SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3345-23

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| STATE OF NEW JERSEY, | : | CRIMINAL ACTION |
| Plaintiff-Respondent, | : | On Appeal from a Judgement of Conviction of the Superior Court |
| v. | : | of New Jersey, Law Division, Hudson County. |
| CHARLES P. JAKUBOWSKI, | : | Indictment No. 24-05-554-I |
| Defendant-Appellant. | : | Sat Below: Hon. Carlo Abad, J.S.C. |

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# BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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DEFENDANT IS NOT CONFINED

July 14, 2025

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## PRELIMINARY STATEMENT

Here, the trial court was presented with a simple task: determine whether Mr. Charles Jakubowski acted in self-defense when he admittedly punched two men. Jakubowski testified he resorted to violence only after these men cornered him, ripped him out of his truck, kneed him in the groin, and punched him in the head. While these men testified they identified themselves as law enforcement officers, Jakubowski testified they did not. Defense counsel provided pretrial notice of the intent to present a claim of self-defense. Whether the men identified themselves as law enforcement and whether Jakubowski acted in self-defense were the only contested issues for the trial court to decide. Yet the trial court inexplicably found the men's identities as law enforcement was irrelevant and failed to address the issue of self-defense entirely. This was clearly mistaken. Mr. Jakubowski's conviction must be vacated, and the matter must be remanded for a new trial.

## PROCEDURAL HISTORY

On April 17, 2024, a Hudson County grand jury returned Superseding Indictment No. 24-05-0554-I charging Jakubowski with two counts of fourth-degree aggravated assault on a law enforcement officer, contrary to N.J.S.A. 2C:12-1(b)(5)(a). (Da1 to 2).[1] Count one pertained to Franco Amato and

[1] "1T" – May 15, 2024 (trial, day one)

count two pertained to Eric Amato. Ibid. About a week before trial on May 7, 2024, the State filed an amended indictment downgrading both charges to disorderly persons simple assault, contrary to N.J.S.A. 2C:12-1(a)(1). (Da3 to 4). The day after the amended indictment was filed, defense counsel filed a notice of defense advising Jakubowski intended to present a claim of self-defense, pursuant to Rule 3:12 and N.J.S.A. 2C:3-4. (Da5 to 6).

The Honorable Judge Carlo Abad, J.S.C., presided over the two day trial on May 15 and 16, 2024. See generally 1T and 2T. The court did not conduct a charge conference prior to rendering its verdict. As to count one charging simple assault against Franco, the court found Jakubowski guilty of the lesser-included petty disorderly persons charge of mutual fighting, pursuant to N.J.S.A. 2C:12-1(a)(1). (2T104-4 to 6). As to count two charging disorderly persons simple assault against Eric, the court found Jakubowski guilty. (2T105-13 to 14). The court immediately sentenced Jakubowski to mandatory fines and penalties only. (2T112-11 to 19). Jakubowski filed a notice of appeal on June 28, 2024. (Da10 to 16). This appeal follows.

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"2T" – May 16, 2024 (trial, day two, and sentencing)
"Da" – Defendant's appendix

## STATEMENT OF FACTS

On December 29, 2022, Mr. Jakubowski worked as a delivery driver for San Vito's Pizzeria in Bayonne. (2T5-10). About four hours into his shift, he walked out of the pizzeria into the parking lot with deliveries to make. (2T8-6 to 14).

### A. Danielle, Eric, and Franco Amato's Testimony

The State presented testimony from Danielle Amato, Eric Amato, Franco Amato,[2] Emergency Medical Technician Timothy Rosario, responding Officer Isaiah Mercado, and Detective Alexis Cook.[3] See generally 1T. Danielle, Eric, and Franco testified to the following. On December 29, they attended a family gathering at a restaurant that shares a parking lot with San Vito's Pizzeria. (1T24-1 to 2). Danielle left the restaurant first and encountered Jakubowski, whose Ford F-150 pickup truck was parked next to her SUV. (1T12-20 to 21; 1T15-8 to 9). Jakubowski chastised her for parking terribly

[2] Because the three witnesses share a common surname, this brief uses their first names. Additionally, the transcripts refer to Mr. Franco Amato as both "Franco" and "Frank." For consistency, he is referred to as Franco in this brief. Mr. Jakubowski's testimony identifies Eric as wearing a black shirt and Franco as wearing a red shirt during the incident. See generally 2T4 to 2T58. For context, Eric and Franco are brothers, and Eric and Danielle are married to each other. (1T13-21; 1T14-17).

[3] At the time of the incident, Cook used her maiden name, Ogbin. By the time of trial, she changed her last name to Cook. (1T122-24 to 25).

and they exchanged nasty words. (1T13-5 to 12). They both got into their respective cars, and as Danielle tried backing out, Jakubowski also backed out. As a result, Danielle could not back her car out of its parking spot without hitting Jakubowski's truck. (1T16-3 to 5).

Danielle's husband Eric approached them because he heard what sounded like an argument. (1T24-9 to 11; 1T25-7 to 9). Danielle told Eric, "Just forget it, just get out of here." (1T25-12 to 13). Eric told Jakubowski to "just let her leave," and then walked away back to his car. (1T25-24; 1T26-1; 1T35-12 to 20). As Eric walked away, he heard an engine revving and interpreted it as Jakubowski "taunting" Danielle, so he walked back over to them. (1T26-2 to 4; 1T35-22 to 36-2).

Meanwhile, Franco also heard the altercation. (1T71-21 to 24). By the time he approached Danielle and Jakubowski, Eric had already left to walk back to his car. Franco asked what was happening and told Jakubowski to let Danielle pull out of the spot. (1T72-2 to 3; 1T72-6 to 7). Franco then started to walk back towards his own car, Jakubowski got into his truck, and both Danielle and Jakubowski started backing up again. (1T79-18 to 21).

Franco approached Jakubowski again and said he was going to stand behind his truck so Jakubowski could not move until Danielle left. (1T27-10 to 12; 1T80-3 to 7). At this point, Eric returned and saw Franco standing

behind Jakubowski's tailgate. (1T26-9 to 13; 1T36-3 to 4). Eric and Franco stood behind the truck together and Eric slapped Jakubowski's tailgate while telling him he was going to hit Danielle. (1T27-1 to 3; 1T37-12 to 18).

