APPELLATE DIVISION
DOCKET NO. A-3858-22
INDICTMENT NO. 21-03-0627

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court
v.	:	of New Jersey, Law Division, Camden County.
JAMIER GIBSON,	:	
Defendant-Appellant.	:	Sat Below:
	:	Hon. Gwendolyn Blue, J.S.C., and a Jury

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Jamier Gibson was tried and convicted on charges stemming from an incident where he allegedly robbed Dharan Muse at gun point. However, Gibson was significantly prejudiced by two errors that unfairly denigrated him in front of the jury and deprived him of a fair trial. First, the State introduced a recording of Gibson's police interrogation in which he told detectives he did not rob Muse and that the interaction was actually an attempted drug sale in which Muse took his drugs and ran off, dropping his phone in the process. Throughout the course of the video shown to the jury, detectives repeatedly assert that Gibson's account isn't true and that video surveillance doesn't support his statement. This was inadmissible lay opinion that usurped the jury's fact-finding role. This error was not addressed by the court and the jury was not instructed to disregard any lay opinions contained in the video.

Second, the prosecutor accused Gibson of an uncharged attempted theft during summation despite no support in the record. The court permitted the State to introduce evidence of a Cash App request that Muse received from Gibson's wife after the robbery for the purpose of proving that Gibson stole Muse's wallet. However, the request was not from Gibson's account, and there was no evidence presented that suggested the request was made by Gibson or at his direction. The prosecutor committed misconduct when they asserted

Gibson committed an additional crime despite no supporting facts in evidence. These errors were clearly capable of producing an unjust result, as they each resulted in significant unfair prejudice. Because Gibson was deprived of his rights to a fair trial and due process, this Court must reverse his convictions and remand for a new trial.

PROCEDURAL HISTORY

On March 29, 2021, a Camden County Grand Jury returned Indictment Number 21-03-0627, charging Jamier Gibson with: first-degree robbery, contrary to N.J.S.A. 2C-15-1a(2) (Count 1); second-degree unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5b(1) (Count 2); second-degree possession of a weapon for an unlawful purpose, contrary to N.J.S.A. 2C:39-4a(1) (Count 3); fourth-degree aggravated assault, contrary to N.J.S.A. 2C:12-1b(4) (Count 4); second-degree certain persons not to have weapons, contrary to 2C:39-7b(1) (Count 5). (Da1-6)[1]

[1] "Da" – Defendant's appendix
"1T" – Pretrial conference transcript (January 24, 2023)
"2T" – Pretrial conference transcript (February 8, 2023)
"3T" – Motion Transcript (February 13, 2023)
"4T" – Transcript of trial (February 14, 2023)
"5T" – Transcript of trial (February 15, 2023)
"6T" – Transcript of trial (February 21, 2023, Vol. 1 of 2)
"7T" – Transcript of trial (February 21, 2023, Vol. 2 of 2)
"8T" – Transcript of trial (February 22, 2023)
"9T" – Transcript of trial (February 28, 2023)

On January 25, 2023, the State moved to admit Gibson's recorded statements made while in police custody, which Gibson opposed. The court held a Miranda[2] hearing on February 13, 2023. (See 3T) After hearing the testimony of Detective Siegfried and the parties' arguments, the court found the statement to be admissible and granted the State's motion. (3T 106-24 to 117-5) The court then considered whether portions of the statement should be redacted. Defense counsel requested that any references to Gibson's father be redacted, while the State argued it should remain as evidence of consciousness of guilt. (3T 122-14 to 123-25) The court ordered the references to the father to be redacted, finding them to be inadmissible under N.J.R.E. 403. (3T 140-19 to 141-25).

Trial commenced before the Honorable Gwendolyn Blue, J.S.C., and a jury on February 21, 2023. (6T) On February 28, 2023, the jury convicted Bouzy on Counts 1 through 4. (9T; Da7-10) After the verdict was read, the State agreed to dismiss Count 5. (9T 117-19 to 118-5; Da10-13)

Judge Blue sentenced Gibson on April 26, 2023. (10T) The court merged Counts 3 and 4 with Count 1. (Da10-13, 10T 66-13 to 18) On Count 1, the court imposed a 20-year term of imprisonment with an 85% period of parole

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"10T" – Transcript of sentence (April 26, 2023)

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

ineligibility. (Da10, 10T 65-4 to 12) On Count 2, the court imposed a ten-year term of imprisonment with a five-year period of parole ineligibility to run concurrent to Count 1. (Da10-12, 10T 66-4 to 8).

Gibson filed a Notice of Appeal on August 4, 2023, along with a motion for indigency status, assignment of counsel, and to file his appeal as within time. (Da14-15; Da16-19) This Court granted his motion. (Da20)

STATEMENT OF FACTS

On the night of September 29, 2020, at around 9:30 p.m., Dharan Muse was walking on Decatur Street near its intersection with Davis Street in Camden on his way home from work. (7T 226-15 to 229-9) Muse testified a man got out of a gray SUV parked in the middle of the street about one hundred feet away, approached him from behind, and asked for directions to Sheridan Street. (7T 234-5; 7T 236-1 to 16) Muse told him, and the man turned away before turning back around wielding a silver handgun which he pointed at Muse. (7T 234-5 to 11)

Muse was carrying a bag of groceries in one hand, his phone in the other, and had his wallet in his pocket. (7T 237-8 to 22) Muse testified the man said, “Run your pockets before I shoot you.” (7T 240-19 to 22) After Muse handed over his wallet and phone, the man told him to turn around and run. (7T 241-15 to 242-8) Muse ran home, told his family that he was robbed, and

went to his laptop to attempt to track his phone's location. (7T 242-11 to 15) Muse then called 911 to report he had been robbed by a man with a gun, and that his phone was taken. (7T 242-16 to 25; 7T 254-15 to 247-7; Da145) When asked if his phone was the only thing taken, Muse responded, "Yeah. That was it." (7T 247-8 to 10)

Detectives Jake Siegfried and Andrew Einstein of the Camden County Police Department began an investigation. (6T 48-4 to 49-21) After speaking with Muse, the detectives located surveillance footage from a camera near the scene on Davis Street. (6T 49-22 to 25; 6T 54-6 to 13) The footage shows Muse walking on Davis before turning left onto Decatur and out of frame. (Da146 at 0:00 to 0:45) Shortly after, a car stops and a man gets outs and similarly walks out of frame onto Decatur. (Da146 at 0:52 to 1:18). About 35 seconds later, the man jogs back to the car and drives away. (Da146 at 1:53 to 2:10) Siegfried testified they were able to decipher the car's license plate from the footage, and a records search returned Gibson as a person connected to the car. (6T 60-16 to 62-19) The following day, police showed Muse a photo array that included Gibson's photo, but Muse did not identify Gibson as the man who robbed him. (6T 65-17 to 66-15; 7T 233-19 to 23)

On September 30th, Siegfried and Einstein were informed that Muse's cell phone was being tracked to the area of Mount Ephraim and Jackson, and

the detectives went to the area searching for the car seen in the surveillance video. (6T 68-1 to 18) Detectives saw a vehicle that resembled the one depicted in surveillance footage and conducted a traffic stop. (6T 70-6 to 10) Gibson and his wife, Daenell Reid, were in the car. (6T 70-11 to 19) Reid consented to a search of the car, and detectives found Muse's cell phone in the front driver's side door panel. (6T 70-20 to 73-11) Both Gibson and Reid were arrested. (6T 76-1 to 6) Neither the weapon alleged to have been used nor Muse's wallet were recovered. (6T 37-21 to 24; 6T 75-20 to 22)

Siegfried and Einstein conducted a recorded interrogation of Gibson. (6T 76-17 to 25; see Da147) Gibson told detectives the prior night he was giving Lyft rides and "hacking"[3] with Reid. (6T 94-13 to 18) Near the corner of Decatur and Davis Streets, Gibson told detectives he got out of the car to sell drugs to a man he knows as Cab, but when he went to make the sale, the buyer took the drugs and ran off without paying. (6T 101-8 to 17) In doing so, the man dropped what he was carrying, including his groceries, and Reid pointed out to him that he dropped his phone as well. (6T 158-25 to 159-7) Gibson picked up the phone before returning to his car to pursue him, but could not find him. (6T 160-15 to 161-19) Gibson acknowledged the man in the

[3] "Hacking" means to operate as an unlicensed taxi. (7T 203-23 to 204-5)

surveillance footage looked like him. (6T 172-6 to 173-6; Da148 at 26:45-26:50)

Detectives returned Muse's phone to him the next day, but did not recover his wallet. (7T 52-8 to 53-2) Muse testified his wallet contained his Cash App debit card that was connected to his Cash App account. (7T 252-25 to 253-17) At 9:32 p.m. on the night of the robbery, Muse received a Cash App request for $250 from Daenell Reid, which he screenshotted and gave to police. (7T 256-20 to 257-21; 7T 261-10 to 18; 7T 264-16 to 23; Da21)

LEGAL ARGUMENT

POINT I

THE COURT FAILED TO REDACT PORTIONS OF GIBSON'S RECORDED INTERROGATION THAT INCLUDED INADMISSIBLE LAY OPINION OF DETECTIVES. (Not raised below)

The trial court erred in admitting portions of Gibson's videotaped interrogation in which detectives repeatedly stated that Gibson was lying or that his account was inconsistent with surveillance footage. These statements were inadmissible lay opinion. Furthermore, the jury was never instructed that these statements were not sworn testimony and should not be considered proof of the truth of the facts asserted. The failure to redact the detectives' highly prejudicial comments usurped the jury's role as fact finder. The erroneous admission of these statements was clearly capable of causing an unjust result

and requires reversal. U.S. Const. amends. V, XIV; N.J. Const. art. I, ¶¶ 1, 10; R. 2:10-2.

A. The video of Gibson's interrogation included numerous statements by detectives that Gibson was lying or that his account was contradicted by surveillance footage.

At trial, the State played a redacted recording of Gibson's interrogation by detectives Siegfried and Einstein. (See Da 148) Throughout this recording, the jury heard detectives: accuse Gibson of lying no less than a dozen times; suggest that they knew for a fact that Gibson's account wasn't true; and assert that Gibson's account was inconsistent with video evidence.

At the outset of the recording, detectives insinuated that they have factual knowledge of what happened between Gibson and Muse. After obtaining a Miranda waiver, detectives began the interrogation by stating, "I just want to give you the heads up now . . . we have RT-TOIC[4] cameras, we know what's going on. . . . Some of these questions we might ask you, we already know the answer to." (6T 94-1 to 8) As the detectives questioned Gibson about the events of that night, Gibson denied asking anybody for directions to Sheridan Street. (6T 99-2 to 10) Siegfried, implying Gibson was

[4] RT-TIOC is an acronym for real time tactical operation intelligence center. U.S. Department of Justice, Successful Practices and Strategies – Camden County Police Department, cops.usdoj.gov/pdf/CPOS/ss/2.02_SPS_Camden_final.pdf (last visited Apr. 29, 2025)

lying, responded, "Listen, I need you to tell me the truth." (6T 99-11 to 12) Siegfried again warned, "We have cameras. Like I said, we have cameras everywhere man. . . We don't just bring you up here for no reason, bro. . . . [E]verything has a purpose and you're here for a reason." (6T 99-19 to 100-4) Throughout the remainder of the interrogation, the detectives repeatedly accused Gibson of lying, or asserted that they had video surveillance or other factual knowledge that disproved Gibson's account:

- "I don't think you're telling us the whole, everything that went down" (6T 103-14 to 16)
- "Listen. Listen. You're lying." (6T104-3 to 4)
- "The cameras don't show that." (6T 159-8 to 10)
- "We know that's not what happened." (6T 159-14 to 15)
- "You're telling a different story than what is shown on the camera, we know that" (6T 159-17 to 19)
- "You didn't go after him though" (6T 160-19 to 20)
- "We see you take off. I get it. You were flying, you weren't chasing him." (6T 161-8 to 9)
- "Listen, listen, we know it didn't go down the way you're saying. We know that okay?" (6T 164-20 to 22)
- "But that's not how it happened. Listen, you're saying that you didn't pick anything up when you went back to the car. Okay? You don't look back around, you leave. I saw. You never come back, okay?" (6T 165-15 to 19)

- "Listen, that's not what happened. You need to stop lying – listen, you need to help yourself here, okay?" (6T 166-1 to 3)

- "You know – listen, you know what you're telling me . . . is not true. You know that." (6T 166-9 to 13)

- "Listen, but parts of your story . . . are not true, okay?" (6T 166-17 to 21)

- "What you're saying happened did not take place. It happened a different way." (6T 167-13 to 15)

- "He doesn't beat you for the drugs. What happened? We want you to tell the truth" (6T 168-13 to 15)

- "Listen, Mr. Gibson, that's not what's . . . being displayed on the camera, man. You know that." (6T 168-22 to 24)

- "There's more stuff that happened there, okay? And we want you to help yourself. If you're not going to sit here and help yourself and tell what really happened out here, we're leaving and that's it." (6T 170-21 to 25)

- "I need you to tell me the truth and what really happened out there . . . But that's not what happened" (6T 174-4 to 9)

- "I want you to tell me the truth, that is it. We wanted the truth. If you're not going to sit here and tell me the truth I'm leaving, that's it." (6T 175-21 to 25)

- "I'm not going to tell you if I believe you or not because I know that's not what happened. That's not what happened out there. That's not what happened. I wanted that truth and that was it. That's all it is." (6T 178-10 to 14)

- "No, that's not what happened. It's not that I don't believe you, I know that's not what happened. See the difference there? I investigate and I . . . think off fact." (6T 178-17 to 20)

These statements are inadmissible lay opinion, and as such should have been redacted.

