersey caselaw – is that a legitimate concern that an inference of criminal propensity would cloud the jury's judgment ends the discussion on admission. If some combination of sanitization and limiting instruction cannot assuage that concern, then the State must find another way to prove its case. That judgment is embodied in the simple balancing test: whether the "probative worth of the evidence is outweighed by its potential for undue prejudice." Rose, 206 N.J. at 160. And it is furthered by the requirement that the trial court consider whether less prejudicial means are available to prove the disputed point. Id. at 161. See State v. Hardaway, 269 N.J. Super. 627, 630-31 (App. Div. 1994) ("The weighing process requires the court on its own initiative to determine the scope and content of the proffered evidence to be sure that the fact it is offered to prove cannot be proved by less prejudicial evidence.")

Here, this Court's focus is on the disputed point of identity, and the State had ample evidence relevant to identity, apart from other-crime evidence. The State offered evidence that defendant and Allen were previously in a romantic relationship and had a daughter together; that defendant lived near the scene of homicide and was in the area around the suspected time of the homicide; that phone records from defendant's and Allen's cell phones tended to show that defendant was in the area of the homicide at the time, and had driven Allen's

vehicle from the scene to Philadelphia, where he may have scrapped it at a "chop shop"; that defendant then travelled to Florida and conducted searches on his phone about the homicide; and that there were extensive text messages between defendant and Allen, including discussions about meeting in person in Camden on September 28th, after which the messages abruptly stopped. In light of this evidence of identity, the probative value of the other-crime evidence was substantially diminished and did not outweigh the undue prejudice.

To be clear, defendant does not urge a per se bar on the use of other-crime evidence involving the same victim as proof of the identity of the current perpetrator. But those instances will be rare outside of the signature-crime context when the Cofield test is conducted with due regard for less inflammatory alternatives to proving identity.

## CONCLUSION

The convictions should be reversed because defendant was denied his right to a fair trial by the introduction of overwhelmingly prejudicial other-crime evidence.

Respectfully submitted,

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SUPPLEMENTAL LETTER IN LIEU OF BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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

Re: STATE OF NEW JERSEY (Plaintiff-Respondent) v.
ERIC T. SEDDENS (Defendant-Appellant)
Docket No. A-3219-23

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

Sat Below: Hon. Yolanda C. Rodriguez, J.S.C.,
Hon. Gwendolyn Blue, J.S.C.

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Honorable Judges:

This letter brief is submitted at the Court's request in lieu of a formal brief on behalf of the State. See R. 2:6-2(b); R. 2:6-4(a).

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## STATEMENT OF FACTS AND PROCEDURAL HISTORY

The State relies on the procedural history and facts set forth in its brief of October 14, 2025, adding the following. On March 2, 2026, this Court requested oral argument on March 16 "limited to the N.J.R.E. 404(b) issues in Point I of appellant's brief." The Court further requested supplemental five-page letter briefs addressing "whether and when Rule 404(b) 'other crimes' evidence involving the same victim can be admitted as proof of the identity of the current perpetrator."

## LEGAL ARGUMENT

### THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF DEFENDANT'S PRIOR ASSAULT OF HIS HOMICIDE VICTIM.

Rule 404(b) only prohibits admission of evidence of other crimes, wrongs or acts when offered "to prove a person's disposition" and "show that on a particular occasion [he] acted in conformity with such disposition." See State v. Castagna, 400 N.J. Super. 164 (App. Div. 2008). Its purpose is "simply to keep from the jury evidence that the defendant is prone to commit crimes or is otherwise a bad person, implying that the jury needn't worry overmuch about the strength of the government's evidence." State v. Rose, 206 N.J. 141, 180 (2011) (quoting United States v. Green, 617 F.3d 233, 248-49 (3d Cir. 2010). That said, "[n]o other use of prior crimes or other bad acts is forbidden by the rule," which expressly permits such evidence to prove, among other things, motive, intent, plan or identity. Ibid.