Jakubowski continued to back up and tapped Franco in the knee with his truck. (1T27-12 to 14; 1T37-20 to 21; 1T80-7 to 9). Franco testified it was "a little discomforted, just like a little tiny bit of pain to the knee but nothing that[ was] going to debilitate [him]." (1T80-18 to 20). Instead of moving out of the way, Franco shouted, "Dude, you just hit me with the car, knock it off. Hold up so she can get out." (1T27-25 to 28-2). Jakubowski backed up and tapped Franco again. (1T28-3 to 4; 1T38-3; 1T80-23 to 81-1). While both brothers continued standing behind the truck, Eric said to Franco, "did he just hit you with the car a second time?" (1T28-4 to 5; 1T81-13 to 16). Ignoring Eric, Franco yelled at Jakubowski, "You hit me with the car again. Knock it off, let her leave." (1T28-5 to 6). Neither brother moved out of the way. Jakubowski backed up and tapped Franco again. (1T28-7-8; 1T38-10 to 11). Eric, still standing behind the truck, repeated, "did he just hit you with the car a third time?" (1T28-8 to 9; 1T38-12 to 13).

Both brothers testified they did not identify themselves as police officers up until that point. (1T38-14 to 15; 1T81-19 to 23). However, after standing still while Jakubowski hit him with his F-150 truck three times, Franco finally

decided "enough is enough" and went over to the driver side door. (1T38-12 to 13; 1T81-16 to 18). As he approached, Franco said, "That's it, you're under arrest. We are both Bayonne police officers. Get out of the car." (1T28-9 to 11; 1T28-19 to 22; 1T28-23 to 25; 1T38-17 to 18; 1T40-1 to 6; 1T82-3 to 7). Franco opened the door and tried to pull Jakubowski out, but he "refused." (1T28-13 to 16; 1T28-19; 1T82-10 to 12). Both Eric and Franco described Jakubowski as, "resisting completely, flailing his arms, throwing his arms," and doing "whatever he could to not get arrested." (1T29-16 to 17; 1T40-17 to 18; 1T82-13 to 14). Franco told Jakubowski several times to turn around and put his hands behind his back. (1T82-14 to 16). The record does not reflect Franco's intention for making this request as the brothers did not have handcuffs. (1T29-19).

Franco "trie[d] to do a leg sweep to take him down to the ground" but Jakubowski pivoted, and Franco's right knee hit Jakubowski in the groin. (1T29-17 to 18; 1T41-10 to 15; 1T82-25 to 83-3). Meanwhile, Eric called 911. (1T29-7 to 9; 1T40-7 to 8; 1T83-9 to 11). When Franco kneed Jakubowski in the groin, Jakubowski fell to the ground. (1T41-17; 1T83-3 to 4). When Jakubowski stood back up, he punched Franco. (1T41-18 to 19; 1T83-4).

Eric then grabbed Jakubowski by the collar. (1T42-4). Franco turned to walk away, and Jakubowski punched Franco in the back of the head. (1T42-9

to 12; 1T83-16 to 19). Eric then turned to Jakubowski, still holding his collar, and Jakubowski punched Eric in the face. (1T42-15 to 16; 1T42-19). Franco testified he did not see Jakubowski punch Eric, but he did see Eric bleeding. (1T84-1 to 4). At that moment, uniformed on-duty police officers arrived and arrested Jakubowski. (1T42-16 to 17; 1T84-8 to 9).

As to their injuries, Franco testified a dentist diagnosed him with "bruising." (1T84-19 to 21). Eric testified, and various photos and medical records showed, he experienced a cut to his lip that required stitches. (1T43-7 to 9).

**B. Charles Jakubowski's Testimony**

Jakubowski testified to largely the same version of events. In all, the parties agreed that Franco attempted to extract Jakubowski from his truck, that Franco kneed Jakubowski in the groin, and that Jakubowski punched both Eric and Franco. They disagreed on whether Jakubowski tapped Franco with his car. The most important fact they disagreed on was whether Eric and Franco identified themselves as officers.

Jakubowski acknowledged that he started the exchange of nasty words with Danielle. (2T11-12 to 16). He then got into his truck and sat sidesaddle on the seat with his left leg hanging out of the open door. (2T13-4 to 9). Before he could close the door, Franco, "with his fists clenched[,] walk[ed]

aggressively towards [Jakubowski] with . . . a scowl on his face." (2T13-5 to 8). Franco grabbed the top of the door frame and while screaming at Jakubowski, slammed the door into Jakubowski's leg. (2T14-10 to 13; 2T14-23 to 25). Jakubowski tried to back up and grab the door, but Franco continued slamming it, now onto Jakubowski's wrist, four to five times. (2T14-25 to 15-2). Jakubowski could feel his wrist "crack." (2T15-3).

Jakubowski finally got his body in the truck. (2T15-20 to 22). Franco continued verballing threatening Jakubowski. (2T15-24 to 25). Jakubowski heard Danielle say, "Let's fuck with him and block him in." (2T17-7). At this point, Danielle's SUV was blocking his truck in the spot. (2T18-1). Jakubowski got out of the truck, walked a few steps to see over the bed and said, "Move your fucking [SUV]." (2T17-12; 2T17-15 to 17). Franco, who was standing a few feet away from the back of Jakubowski's truck, again approached Jakubowski, hurling "racial slurs towards" him. (2T18-18 to 22; 2T19-17 to 18).

Jakubowski got back in his truck and turned around to look through his back window to reverse. (2T20-4; 2T20-10 to 13). He saw Eric and Franco standing side by side directly behind his truck. (2T20-13 to 15). Jakubowski started beeping his horn and tapped his brakes to make the lights flicker. (2T20-20; 2T21-1 to 2). He watched as Eric and Franco took "baby steps"

away from the truck. (2T21-7 to 9). Jakubowski "release[d] some pressure" to reverse as far as he could without hitting them about two or three times, but the men continued to take only "baby steps" and trap him in the spot. (2T21-9; 2T21-13 to 18). Franco then "smack[ed] the back of [Jakubowski's] truck three times" with his hand. (2T21-19 to 21).

Jakubowski put the truck in park, and Franco immediately "r[an] around" to the driver side door and opened it. (2T21-23 to 25). Unsure "if he ha[d] something, [or if] he[ was] going to hit [him]," Jakubowski "tr[ied] to grab the door and lock it, and get as far into the passenger seat as" possible. (2T22-1 to 5). But Franco "rip[ped] the door open [and] . . . grab[bed Jakubowski] . . . [v]iolently [and a]ggressively." (2T22-5 to 9). Franco continued shouting "he's going to fuck [Jakubowski] up." (2T22-13). Jakubowski heard "another voice saying, 'Get him the fuck out of the truck.'" (2T22-14 to 15). Franco and Eric then "ripped [Jakubowski] out of the truck." (2T22-18 to 19). Franco held Jakubowski by the shoulder as Jakubowski tried to back up and "push him off." (2T22-24 to 23-10). Franco punched the top of Jakubowski's head, and Jakubowski returned a punch to Franco's face. (2T23-13 to 16). Franco fell on the ground, and Jakubowski backed up to look for Eric. (2T23-16 to 18). Franco got up and "wedge[d] his body into" the truck facing outward toward Jakubowski. (2T23-20 to 21; 2T23-24 to 24-2).