B. The detectives' statements were inadmissible and highly prejudicial lay opinions that improperly invaded the jury's province as independent fact finder.

The recording of Gibson's interrogation should have been redacted to remove portions in which detectives Siegfried and Einstein accuse Gibson of lying and suggest that they have knowledge of his guilt. These statements were inadmissible lay opinion, and such testimony by law enforcement is not permitted at trial because it "invade[s] the fact-finding province of the jury." State v. McLean, 205 N.J. 438, 443 (2011).

An officer is not permitted to offer lay opinion testimony on the credibility of another witness. N.J.R.E. 701 provides that "[i]f a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences may be admitted if it: (a) is rationally based on the witness' perception; and (b) will assist in understanding the witness' testimony or in determining a fact in issue." While lay witnesses may provide testimony in the form of "opinions or inference" under N.J.R.E. 701, lay witnesses may not testify "on a matter 'not within [the witness's] direct ken . . . and as to which the jury is as competent as he to form a conclusion." Id. at 459, (alterations in original) (quoting Brindley v. Firemen's Ins. Co., 35 N.J. Super. 1, 8 (App.

Div. 1955)). In the context of police testimony, an officer may provide testimony about facts observed firsthand but may not "convey information about what the officer 'believed,' 'thought' or 'suspected.'" Id. at 460 (citing State v. Nesbitt, 185 N.J. 504, 514-16 (2006)).

Assessing credibility is one such issue that falls "peculiarly within the jury's ken," and for which jurors require no expert assistance. State v. J.Q., 252 N.J. Super. 11, 39 (App. Div. 1991). As such, witnesses are prohibited from opining on the credibility of other witnesses. State v. R.K., 220 N.J. 444, 458 (2015); see State v. Frisby, 174 N.J. 583, 594 (2002) ("[T]he mere assessment of another witness's credibility is prohibited.") Specifically, "a witness should never 'offer an opinion that a defendant's statement is a lie.'" State v. C.W.H., 465 N.J. Super. 574, 593 (App. Div. 2021) (citing State v. Tung, 460 N.J. Super. 75, 102 (App. Div. 2019)). In Tung, this Court cautioned:

> Police testimony concerning a defendant's guilt or veracity is particularly prejudicial because "[a] jury may be inclined to accord special respect to such a witness," and where that witness's testimony goes "to the heart of the case," deference by the jury could lead it to "ascribe[] almost determinative significance to [the officer's] opinion."
>
> [460 N.J. Super. at 102 (alterations in original) (quoting Neno v. Clinton, 167 N.J. 573, 586-87 (2001)).]

Similarly, while police officers may provide a factual recitation of a defendant's conduct that they observe firsthand, they are prohibited from opining at trial on their views as to a defendant's guilt. McLean, 205 N.J. at 461. This is because such lay opinion testimony impermissibly "invade[s] the province of the jury to decide the ultimate question" they have been tasked with resolving as factfinders. Id. at 453. Officer testimony is simply "not a vehicle for offering the view of the witness about a series of facts that the jury can evaluate for itself or an opportunity to express a view on guilt or innocence." Id. at 462. For example, applying these principles, our Supreme Court has held that officers cannot "testify about a belief that the transaction he or she saw was a narcotics sale." Id. at 461; State v. Cain, 224 N.J. 410, 413 (2016) (noting that courts have "attempted to curtail the misuse of expert testimony that has intruded into the jury's exclusive role as finder of fact").

Here, the court erred by failing to redact lay opinion statements by detectives assessing Gibson's credibility. The jury heard Siegfried and Einstein explicitly accuse Gibson of lying over a dozen times. The detectives would not have been permitted to testify at trial regarding these opinions because "[t]he State may not attack one witness's credibility through another witness's assessment of that credibility." State v. R.K., 220 N.J. 444, 458 (2015). Moreover, an officer's opinion as to the veracity of a suspect who they

have interrogated is particularly prejudicial because "[a] jury may be inclined to accord special respect to such a witness," abdicating its proper role as factfinder. Tung, 460 N.J. Super. at 140. It was impossible for the jury to form an independent conclusion on Gibson's statement because they repeatedly heard the detectives confidently and boldly assert that his statement was untrue and that they knew for a fact it was not what happened.

Similarly, the jury should not have been permitted to hear the detectives' repeated assertions that Gibson's account was contradicted by surveillance footage. Throughout the interrogation, the detectives suggest that they had knowledge or evidence, such as surveillance footage, disproving Gibson's account. At the outset of the interrogation, detectives said, "I just want to give you the heads up now that just like we have RT-TOIC cameras, we know what's going on. . . . Some of these questions we might ask you, we already know the answer to." (6T 94-1 to 8) Throughout the interrogation, the detectives tell Gibson that his account doesn't reflect what is shown on surveillance video, including an instance when Siegfried insisted "that's not . . . what's being displayed on the camera" after Gibson said Muse took his drugs and ran off, (6T 168-16 to 24), despite Muse and Gibson never appearing on surveillance video together. (Da146) At other times, the detectives state that they know what Gibson is saying isn't true, including Siegfried's statement,

"It's not that I don't believe you, I know that's not what happened. See the difference there? I investigate and I . . . think off fact." (6T 178-17 to 20)

Nor should the jury have been permitted to hear the detectives' opinions on the surveillance footage or their supposed knowledge of Gibson's actions. The jury was responsible for viewing the footage and forming an independent conclusion on whether it supported Gibson's account. See State v. Pasterick, 285 N.J. Super. 607, 620 (App. Div. 1995) ("There is no provision in our legal system for a 'truth-teller' who is authorized to advise the jury on the basis of ex parte investigations what the facts are and that the defendant's story is a lie.") Instead, the jury heard the detectives forcefully and confidently assert time and time again that they know Gibson's version isn't true because surveillance footage tells a different story. This created an unacceptable risk that the jury would be swayed by these statements and rely on the detectives' beliefs rather than form their own opinion based on the evidence presented. Moreover, these statements were highly misleading. The detectives' repeated references to surveillance cameras and their assertions that they know already what happened invited speculation by the jury as to whether additional incriminating evidence existed that they were not being shown. See State v. Branch, 182 N.J. 338, 351 (2005) (recognizing a police officer cannot "imply to the jury that he [or she] possesses superior knowledge, outside the record,

that incriminates the defendant"). As a result, not only are these statements inadmissible lay opinion, but they fail to pass muster under N.J.R.E. 403, which empowers the court to exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice or misleading the jury.

The introduction of these opinions through a recorded interview rather than live testimony does not alter the analysis. The detectives' lay opinions would not have been permitted at trial, as "[t]he State may not attack one witness's credibility through another witness's assessment of that credibility." R.K., 220 N.J. at 458. Permitting the admission of portions of an interrogation in which detectives opine on credibility and guilt in a manner not permitted at trial would place directly before the jury the exact type of evidence the court otherwise prohibits. Statements that are inadmissible if made by a detective at trial should not become admissible simply because they were made during an interrogation. See Tung, 460 N.J. Super at 102 (finding that an officer's commentary on defendant's credibility, some of which was introduced through an interrogation video, was improper); State v. Patton, 362 N.J. Super. 16, 33-35, 38-39 (App. Div. 2003) (discussing the risk of introducing a fabricated document used during interrogation into the record in jeopardizing the right to a fair trial, and holding that hearsay embedded in an interrogation be excluded from evidence).

While New Jersey has not addressed the question in published authority,[5] several other states prohibit such prejudicial testimony when admitted through a recorded interrogation. The Kansas Supreme Court, for example, has held that portions of an interrogation in which an officer told the defendant that he was "a liar" and was "bullshitting" should not have been admitted because "[a] jury is clearly prohibited from hearing such statements from the witness stand . . . and likewise should be prohibited from hearing them in a videotape, even if the statements are recommended and effective police interrogation tactics." State v. Elnicki, 105 P.3d 1222, 1229 (Kan. 2005). Similarly, the Wyoming Supreme Court has held that a detective's

[5] While research has not uncovered any published authority, this Court has recently addressed this issue in several unpublished opinions. See State v. Grant, No. A-1401-18 (App. Div. February 15, 2022) (slip op. at 27) (Holding that statements by detectives introduced via an interrogation recording denied defendant a fair trial "by invading the province of the jury to determine credibility and decide guilt."); State v. Bolden, No. A-1940-22 (App. Div. May 15, 2025) (slip op. at 29) (Holding that statements made by police during interrogations "are not proper statements for presentation to the jury in an unredacted statement" and that they constituted "lay opinions interpreting the evidence, a function solely entrusted to the jury."); State v. Mason, No. A-2455-22 (App. Div. May 29, 2025) (slip op. at 26) (Holding that statements made by police introduced via an interrogation video "were lay opinions about defendant's truthfulness, a function solely entrusted to the jury" and that such an error would ordinarily be clearly capable of producing an unjust result but for the sua sponte curative instruction given before and after defendant's statement was played for the jury). Counsel has included these opinions in the appendix (Da22-58; Da59-110, Da111-144) and is unaware of contrary opinions. See R. 1:36-2.

comments in a recorded interview that "express opinions about the accused's mendacity and guilt and about the alleged victim's truthfulness and credibility" should not have been admitted because they improperly "invade[] the exclusive province of the jury to determine the credibility of the witnesses." Sweet v. State, 234 P.3d 1193, 1204 (Wyo. 2010); see also Commonwealth v. Kitchen, 730 A.2d 513, 522 (Pa. Super. Ct. 1999) (holding that officers' "accusations of lying and untruthfulness must be redacted from the [interrogation] videotapes prior to their submission to a jury").

Even those state courts that have not prohibited the admission of all police lay opinion commentary in interrogations have still held that it "should be judiciously considered for its probative value" and excluded where its probative value is outweighed by its prejudicial impact. State v. Gaudreau, 146 A.3d 848, 864 (R.I. 2016); accord People v. Musser, 835 N.W.2d 319, 330 (Mich. 2013) (holding that trial courts must review police commentary during interrogations and "'vigilantly weed out' otherwise inadmissible statements that are not necessary to accomplish their proffered purpose."). Although a detective's statements in interrogation may be probative if they provide context for a defendant's responses, in cases where "the defendant makes no inculpatory statements" and does not change his story in response to the detective's statements, that probative value is greatly diminished. Gaudreau,

146 A.3d at 864. Only a "small minority of states" that have held "that a police officer's statements have probative value for providing context even where the defendant, as here, made no inculpatory statements and had not changed his story during the interrogation." Gaudreau, 146 A.3d at 860. Permitting the admission of lengthy sections of an interview in which a detective espouses his lay opinion regarding defendant's guilt and credibility, even where those opinions do not elicit a probative response from the defendant, "would allow interrogations laced with otherwise inadmissible content to be presented to the jury disguised as context." Musser, 835 N.W.2d at 330.

Here, Gibson maintained throughout the interrogation that he did not rob Muse, and did not change his account in response to the detectives' insistence on his guilt and lack of credibility. The detectives' lay opinions therefore carried no probative value that would outweigh the significant risk that the jury would impermissibly consider them for their truth. The jury should have been allowed to make their own determination as to whether Gibson's account was true. Similarly, the jury should have been able to view the surveillance footage without the influence of the opinion of detectives. The opinions of the detectives invaded the province of the jury as sole finders of fact and assessors of credibility and deprived Gibson of a fair trial. Reversal is therefore required.

C. The court further erred by failing to provide the jury with a limiting instruction that it should not consider the detectives' statements for their truth.

The risk that the jury improperly considered the lay opinions of detectives Siegfried and Einstein was heightened due to the court's failure to give a limiting instruction. To the extent any of the offending statements may be admissible for the purpose of contextualizing Gibson's responses, "[w]hen a statement is admitted for a purpose other than to prove the truth of the matter asserted, the court should instruct the jury concerning the limited use of that evidence." State v. Maristany, 133 N.J. 299, 309 (1993). However, the court never told the jury that the detectives' statements were not sworn testimony. Without such an instruction, the jury was unaware it could not consider the detectives' lay opinions as substantive evidence of Gibson's guilt or credibility.

"Proper jury instructions are essential to ensuring a fair trial." State v. Robinson, 165 N.J. 32, 40 (2000). Trial courts therefore have an "independent duty . . . to ensure that the jurors receive accurate instructions on the law as it pertains to the facts and issues of each case, irrespective of the particular language suggested by either party." State v. Baum, 224 N.J. 147, 159 (2016) (quoting State v. Reddish, 181 N.J. 553, 613 (2004)).

States that have permitted the admission of lay opinion statements made by officers in interrogations have nonetheless stressed the importance of proper limiting instructions regarding how the jury is to consider police statements made in interrogation. See, e.g., Lanham v. Commonwealth, 171 S.W.3d 14, 27 (Ky. 2005); State v. Demery, 30 P.3d 1278, 1283 (Wash. 2001). If a detective's lay opinion statement made in interrogation is admitted, "the trial court should give a limiting instruction to the jury, explaining that only the defendant's responses, and not the [detective's] statements, should be considered as evidence." Demery, 30 P.3d at 1283. Because the introduction of a detective's opinion that a defendant is lying creates "the possibility that the jury will misunderstand and accord to those comments an impermissible weight during deliberation," those courts have held that the jury should be instructed that such comments are "offered solely to provide context to the defendant's relevant responses" and should not be considered "for the truth of the matter that they appear to assert, i.e. that the defendant is lying." Id. at 27-28.

