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DESIGNATED COUNSEL ON BEHALF OF  
JENNIFER N. SELLITTI, PUBLIC DEFENDER

MAY 28, 2024

LETTER PETITION FOR CERTIFICATION ON BEHALF OF  
DEFENDANT-PETITIONER

Honorable Chief Justice and  
Associate Justices of the  
Supreme Court of New Jersey  
Hughes Justice Complex  
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent)  
v. Gregory Jean-Baptiste (Defendant-Petitioner)

Supreme Court Docket No.  
App. Div. Docket No. A-1452-19

On Petition For Certification From A Final  
Judgment Of The Superior Court Of New Jersey,  
Appellate Division

Sat Below:  
Hon. Haas, J.A.D.  
Hon. Gooden Brown, J.A.D.

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Honorable Justices:

On May 20, 2024, in a written opinion, the Appellate Division affirmed the judgment of conviction and the sentence imposed that was entered against petitioner in the Superior Court of New Jersey Law Division, Monmouth County. See State v. Gregory Jean-Baptiste, Appellate Division Docket No. A-1452-19 (App. Div. May 20, 2024).<sup>1</sup> Since the issues presented in the defendant-petitioner's appeal have substantial merit, he submits this letter form of petition for certification.

Petitioner will rely upon all the issues raised in his Appellate Division brief and adds the following clarifying remarks in support of his petition. The defense in this case was primarily third-party guilt, namely that Michael Melton had killed his estranged spouse or that James Fair, in concert with others, had committed the burglary and murder. Fair had entered a guilty plea to conspiracy to commit burglary. (8T174-22).<sup>2</sup> The defense did not intend to call Fair to testify as a witness but promised the jury that it would hear from Fair. (12T65-11 to 12; 20T18-3 to 4).

The State's theory was that James Fair had overheard a telephone call

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<sup>1</sup> A copy of the decision is included as Pa1-Pa114.

<sup>2</sup> Petitioner's adopts the transcript citations included in his appellate merits brief.

which indicated that David “Munch” James kept a large amount of cash in his freezer. (5T1801 to 6; 9T128-17; 12T164-8 to 12). James lived in an apartment two doors down from the victim. Ibid. The State alleged that Fair passed on this information to defendants who then mistakenly burgled Jonelle’s apartment. However, Fair had initially told others that he and confederates other than defendants had committed the crimes. He even bragged about the killing. (14T99-15 to 104-16). Notably, the State did not dispute that Fair made statements that “he killed someone.” (14T107-21 to 22). Fair’s statement was corroborated by Kevin Brown. Brown described Fair as a drug dealer. (21T133-4). Brown told police that he could have been in the car when Fair went inside the victim’s apartment building. (20T142-2 to 9). Fair and Brown were known to have committed another residential burglary around the same time. Defense counsel argued that the trial court was allowing the State to create illusions about Fair’s and Brown’s lack of respective involvement in the crime. (20T53-4 to 57-5).

The trial court also denied defense counsel’s application to question the lead investigator about Brown’s statement. (21T153-16 to 17). Defendants intended to call witnesses who would testify about what both men had told others about their respective involvement. (Da20-Da21; Da51). Neither party intended to call Fair as a witness. The trial court acknowledged that Fair had

told others about his involvement in the crime:

On diverse dates Mr. Fair allegedly made a number of out of court statements to Jenny Henderson, Ciara Williams, Kevin Clancy, and Kyre Wallace. In each of these statements, Mr. Fair allegedly claimed he was present at Ms. Melton's apartment when she was killed.

Ms. Henderson, Ms. Williams, Mr. Clancy, and Ms. Wallace each gave unsworn recorded out of court statements to detectives with the Monmouth County Prosecutor's Office. On November 21, 2013, Ms. Henderson told Detective Baldwin that Mr. Fair said he was involved with the homicide of Ms. Melton. On May 28, 2014, Ms. Williams spoke to Detective Samis and said that Mr. Fair bragged to her about the crimes he had gotten away with, including the homicide of Ms. Melton. On August 25, 2014, Mr. Clancy told Detective Samis that while he was incarcerated with Mr. Fair, Mr. Fair talked about his involvement with a "murder" of a "teacher from Red Bank." On November 19, 2014, Mr. Wallace told Detective Samis that in January 2014, Mr. Fair told her about his involvement with the homicide of Ms. Melton.

[Da15]

In his plea colloquy Fair "affirmatively denied being present in Ms. Melton's apartment the night of her death." (Da15-Da16). While in custody he admitted that he lied to Ms. Williams when he told her had killed Ms. Melton. (Da21). He "told detectives that he may have 'taken credit for the murder . . . to make himself look cool.'" (Da21). On December 21, 2017, Fair was sentenced to 10 years in prison for conspiracy to commit burglary under Indictment No. 16-04-0178-I, which is to run concurrently to an eighty-two-year sentence imposed under Indictment No. 14-10-1876-I. (Da16).