Jakubowski and Franco shoved each other, and Jakubowski told Franco he wanted his phone on the front seat to call the police. (2T24-13; 2T24-15 to 18). Franco said, "Good. Call the cops," but when Jakubowski took his phone and turned around to face Franco, Franco took a few steps forward and kneed him in the groin. (2T24-19 to 25-11). Jakubowski doubled over, and when he stood back up, he punched Franco in the face. (2T25-11 to 14).

Eric grabbed Jakubowski's shoulder and pulled him closer, shouting at him. (2T26-4 to 10). Unable to pull away, Jakubowski punched Eric in the face. (2T26-12 to 13). The three separated, but continued shouting at each other, at which point uniformed on-duty officers arrived from across the parking lot. (2T26-14 to 21). As soon as Jakubowski saw a uniformed officer, he walked right over to him and told him, "[T]hese two guys are jumping me over there." (2T27-15 to 20). The uniformed officer immediately grabbed Jakubowski and handcuffed him. (2T27-20 to 21; 2T28-1 to 2).

As arresting officer Mercado and Detective Cook attempted to ask Jakubowski about what happened, the brothers continuously got "in [Jakubowski's] face," yelling at him. (2T28-10 to 16; 2T38-13 to 17). Jakubowski testified he was "[one] hundred percent" sure neither Eric nor Franco identified themselves as officers. (2T27-5 to 7). He did not learn they were officers until he asked uniformed officers why they were not arresting

them, and the uniformed officers responded, "well, they're police officers." (2T28-17 to 20).

Jakubowski testified that when he was released from the police station, he went to the hospital for his wrist but did not receive any treatment. (2T30-22 to 25; 2T31-2 to 3; 2T31-13 to 15). However, after experiencing chronic pain for a few months, he went to a specialist who informed him his wrist bone needed to either be "removed" or "drill[ed] into . . . because part of the bone is dying [from] lack of blood flow." (2T31-18 to 22; 2T32-10 to 12).

**C. Closing Arguments**

During summation, defense counsel argued Jakubowski was not guilty of simple assault based on tapping Franco with his truck because he did not cause or attempt to cause bodily injury during that portion of the incident. (2T59-25 to 60-2; 2T60-3 to 6). Regarding the rest of the incident, counsel acknowledged Jakubowski testified "he did, in fact, use physical force against the Amatos," but argued he acted in "self-defense because they never identified themselves as police officers when they were assaulting [him] and pulling him out of his truck." (2T60-7 to 13). Counsel argued the fact that Jakubowski asked uniformed police for help the second they arrived, and that he tried to press charges against the brothers lent further support to a finding of

self-defense. (2T68-7 to 11; 2T68-22 to 69-1). She argued that overall, Jakubowski "was defending himself." (2T70-4).

The prosecutor closed by arguing Eric and Franco "testified, and [Jakubowski] confirmed that he punched them in the face." (2T72-13 to 15). He argued the brothers credibly testified they identified themselves as officers. (2T71-9 to 11; 2T72-3 to 4). He argued "Jakubowski took things too far. He didn't keep his temper under control . . . ." (2T70-10 to 12).

At the very end of summation, for the first time, the State argued that "at no point did defense counsel give notice of a self-defense claim here" so "[t]hat should not be taken into consideration." (2T74-10 to 13). Defense counsel accurately pointed out she filed the notice about two weeks prior. (2T74-20 to 22). See also Da5 to 6. To explain why she did not file it sooner, she stated, "I didn't think that it was applicable to aggravated assault on a law enforcement officer, so I filed it after the case had been downgraded to simple assault." (2T75-4 to 7). The court never addressed this point of contention, responding simply, "All right. Thank you." (2T75-8).

**D. Trial Court's Decision**

Rather than react to the parties' discussion about the notice of self-defense, the court immediately launched into its decision. Moreover, the court did not conduct a charge conference pursuant to Rule 1:8-7(b). Rather, after

both parties closed, the court summarily rendered its verdict. See 2T75-20. The court considered the simple assault statute, reading N.J.S.A. 2C:12-1 as follows: "'A person is guilty of assault if the person attempts to cause or purposely, knowingly or recklessly causes bodily injury to another.' . . . 'Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent in which case [it] is a petty disorderly persons offense,' otherwise known as mutual fighting." (2T76-6 to 13). The court summarized each witness's testimony. See generally 2T78 to 2T96. The court rendered credibility findings for Danielle, Eric, Franco, and Jakubowski, finding "all of them to be credible." (2T98-22 to 23).

Firstly, the court determined Eric and Franco's status as law enforcement officers was "of no concern to the [c]ourt" and "irrelevant." (2T96-23 to 24; 2T97-5). Rather, "[t]he only determination that this [c]ourt needs to make a finding is whether or not the defendant attempted to cause or purposely, knowingly or recklessly caused bodily injury to another, and that's it." (2T97-13 to 17).

To do so, the court "pinpoint[ed]" the testimony it found relevant. (2T99-13). As to Eric's injuries, Eric testified Jakubowski hit him "with a closed fist to the face," which resulted in "blood all over" and required medical attention. (2T99-17 to 21). This, in addition to the photos entered as

S-1 through S-5, showed Eric "did suffer those injuries." (2T99-22 to 24). "[M]ost importantly," Jakubowski testified he "pushed" Eric and "punched him right in the face." (2T100-14; 2T100-23; 2T101-1 to 2)

As to Franco's injuries, Franco testified Jakubowski "pushed him and then punched him twice in the back of the head," which required him to see a dentist, who diagnosed him with "bruising." (2T100-7 to 8; 2T100-11 to 13). The court noted "most importantly," Jakubowski testified, "[I] said to [Franco] get the fuck off me. [Franco] hit me. [Franco] hit my right arm. [Franco] punched my head. And I said what the fuck are you doing? So I hooked him, and I . . . [c]racked him in the face." (2T100-14; 2T100-17 to 21). Jakubowski testified after he punched Eric, Franco "kneed me in the nuts, so I got up and I punched [Franco] in the face again." (2T100-22 to 101-1). Therefore, and predominantly based on Jakubowski's testimony, the court found "it is clear . . . Jakubowski, with intent, did recklessly cause bodily injury to those two individuals." (2T101-5 to 8).