Here, even if the portions of the interrogation in which Detectives Siegfried and Einstein express their lay opinion as to Gibson's guilt and credibility had carried some legitimate probative value, the jury was never provided with an instruction that provided direction as to how they were

permitted to consider their statements. At a minimum, the trial court "should have advised the jury of the context of an interrogation and admonished them that the tactics used by the police are not to be taken as evidence in and of themselves and that the credibility of all witnesses resides solely within their province." Gaudreau, 146 A.3d at 864. The court failed to provide any such instruction. As such, the jury was not aware they were being shown the video for the purpose of assessing Gibson's credibility for themselves, and should not base their conclusion on the statements and tactics of the detectives. Because the jury was not properly instructed, reversal is required.

D. The court's erroneous admission of the detectives' lay opinions was plain error.

The erroneous admission of portions of the interrogation video containing the detectives' lay opinions was highly prejudicial and clearly capable of causing an unjust result. R. 2:10-2.

The State's case was far from overwhelming. The State presented evidence that Muse and Gibson appear on surveillance video near the intersection of Davis and Decatur streets. Muse testified Gibson pointed a gun at him and demanded the contents of his pockets, after which Muse turned over his cell phone and wallet. However, Gibson acknowledged the two had an interaction, but adamantly denied robbing Muse and explained that he picked up Muse's phone after it was dropped. The interaction between the two is not

captured as the two never appear on video together. Muse could not identify Gibson at trial and could not pick Gibson out of a photo array. Muse's wallet, which he did not initially report stolen, was never recovered. Similarly, the weapon alleged to have been used was never recovered, and is not seen on surveillance video.

Faced with a dearth of video and physical evidence, to fill the gaps the State relied on the jury believing Muse's version of events over Gibson's. However, this vital credibility determination was undermined by the statements made by the detectives throughout the recording. During the 32-minute recording, the detectives either accuse Gibson of lying, directly or indirectly, at least seventeen times. Additionally, the detectives opined on the contents of video evidence at least four times, including instances where detectives misleadingly suggested surveillance footage captured the interaction between Gibson and Muse. These statements made it impossible for the jury to independently evaluate the evidence and make their own fact and credibility determinations. The detective's opinions on Gibson's credibility were especially prejudicial because "[a] jury may be inclined to accord special respect to such a witness." Frisby, 174 N.J. at 595 (quoting Neno v. Clinton, 167 N.J. 573, 586-87 (2001)). Indeed, the effect of such testimony on the jury's determination "cannot be overstated." Id. at 595. Additionally, the jury

did not have the benefit of a limiting instruction, increasing the risk that the jury considered the statements for an impermissible purpose. As such, the erroneous admission of the detectives' lay opinions was clearly capable of producing an unjust result, and Gibson's convictions must be reversed.

POINT II

THE STATE IMPROPERLY ACCUSED GIBSON OF AN UNCHARGED ATTEMPTED THEFT DURING SUMMATION DESPITE NO FACTS IN EVIDENCE SUPPORTING THE ACCUSATION. (Not raised below.)

During their summation, the prosecutor improperly told the jury that Gibson "tried to steal money from the victim" through Cash App despite a total lack of evidence to support this accusation. This prosecutorial misconduct was plain error and violated Gibson's rights to due process and a fair trial. R. 2:10-2; U.S. Const., amend. XIV; N.J. Const., art. I, ¶¶ 1, 9 and 10. Therefore his convictions must be reversed and the matter remanded for a new trial.

Prior to the first day of trial, defense counsel filed a motion to exclude screenshots of Cash App transactions between Muse and Daenell Reid. (6T 29-11 to 22) The State intended to introduce several screenshots; one screenshot was provided by Muse "[i]n the summer," while others were provided just a few days prior to the start of trial. (6T 34-24 to 35-13) Defense counsel argued the screenshots were not probative, while the State argued they intended to use

them to prove "that the theft continued after the fact." (6T 35-21 to 36-18) When the court questioned this purpose, the State additionally argued that they were probative of the theft of the wallet because Reid would not have been able to send a request to Muse's Cash App account unless she had his Cash App account information via his Cash App card that was in his wallet. (6T 36-21 to 37-20) The court barred the screenshots that were only produced on the eve of trial, [6] but allowed the earlier-provided screenshot because it "goes to identification" and is "probative of the incident itself." (6T 40-11 to 21; 7T 218-20 to 220-4)

During trial, the State elicited testimony from Muse that he received a Cash App request for $250 on the night of the robbery. (7T 256-20 to 257-3) A photo of Muse's cellphone showing a canceled Cash App request for $250 from Daenell Reid dated September 29, 2020 at 9:32 p.m. was admitted into evidence over defense objection. (8T 121-11 to 124-18; Da21)

During summations, the prosecutor argued, "We know this was a theft because after D.J.'s property was stolen from him, the defendant by way of his wife, [Daenell Reid], tried to steal money from the victim, from D.J. D.J. didn't have any cash in his wallet, so the next easiest way to get that money

[6] The barred screenshots depicted Cash App transactions that apparently took place at 8:32 p.m., nearly an hour prior to the robbery which the State alleged occurred at 9:20 p.m. (6T 41-24 to 43-25)

that they wanted was through the cash app card which D.J. explained is used just like a debit card." (9T 27-14 to 21)

A prosecutor is limited as to what they can comment on in summation. Although prosecutors are permitted to make vigorous and forceful summations, they "must limit their remarks to the evidence, and refrain from unfairly inflaming the jury." State v. Atwater, 400 N.J. Super. 319, 335 (App. Div. 2008). "[T]he primary duty of a prosecutor is not to obtain convictions, but to see that justice is done." State v. Smith, 167 N.J. 158, 177 (2001) (quoting State v. Frost, 158 N.J. 76, 83 (1999)). Thus, prosecutors are "duty-bound to confine their comments to facts revealed during the trial and reasonable inferences to be drawn from that evidence." Frost, 158 N.J. at 85 (citing State v. Marks, 201 N.J. Super. 514, 534 (App. Div.1985)). A prosecutor commits misconduct on summation when he makes comments or draws inferences not grounded in evidence in the record. Smith, 167 N.J. at 178; see also Frost, 158 N.J. at 88 ("[P]rosecutors should confine their summations to a review of, and an argument on, the evidence, and not indulge in . . . collateral improprieties of any type, lest they imperil otherwise sound convictions." (internal quotations omitted)).

Prosecutorial misconduct requires reversal when it "deprived the defendant of a fair trial." Frost, 158 N.J. at 83. Even if the evidence of guilt is

"overwhelming," such evidence can "never be a justifiable basis for depriving a defendant of his . . . entitlement to a constitutionally guaranteed right to a fair trial." Id. at 87; see also State v. Smith, 212 N.J. 365, 404 (2012). A defendant's fair trial rights are violated when prosecutorial misconduct "substantially prejudice[s] the defendant's fundamental right to have a jury fairly evaluate the merits of his or her defense." State v. Harris, 181 N.J. 391, 495 (2004) (citation omitted); see also State v. R.B., 183 N.J. 308, 330 (2005) (reiterating that prosecutorial misconduct is not harmless error when it "raise[s] a reasonable doubt as to whether it led the jury to a verdict it otherwise might not have reached" (internal citation omitted)).

Here, the prosecutor improperly asserted that Gibson committed an uncharged attempted theft without any support in the record. The prosecutor had a duty to confine her comments to facts revealed during the trial and only reasonable inferences that could be drawn from them. Frost, 158 N.J. at 85. Pursuant the court's ruling, the State was permitted to introduce evidence of the Cash App request to establish that Gibson possessed Muse's wallet. As such, based on the evidence presented, the State was permitted to argue to the jury that the Cash App request from Reid was possible because Gibson took Muse's wallet containing his Cash App card. However, the prosecutor's argument went far beyond this reasonable inference when she accused Gibson

of "tr[ying] to steal money" from Muse. (9T 27-16) This accusation was totally unsupported by the evidence presented, which established that the Cash App transaction was made through Reid's account. (Da21) There was no evidence that Gibson had access to Reid's account or otherwise directed Reid to make the request. Without any basis in the evidence presented, the prosecutor attributed the actions of a third-party to Gibson. Therefore, because the prosecutor's accusation was not grounded in evidence in the record, her comment was improper and constitutes misconduct. Smith, 167 N.J. at 178; see also Frost, 158 N.J. at 88.

The prosecutor's misconduct was clearly capable of producing an unjust result, especially here where the evidence is far from overwhelming. Accusing Gibson of an additional uncharged crime without any support in the record was significantly prejudicial. This prejudice is akin to the risk in admitting "other crimes" evidence—the jury may convict the defendant because they believe he is a bad person with a propensity for committing crimes. See State v. Cofield, 127 N.J. 328, 336 (1992). This danger is why typically, to admit other-crimes evidence, the State must pass a "rigorous test," State v. Garrison, 228 N.J. 182, 194 (2017), which requires the "evidence of the other crime . . . be clear and convincing," Cofield, 127 N.J. at 338. However, the prosecutor was allowed to circumvent all procedural safeguards and directly assert that Gibson committed

an additional crime not before the jury despite no supporting evidence. As a result, Gibson was branded as someone with a propensity to commit crimes who continued to attempt to steal money from Muse even after the alleged robbery. As such, the prosecutor's impermissible comment was clearly capable of producing an unjust result. Reversal is required.

POINT III

THE COURT ERRED IN CONSIDERATION OF THE AGGRAVATING AND MITIGATING FACTORS RESULTING IN AN EXCESSIVE SENTENCE. (10T 52-9 to 69-4)

The court erred in its consideration and weighing of aggravating and mitigating factors resulting in an excessive sentence. First, the court failed to provide sufficient reasoning for finding the aggravating factors. Second, the court gave undue weight to the aggravating factors and failed to explain why these factors required a sentence at the top of the first-degree range. Remand for resentencing is therefore required.

At sentencing, the court found aggravating factors three (risk the defendant will commit another offense), six (extent of defendant's prior criminal record), and nine (the need for deterrence). N.J.S.A 2C:44-1a(3), (6), (9). Gibson additionally argued for application of mitigating factors one (defendant's conduct neither caused nor threatened serious harm), two (defendant did not contemplate that his conduct would cause or threaten

serious harm), eight (defendant's conduct was the result of circumstance unlikely to recur), nine (defendant's character and attitude indicate that the defendant is unlikely to commit another offense), eleven (the imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents), and twelve (defendant's willingness to cooperate with law enforcement). N.J.S.A. 2C:44-1b(1), (2), (8), (9), (11), and (12). The court declined to find any mitigating factors. (10T 60-2 to 63-16; Da12)

"[O]ur case law and the court rules prescribe a careful and deliberate analysis before a sentence is imposed." State v. Fuentes, 217 N.J. 57, 71 (2014). First, the sentencing court must identify whether any of the aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1 apply. Id. at 71-72. Rather than merely listing the applicable factors, the court must provide "the factual basis supporting a finding of particular aggravating and mitigating factors[.]" R. 3:21-4(h); see N.J.S.A. 2C:43-2e. The court's "explanation should thoroughly address the factors at issue." Fuentes, 217 N.J. at 73. "The finding of any factor must be supported by competent, credible evidence in the record." State v. Case, 220 N.J. 49, 64 (2014).

Once the relevant aggravating and mitigating are identified, the court "must qualitatively assess the relevant aggravating and mitigating factors, assigning each factor its appropriate weight." Id. at 65. Finally, it must engage

in "a case-specific balancing process" of the weighted factors. Fuentes, 217 N.J. at 72-73. A simple count of whether one set of factors outnumbers the other is not enough. Ibid. To facilitate meaningful appellate review, the court must instead provide a detailed explanation of the balancing process and the reasons for the ultimate sentence imposed. Ibid.; Case, 220 N.J. at 65. In the end, "when the mitigating factors preponderate, sentences will tend toward the lower end of the range, and when the aggravating factors preponderate, sentences will tend toward the higher end of the range." State v. Natale, 184 N.J. 458, 488 (2005). "Inadequate explanation of the sentencing judge's reasons for [a sentence] generally requires a remand for resentencing." State v. Pennington, 301 N.J. Super. 213, 220 (App. Div. 1997), reversed in part on other grounds, 154 N.J. 344 (1998); State v. Watson, 224 N.J. Super. 354, 363 (App. Div. 1988) ("Without the requisite particularized statement of reasons by the sentencing court, appellate review is futile.").

First, resentencing is required because the court failed to provide a sufficient basis for its findings of aggravating factors three (the risk that the defendant will commit another offense, N.J.S.A. 2C:44-1(a)(3)) and nine ("the need for deterring the defendant and others from violating the law, N.J.S.A. 2C:44-1(a)(9)). The court provided no discernible explanation or support for its conclusion on either factor. As to factor three, it merely concluded it

"find[s] there is a huge risk that Mr. Gibson will commit another offense." (10T 59-12 to 14) As to factor nine, the court concluded, "I do find number nine and I place great weight on number nine, a need for deterrence," without any further discussion. (10T 59-22 to 23) The court did not point to any facts in the record about Mr. Gibson's offense or his individual characteristics to support the conclusion that he, in particular, is likely to recidivate or is in need of additional deterrence. See State v. Randolph, 210 N.J. 330, 349 (2012) (aggravating factors three and nine "invite consideration by the sentencing court of the individual defendant's unique character and qualities"); State v. Thomas, 188 N.J. 137, 153 (2006) (aggravating factors three and nine require the sentencing court to make a "qualitative assessment").