Admissibility of such evidence turns on the analysis articulated in State v. Cofield, 127 N.J. 328 (1992). The court must determine that evidence is (1) relevant to a material issue, (2) similar in kind and reasonably close in time to the charged offense, (3) clear and convincing, and (4) of a probative value not outweighed by its apparent undue prejudice. Id. at 338. But "[i]f other less prejudicial evidence may be presented to establish the same issue, the balance in the weighing process will tip in favor of exclusion." Rose, 206 N.J. at 161.[1]

Although the Cofield analysis applies regardless of the proposed permissible use of the evidence, "where the venture is to prove identity, it has been said that proffered other crimes evidence must meet a stiffer standard than is generally required when the evidence is offered to prove other issues." State v. Reldan, 185 N.J. Super. 494, 502 (App. Div.), certif. denied, 91 N.J. 543 (1982). So, when offered on the issue of identity, such evidence could involve, for example, a similar or "signature crime" involving "unusual and distinctive" conduct. See State v. Fortin, 162 N.J. 517, 532 (2000) (citing Reldan, 185 N.J. Super. at 502). But the rule need not be interpreted that narrowly, because "[i]f a defendant can be

[1] Admissibility appears somewhat more permissive under Rule 404(b)'s federal counterpart, which is considered an "inclusive" rule (as opposed to New Jersey's "rule of exclusion") "admitting all evidence of other crimes or acts except that which tends to prove only criminal disposition," provided that the "probative value [] is not substantially outweighed by the potential for unfair prejudice." U.S. v. Veneno, 107 F.4th 1103, 1116 (10th Cir. 2024) (emphasis added).

connected to a weapon or disguise used in a prior criminal transaction, it [too] can serve to identify him or tie him to a similar event." State v. Gillespie, 208 N.J. 59, 86 (2011) (considering admissible as "other-crime" identity evidence that same weapon used during charged homicide also used during earlier unrelated robbery).

Similar logic should apply here. This Court has held "that evidence of arguments or violence between a defendant and a homicide victim has long been admitted." State v. Engel, 249 N.J. Super. 336, 373-74 (App. Div.) (citing cases), certif. denied, 130 N.J. 393 (1991). Although that case and others from New Jersey have considered admissible the "other-crime" evidence in such context, it was typically used to establish motive rather than identity. See, e.g., Rose, 206 N.J. 141 (admitting prior attempt to kill victim as evidence of motive in defendant's trial for later murder of same victim); Castagna, 400 N.J. Super. at 164 (where defendant conspired to murder wife, admitting as to motive array of 404(b) evidence involving same victim, including prior domestic violence charge, harassment conviction and restraining order violation); Engel, 249 N.J. Super. at 336 (in murder trial, admitting prior abuse and assaults by defendant husband against victim wife to establish motive).

But even though those cases did not necessarily involve the use of prior defendant-victim "evidence of arguments or violence" to prove identity, they offered no commentary or analysis on, let alone proscribed, the use of such

evidence for that purpose. And the cases this Court identified from other jurisdictions favorably addressed the subject and considered admissible those prior crimes or bad acts involving a given defendant against the same victim. See Veneno, 107 F.4th at 1117-18 (deeming admissible in domestic assault case prior uncharged beating of same victim for identity where prior act was "nearly identical to the later act" having occurred "in the same place, in the same way, and for the same reason," i.e. jealousy); U.S. v. Yellow, 18 F.3d 1438, 1441-42 (8th Cir. 1994) (admitting evidence on identity consisting of prior uncharged sexual assaults of same victims); U.S. v. Lewis, 780 F.2d 1140, 1142 & n.2 (4th Cir. 1986) (in assault case, prior altercation between defendant and victim admissible on identity given "similarity in the method of both assaults"); State v. Enoch, 820 S.E.2d 543, 557-58 (N.C. Ct. App. 2018) (admitting as to identity ex-girlfriends' accounts of abusive relationships with defendant in trial for murdering most recent girlfriend; noting similarities between separate incidents need not be "unique and bizarre" but must tend to support reasonable inference same person committed earlier and later acts); Brim v. State, 624 N.E.2d 27, 33 (Ind. Ct. App. 1993) (admitting prior uncharged assaults for identity given similarities—of same victim, influence of alcohol and grabbing of victim by head and "bouncing" same against hard surface).

Likewise, the similarities here between the prior assault and later homicide were distinctive, numerous and well beyond merely involving the same victim.

Defendant twice attacked the mother of his child the same way at the same location. In 2018, he lured her to his neighborhood with a gift for their daughter and then assaulted her and left her in the street bleeding from the head as he stole her car. In 2020, two months after his release from prison for that assault, he again lured this victim to his neighborhood with a gift for their child and, this time, shot her in the head before leaving her again bleeding in the street as he stole her car. Defendant's defense was that he was not the killer, that it was the victim's current boyfriend or maybe some random unidentified drug dealer—thus, this other-crime evidence spoke directly to identity and motive. As in the cases cited above, the probative value of this evidence far outweighed any potential for undue prejudice given the history of violence between defendant and this homicide victim, which is why such evidence has long been considered admissible by our courts in such matters.

## CONCLUSION

Based on the foregoing, the State urges this Court to affirm.

Respectfully submitted,

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BY: _____
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