Even though the court found Eric and Franco's status as law enforcement officers was irrelevant, the court seemed intrigued by the fact that they were "clearly in plain clothes," and had no badges, handcuffs, or weapons. (2T101-18 to 19; 2T101-21 to 25). The court found "beyond a reasonable doubt" Franco kneed Jakubowski in the groin, while "supposedly trying to put Mr.

Jakubowski under arrest," but wondered aloud, "how would he have done it? He didn't have any handcuffs on him." (2T102-17 to 20; 2T102-22 to 24). The court found, therefore, the "altercation [was] started by Franco." (2T102-21). Jakubowski, therefore, was guilty of mutual fighting for punching Franco in the mutual scuffle. (2T104-2 to 6). The court determined that if the State intended to use the allegation that Jakubowski hit Franco with his truck as a basis for the simple assault charge, the court "d[id not] find that the State made those proofs beyond a reasonable doubt . . . ." (2T104-25 to 105-6).

Based on Eric's testimony that "Jakubowski punched him in the face, and as a result of it suffered injuries to his mouth, and which caused bleeding, which caused him to go to the hospital" and Jakubowski's "testi[mony] that he punched Eric . . . in the face," the court found Jakubowski guilty of count two, disorderly persons simple assault. (2T104-11 to 13; 2T104-19 to 24).

The court never addressed the issue of self-defense. In fact, the court never mentioned self-defense anywhere in its decision. See generally 2T75-20 to 107-14.

## LEGAL ARGUMENT

**THE EVIDENCE DEMONSTRATED A RATIONAL BASIS FOR SELF-DEFENSE, WHICH JAKUBOWSKI UNEQUIVOCALLY REQUESTED THE TRIAL COURT CONSIDER. THE TRIAL COURT FAILED TO ADDRESS THIS DEFENSE ENTIRELY, AND THEREFORE JAKUBOWSKI'S CONVICTIONS MUST BE VACATED AND THE MATTER MUST BE REMANDED FOR A NEW TRIAL. (Da5 to 6; 2T74-10 to 75-7)**

"If 'a self-defense charge is requested and supported by some evidence in the record, it must be given' at trial" for the fact finder's consideration. State v. Macchia, 253 N.J. 232, 252 (2023) (quoting State v. Rodriguez, 195 N.J. 165, 174 (2008)). When a party requests an instruction and it is not given, the reviewing court applies the rational basis test. State v. Carrero, 229 N.J. 118, 127-28 (2017). This standard applies to requested charges on affirmative defenses as well. State v. Walker, 203 N.J. 73, 87 (2010) ("[I]f a defendant requests a charge on the defense and there is a rational basis in the record to give it, then the court should give the requested instruction."). This test "sets a low threshold." Carrero, 229 N.J. at 128. "In deciding whether the rational-basis test has been satisfied, the trial court must view the evidence in the light most favorable to the defendant." Ibid. (citing State v. Mauricio, 117 N.J. 402, 412 (1990)).

Here, the testimony of the three key witnesses – Eric, Franco, and Jakubowski – obviously focused on self-defense. Defense counsel provided

pretrial notice of the defense pursuant to court rule. At trial, defense counsel presented self-defense as the sole issue for the court to adjudicate. Yet the court failed to consider self-defense entirely. Therefore, Jakubowski's convictions must be vacated, and the matter must be remanded for a new trial.

**A. Self-defense has a rational basis in the record.**

Under the plain language of N.J.S.A. 2C:3-4(a), Jakubowski's use of force would have been justified if he reasonably believed it was immediately necessary to protect himself against Eric and Franco's use of force. However, it would not have been justified if he knew the brothers were police officers and he used that force to resist arrest. N.J.S.A. 2C:3-4(b)(1)(a). Both the State and the defense presented evidence concerning this affirmative defense.

Jakubowski testified to the fact that the brothers never identified themselves as officers and that he felt threatened. He testified he only resorted to violence after Danielle, Eric, and Franco cornered him, and Franco slammed his leg and wrist with the truck door, ripped him out of the truck, kneed him in the groin, and punched him in the head. Eric and Franco testified they did in fact corner Jakubowski, rip him out of the truck, knee him in the groin, and punch him in the head, but that they identified themselves as officers. Viewed in the light most favorable to the defense, self-defense had a rational basis in the evidence.

**B. The defense requested the court consider self-defense.**

The defense requested the court consider a claim of self-defense by filing a notice of claim prior to trial, pursuant to Rule 3:12-1. Eric, Franco, and Jakubowski's testimony clearly centered on the issue of self-defense. The entire defense summation was about self-defense. Indeed, the defense essentially conceded the elements of assault. See 2T60-8 to 10. Further, at the end of summations, the State criticized the timeliness of the defense's filing of the notice of self-defense. In response, defense counsel clearly indicated she wanted the court to consider self-defense. See 2T74-10 to 75-7.

Although the Rule generally requires filing the notice at least seven days prior to the Initial Case Disposition Conference, failure to do so does not prohibit raising the defense at trial. R. 3:12-1. The Rule plainly states that if a party fails to comply with the rule, the court "may take such action as the interest of justice requires." Ibid. (emphasis added). Even though a court has "discretion to bar witnesses, grant an adjournment, or grant a 'delay during trial as the interest of justice demands,'" the State here failed to assert any harm it suffered as a result of the supposed 'deficiency.' See State v. Harper, 229 N.J. 228, 242 (2017) (quoting R. 3:12-1). And it is hard to imagine any harm. The court, for its part, did not address the issue of timeliness at all.

To the extent that there was any lack of formality at trial in the defense's request for self-defense, it was the direct result of the court's failure to conduct the required charge conference before issuing its decision. See R. 1:8-7(b). Defense counsel requested self-defense as best as she could, given that the court immediately launched into its decision after summations. No one in the courtroom could have reasonably failed to understand that the defense wanted the court to consider self-defense.