Second, the court erred in weighing the aggravating factors resulting in an excessive sentence. The factors found here—three, six, and nine—are commonly found in a majority of criminal cases. There was nothing extraordinary about Gibson's characteristics or record that warranted a sentence at the top of the first-degree range. The court acknowledged that while Gibson had multiple previous convictions, his past record consisted of mostly drug related offenses and one simple assault. (10T 64-5 to 13) In discussing the sentence, the court commented that a "20-year sentence . . . is a substantial sentence" but only justified it because it "could have . . . very

easily made a record whereby I could have imposed a life sentence on Mr. Gibson." (10T 66-21 to 67-1) This reasoning suggests the court did not actually start its consideration with a sentence in the middle of the 10 to 20 year first degree range, but rather considered the top of the range to be a life sentence. The fact that Gibson potentially faced a discretionary extended term, which the court ultimately found inappropriate, cannot itself justify a maximum first-degree sentence. The court was required to engage in an individual assessment of Gibson rather than impose a sentence simply based on his total potential sentencing exposure.

To the extent the court considered Gibson as an individual, it pointed to the fact that he is the father of two young children and had the support of his mother to justify the substantial sentence:

> Mr. Gibson stood in a real unique situation. He had his mother. I've seen so many people in my courtroom that come by themselves with no mother, no father, no sister, no brother, not even a friend.
>
> But Mr. Gibson had his mother. He had his children and he had the guardianship of, I reviewed this presentence report carefully and even having those little babies, that still wasn't enough for him to not have contact with the law.
>
> [(10T 67-19 to 68-2)]

Having children and the support of a parent should not have placed Gibson in a worse position at sentencing. It was inappropriate for the court to consider

Gibson's family as supporting a 20-year prison term, as having a family does not make Gibson either more likely to reoffend under aggravating factor three or increase the need for deterrence under aggravating factor nine. See State v. Ikerd, 369 N.J. Super. 610, 618 (2004) (Holding that defendant's "status as a pregnant addict . . . bore no relationship to the offense that she initially committed, was excessively punitive, and accomplished no legitimate penal aim" and "thus violated New Jersey law, and likely violated [defendant's] constitutional rights.")

Gibson's sentence is excessive[7] and was the result of a skewed weighing of the aggravating factors and inappropriate consideration of Gibson's family status. Had the court engaged in an appropriate assessment of the sentencing factors, it would have imposed a sentence of incarceration in the middle of the first-degree range. Therefore, Gibson's sentence should be vacated and the case remanded for resentencing.

[7] The sentence is especially excessive given the State's willingness to resolve Gibson's charges with a sentence of five years with an 85% period or parole ineligibility. (2T 7-16 to 25)

CONCLUSION

For the reasons discussed in Points I and II, Gibson's convictions must be reversed and remanded for a new trial. Alternatively, as discussed in Point III, a remand for resentencing is necessary.

Respectfully submitted,

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Dated: June 9, 2025

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-3858-22-T3

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,
v.	:	Camden County.
JAMIER N. GIBSON,	:	Sat Below: Hon. Gwendolyn Blue, J.S.C., and a jury
Defendant-Appellant.	:	

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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November 20, 2025

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TABLE TO APPENDIX

PRELIMINARY STATEMENT

Defendant received a fair trial for, among other charges, first-degree robbery and second-degree unlawful possession of a handgun, thus his two newly minted arguments on appeal should fail. First, the trial judge properly admitted defendant's videotaped interview without sua sponte redacting comments the detectives made in an unsuccessful attempt to get the defendant to confess to the gunpoint robbery. It is settled that police are allowed to use deception to try to induce suspects to confess to their crimes. And here, the jury knew the detectives were doing just that, because before they watched the recorded interview, they first watched the surveillance video from the street near the robbery, which never even showed the victim and the defendant interact. Thus, when the jury watched the interrogation video where detectives told defendant that the video told a different story from what defendant was saying, the jury knew that they were lying to him.

Second, the prosecutor's closing argument was proper. The prosecutor explained in summation that a post-robbery attempted transaction from a card in the victim's stolen wallet to defendant's wife was evidence that defendant had stolen the victim's wallet. This was not, as defendant now claims for the first time on appeal, evidence of an uncharged theft.

Finally, given defendant's lengthy criminal history, including crimes of

violence, the trial judge properly sentenced defendant at the top of the first-degree range, while sentencing his second-degree conviction concurrently with it and merging the two third-degree crimes into it.

In sum, defendant's convictions and sentence were well earned and this Court should affirm.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On March 29, 2021, a Camden County Grand Jury returned Indictment Number 21-03-0672-I, charging defendant with first-degree armed robbery under N.J.S.A. 2C:15-1(a)(2) (Count One); second-degree unlawful possession of weapons under N.J.S.A. 2C:39-5(b)(1) (Count Two); second-degree possession of a weapon for unlawful purpose under 2C:39-4(a)(1) (Count Three); fourth-degree aggravated assault under N.J.S.A. 2C:12-1(b)(4) (Count Four); and second-degree certain persons not to have weapons under N.J.S.A. 2C:39-7(b)(1) (Count Five). (Da1 to 6).

On January 23 and February 8, 2023, defendant appeared before the Honorable Gwendolyn Blue, J.S.C., for case management conferences. (1T; 2T).

On February 13, 2023, defendant appeared before Judge Blue on the State's motion to admit defendant's statement to police. (3T). Judge Blue found the statement was given knowingly and voluntarily and ruled it to be admissible. (3T117-3 to 5). The parties then agreed on certain redactions, such as references to defendant's social security number and to his prior criminal history. (3T117-9 to 122-13).

Jury selection took place on February 14 and 15, 2023. (4T; 5T). Defendant was tried before Judge Blue and a jury on February 21, 22, and 28,

2023. (6T; 7T; 8T; 9T). On February 28, 2023, the jury returned guilty verdicts on Counts One through Four. (9T104-4 to 106-5; Da7 to 9). The State then dismissed Count Five. (9T113-25 to 114-5).

On April 26, 2023, Judge Blue denied the State's request for an extended term, because she found she could "satisfy her concerns with her sentence within the ordinary range." (10T64-20 to 23). She then sentenced defendant on Count One to twenty years in New Jersey State Prison (NJSP), subject to the No Early Release Act (NERA). (10T65-4 to 8; Da10). Judge Blue sentenced defendant to a concurrent term of ten years' incarceration with a five-year period of parole ineligibility on Count Two. (10T66-4 to 8; Da10, 13). Counts Three and Four merged with Count One. (10T13 to 20; Da13).

Defendant filed a pro se Notice of Appeal on July 24, 2023. (Da15). This Court granted defendant's motion to proceed as indigent, his motion for assignment of counsel, and leave to file his brief out of time on October 23, 2023. (Da20).

COUNTERSTATEMENT OF FACTS

The following facts were adduced from defendant's trial.

On September 29, 2020, around 9:30 p.m., defendant robbed twenty-nine-year-old Dhahran Muse at gunpoint. (6T48-18 to 49-19; 6T63-4 to 6; 6T192-11 to 13; 7T226-16 to 21; 7T228-13 to 229-6; 7T234-6 to 22; 7T266-19 to 25; 8T44-10 to 11). Muse had taken the train home from work and was walking from the Ferry Avenue train station in Camden when defendant approached him from behind and got Muse's attention by asking for directions to Sheridan Street. (7T234-6 to 7). Muse testified, "I'm like wait a minute, Sheridan Street is right there then he turned around he had a gun pointed at me," which he described as a small silver pistol. (7T234-7 to 15). Muse genuinely believed defendant would shoot him if he did not do as defendant asked. (7T235-16 to 19).

Muse testified, "he just told me empty my pockets, he's going to shoot me so I gave my wallet and my phone . . . he told me turn around before I shoot you, so I just ran." (7T234-18 to 22). His wallet contained a Cash App card and an Apple card. (7T252-20 to 25). Muse testified that Cash App is "similar to Zelle." (7T253-12 to 13). He explained, "you get a card with Cash App and with the card it has your address on the back of it so you can request and send money to people that way or they can use the number to type it in as a debit card." (7T253-15 to 19). Cash App can be used as a phone application, but

there is also a physical Cash App card with numbers on the back, which can be swiped "like a regular card." (7T254-1 to 11). Someone "could use that in the address and request money from it as long as they have your Cash App address, the name, the dollar sign, whatever it may be, they can request money from you." (7T254-11 to 14). That night, after the robbery, Muse saw on his MacBook that he had received a Cash App request from Denale Reed, who was in the car with defendant at the time of his arrest, for $250.[1] (6T70-12 to 20; 7T256-21 to 257-5; 7T260-24 to 261-14). The timestamp on the request was 9:32 p.m. on September 29, 2020. (7T264-17 to 21).

When Muse got home, he told his family he had been robbed and used his MacBook to track his iPhone. (7T242-12 to 16). He then called 9-1-1 at 9:38 p.m. using his house phone and reported that he had been robbed at the corner of Davis and Decator Streets. (6T49-5 to 12; 7T246-19 to 243-3; 7T246-2 to 10). He noted that the robber had been driving a Chevrolet Suburban or similar vehicle, which he thought might have been gray. (7T246-10 to 20). He told the dispatcher that, four to five minutes prior to that moment, he had tracked his iPhone and it was located at 110 Whitehorse Pike in Oaklyn. (7T247-7 to 12;

[1] The transaction was not completed, because Muse did not authorize the payment. (7T264-7 to 16).

7T250-21 to 251-3). Muse's brother, who lived in Texas, also tracked his phone, because his brother "ha[d] his location"; his brother continued to track the phone until it was found. (8T30-4 to 7; 8T34-20 to 35-13).

Officers responded to the 9-1-1 dispatch and met the victim at the scene of the robbery, and eventually Detective Jake Siegfried responded there as the primary detective. (6T49-2 to 50-4). He spoke with Muse and canvassed the area for video surveillance; he then found video footage that showed part of what the victim had described to him. (6T50-3 to 51-8; 6T51-2 to 8; 6T60-9 to 20). The video showed the suspect vehicle, from which Siegfried was able to glean the registration number and ultimately use to locate defendant and conduct a motor-vehicle stop. (6T60-9 to 24; 6T68-14 to 22; 6T70-2 to 16). Defendant's wife, Denale Reed, gave consent to search the vehicle. (6T70-21 to 71-10).

Detective Siegfried searched defendant's vehicle and saw the victim's cell phone in the driver's side door panel. (6T73-1 to 10). He then called the victim's number and heard it vibrating in the panel. (6T73-13 to 74-6). Defendant's gun and the victim's wallet were never found. (6T198-19 to 24; 7T210-25 to 211-5; 7T253-1 to 6). Patrol officers arrived and transported defendant and his wife to the Detective Bureau and Police Administration Building, where they were interviewed separately. (6T76-2 to 11).

In his interview, defendant repeatedly denied robbing the victim and

insisted instead that the victim had stolen drugs from him during a drug deal that had gone bad. (6T100-19 to 25; 6T101-13 to 102-23; 6T104-1 to 3; 6T105-5 to 6; 6T158-19 to 159-8; 6T160-4 to 162-22; 6T165-8 to 15; 6T166-15 to 168-22; 6T174-21 to 175-3).

Detective Siegfried testified on cross-examination that detectives sometimes lie to suspects "about information that [they] have that [they] really don't," to try to elicit a confession to something the detectives did not know about. (7T205-22 to 206-4). He acknowledged that he lied to defendant "several times" when he interviewed him, including about his story not matching what the video showed. (7T206-8 to 13). Indeed, Siegfried testified that when told defendant, "we know it did not go down like you're saying it did," he did not actually have contradictory evidence. (7T206-14 to 18). Defense counsel pointed out that defendant had said, "Go look at the video right now, I swear to you, look at the video and you'll see everything that happened." (7T206-25 to 3). Siegfried told defendant he needed to tell him "a different story." (7T207-13 to 15). Defendant responded, "I don't know what you want. I told you the truth"; and Siegfried acknowledged to the jury that, "in reality," the video did not show that defendant was not telling him the truth. (7T207-16 to 22). Only the victim's statement contradicted defendant's account. (7T207-23 to 25).

Within a few hours of beginning deliberations, and without asking the

court any questions, the jury found defendant guilty of all counts. (9T100-2 to 106-5). This appeal follows.

LEGAL ARGUMENT

POINT I

THE DETECTIVE'S COMMENTS IN THE RECORDED INTERVIEW WERE PROPER.

After a line-by-line review of the interview transcript of defendant's statement with counsel, Judge Blue correctly redacted certain potentially prejudicial statements from defendant's recorded interview and correctly left the remainder of the interview intact. In a Rule 104 hearing, the judge ruled, over the prosecutor's objection, that statements defendant made referring to his father, which included referring to him as "track devil" and "a big dog," would be redacted. (3T122-19 to 126-20; 3T128-3 to 10; 3T132-10 to 15); see also 6T108-12 to 13). She also ruled that a reference to defendant's criminal history or being on bail in Burlington County would be redacted. (3T121-22 to 122-8; 3T132-20 to 25; 3T136-15 to 23). Several lines of the interview transcript were also redacted by agreement between the parties, such as references to defendant being in handcuffs. (3T119-6 to 122-13; 3T128-12 to 129-13). Defendant originally objected to the statement, "We don't -- we don't just bring you in here for no reason," but withdrew his objection. (3T130-14 to 131-19). And as they went page-by-page through the interview transcript, defendant stated he agreed there should be no redactions on the majority of the transcript. (6T119-6 to 9;

6T129-14 to 130-13; 6T131-22 to 132-6; 6T134-12 to 136-4).