The jury never heard what Fair told others. The trial court ruled that Fair's and Brown's respective out-of-court statements were inadmissible hearsay. The trial court effectively denied defendant a complete defense and kept the jury from hearing evidence contrary to the State's theory of the case -- evidence that reasonably could have led to reasonable doubt. Defendant had argued that both statements were admissible under N.J.R.E. 803(c)(25), that they were relevant and mutually corroborated each other to show sufficient reliability.<sup>3</sup> Further, the trial court rulings unfairly allowed the State's witnesses to claim that they had no reason to suspect Kevin Brown's involvement in the crime, when in fact the police had his inculpatory statement in their possession. (20T56-4 to 14). See State v. Garcia, 245 N.J. 412 (2021) (finding plain error where the trial court excluded exculpatory evidence and the prosecutor's summation remarks, directly at odds with the excluded evidence, provided it with an unfair advantage and denied defendant a fair trial).

The Appellate Division agreed with defendant that the trial court erred as both statements were admissible as statements against interest. See (Pa38). The appellate panel further agreed that as statements against interest, Fair and

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<sup>3</sup> Now enumerated as N.J.R.E. 803(b)(3).

Brown's statements were inherently reliable. (Pa38-Pa39). However, the Appellate Division found that the error was harmless given the weight of evidence against defendant. (Pa42-Pa43).

The appellate panel failed to consider that the trial court's decision effectively denied defendant his constitutional right to a complete defense. State v. Garron, 177 N.J. 147, 168 (2003) (stating, "The Federal and New Jersey Constitutions guarantee criminal defendants 'a meaningful opportunity to present a complete defense.'" (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986))). There was no reasonable dispute that the statements were admissible hearsay as statements against interest. Nor was there any genuine dispute that defendant had shown a sufficient nexus between Fair/Brown and the crimes committed to present a third party defense. See State v. Perry, 225 N.J. 222, 239 (2016) (alteration in original) (quoting State v. Koedatich, 112 N.J. 225, 301 (1988), cert. denied, 488 U.S. 1017 (1989)) ("[t]he evidence a defendant seeks to admit in support of a third-party guilt defense must be capable of demonstrating 'some link between the [third-party] evidence and the victim or the crime.'"). "Third-party guilt evidence need only be capable of raising a reasonable doubt of defendant's guilt to warrant its admissibility." State v. Fortin, (Fortin II), 178 N.J. 540, 591 (2004). As this Court observed before, "[u]ltimately, the jury, not the judge, is the arbiter of the truth in

reaching its verdict." Ibid. The Court specifically noted that evidence of third-party guilt has a rational tendency to engender reasonable doubt. State v. Ways, 180 N.J. 171, 189 (2004).

A similar circumstance in this case presented itself in State v. Hannah, 248 N.J. 148, 189 (2021). There the defense wanted to present the exculpatory testimony of Mary Jones. Jones was prepared to testify that her son, Maurice Thomas, had conspired to frame Hannah for a robbery/homicide. The trial court had erroneously ruled that Jones' testimony was inadmissible hearsay and unreliable. After twenty-eight years of litigation, this Court agreed that the trial court's initial erroneous ruling set into motion one error that followed the other.

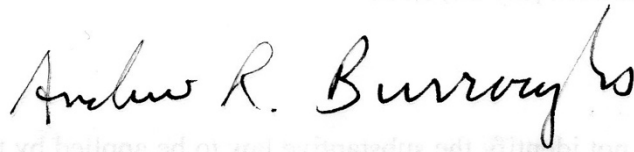
The fact that Fair may have recanted his earlier confession goes to the credibility and not to the reliability of his out-of-court statements. It is the jury's responsibility to weigh Fair's two statements and determine whether he was credible or not when he admitted committing the crimes. Fortin, 178 N.J. at 581. A reasonable juror may have determined that Fair's first statement was the most credible. Why would an individual freely admit to committing a brutal murder to others? The jury may have found Fair's subsequent recantation was contrived as he likely realized his legal jeopardy. What is not disputed is that the defense was denied its "constitutional right to present a

compete and credible third-party-guilt defense.” Hannah, 248 N.J. at 189.

Counsel certifies that this petition is filed in good faith and not for purposed of delay.

Respectfully submitted,

JENNIFER N. SELLITTI  
PUBLIC DEFENDER  
ATTORNEY FOR DEFENDANT-  
PETITIONER

A handwritten signature in black ink that reads "Andrew R. Burroughs". The signature is written in a cursive, flowing style. Below the signature, there is a faint, mirrored watermark of the signature.

By: \_\_\_\_\_  
Andrew R. Burroughs, Esq.  
Designated Counsel  
N.J. Bar#000532011