**C. The court erroneously failed to consider self-defense.**

Because self-defense has a rational basis in the record and defense asked the court to consider it, the court was required to do so. The court correctly determined it needed to find whether the State proved Jakubowski used force upon the brothers, but that was certainly not the end of the analysis. The court also needed to determine if Jakubowski's force "was justifiably used for his[] self protection." Model Jury Charges (Criminal), "Justification – Self Defense in Self Protection (N.J.S.A. 2C:3-4)" (rev. June 13, 2011). The court needed to determine whether Jakubowski (1) "reasonably believe[d]" that he "must use force" and (2) that "the use of force was immediately necessary;" and (3) he "us[ed] force to defend himself[] against unlawful force;" and (4) "the level of the intensity of the force he[] use[d was] proportionate to the unlawful force he[] attempt[ed] to defend against." Ibid. Given the plain language of

N.J.S.A. 2C:3-4(b)(1)(a), the court was also required to determine if Jakubowski knew the brothers were officers and knew they were acting in the performance of their duties, and whether he used force to resist arrest.

The court failed to make any of these findings. Instead, the court erroneously decided "at the forefront, that in determining the findings that the [c]ourt needs to make pursuant to the [simple assault statute], the fact that the individuals involved in this particular incident are law enforcement [is] of no concern to the [c]ourt." (2T96-20 to 25). The court also erroneously held "[t]he only determination that this [c]ourt needs to make a finding is whether or not the defendant attempted to cause or purposely, knowingly or recklessly caused bodily injury to another, and that's it." (2T97-13 to 17). This conclusion of law was clearly mistaken given the plain language of N.J.S.A. 2C:3-4(b)(1)(a). Whether the brothers identified themselves as officers was obviously the main issue in deciding self-defense, and the court did not even think that determination was relevant to the analysis.

More broadly, the court did not consider – or even mention – self-defense in any fashion when rendering its decision. The court simply found that the elements of assault were proven – a proposition the defense conceded in relying upon self-defense. What happened is inexplicable: the court failed to consider the sole defense at trial. The harm to Jakubowski is clear. The

record supported a finding that he reasonably believed it was immediately necessary to use force to protect himself from the brothers and that the force he used was proportional to their use of force. Had the court actually considered self-defense instead of narrowly construing the issue, the verdict very likely would have been different. Jakubowski's conviction must therefore be vacated, and the matter must be remanded for a new trial.

## CONCLUSION

Because self-defense had a rational basis in the evidence and because the defense requested the court consider it, the court was required to do so. The court failed to address the issue entirely. Therefore, Mr. Jakubowski's convictions must be vacated, and this matter must be remanded for a new trial.

Respectfully submitted,

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Attorney for Defendant-Appellant

By: /s/ Emma W. Pallarino
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Dated: July 14, 2025

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LETTER BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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. Charles P. Jakubowski (Defendant-Appellant)
Docket No. A-3345-23

Criminal Action: On Appeal From a Final Judgment of Conviction of the Superior Court of New Jersey, Law Division, Hudson County

Sat Below: Hon. Carlo Abad, J.S.C.

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Honorable Judges:

Pursuant to Rule 2:6-4(a), this letter brief is submitted on behalf of the State of New Jersey.

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## COUNTERSTATEMENT OF PROCEDURAL HISTORY

On May 1, 2024, a Hudson County grand jury charged defendant Charles P. Jakubowski in Indictment No. 24-05-0554 with two counts of fourth-degree aggravated assault on a law enforcement officer, N.J.S.A. 2C:12-1(b)(5)(a) (Da1 to Da2).[1]

On May 7, 2024, the State amended both counts of Indictment No. 24-05-0554 to two counts of simple assault, N.J.S.A. 2C:12-1(a)(1). (Da3 to Da4; 1T4-11 to 14).

The following day, on May 8, 2024, defendant notified the State that he would raise a self-defense claim at trial, N.J.S.A. 2C:3-4(a). (Da5 to Da6).

The day after that, May 9, 2024, the parties appeared for an Initial Case Disposition Conference before the Honorable Mitzy Galis-Menendez, P.J.Cr. (3T). There, defendant requested transcripts of witness statements. (3T3-22 to 4-9). Judge Galis denied this request because it was untimely under the pretrial discovery rules. (3T5-17 to 7-15).

The Honorable Carlo Abad, J.S.C., presided over a two-day bench trial beginning on May 15, 2024. (1T; 2T).

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[1] The State designates defendant's brief "Db" and cites to the record as follows:
1T = First day of trial, dated May 15, 2024
2T = Second day of trial and sentencing, dated May 16, 2024
3T = Initial Case Disposition Conference, dated May 9, 2024
Da = Defendant's appendix

At trial, the parties stipulated as follows: because the State downgraded defendant's charges to disorderly-persons offenses, defendant had no right to a jury trial and it was therefore unnecessary for defendant to waive his jury-trial right. (1T4-9 to 18).

The parties disagreed on the applicability of self-defense. Although defense counsel put forth a self-defense theory, the State argued during summations that Judge Abad should disregard self-defense because defendant's notice of claim was untimely under Rule 3:12-1. (2T74-10 to 75-3). Defense counsel explained: "I didn't think that [self-defense] was applicable to aggravated assault on a law enforcement officer, so I filed it after the case had been downgraded to simple assault." (2T75-4 to 7).[2]

At the conclusion of the first day of his bench trial, May 15, 2024, defendant moved for a judgment of acquittal under State v. Reyes, 50 N.J. 454 (1967). (1T135-5 to 136-2). Judge Abad denied defendant's Reyes motion for reasons stated on the record. (1T137-12 to 139-17).

At the conclusion of the second and final day of defendant's bench trial, May 16, 2024, Judge Abad found defendant guilty of mutual fighting as a lesser-included offense of simple assault under count one, but guilty of simple assault

[2] The transcript misattributes this line of dialogue to the assistant prosecutor. Given the context of the exchange, this is most likely a scrivener's error.

under count two. (2T75-20 to 105-18). That same day, sentencing proceedings began in which the State and defense counsel both recommended fines only. (2T107-18 to 20, 110-5 to 7). In accordance with the State and defense counsel's recommendation, Judge Abad sentenced defendant to fines only, totaling $250, and emphasized there would be "no probation" or "custodial sentence." (Da7 to Da8; 2T112-11 to 21).

This appeal follows.

## COUNTERSTATEMENT OF FACTS

The following facts are derived from testimony and physical evidence presented in the State's case (1T), and testimony presented in defendant's case, (2T).

On December 29, 2022, around 8:15 p.m., Danielle Amato[3] was exiting a restaurant on 19th Street and Broadway in Bayonne and approaching her vehicle parked in the restaurant's parking lot. (1T70-9 to 14). Danielle accompanied her fourteen-year-old son as they left a relative's fifteenth birthday party. (1T13-8 to 10, 19-14 to 16, 69-22, 23-25 to 24-1 to 2). After Danielle entered the driver's side of her vehicle and her son entered the rear passenger side, defendant—whose pick-up truck was parked next to Danielle's car—approached

[3] Because they share the same surname, Danielle Amato and the two victims in this matter, Franco and Eric Amato, are referred to by their first names for clarity.