Before playing the recording of defendant's Mirandized statement, the State first played the surveillance video, from the night of the robbery. (6T2-20; 56-4 to 5; Da146). The video does not capture the robbery. It shows a man walking down the street holding something in his left hand; as he takes a left onto a perpendicular street, which is not visible from the camera angle, an SUV approaches from behind him, pulls off to the right and stops. (Da146 at 00:00:39 to 00:00:53). The driver of the SUV gets out and walks down the same street where the first man turned, then disappears from view. (Da146 at 00:00:57 to 00:01:17). About thirty seconds later, the brake lights on the SUV light up, and someone, presumably the same person who got out of the SUV, runs to the SUV and gets in the driver seat. (Da146; 00:01:51 to 00:02:01). The SUV then continues in the same direction and the video ends. (Da146 at 00:02:02 to 00:02:19).

A. Recording played at trial.

In the beginning of the interview, defendant claimed he and his wife stayed home the previous night, September 29. (6T95-18 to 96-2; 6T96-14 to 16). Detective Siegried told him that he could see him and Ms. Reed in his car on surveillance footage, and defendant admitted that they had been riding

around. (6T96-17 to 97-1).

Defendant initially either denied or said he could not remember being near the location of the robbery. (6T97-2 to 98-7). Siegfried told defendant he wanted to "give [defendant] an opportunity to just tell the truth and said he could see defendant driving and Ms. Reed in the passenger seat; defendant agreed. (6T98-12 to 19). Defendant said at first that he would not waste his time on Sheridan Street. (6T98-24 to 99-19). Detective Siegfried told defendant, "[W]e have cameras everywhere man. . . . We just didn't bring you up here for no reason. . . . everything has a purpose and you're here for a reason." (6T99-20 to 100-5). He said he could see defendant get out of the car and asked him what he did next. (6T100-9 to 18). Defendant then admitted to being on Sheridan Street but stated that he was there to sell drugs, and that what really happened was that he had his drugs stolen in a drug deal that had gone wrong. (6T100-19 to 25; 6T101-13 to 25; 6T102-12 to 18).

Defendant said he "just walked off" after that. (6T102-21 to 23). Siegfried asked him if he took anything, and defendant said he "just went back in the car." (6T103-1 to 2). Siegfried asked why the victim's cell phone was found in defendant's driver's side door. (6T103-19 to 25). Defendant began, "The shit that the mother fucker. He took my bags and took the fuck off running, you know?" (6T104-1 to 3). Detective Siegfried stopped him and said, "Listen.

Listen. You're lying. I just gave you the chance to say if he took anything and you said he didn't take anything, you just went back in your car." (6T104-4 to 7). Defendant protested, "No, listen to me. Look. He took my bags and ended up running. He dropped -- when he dropped whatever he dropped, he dropped and that was that. You know what I'm saying? I went to the car." (6T104-8 to 12).

Detective Epstein interjected and told defendant, "When we ask questions, we have answers to and we're gauging your. . .," and defendant interrupted, "I'm telling you, it's a drug deal gone bad." (6T105-2 to 6). Epstein offered him a chance to "take a step back" and have Siegfried ask him the same questions again and advised him to think long and hard before answering. (6T105-23 to 106-17).

Defendant maintained that the incident was "a drug deal that went bad," and that the victim robbed defendant. (6T158-19 to 25; 6T160-4 to 9). He said the victim "just took off fucking running. Then my girl like, 'Babe, what's that he dropped?' I swear," and encouraged the detectives to "[l]ook at the cameras. The cameras will show you." (6T159-1 to 8). Detective Siegfried disagreed and told him the cameras conflicted with his story. (6T159-12 to 20; 6T160-10 to 12). Defendant responded, "I can't help what you see, that might not have been me what you saw there." (6T160-10 to 12). Defendant claimed he chased after

the person who stole his drugs. (6T160-16 to 19). Siegfried rebutted, "You didn't go after him though," and defendant maintained, "I went and chased him down that fucking street. I went flying down that fucking street and couldn't find him." (6T160-20 to 25). Detective Epstein explained, "We see you take off. I get it. You were flying, you weren't chasing him." (6T161-9 to 10). Defendant continued that the man had "snatched" his drugs before running away and encouraged the detectives to go back and watch the video footage. (6T161-11 to 25). He repeated his story about having his drugs stolen. (6T162-8 to 22).

After a short break in the interrogation, Detective Siegfried apparently showed defendant the video and asked whether that was him getting out of the car, and defendant said he could not tell. (6T163-1 to 164-10). Siegfried told defendant, "You know it's in the same area where you say you get out of the car," and defendant responded, "Yeah, but my man who I bust the trap to, that didn't look like him, man." (6T164-11 to 15). Siegfried continued, "that's you getting out of the car right before you went to talk to that dude." (6T164-16 to 18). Defendant protested, "The mother fucker is driving the car, bro. That – that's," and Siegfried interrupted, "Listen, listen, we know it didn't go down the way you're saying. We know that okay?" (6T164-16 to 23).

Defendant asked, "So you're thinking I robbed him, Bro? That's what

you're thinking." (6T164-24 to 25). He maintained his story and said he "jumped in the car and went for it." (6T165-1 to 15). Siegfried told him, "But that's not how it happened. Listen, you're saying that you didn't pick anything up when you went back to the car. Okay? You don't look back around, you leave. I saw. . . . You never went back . . ." (6T165-16 to 22). Defendant claimed, "That was . . . something on the ground. My wife . . . found it on the ground." (6T165-23 to 166-1).

Detective Siegfried said, "Listen, that's not what happened. You need to stop lying -- listen, you need to help yourself here, okay?" (6T166-2 to 4). He continued, "you know what you're telling me . . . is not true. You know that." (6T166-5 to 14). Defendant remained adamant that he had been trying "to go sell this man some . . . dope and he tried to beat me, that's what the fuck happened." (6T166-15 to 17). Siegfried told him, "parts of your story . . . are not true, okay? . . . I want you to tell me the truth." (6T166-18 to 167-2). Defendant repeated his story, and Siegfried responded, "What you're saying happened did not take place. It happened in a different way." (6T167-2 to 16). Defendant asked what he meant by that, and Siegfried told him, "It's not what you're saying happened. . . . You already said you left, correct? You -- as soon as you said he beat you for your drugs, you ran back to your car. At no point in time did you tell me that you picked up a phone off the ground and you looped

back around and that you went to pick up your phone." (6T167-17 to 168-2). He said they could see defendant's wife in the passenger seat, and then "she hits the brake for you, you jump back in the car and you guys leave." (6T168-3 to 7). Siegfried asked what happened when he was with the victim, and defendant maintained that the victim "went off with" his drugs. (6T168-9 to 13).

Detective Siegfried asked defendant, "He doesn't beat you for the drugs. What happened? We want you to tell the truth." (6T168-14 to 16). Again, defendant claimed the victim did "beat [him] for the drugs," and Siegfried responded, "that's not what's being displayed on the camera, man. You know that." (6T168-17 to 25). Defendant asked what was being displayed, and claimed he "never had a weapon," and that nothing of what Siegfried was saying was what had happened. (6T169-1 to 14). Siegfried said they wanted defendant to help himself by telling them "what really happened," otherwise they would leave "and that's it," and he would not be able to help. (6T170-18 to 171-2).

Detective Epstein asked, "In the history of Drug Boys getting beat for their drugs, . . . [w]hen have the Drug Boys never chase [sic] down a dude that beats him for the drugs?" (6T171-13 to 22). Defendant persisted, "when we got in the car and I took off down that block, Bro, where . . . did he run off to? He was nowhere to be the fuck found. Like nowhere. I don't know if he went in between the fucking apartment complex. The n****r was nowhere to be found."

(6T171-23 to 172-4). Epstein responded, "I guarantee you're chasing him down." (6T172-5 to 6). Detective Siegfried added, "you tell me in this photo right here . . . this is the same time you're describing that you got beat. So how are you telling me this isn't you now?" (6T172-7 to 10). Defendant admitted that the person on the video looked like him but claimed "this looks like this isn't the street that I was on that this shit happened on." (6T172-13 to 21). Siegfried told him that he was not asking whether it looked like him, "I'm saying it is you. It's a yes or no question. Is it you? We just described, this whole story that we're talking about . . . it's all on camera. . . . That's you." (6T172-23 to 173-6).

Detective Siegfried told defendant that they were not going to waste time by going "back and forth and you tell me it was this and I tell you it was that," and said "I need you to tell me the truth and what really happened out there." (6T173-19 to 174-6). Defendant insisted, "How many times you want me to tell you the same thing?" (6T174-7 to 8). And Siegfried responded, "But that's not what happened." (6T175-9 to 10). Defendant continued, "That's what happened and that's what happened," and Siegfried replied that they were leaving "and that's it." (6T174-11 to 15). Defendant repeated his story that the victim had stolen his "dope" and then dropped his phone and ran. (6T174-21 to 175-9). Siegfried noted defendant "never said anything about that" the first time he told

him his story, and defendant persisted "But that's how it went down." (6T175-10 to 17). Siegfried then said, "we're not going to just keep going around in circles," and that if defendant would not tell them the truth then he would leave. (6T175-22 to 176-1). Defendant asked if Siegfried believed he was telling the truth, and Siegfried responded that as detectives, they investigate everything, and that they did not bring defendant in "for no reason." (6T176-14 to 177-5). Defendant repeated his story, and Siegfried responded, "If that's your story, then that's fine. Then you stick to that story, okay?" (6T177-10 to 178-7). He continued, "I'm not going to tell you if I believe you or not because I know that's not what happened. That's not what happened out there. That's not what happened. I wanted the truth and that was it. That's all it is." (6T178-9 to 15). Defendant replied, "You really don't believe me." (6T178-16 to 17). And Siegfried told him, "No, that's not what happened. It's not that I don't believe you, I know that's not what happened. I investigate and I do think off fact. . . . I don't do stuff just based off of oh, maybe this happened or maybe this didn't happen or let's just do this for no reason." (6T178-18 to 179-2). With that, he ended the interview. (6T179-6 to 18).

B. Standard of review.

As an initial matter, defendant's belated challenge to the redacted

statement is waived. See State v. Bogus, 223 N.J. Super. 409, 419 (App. Div. 1988). Not only must objections be made at trial, but they must be specific, or they are deemed waived. Melendez-Diaz v. Massachusetts, 557 U.S. 305, 327 (2009); see also State v. Michaels, 219 N.J. 1, 35, cert. denied, 574 U.S. 1051 (2014) (finding "a hearsay analysis is not a replacement for a confrontation analysis[.]). Indeed, the Supreme Court has rejected a "defendant's contention that the State must disprove issues not raised by the defense" at the trial level. State v. Witt, 223 N.J. 409, 418 (2015). To burden the State with the responsibility of disproving issues not properly raised "would compel the State to cover areas not in dispute from fear that an abbreviated record will leave it vulnerable if the defense raises issues for the first time on appeal." Ibid. And addressing such "shadow issues will needlessly lengthen [trial-level proceedings] and result in an enormous waste of judicial resources." Ibid. Thus, "[a] prosecutor should not have to possess telepathic powers to understand what is at issue . . . ." Ibid. A defendant's failure to raise a specific objection to the admissibility of evidence deprives the State of an opportunity to answer that objection and bars the defendant from making that objection for the first time on appeal.

But if this Court decides the issue, it must review this issue under the plain-error standard of review. See State v. Singh, 245 N.J. 1, 13 (2021). Plain

error is reversible only if it is "clearly capable of producing an unjust result." R. 1:7–2; R. 2:10–2. As our Supreme Court has long recognized, "that high standard provides a strong incentive for counsel to interpose a timely objection, enabling the trial court to forestall or correct a potential error." State v. Bueso, 225 N.J. 193, 203 (2016). On plain-error review, an appellate court's task is to engage in a "fact-specific inquiry" to determine whether the defendant suffered any actual, not merely theoretical, prejudice because of the alleged error. State v. G.S., 145 N.J. 460, 473 (1996); see State v. Dunbrack, 245 N.J. 531, 544 (2021) (noting this is an "exacting" standard). Thus, "[t]he mere possibility of an unjust result is not enough." State v. Funderburg, 225 N.J. 66, 79 (2016). Rather, the applicable test is "whether the possibility of injustice is 'sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached.'" Dunbrack, 245 N.J. at 544. Courts conducting this inquiry must assess the degree of actual harm within the context of the trial while considering the weight of the evidence, the arguments of counsel, the lack of a timely objection and any other relevant information gleaned from the record as a whole. See State v. Marshall, 123 N.J. 1, 145 (1991); State v. Wilbely, 63 N.J. 420, 422 (1973). Reversal for plain error is thus reserved for "blockbusters: those errors so shocking that they seriously affect the fundamental fairness and basic integrity of the proceedings below."

United States v. Griffin, 818 F.2d 97, 100 (1st Cir. 1987).

C. The interrogation video was properly admitted.

Particularly since the jury first watched the surveillance video, which does not show the robbery, the interrogation video was properly admitted. When the State played the video of the interrogation, the jury already knew that anything the detectives said to defendant about the video telling a different story was not true. They knew the video did not show the robbery or anything more than two people walking down a street at different times and then defendant running back to his car. Thus, in watching the interrogation where detectives tried to get defendant to admit to the robbery, it was clear that it was they were lying to defendant about what the video actually showed. And after the surveillance video was played, Detective Siegfried even admitted that was exactly what happened. There was thus no error in its admission.

It is true N.J.R.E. 701 "does not permit a witness to offer a lay opinion on a matter 'not within [the witness's] direct ken . . . and as to which the jury is as competent as he to form a conclusion[.]'" State v. McLean, 205 N.J. 238, 459 (2011) (alterations in original) (quoting Brindley v. Firemen's Ins. Co., 35 N.J. Super. 1, 8 (App. Div. 1955)). Indeed, lay opinion testimony "is not a vehicle for offering the view of the witness about a series of facts that the jury can

evaluate for itself or an opportunity to express a view on guilt or innocence." Id. at 462. In the context of live police testimony, an officer may provide testimony about facts observed firsthand, but may not "convey information about what the officer 'believed,' 'thought' or 'suspected.'" Id. at 460 (citing State v. Nesbitt, 185 N.J. 504, 514-16 (2006)).