Danielle's driver-side window and began insulting Danielle for the manner in which her car was parked. (1T13-5 to 15). Danielle's brother-in-law Franco exited the restaurant to investigate the commotion. (1T71-21 to 72-14). Franco testified that he soon discovered defendant was accosting his sister-in-law Danielle for the way she had parked. (1T79-2 to 10). Franco said that he told defendant multiple times to remove himself from the driver-side window of Danielle's vehicle, enter his own truck, and drive away—to which defendant replied several times, "I guess we're just going to have to fight." (1T79-14 to 16). Franco again told defendant, "Just get in your car and leave"; then, Franco began to walk to his own vehicle. (1T79-17 to 20).

Franco turned his head briefly and saw that, as Danielle was backing out of her parking space, defendant was backing out of his parking space such that defendant came close to hitting Danielle's vehicle several times. (1T79-2 to 80-10). For his part, defendant testified that he was behind the wheel of his truck with its driver-side door opened at the time and telling Danielle, "Your husband ain't gonna do shit." (2T12-24 to 13-5).

Eric testified that he exited his own vehicle when the altercation involving Franco, Danielle, and defendant unfolded. (1T24-2 to 25-25). Eric recalled hearing defendant rev his engine and seeing defendant continue with his maneuver of reversing his truck in a way that made the truck come close to

hitting Danielle's car as she was reversing. (1T26-1 to 27-1). Danielle, Franco, and Eric testified that at this point, Franco and Eric stood behind defendant's truck to prevent defendant's truck from colliding with Danielle's car so that she could safely leave the parking spot. (1T17-14 to 18, 26-23 to 27-25).

Franco and Eric testified that defendant "tapped" Franco's leg with the rear of his truck three times. (1T27-10 to 28-11, 81-9 to 18). They also testified that after the third tap to Franco's leg, both Franco and Eric approached defendant's driver-side door to arrest him. (1T28-10 to 29-2, 81-19 to 82-11). Franco stated that he identified himself to defendant as a police officer, which defendant denied in his trial testimony but corroborated in his statements to first responders on the day in question. (2T49-16 to 18,[4] 73-5 to 6). Eric testified that as he saw Franco attempt to arrest defendant, he saw defendant "resisting" by "flailing his arms, throwing punches." (1T29-16 to 17). In the meantime, Eric said he placed a call with Bayonne police dispatch to inform them of this altercation, and that first responders arrived within "seconds." (1T40-7 to 12). Defendant himself testified that he punched Franco in the face when Franco pulled him out of the truck. (2T23-16). Defendant also maintained that he suffered other injuries—including a "crack[ed]" wrist—when the struggle with

[4] Due to technical issues, portions of external audio of the body-worn camera footage played at trial was not captured by the trial transcript. However, the assistant prosecutor recited this portion in his summations. (2T73-5 to 6).

Franco began, though Detective Alexis Cook testified that despite offering defendant medical care on-scene, defendant refused this care, and otherwise exhibited no injuries consistent with his testimony that he was initially aggressed. (1T128-18 to 131-3, 131-23 to 132-7. But see 2T14-23 to 15-4, 23-9 to 20). Both defendant and Franco's testimony agreed that only after defendant punched Franco in the face did Franco's knee hit defendant in the groin. (1T82-25 to 83-5; 2T23-16 to 25-11). Franco explained that he did "hit [defendant] with [his] knee on the inside of [defendant's left leg]" in an attempt to better restrain defendant, at which point defendant moved and Franco's knee "caught [defendant] in the groin area." (1T82-25 to 83-5).

Eric and defendant's testimony agreed that afterward, Eric attempted to hold defendant against his truck. (1T42-3 to 17; 2T25-20 to 26-16).[5] Eric testified that he heard "sirens getting closer" and heard Franco say "[s]crew it" and retreat from defendant, whereupon defendant struck Franco a second time with a closed fist to the back of Franco's head. (1T42-3 to 17). When Eric turned his head toward Franco to assess his condition, defendant—still being held by Eric—punched Eric in the face with a closed fist. (Ibid.).

[5] In his trial testimony, defendant refers to Franco as the "guy in the red shirt" and Eric as the person wearing a "black shirt."

Emergency medical technician Timothy Rosario testified that he transferred Eric to Bayonne Medical Center for a "puncture wound on the outside right corner of" his mouth and "bleeding on the outside of" his face. (1T104-12 to 19). Franco sought medical attention for pain in his jaw and ear. (1T84-15 to 22).

## LEGAL ARGUMENT

### POINT I

### DEFENDANT WAS NOT ENTITLED TO CONSIDERATION OF HIS SELF-DEFENSE CLAIM BECAUSE HE IMPROPERLY SERVED NOTICE OF HIS SELF-DEFENSE CLAIM AND THERE WAS NO RATIONAL BASIS FOR FINDING SELF-DEFENSE.

Defendant argues that Judge Abad improperly overlooked defendant's self-defense claim, requiring a remand for a new trial. For the reasons discussed below, this court should reject defendant's arguments and affirm his convictions.

Rule 3:9-1(c) provides that defense counsel must "confer and attempt to reach agreement" with the State "on any discovery issues" before trial.

Before trial and "[n]o later than seven days before the Initial Case Disposition Conference that is scheduled pursuant to [Rule] 3:9-1(e) the defendant shall serve on the prosecutor a notice of intention to claim" self-defense at trial. R. 3:12-1. "If a party fails to comply with this Rule, the court

may take such action as the interest of justice requires." Ibid. (emphasis added). "The action taken may include"—but is surely not limited to—"refusing to allow the party in default to present witnesses in support or in opposition of that defense at the trial or to allow the granting of an adjournment or delay during trial as the interest of justice demands." Ibid. (emphasis added).

"The salutary purpose of [Rule 3:12-1] is to avoid surprise at trial by the sudden introduction of a factual claim which cannot be investigated without requiring a substantial continuance." State v. Burnett, 198 N.J. Super. 53, 57-58 (App. Div. 1984). This court has "discern[ed] compelling state interests which strongly militate in favor of the sanction of preclud[ing a defense] where [Rule 3:12-1] has been repeatedly and flagrantly violated." Id. at 59.

To invoke self-defense, "a defendant must abide by the same settled procedures that apply to other defenses." See State v. Harper, 229 N.J. 228, 241 (2017) (citing R. 3:12-1). That is, the defendant "must give pretrial notice of his intention to rely on" an affirmative defense. See ibid. (citing R. 3:12-1). The requirement that timely pretrial notice be served does not disappear merely because the defense is raised at trial. Rather, in addition to timely pretrial notice, "[a] defendant also has the burden" to raise some evidence of the defense at trial. Ibid. (emphasis added) (citing State v. Toscano, 74 N.J. 421, 442 (1977), superseded by statute, N.J.S.A. 2C:2-9); State v. Romano, 355 N.J. Super. 21,

35-36 (App. Div. 2002). At bottom, "a defendant must timely assert the defense or it is waived." Id. at 242 (citing James W. Moore et al., 24 Moore's Federal Practice, § 612.05 (Matthew Bender 3d ed.)).

That an offense is charged as assault on a law enforcement officer does not categorically preclude a self-defense claim. See N.J.S.A. 2C:3-4(b)(1)(a).

"A disorderly persons offense is not a crime and does not, when standing alone, afford the right to a jury trial." State v. Miller, 382 N.J. Super. 494, 501 (App. Div. 2006) (citing N.J.S.A. 2C:1-4(b)).

Generally, the use of force in self-defense is justified when a defendant "reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." N.J.S.A. 2C:3-4(a). "Self-defense requires an actual, honest, and reasonable belief by the defendant of the necessity of using force." State v. Josephs, 174 N.J. 44, 101 (2002) (citing State v. Kelly, 97 N.J. 178, 198-99 (1984)). Reasonable belief is determined by the trier of fact, "using an objective standard of what a reasonable person in the defendant's position would have done at the time the force was used." See ibid. (citing Kelly, 97 N.J. at 199-200). A factfinder "is not required to find beyond a reasonable doubt that the defendant's belief was honest and reasonable." Id. at 101-02 (citing Kelly, 97 N.J. at 200). Nor is the State required to disprove a defendant's self-defense

claim, unless there exists evidence in the State's or the defendant's case sufficient to provide a "rational basis" for a self-defense claim. State v. Bryant, 288 N.J. Super. 27, 35-36 (App. Div. 1996) (citing Kelly, 97 N.J. at 200).

Importantly, what counsel argued is not enough—courts "look only to the evidence" providing a rational basis for self-defense. State v. Rodriguez, 195 N.J. 165, 170 (2008); see also State v. Loftin, 146 N.J. 295, 353 (1996) ("[C]ounsel's argument is not evidence.").

"A defendant's state of mind at the time of an alleged crime is inherently intangible and, therefore, is proven predominantly through witness testimony and circumstantial evidence." State v. Jenewicz, 193 N.J. 440, 451 (2008) (citing State v. Williams, 190 N.J. 114, 124 (2007). Although "[a]n obvious, ready source for direct evidence about state of mind is the defendant's testimony," this testimony "is vulnerable . . . to impeachment" for bias and through prior inconsistent statements. Ibid.; N.J.R.E. 607.

"[T]he citizen's right to protect himself" when unlawful force is used to effect an arrest "is not unqualified." State v. Simms, 369 N.J. Super. 466, 472 (App. Div. 2004). "As explained by the Supreme Court in State v. Mulvihill[, 57 N.J. 151, 157 (1970)], the citizen cannot use greater force in protecting himself from the officer's unlawful force than appears necessary under the

circumstances, and he loses his privilege of self-defense if he knows that if he submits to the officer, the officer's excessive use of force will cease." Ibid.

Likewise, when a defendant is justified in their use of force for self-defense but "recklessly or negligently injures or creates a risk of injury to innocent persons," that justification becomes unavailable "in a prosecution for such recklessness or negligence towards innocent persons." N.J.S.A. 2C:3-9(c).

"[I]n a criminal . . . bench trial, a judge should not only make specific findings of fact regarding elements of the offense, but should also state whether he considered lesser-included offenses, specifically identifying those he considered." State ex rel. L.W., 333 N.J. Super. 492, 498 (App. Div. 2000).

Simple assault is defined as the "attempt[] to cause or purposely, knowingly or recklessly cause[] bodily injury to another." N.J.S.A. 2C:12-1(a)(1).

"Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense." N.J.S.A. 2C:12-1(a).

"'[M]utual combat requires a mutual intent to fight, as distinguished from an encounter where one is attacking and the other is merely defending himself.'" State v. Pasterick, 285 N.J. Super. 607, 617 (App. Div. 1995) (emphasis added) (quoting Charles E. Torcia, 2 Wharton's Criminal Law § 161, at 361 (15th ed.

1994)); cf. State v. Blackmon, 202 N.J. 283, 291 (2010) (citing N.J.S.A. 2C:44-1(b)(4)) (declining to disturb sentencing court's finding that shooting being "part of a mutual fight" between the defendant and victim "tend[ed] to excuse or justify conduct" though "insufficient to establish defense").

In State v. Scaduto, 74 N.J.L. 289 (1907), our Supreme Court observed that, under an indictment charging two or more actors with "fight[ing] together," two "defendants could not set up self-defense as against each other" because the offense of fighting together "seems to arise out of a mutual agreement . . . and not the fight which may arise where one unjustifiably attacks another," id. at 294; see also State v. Gentry, 439 N.J. Super. 57, 69 (App. Div. 2015) (distinguishing Scaduto in homicide case because Scaduto "was not directed at self-defense to a homicide charge" but to 1898 statute that criminalized "fighting by mutual agreement"); State v. Jordon, 86 N.J. Super. 585, 590 (App. Div. 1965) (applying Scaduto to predecessor "fighting" statute, N.J.S.A. 2A:170-27).

This court has previously held that some Code offenses by their very nature can preclude a defendant from raising self-defense. See State v. Sanders, 467 N.J. Super. 325, 340 (App. Div. 2021) (declining to apply self-defense to endangering injured victim because, although victim died from defendant's valid use of self-defense, endangering "appears to encompass a participant in

the events causing the victim's injury" whether or not "the participant reasonably believes the injury-causing force was necessary for self-protection").

Here, defendant's notice of claim was untimely because it was filed on May 8, and the Initial Case Disposition Conference was held before Judge Galis on May 9, where Judge Galis noted "a trial date has been set at this point." R. 3:12-1; (3T7-9 to 11). Contrary to what defendant's trial counsel supposed, a self-defense claim could have conceivably been raised—even if ultimately meritless—whether or not defendant was charged with assaulting two law enforcement officers. See N.J.S.A. 2C:3-4(b)(1)(a). Compelling state interests here strongly militate in favor of finding defendant's notice of claim was untimely, given defense counsel's apparent failure to comply with Rule 3:9-1's "meet-and-confer" requirement pretrial. See Burnett, 198 N.J. Super. at 59; (3T5-17 to 7-15).