Defendant's reliance on State v. C.W.H., 465 N.J. Super. 574 (App. Div. 2021) and State v. Tung, 460 N.J. Super. 75, 102 (App. Div. 2019) is misplaced, because both of those cases are about live testimony, which supplemented the recorded interviews introduced at trial. In C.W.H., after playing the videotaped interrogation, the detective testified that the defendant's denials were "very weak" and "some of the weakest denials [he had] seen in an interview." 465 N.J. Super. At 592. He continued, "His denials were extremely weak, things like I can't remember, I don't know. To me, when I hear 'I don't know,' it means that he does know, he just isn't ready to admit it. It's one step closer to providing the truth." Ibid. The detective even attributed the defendant's belching to being "just one factor of deceptiveness" when questioned. Id. at 593. This Court found this testimony to be plain error. Id. at 596.

In Tung, before the defendant's audio-recorded statement was played, the detective testified that "obviously [Tung] wasn't being truthful when he answered" a question about whether his estranged wife had a boyfriend, who

was the murder victim. 460 N.J. Super. at 87. He also "repeatedly explained to the jury that he 'continued to confront [Tung] with the fact that [the detective] didn't believe he was home all night. [The detective] felt he went to [the victim's] house. [He] felt there was an argument . . . . that somehow got out of control.'" Id. at 88. This Court noted the detective "periodically offered comments" during the playback of the statement, "some of which addressed defendant's demeanor during questioning, but others addressed the quality of defendant's answers or his refusal to consent to searches." Id. at 90. This Court held that this testimony by the detective, "who the jury knew had administered lie detector tests for ten years, that defendant was not truthful was improper." Id. at 104.

But a detective using deceptive interview techniques in an interrogation is entirely different from a detective opining on direct examination that a defendant was untruthful. Interrogation techniques used by an officer "to dissipate [a suspect's] reluctance and persuade the person to talk are proper as long as the will of the suspect is not overborne." State v. Miller, 76 N.J. 392, 403 (1978); see also State v. Galloway, 133 N.J. 631, 655 (1993) ("The fact that the police lie to a suspect does not, by itself, render a confession involuntary."); State v. Patton, 362 N.J. Super. 16, 31 (App. Div. 2003) ("New Jersey courts . . . have permitted the use of trickery in interrogations.") Indeed, police are

entitled to significant leeway in their interrogation techniques. See State v. L.H., 239 N.J. 22, 43-44 (2019). Recognizing a suspect's "natural reluctance . . . to admit to the commission of a crime and furnish details," an interrogating officer can use tactics "to dissipate this reluctance and persuade the person to talk," if "the will of the suspect is not overborne." Miller, 76 N.J. at 403.

And courts in other states have recognized a distinction between comments made by interrogating officers during a defendant's recorded statement and live testimony of police officers at trial. Comments made by an interrogating officer designed to elicit a response from a suspect do not amount to opinion testimony or testimonial hearsay. See Butler v. State, 738 S.E.2d 74, 81 (Ga. 2013). And in State v. Boggs, the Supreme Court of Arizona found that a detective's repeated statements to the defendant accusing him of lying during an interrogation were admissible because the accusations "were part of an interrogation technique and were not made for the purpose of giving opinion testimony at trial." 185 P.3d 111, 121 (Ariz. 2008). See also Allen v. Commonwealth, 286 S.W.3d 221, 226 (Ky. 2009) (Recognizing "although it is generally improper for one witness to accuse another witness of lying, it is not . . . inherently improper for a police officer questioning a suspect . . . about holes or potential falsehoods in that suspect's theory of events in an effort to get the suspect to tell the complete truth."); State v. Demery, 30 P.3d 1278, 1284 (Wash.

2001) (concluding officer's statement made during defendant's recorded statement "merely provided the necessary context that enabled the jury to assess the reasonableness of the defendant's responses"). Indeed, courts must be careful in redacting statements so as not to lose or change the context of the statement. See State v. Wyles, 462 N.J. Super. 115, 125 (App. Div. 2020) (noting "a redaction permitted by the court significantly changed the context of the words spoken by [eyewitness] concerning his knowledge of the shooter's identity.")

Defendant's reliance on the three unpublished cases is thus unconvincing. First, State v. Grant is distinguishable. In Grant, six different surveillance videos were shown to the jury that showed the victim walking along the route he traveled the night he was killed, Grant in the same liquor store as the victim, and a video a block away from the shooting that showed "some flashes" and the "front" of the shooter. No. A-1401-18 (App. Div. Feb. 15, 2022) (slip op. at 4 to 6) (Da25 to 27).[2] Unlike defendant here, Grant objected to the playing of the interview at trial, which the court did not rule on, and the court did not provide a limiting instruction. Id. at (slip op. at 10); (Da31). This Court held that the

[2] The State cites these unpublished decisions to address defendant's arguments. A copy of each decision is in defendant's appendix (Da22 to 144) or appended to this brief (Sa1 to 20).

detective's statements to the defendant about the surveillance videos, which appear to be correct recitations of what the videos showed (compare id. at (slip op. 5 to 6) with id. at (slip op. 15 to 21)), were improper lay opinions interpreting the evidence. Id. at (slip op. at 24) (Da45). The panel pointed out that the detective "opined during the interview that the videos clearly showed defendant had a gun and was the shooter. These were questions for the jury to decide. They should have been redacted." Id. at (slip op. at 24).

In State v. Bolden, A-1940-22 (App. Div. May 15, 2025) (slip op. at 18, 29), and State v. Mason, A-2455-22 (App. Div. May 29, 2025) this Court similarly held that a detective's unredacted statements that challenged the defendants' veracity were lay opinions interpreting the evidence, and thus improper. But in Mason, because the judge had given a curative instruction before and after the recording, this Court held that the error was not reversible. A-2455-22 (App. Div. May 29, 2025) (slip op. at 26).

And in another unpublished case omitted from defendant's brief, State v. C.S., this Court held that the detective's unredacted statements were properly introduced. State v. C.S., A-0841-22 (App. Div. Jan. 21, 2025), cert. denied, 260 N.J. 549 (2025). The detective repeatedly told C.S. he knew he was lying during the ninety-minute interrogation. Id. at (slip op. at 4). C.S. initially denied the sexual assault allegations, and the detective repeatedly told C.S. he was lying

and that his statement was inconsistent with what other people had said. Ibid. The detective told C.S., "[y]ou're bull*****ing me right now because I know that something happened," which C.S. denied. Ibid. About an hour into the interview, C.S. admitted to the assault. Ibid.

This Court held the detective's statements about C.S.'s truthfulness were admissible because they "were not made for the purpose of expressing an opinion as to defendant's credibility or veracity at trial. Rather, they were questions in a pre-trial interview, part of an interrogation technique and designed to elicit a response from a suspect." Id. at (slip op. at 12). Thus, "the comments were offered for their effect on defendant and not for their truthfulness. The detective did not testify as to defendant's truthfulness. The detective's comments were admissible since they provided context for the interrogation enabling the jury to assess the reasonableness of the defendant's responses." Ibid.

The trial court gave a curative instruction to the jury. But this Court also placed importance on the trial judge's final instructions to the jury, including "what constitutes reasonable doubt, and that the State had the burden to prove each element of their case beyond a reasonable doubt, to which the burden never shifts to the defendant," as well as how the jury could consider the evidence. State v. C.S., A-0841-22 (App. Div. Jan. 21, 2025) (slip op. at 12). Second, the

judge instructed the jurors on how they may consider the evidence presented, and specifically the videotaped interrogation. Ibid.

Here, Judge Blue redacted several statements made during the recorded interrogation to protect defendant from any undue prejudice, such as references to his prior incarcerations or even being in handcuffs at the beginning of the interview. And the court properly redacted any potentially prejudicial references to defendant's father. But there was no need to sua sponte redact statements the detectives made in an attempt to get defendant to admit to robbing the victim. And the jury had already seen the surveillance video and knew that it did not show a robbery because the street where the robbery occurred is completely blocked from view of the camera.

Thus, the jury knew the detectives were deceiving defendant in the interview when they told him they had seen the video and knew he was lying. And indeed, Detective Siegfried admitted on cross-examination that he lied to defendant "several times" in the interview, including about his story not matching what the video showed. (7T206-8 to 13). He admitted he had no contradictory evidence when they told defendant "we know it did not go down like you're saying it did." (7T206-14 to 18). Defense counsel pointed out that defendant had said, "Go look at the video right now, I swear to you, look at the video and you'll see everything that happened." (7T206-25 to 3). Siegfried

testified that, "in reality," the video did not show that defendant was not telling him the truth. (7T207-16 to 22). Only the victim's statement contradicted defendant's account. (7T207-23 to 25).

And as in C.S., here, Judge Blue instructed the jury, "You and you alone are the sole and exclusive judges of the evidence, of the credibility of the witnesses, and the weight to be attached to the testimony of each witness. (9T49-18 to 21). And regarding defendant's recorded statement, she instructed, "It is your function to determine whether or not the statements were actually made by the defendant and if made, whether the statements or any portion of them are credible." (9T81-7 to 12). She also instructed, "In considering whether or not an oral statement was actually made by the defendant and if made, whether it is credible, you should receive, weigh, and consider the evidence with caution based on the generally recognized risk of misunderstanding by the hearer or the ability of the hearer to recall accurately the words used by the defendant." (9T81-13 to 19). No additional limiting instruction was requested and none was warranted.

In addition, the other evidence here was strong. Immediately after the robbery, the victim tracked the location of his stolen iPhone on his MacBook computer. He gave that location to the 9-1-1 dispatcher and a description of defendant and his vehicle. Police met the victim at the scene of the robbery,

where they found surveillance cameras and used footage from those cameras to identify defendant's vehicle and ultimately conduct a motor-vehicle stop. Defendant's wife consented to a search of the vehicle, and police found the victim's stolen phone inside. And the victim saw on his MacBook that a Cash App transfer of $250 had been attempted from his account to defendant's wife.

The videorecorded interview was thus properly introduced and at any rate was not clearly capable of producing an unjust result.

POINT II

THE PROSECUTOR PROPERLY REFERRED TO EVIDENCE THAT DEFENDANT HAD STOLEN THE VICTIM'S WALLET IN HER CLOSING ARGUMENT.

The prosecutor properly explained in her closing argument that the jury could find defendant stole the victim's wallet, which held a Cash App card, based on an attempted Cash App transaction from the victim's account to defendant's wife minutes after the robbery.

As background, defense counsel objected to the introduction of the screenshot showing the attempted Cash App transaction from the victim's Cash App account to defendant's wife, complaining that it had "nothing to do with" defendant, and "nothing to do with the case" because it was sent to "some third party." (6T35-23 to 36-3). Judge Blue explained, "The third party is your client's wife. He acknowledges that's his wife. Who was present with him . . . when this situation occurred. . . . So it's not a third party, he's not a stranger. That's what . . . we have here." (6T36-4 to 10). The State argued the screenshot of the attempted transaction was probative to prove the theft of the wallet, because that was where the Cash App card had been, the iPhone had been passcode-protected, and the wallet was never recovered. (6T37-13 to 20). And Judge Blue agreed that the screenshot was thus probative of the theft of the

phone. (6T37-25). The State also noted the screenshot showed the attempted transaction occurred ten minutes after the robbery. (6T39-6 to 8). The court allowed its admission into evidence but did not allow other screenshots of which the defense did not have adequate notice. (6T39-12 to 15).

The victim explained that his Cash App card had been in his wallet when it was stolen. (7T252-20 to 25). After the robbery, he saw on his computer that his Cash App card had been accessed in an attempted transfer of $250 from his account to defendant's wife. (6T70-12 to 20; 7T256-21 to 257-5; 7T260-24 to 261-14).

In summation, the prosecutor explained, "we know this was a theft" of defendant's wallet, because "defendant, by way of his wife . . . tried to steal money from the victim." (9T27-14 to 17). She continued that the victim "didn't have any cash in his wallet, so the next easiest way to get that money that they wanted was through the cash app card[,] which [the victim] explained is used just like a debit card." (9T27-18 to 21). In other words, she explained that the jury could infer that defendant stole the victim's wallet because defendant, through his wife, had accessed the Cash App card that was in the wallet. She was not implying an uncharged theft of the money in the attempted transaction. Defendant's defense was that he had been trying to sell the victim drugs when the victim robbed him of his drugs. The prosecutor's reference to the Cash App

screenshot was thus a response to this claim, because it showed that the defendant had taken possession of the victim's wallet and used the number on the Cash App card inside it after the time of the robbery. See State v. C.H., 264 N.J. Super. 112, 134-35 (App. Div.) (holding prosecutor's comments in summation in response to defense counsel's attempt to discredit credibility of State's witnesses were not improper), certif. denied, 134 N.J. 479 (1993); see also State v. Nelson, 173 N.J. 417, 472-73 (2002) ("A prosecutor may respond to defense claims, even if the response tends to undermine the defense case.").

Preliminarily, defendant never objected to the closing arguments, thus his argument must be reviewed for plain error. See State v. Timmendequas, 161 N.J. 515, 576 (1999). See also Melendez-Diaz, 557 U.S. 305, 327 (2009); see also Point Ib, supra. Even where a defendant may have met this burden, an appellate court's review under Rule 2:10-2 is discretionary, as is clear from the language of this rule, such that this Court "may, in the interests of justice, notice plain error not brought to the attention of the trial or appellate court." (Emphasis added). For that reason, a reviewing panel should correct a plain, forfeited error affecting substantial rights only where that error seriously affects the fairness, integrity or public reputation of judicial proceedings, and only where the failure to act would result in a "miscarriage of justice" such as the conviction of an actually innocent defendant. See United States v. Olano, 507 U.S. 725, 736

(1993).