Defendant is correct that Rule 3:12-1 "plainly states that if a party fails to comply with the rule, the court '<u>may</u> take such action as the interest of justice requires.'" (Db18 (quoting R. 3:12-1)). Indeed, because of the precatory "may" in Rule 3:12-1, it would be improper to read into the rule a requirement that a judge consider the issue of timeliness sua sponte. Therefore, defendant's attempt to find error in Judge Abad "not address[ing] the issue of timeliness" is as unavailing as his attempt to find error in "the court's failure to conduct the

required charge conference before issuing its decision." (Db18 to Db19). After all, defendant's disorderly-persons offenses did not afford him the right to a jury trial, making Rule 1:8 inapplicable. See Miller, 382 N.J. Super. at 501.

Defendant failed to timely notify the State of his intention to claim self-defense at trial. Therefore, Judge Abad was correct to disregard it, and his judgment of conviction should be affirmed.

Even assuming that defendant provided timely notice of his self-defense claim, defendant still fails to show that evidence elicited through testimony at trial sufficiently provided a rational basis for this claim.

Defendant repeatedly urges this court to consider trial counsel's closing arguments as an indication that there was some evidence providing a rational basis for a self-defense claim. (Db11, Db12, Db17). As previously noted, defendant's self-defense claim was untimely and therefore waived. Moreover, counsel's closing arguments are not evidence. Loftin, 146 N.J. at 353. "[L]ook[ing] only to the evidence" providing a rational basis for self-defense, Rodriguez, 195 N.J. at 170, this court should find there was insufficient evidence in the trial record for that claim.

"Self-defense requires an actual, honest, and reasonable belief" that the defendant needed to use force in self-protection. Josephs, 174 N.J. at 101. "Honesty alone . . . does not suffice," Kelly, 97 N.J. at 178, but it is essential.

At trial, defendant testified that the Amatos "[a] hundred percent" did not identify themselves as police officers. (2T27-5 to 7). And defendant's trial counsel argued during summations that Judge Abad should have found that defendant's use of physical force "was self-defense because [the Amato brothers] never identified themselves as police officers when they were assaulting [defendant] and pulling him out of his truck." (2T60-10 to 13). Yet body-worn camera footage taken after the incident showed defendant telling first-responders that the Amato brothers were "saying they're cops" when they encountered him. (2T49-16 to 18, 73-5 to 6). It was also established Eric placed a call to Bayonne police dispatch as the struggle between defendant and Franco ensued. (1T40-7 to 12, 83-9 to 13). Because the State's impeachment of defendant through his inconsistent statements showed he did not have an honest belief in the need for self-defense, defendant's testimony failed to elicit evidence in his case to provide a rational basis for his self-defense claim. See Jenewicz, 193 N.J. at 451. Furthermore, testimony from the State's case showed Eric placed a call to police dispatch within earshot of defendant, and reinforcements arrived mere moments afterward. (1T40-7 to 12). Thus, there was no rational basis to find that defendant had an actual or honest belief in the need for self-defense.

Defendant's trial counsel further argued that defendant "resorted to physical force only after he was attacked, specifically when he was kneed in the testicles by I think the one in the red [shirt, Franco]. . . . What was [defendant] supposed to do?" (2T67-18 to 68-1).

The evidence elicited through trial testimony from the State and defense witnesses showed that when Franco approached defendant's truck, he identified himself as a police officer and pulled defendant out of the truck to effect an arrest. (1T28-12 to 17; 2T22-3 to 23-16, 49-16 to 18, 73-5 to 6).

Contrary to trial counsel's summation, Franco's and defendant's testimony agreed that only after defendant began throwing and landing punches did Franco "hit [defendant] with [his] knee on the inside of [defendant's left leg]," at which point defendant moved and Franco's knee "caught [defendant] in the groin area." (1T82-25 to 83-5; 2T23-16 to 25-11). In any event, Detective Cook testified that despite offering defendant medical care on-scene, defendant refused this care, and otherwise exhibited no injuries consistent with his testimony that he was initially aggressed. (1T128-18 to 131-3, 131-23 to 132-7. But see 2T14-23 to 15-4).

Here, defendant's right to protect himself during this arrest was qualified by punching Franco in response to Franco pulling him out the truck as Eric called police dispatch. (1T28-12 to 17; 2T22-3 to 23-16, 49-16 to 18, 73-5 to 6;

2T40-7 to 12, 83-9 to 13). Assuming for the sake of argument that Franco used excessive force in pulling defendant out of the truck, a punch constitutes greater force than was necessary to counter pulling. See Simms, 369 N.J. Super. at 472. Accordingly, defendant punching Eric with enough force to break skin while Eric held him under arrest—distracted by Franco going down after defendant hit him a second time—constituted greater force than necessary.

Lastly, defendant overlooks how Judge Abad's finding of guilt under mutual fighting as a lesser-included offense of simple assault might preclude defendant's self-defense claim. Like in Sanders, this court should find that self-defense is inapplicable to a charge of mutual fighting where, as here, non-deadly force is instigated and does not escalate to deadly force. Whereas self-defense may precede endangering, see Sanders, 467 N.J. Super. at 340, mutual fighting begins with an agreement to cause an affray that may escalate—only after which escalation may self-defense be warranted. Ultimately, finding self-defense when mutual fighting has been found would invite judges to inquire into the reasonableness of unreasonable conduct.

Defendant's argument sounds in Rule 1:8 governing jury trials. (Db12, Db19). Defendant does not allege that there was insufficient credible evidence in the record to support Judge Abad's finding of guilt for mutual fighting or simple assault in his bench trial, State v. Stas, 212 N.J. 37, 49 (2012) (citing

State v. Locurto, 157 N.J. 463, 471 (1999))—only that Judge Abad should have considered self-defense when issuing the verdict. Because a finding of self-defense is incongruent with a finding that defendant engaged in nonlethal mutual fighting, see, e.g., Pasterick, 285 N.J. Super. at 617; Blackmon, 202 N.J. at 291; Gentry, 439 N.J. Super. at 69, this court should affirm.

For these reasons, defendant's judgment of conviction should be affirmed.

## CONCLUSION

For the foregoing reasons, the State urges this court to AFFIRM defendant's judgment of conviction.

Respectfully submitted,

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Dated: August 19, 2025