But there was no error in the prosecutor's reference to the attempted Cash App transaction. The primary duty of a prosecutor is to see that justice is done, and she is not precluded from making a "vigorous and forceful presentation of the State's case[.]" State v. Ramseur, 106 N.J. 123, 322 (1987). Prosecutors are "'expected to make vigorous and forceful closing arguments to juries[.]'" State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Frost, 158 N.J. 76, 82 (1999)). They are thus afforded "considerable leeway" in closing and may comment on the evidence or facts adduced and urge legitimate inferences to be drawn therefrom, so long as they are "reasonably related to the scope of the evidence presented." Ibid.; State v. R.B., 183 N.J. 308, 330 (2005); see State v. Bogen, 13 N.J. 137, 140 ("[T]he broadest latitude in summation must be allowed the prosecutor and defense counsel alike to advocate their respective positions before the jury . . ."), cert. denied sub nom. Lieberman v. New Jersey, 346 U.S. 825 (1953).

In reviewing a prosecutor's comments, the Court should analyze those remarks within the context of the whole trial. McNeil-Thomas, 238 N.J. at 726 (quoting State v. Feaster, 156 N.J. 1, 64 (1998)); accord State v. Johnson, 31 N.J. 489, 513 (1960). One misstep does not automatically require a criminal conviction's reversal. See State v. Jackson, 211 N.J. 394, 408-09 (2012). A

new trial will be conducted only where a prosecutor's misstep was so egregious that it deprived defendant of a fair trial, which requires some degree of a "real" possibility that the misstep led to an "unjust result," "one sufficient to raise a reasonable doubt as to whether [it] led the jury to a verdict it otherwise might not have reached." McNeil-Thomas, 238 N.J. at 275 (citations omitted); R.B., 183 N.J. at 330, 329; State v. Daniels, 182 N.J. 80, 96 (2004).

That did not occur here. The prosecutor merely explained how the jury could find that defendant stole the victim's wallet—by recognizing that the Cash App transaction from a card number that was in the victim's wallet had been attempted to defendant's wife. This was entirely proper and this Court should affirm defendant's convictions.

POINT III

THE SENTENCING JUDGE PROPERLY ACTED WITHIN HER DISCRETION.

Judge Blue properly sentenced defendant to an aggregate term of twenty years imprisonment for the first-degree robbery and related weapons convictions. Judge Blue reviewed in great detail defendant's lengthy criminal history. This includes a juvenile history of eleven total arrests, eight juvenile adjudications, and four violations of probation. (10T52-19 to 56-13). As she detailed each arrest, she noted the services offered to him along with his sentences and found "there [were] services being offered for [defendant] throughout the entirety of his juvenile history." (10T52-25 to 56-13).

As an adult, defendant accrued twenty total arrests, six resulting in Superior Court convictions and six resulting in municipal court convictions. (10T56-14 to 18). For his first four indicatable convictions, defendant was given "the opportunity for probation," which, she noted, includes "programs that provide [probationers] with assistance if an adult take[s] advantage of them." (10T57-18 to 58-11). His fifth conviction was for aggravated assault, for which defendant received a four-year flat sentence to state prison. (10T58-13 to 15). Defendant was then sentenced to probation for a fifth time for his sixth indictable conviction. (10T58-18 to 21). At the time of sentencing, defendant

had municipal and Superior Court charges pending. (10T59-3 to 6).

Judge Blue thus applied aggravating factor three (risk defendant will commit another offense), finding "a huge risk" that defendant will commit another offense. (10T59-7 to 14) see also N.J.S.A. 2C:44-1(a)(3). She also applied aggravating factor six (extent of defendant's prior criminal record), noting she had "placed the extent of his record on the record." (10T59-17 to 19); see also N.J.S.A. 2C:44-1(a)(6). And finally, she placed great weight on aggravating factor nine (need for deterrence). (10T59-22 to 23); see also N.J.S.A. 2C:44-1(a)(9).

Judge Blue reviewed each of the statutory mitigating factors, but none applied. (10T60-2 to 63-16). First, she noted that mitigating factor one (defendant's conduct neither caused nor threatened serious harm) was inapplicable because "the victim says he saw the gun, the gun was pointed at him and was told he would be shot. That's certainly threaten [sic] serious harm." (10T60-4 to 10); N.J.S.A. 2C: 44-1(b)(1). For similar reasons, she rejected factor two (defendant did not contemplate that his conduct would cause or threaten serious harm). (10T60-11 to 15). Defendant was armed with a firearm, threatened to shoot the victim, and took the victim's property. (10T60-13 to 15). She explained, "You have to contemplate under those facts that that can cause serious harm." (10T60-16 to 17). She explained that the facts did not

support a finding of factors three (defendant acted under a strong provocation), four (substantial grounds that excuse or justify defendant's conduct though fail to establish a defense), five (victim's conduct induced or facilitated the commission of the offense), or six (defendant has agreed to restitution). (10T60-18 to 61-3); N.J.S.A. 2C:44-1(b)(3), (4), (5), (6).

The court found factor seven (defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense) inapplicable, as "this defendant has had consistent contact with the law, despite there being opportunities for him, despite the support that he has of his mother, despite his four children," who were four, five, ten, and eleven years old. (10T61-8 to 16); N.J.S.A. 2C:44-1(b)(7).

The court also found factor eight (defendant's conduct was the result of circumstances unlikely to recur) inapplicable, finding, "I hear nothing that tells the Court that these circumstances would not occur again. In fact, everything in front of the Court suggests otherwise." (10T61-20 to 24); N.J.S.A. 2C:44-1(b)(8). Factor nine (character and attitude of the defendant indicate that the defendant is unlikely to commit another offense) was likewise inapplicable; "There is nothing before the Court that tells this Court that his character and attitude indicates he is unlikely to commit another crime or offense." (10T61-

24 to 62-6). Factor ten (defendant is particularly likely to respond affirmatively to probationary treatment) was inapplicable under the sentencing guidelines. (10T62-7 to 8); N.J.S.A. 2C:44-1(b)(10).

Judge Blue found factor eleven (excessive hardship) inapplicable. (10T62-19 to 20); N.J.S.A. 2C:44-1(b)(11). She explained, "there is a child support order in place with arrears of over $17,000." (10T62-12 to 14). "The defendant's mother says that despite her current health, she is responsible for taking care of the children. Defendant has almost -- almost three years worth of jail credit. His mother says she's been providing care for the children," and thus found "no excessive hardship if he's sentenced to prison." (10T62-15 to 20). She also rejected a finding of mitigating factor twelve (willingness of the defendant to cooperate with law enforcement). (10T62-21 to 22); N.J.S.A. 2C:44-1(b)(12). She found, "[d]efendant gave a statement that one can find to be self-serving whereby he says I had contact with somebody, that person was taking my drugs, it was a drug deal gone bad and that person dropped his telephone." (10T62-23 to 63-2). And finally, because defendant was twenty-eight at the time of the offense, factors thirteen (conduct of a youthful defendant was substantially influenced by another person more mature than the defendant) and fourteen (defendant was under twenty-six years old) did not apply. (10T63-3 to 10); N.J.S.A. 2C:44-1(b)(13), (14). Thus, on a qualitative basis, she found

the aggravating factors substantially outweighed the nonexistent mitigating factors, "whereupon a period of parole ineligibility is imposed." (10T63-15 to 16).

In evaluating a sentence's appropriateness, an appellate court must satisfy itself that the trial court properly applied the Code of Criminal Justice's standards and guidelines, that the aggravating and mitigating factors found by the sentencing court were based on competent credible evidence in the record, and that the sentence was reasonable so as not to shock the judicial conscience. State v. Liepe, 239 N.J. 359, 371 (2019); see also State v. Megargel, 143 N.J. 484, 493 (1996). Under the Code, the focus is on the gravity of the offense. State v. Carey, 168 N.J. 413, 422 (2001).

The reviewing court must not substitute its judgment for that of the trial court and must affirm a sentence as long as the sentencing judge properly identified and balanced the relevant aggravating and mitigating factors. State v. Cassady, 198 N.J. 165, 180 (2009); State v. Natale II, 184 N.J. 458, 489 (2005). If the judge properly followed the guidelines, this Court may modify the sentence only if it shocks the judicial conscience. Cassady, 198 N.J. at 180-81. That standard is "one of great deference, and judges who exercise discretion and comply with the principles of sentencing remain free from the fear of 'second guessing.'" State v. Dalziel, 182 N.J. 494, 501 (2005) (citing State v. Roth, 95

N.J. 334, 365 (1984)).

A conviction of a first-degree charge typically carries a sentence between ten and twenty years. N.J.S.A. 2C:43-6(a)(1). A conviction of a second-degree charge typically carries a sentence between five and ten years. N.J.S.A. 2C:43-6(a)(2). And a conviction of a third-degree charge typically carries a sentence between three and five years. N.J.S.A. 2C:43-6(a)(3). If the court finds that the aggravating factors outweigh the mitigating, it may further fix a period of parole ineligibility not to exceed one-half of the sentence imposed. See N.J.S.A. 2C:43-6(b). And if the defendant is a persistent offender, the court may sentence the defendant to an extended term of imprisonment; for a first-degree offense, the extended term range is between twenty years and a life sentence, and for a second-degree crime the extended term range is between ten and twenty years. N.J.S.A. 2C:43-7(a)(2), (a)(3); N.J.S.A. 2C:44-3.

Here, Judge Blue denied the State's request to sentence defendant as a persistent offender, though she found he "certainly does qualify for a sentence as a persistent offender" due to his six prior convictions and "a continuous course of contact with the criminal justice system," including crimes of violence. (10T63-20 to 64-13). Instead, she found she could "satisfy her concerns with her sentence within the ordinary range." (10T64-20 to 23). On Count One, she thus sentenced defendant to twenty years NJSP, subject to NERA. (10T65-4 to

8). She sentenced defendant to a concurrent term of ten years NJSP with a five-year period of parole ineligibility on Count Two, unlawful possession of a weapon. (10T66-4 to 8). Counts Three and Four merged with Count One. (10T13 to 20; Da13).

In sentencing defendant to the top of the range, Judge Blue acknowledged that it was a "substantial sentence." (10T66-21 to 22). But she noted she "could have very well, very easily made a record whereby [she] could have imposed a life sentence," and "could have made a record to support it based on his criminal history." (10T66-22 to 67-3). She explained, "looking very carefully at his history, he had continuous conduct with the law from a little boy." (10T67-3 to 5). Judge Blue noted that she knew "there are programs and . . . the whole goal of juvenile justice is rehabilitation to give services that can help an individual." (10T67-15 to 18). Despite the support from his mother and despite the guardianship defendant had of his children, "that still wasn't enough for him to not have contact with the law." (10T67-19 to 68-2). Thus, while a twenty-year sentence "is a pretty hefty sentence," she found it to be appropriate and noted "it could have very well been a much lengthier sentence." (10T68-12 to 14).

Indeed, defendant's sentence was within the statutory range and is fully supported by the record. Defendant's criminal history, as noted by the sentencing judge, shows that he has had constant contact with law enforcement,

including eleven arrests as a juvenile and twenty as an adult, which resulted in eight adjudications, six municipal court convictions, and six Superior Court convictions. Defendant had been given multiple chances at probation but clearly was not amenable to rehabilitating and living a crime-free life.

Here, defendant followed the victim, held him up at gunpoint, and demanded he empty his pockets or he would shoot him. The victim testified that he believed defendant would shoot him if he did not comply, and he gave him his phone and wallet. His wallet was never recovered. This Court owes the sentencing court "great deference." Given the use of a firearm in this robbery and defendant's lengthy criminal history, this legal sentence does not shock the conscience and it should be affirmed.

CONCLUSION

For the foregoing reasons, this Court should affirm defendant's convictions and sentence.

Respectfully submitted,

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3858-22
INDICTMENT NO. 21-03-0672-I

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

Your Honors:

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

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Gibson relies on the procedural history and statement of facts set forth in his opening brief.[1]

LEGAL ARGUMENT

Gibson relies on all the legal arguments raised in his opening brief. He adds the following.

POINT I

GIBSON WAS DEPRIVED OF A FAIR TRIAL BECAUSE THE VIDEO RECORDING OF HIS INTERROGATION INCLUDED INADMISSIBLE OPINIONS BY DETECTIVES COMMENTING ON GIBSON'S CREDIBILITY AND GUILT.

The trial court's failure to redact the detectives' numerous and highly prejudicial lay opinions from the interrogation video and to properly instruct the jury was plain error and requires a new trial.

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[1] Gibson retains the abbreviations and transcript designations used in his opening brief and adds the following:
Db = defendant's appellant brief
Sb = State's respondent brief
Sa = State's appendix
Dra = defendant's reply appendix

A. The standard of review is plain error.

As an initial matter, the State's contention that Gibson waived his challenge to the inappropriate statements in the interrogation video is devoid of merit. It is fundamental that this Court may, "in the interests of justice, notice plain error not brought to the attention of the trial" if it is "of such a nature as to have been clearly capable of producing an unjust result." R. 2:10-2; see also State v. Robinson, 200 N.J. 1, 20 (2009). Gibson's argument is clearly reviewable for plain error. The State's reliance on State v. Witt is misplaced. An appellate court will not review an argument raised for the first time on appeal if the "failure to raise the issue created a 'record . . . barren of facts that would shed light on [the] issue.'" State v. Scott, 229 N.J. 469, 479 (2017) (quoting State v. Witt, 223 N.J. 409, 418 (2015)). However, if a trial court was alerted to the "basic problem" and had "the opportunity to consciously rule upon it" then the issue may be raised for appellate review. State v. Andujar, 462 N.J. Super. 537, 550 (App. Div. 2020) (citation omitted). Here, the issue presented is one of law and was squarely before the court when it considered necessary redactions to the interrogation video. While trial counsel did not raise the specific issue of the lay opinion statements, no additional development of the record is needed for plain error review.

B. The trial court erred by failing to redact the detectives' lay opinions and to properly instruct the jury that the statements were not evidence offered for their truth.

Statements that constitute inadmissible lay opinion when made on the witness stand are equally inadmissible when admitted into evidence through an interrogation recording. Although the State concedes that a lay witness's opinion testimony on a matter within the direct ken of the jury is not admissible per N.J.R.E. 701, (Sb21), it draws an arbitrary distinction between lay opinion testimony from witnesses at trial and lay opinion testimony embedded in an interrogation video. On this ground, the State argues State v. C.W.H. and State v. Trung are distinguishable as they considered lay opinions offered in live testimony. (Sb22-23) However, both C.W.H. and Tung featured lay opinions embedded in recordings in addition to those offered as testimony. 465 N.J. Super. 574, 587-88 (App. Div. 2021); 460 N.J. Super. 75, 100-04 (App. Div. 2019). Although this Court's analysis in both focused on the plain error of the live testimony, the reasoning equally applies to opinions embedded in video or audio recordings. Here, the detectives repeatedly accused Gibson of lying, asserted unambiguously that his version of events was false, and commented on the contents of the surveillance footage. The fact that these statements were presented through a video recording does not negate their impact on the jury. "Credibility is an issue which is peculiarly within the jury's ken and with respect

to which ordinarily jurors require no expert assistance." Tung, 460 N.J. Super. at 102. These statements, "which clearly conveyed the impression to the jury that the defendant was being deceptive during questioning, impermissibly colored the jury's assessment of defendant's credibility." C.W.H., 465 N.J. Super. at 595.

The only justification the State has offered as to why these statements are admissible when they would not be allowed as testimony is that the detectives' interrogation techniques were lawful and the detectives' comments are necessary context to understand defendant's statement. First, to be clear, defendant does not challenge the legality or permissibility of the detectives' interrogation technique in this appeal—only the admissibility of their lay opinions. As the Kansas Supreme Court made clear, these statements should not be admitted because "[a] jury is clearly prohibited from hearing such statements from the witness stand . . . and likewise should be prohibited from hearing them in a videotape, even if the statements are recommended and effective police interrogation tactics." State v. Elnicki, 105 P.3d 1222, 1229 (Kan. 2005) (emphasis added).

Second, "context" cannot be the justification to make an end-run around N.J.R.E. 701 and allow the wholesale admission of highly prejudicial lay opinions that go to matters such as credibility that are directly within the jury's

ken. Even if context was a justification, a trial judge would have to carefully review the recorded statement and determine which lay-opinion comments are necessary context and which should be excluded where the probative value is outweighed by the prejudicial effect. Here, most of the detectives' statements cannot be considered "necessary context." Those statements failed to yield any additional admissions and contained no probative value, as Gibson's account remained consistent through the majority of the interrogation. See State v. Gaudreau, 146 A.3d 848, 864 (R.I. 2016) (reasoning that the probative value of a detective's statement is greatly diminished when "the defendant makes no inculpatory statements" and does not change his story in response to the detective's statements). Particularly egregious are the detective's final comments:

> Siegfried: If that's your story, then that's fine. Then you stick to that story, okay? That's what you're sticking –
>
> Defendant: I'm asking you, do you believe me, Bro? I'm asking you –
>
> Siegfried: I'm not going to tell you if I believe you or not because I know that's not what happened. That's not what happened out there. That's not what happened. I wanted the truth and that was it. That's all it is.
>
> Defendant: You really don't believe me.
>
> Siegfried: No, that's not what happened. It's not that I don't believe you, I know that's not what happened. See

> the difference there? I investigate and I do think off fact.
>
> [(6T 178-5 to 20) (emphasis added)]

These comments came at the end of the interrogation after which Gibson made no additional statements about the incident. As such, these statements have near zero probative value. On the other hand, the detective's assertion that he doesn't believe Gibson's account and knows he is lying is completely unacceptable for a jury to hear and is, by itself, plain error. This entire exchange should have been redacted.

Even if some or all of the detectives' statements were admissible for the sake of context, it was nonetheless plain error for the court to fail to issue a limiting instruction to the jury. (See Db20-22) Given the nature and number of the detectives' comments here, a clear, specific, and forceful limiting instruction was required. Without a limiting instruction, the jury had no way of knowing that the detectives' comments are not evidence, are not supported by any information not presented on the record, and are offered solely to provide context for the defendant's subsequent statements.

C. The trial court's error was clearly capable of producing an unjust result.

The failure to redact the statements and to properly instruct the jury was plain error. The State brought to attention this Court's unpublished holding in

State v. C.S., No. A-0841-22 (App. Div. Jan 21, 2025), and argues that here, as in C.S., the trial court's final jury charge cured any prejudice. However, C.S. is against the weight of authority, as it appears to be only one of two occasions this Court has held that lay opinions of police embedded in an interrogation video are admissible without a specific limiting instruction. See, e.g., State v. Grant, No. A-1459-22 (App. Div. July 25, 2025) (Grant II) (slip op. 21) (restating that failure to issue an appropriate limiting instruction was plain error); State v. Mason, No. A-2455-22 (App. Div. May 29, 2025) (slip op. at 26) (holding that the admission of such statements would ordinarily be plain error but for the sua sponte curative instruction given before and after defendant's statement was played for the jury); State v. A.H.-S., No. A-1489-22 (App. Div. Nov. 15, 2024) (slip op. at 4) (finding no plain error when the trial court instructed the jury that "remarks by the detective about what is contained in the interrogation video are not evidence and they are not to be considered by you at all during the deliberations, nor may you assume or infer that the police remarks are based upon additional evidence not testified to at trial."); contra State v. Quackenbush, No. A-0411-16 (App. Div. July 29, 2019) (slip op. at 12) (finding no plain error where final jury charge was sufficient).

The State's argument that the final jury charge was sufficient to cure the error is without merit. This Court in C.S. reasoned that the statements were

admissible because they were "not made for the purpose of expressing an opinion as to defendant's credibility or veracity at trial" but rather "were questions in a pre-trial interview, part of an interrogation technique and designed to elicit a response from a suspect." C.S., slip op. at 12. However, this reasoning goes to admissibility and does not negate the need to properly advise the jury of that distinction as the trial court failed to do here. Nowhere in the court's final jury charge did the court address the prejudice of the detectives' statements. The final jury charge's standard verbiage on reasonable doubt, the burden of proof, and basic principles of how to consider evidence completely failed to address the detectives' comments in the video. The court instructed the jury that they are the sole deciders of facts and credibility, but failed to specifically address the detectives' comments in the video or advise them that they were simply employing an interrogation technique and that his statements could only be considered in the context of understanding how the interrogation was conducted and how the defendant responded to accusations of his involvement.

The state additionally argues that any error in admitting the statements was harmless because the jury had already seen the surveillance video and heard detective Siegfried testify on cross-examination that he lied to Gibson about what the video depicted. (Sb28-29) This argument falls flat. First, just because a jury also views video evidence does not make a law enforcement witness's

comments on that evidence admissible. See State v. Watson, 254 N.J. 558, 601 (2023) (noting "it is for the jury to determine what a recording depicts" and that narration testimony is only appropriate when it can help jurors in determining a fact in issue.) The detectives' statements regarding what was shown on video surveillance and whether or not it supported certain facets of Gibson's account directly undermined the jurors' role as factfinders. Moreover, the jury viewing the video themselves in no way cures the prejudice of the detectives' repeated comments on Gibson's credibility and accusations that Gibson is a liar.

Similarly, the detective's brief testimony on cross did not cure the error. On cross-examination, the following exchange occurred:

> Counsel: [I]n your efforts to elicit confessions, isn't it true that sometimes you lie to suspects about information that you have that you really don't?
>
> Siegfried: Yes.
>
> Counsel: And sometimes it works, they will confess to something that you didn't know that they had done, correct?
>
> Siegfried: Yes.
>
> Counsel: Okay. And when you were interviewing Mr. Gibson, you lied to him several times, right?
>
> Siegfried: Yes.
>
> Counsel: You told him that his story is not what you were seeing on the video, right?

> Siegfried: Yes.
>
> Counsel: But, in fact, you weren't seeing anything on video that contradicted his story; isn't that right?
>
> Siegfried: Correct.
>
> Counsel: You're saying we know it did not go down like you're saying it did, right?
>
> Siegfried: Yes.
>
> Counsel: But you really didn't know that did you?
>
> Siegfried: Correct.
>
> Counsel: You said that's not what's being displayed on the camera at some point, right?
>
> Siegfried: Yes.
>
> [(7T 205-21 to 206-20)]

This attempt by counsel to mitigate the extreme prejudice of the detectives' statements does not remedy the plain error. First, trial counsel's brief cross of Siegfried is in no way a sufficient substitute for a clear and thorough limiting instruction by the court. See State v. Farrell, 61 N.J. 99, 107 (1972) ("[T]he nature of the unfairness here was such that only a clear and precise instruction referring specifically to the improprieties and disapproving them could possibly have eliminated the harm already done to the defendant's rights.").Second, the cross of Siegfried only addressed part of the prejudice caused by the detectives' statements. The detective's admission that he did not know for sure whether

Gibson's story was false does nothing to address the more than ten instances where the detectives either directly or indirectly state that they did not believe Gibson's account. (See Db9-10) The detectives' inappropriate comments on Gibson's credibility are still harmful and usurp the jury's role as the sole finders of credibility.

Finally, the State argues there was no plain error because the other evidence was "strong." However, this was a pitched credibility battle, as the State acknowledges that "[o]nly the victim's statement contradicted defendant's account." (Sb29) The other evidence regarding the iPhone being tracked to Gibson's residence and its eventual recovery in Gibson's car and the Cash App transaction was consistent with Gibson's account of picking up Muse's belongings after a botched drug sale. Moreover, the firearm purported to have been wielded was never recovered or seen on video. As such, this case hinged on the jury's credibility determination of Muse's testimony and Gibson's account. Consequently, law enforcement's repeated and forceful claims that they did not believe Gibson's version of events irreparably harmed the jury's ability to independently determine credibility. See State v. Frisby, 174 N.J. 583, 595 (2002) (noting that "[t]he effect of the police testimony essentially vouching for" the version of events contrary to defendant "cannot be overstated"). Therefore, the admission of the detectives' lay opinions as to Gibson's

credibility with no curative instruction is plain error. See id. at 596 (holding that in a "pitched credibility battle," "[a]ny improper influence on the jury that could have tipped the credibility scale was necessarily harmful and warrants reversal"). It is not for any law enforcement officer or court to determine whether Gibson's account is credible. That function is reserved solely for the jury. A new trial is necessary for the jury to make that determination unfettered.

POINT II

GIBSON WAS DEPRIVED OF A FAIR TRIAL BECAUSE THE PROSECUTOR COMMITTED MISCONDUCT BY ACCUSING HIM OF AN ADDITIONAL UNCHARGED THEFT IN SUMMATION.

During summation, the prosecutor improperly accused Gibson of an uncharged attempted theft by arguing that Gibson "tried to steal money from the victim" through Cash App. This misconduct was plain error. The State suggests the prosecutor "was not implying an uncharged theft of the money in the attempted transaction." (Sb32) This is belied by the plain language of the prosecutor's argument. The prosecutor explicitly argued the Cash App request was evidence that Gibson "by way of his wife tried to steal money from the victim." (9T 27-14 to 21) The State has not argued that this Cash App transaction was the underlying theft supporting the robbery, only that it was probative to whether Gibson took also Muse's wallet.

The State is correct that the prosecutor was well within their rights to argue that Gibson possessed Muse's wallet because his wife requested money from Muse via a Cash App debit card that would have been in the wallet. Where the prosecutor overstepped was by accusing Gibson of an additional, uncharged attempted theft without basis in the record. There was no evidence that Gibson requested the money or in any way encouraged his wife to request the money. See State v. Atwater, 400 N.J. Super. 319, 335 (App. Div. 2008) (holding a prosecutor "must limit their remarks to the evidence, and refrain from unfairly inflaming the jury.")

The prosecutor's misconduct was clearly capable of producing an unjust result. Accusing Gibson of an additional uncharged crime without any support in the record was highly prejudicial. This prejudice is akin to the risk in admitting "other crimes" evidence—the jury may convict the defendant because they believe he is a bad person with a propensity for committing crimes. See State v. Cofield, 127 N.J. 328, 336 (1992). The inherent prejudice of this evidence is well recognized by our courts and is why to admit other-crimes evidence, the State must pass a "rigorous test," State v. Garrison, 228 N.J. 182, 194 (2017), which requires the "evidence of the other crime . . . be clear and convincing," Cofield, 127 N.J. at 338. Reversal is required.

CONCLUSION

For the reasons stated in Points I and II of his opening brief and Points I and II of this reply brief, Gibson's convictions must be reversed. Alternatively, for the reasons stated in Point III of Gibson's opening brief, the sentences should be vacated and the matter should be remanded for resentencing.

Respectfully submitted,

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Dated: December 4, 2025