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May 31, 2024

Honorable Chief Justice and Associate Justices  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625

Re: State v. Jerry Spraulding  
App. Div. Docket No. A-5095-18

Your Honors:

James Fair confessed to murdering Jonelle Melton not once, not twice, not three times, but four separate times. He confessed to committing the murder with multiple other people — not with Jerry Spraulding. But the jury that sat through Spraulding’s trial never heard this evidence due to a blatantly incorrect evidentiary ruling by the trial judge that the Appellate Division recognized yet somehow found harmless. (Dpa 1 to 114)<sup>1</sup> The Appellate Division’s affirmance

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<sup>1</sup> This petition uses the same abbreviations as the Appellate Division briefing. In addition, Dpa refers to the appendix to this petition.

means that a defendant with a claim of innocence that he was barred from presenting at trial is now serving a life sentence in New Jersey prison. This Court should grant certification because excluding admissible evidence of a defendant's claim of innocence cannot be called harmless error.

Sprauding is seeking review of all the arguments raised before the Appellate Division. He relies on and incorporates all arguments from his Appellate Division brief. He adds the following comments regarding the Appellate Division's opinion.

Regarding Fair's four confessions to Ciara Williams, Jenay Henderson, Kevin Clancy, and Kyre Wallace in which Fair "took responsibility for Jonelle's murder and implicated persons other than defendants in the crimes," Slip op. at 31, the Appellate Division correctly recognized that these "statements against his penal interest" were "inherently trustworthy and reliable" and "satisfy the standard for the admission of third-party guilty evidence" such that the trial court abused its discretion in barring this evidence. Id. at 38-39. The Appellate Division further correctly recognized that any "extrinsic circumstances" indicating that Fair was, as the trial court believed, confessing "to make himself look cool," pertain "solely to the weight" of Fair's confessions, not their admissibility. Ibid.; see also id. at 26 (quoting this Court's decision in State v. Cope, 224 N.J. 530, 555 (2016), which held that a "person who confesses to the

crime of which the defendant is accused should not be barred from the witness stand’ unless ‘the confessor’s claim is so patently false because it was impossible for him to have committed the crime,’ such as if the confessor was unquestionably incarcerated when the crime occurred”).

But the Appellate Division then did exactly what courts are prohibited from doing when faced with improperly excluded evidence — “hold that the trial court’s error was harmless” because the court finds the defense theory “implausible.” State v. Hedgespeth, 249 N.J. 234, 253 (2021) (citing State v. Scott, 229 N.J. 469, 484-85 (2017)). “Determining implausibility ‘is in the sole province of the jury. Judges should not intrude as the thirteenth juror.’” Ibid. (quoting Scott, 229 N.J. at 485). The Appellate Division reasoned that because it believed Fair’s statements to be “inconsistent” with each other and with some of the physical evidence, the improper exclusion “did not have a clear capacity to change the verdict. . . .” Slip op. at 42. This analysis is in direct conflict with this Court’s holdings in Hedgespeth and Scott; the Appellate Division is not permitted to hold harmless the exclusion of someone else’s repeated confessions because the Appellate Division finds those confessions “inconsistent” or “implausible.” That determination is for the jury alone. And the jury in this case was wrongfully prevented from making that determination because it never got to hear that James Fair repeatedly said he committed this crime with people other

than Jerry Spraulding.

The Appellate Division’s assessment of harm is based on two other deeply flawed premises. First, the court’s assessment of the confessions’ credibility is not based on any testimony from the people who heard the confessions and would have testified at trial but instead on information about the statements from the State’s trial court brief. Slip op. 31, n.8. (See Da 36-40) The trial court here did not hold a Rule 104 hearing at which it could have heard directly from the four witnesses who heard Fair’s confessions, so the trial court could not, nor did it, make any competent credibility findings about these four witnesses or receive any sworn testimony about exactly what Fair told them. The Appellate Division therefore should not have relied so heavily on the exact words in these written “facts” contained in the State’s brief in holding that the exclusion of Fair’s confessions was harmless. Slip op. 42.

Second, contrary to the Appellate Division’s conclusion, the evidence against Spraulding was far from overwhelming. Slip op. 42-43. There was evidence placing co-defendant Jean-Baptiste in Jonelle’s apartment — his DNA on a lighter inside her apartment. Slip op. at 27-28. And historical cell site data placed co-defendant Byrd’s phone in the vicinity of the apartment at the time of the murder. Id. at 26-27. But there was no DNA evidence or cell site evidence implicating Spraulding. (14T 145-7 to 186-6; 15T 7-9 to 59-2) Moreover, while

both Byrd and Jean-Baptiste were charged, and convicted, of witness tampering for trying to intimidate State witnesses, Spraulding was not. Slip op. 21, 23-25, 29. So, the only evidence directly implicating Spraulding came from a single witness, Elizabeth Pinto. Slip op. at 19-22. Yet her statements were only made after years of badgering by a detective and only after he Mirandized Pinto, making it clear to her that she was facing serious criminal jeopardy and possible deportation if she did not tell the detective what he wanted to hear. Slip op. at 19. (See Db 13-18) This means that the first time that Pinto said that Spraulding had anything at all to do with Jonelle's murder, she knew that police were interested in Spraulding as a suspect, and she had strong motivation to confirm the police's preexisting beliefs about their suspects. (11T 13-24 to 14-6, 75-7 to 77-4) In other words, the sole witness who inculpated Spraulding had reasons to lie about Spraulding's involvement.

Thus, contrary to the Appellate Division's conclusion, the evidence against Spraulding was far from overwhelming. Cf. State v. Derry, 250 N.J. 611, 637 (2022) (holding that the improper admission of lay opinion interpretation of the defendants' words on a wiretap was harmless because of the "overwhelming" evidence, including the defendant's own testimony that he killed the victim); State v. J.L.G., 234 N.J. 265, 273 (2018) (holding that the improper admission of CSAAS testimony was harmless because of there was overwhelming evidence

of defendant's guilt, including "[a]mong other things," an audio recording "of an act of sexual abuse" by the defendant that was made by the victim). Improperly excluding evidence that someone other than Spraulding repeatedly confessed to killing Jonelle easily could have swayed the jury. This Court should grant certification because excluding admissible evidence that someone other than the defendant repeatedly confessed to committing the crime is not harmless.

In addition, the Appellate Division's conclusion that it was harmless for three police witnesses to provide inadmissible lay opinion testimony about how and why they were able to "rule out" multiple other potential suspects suffers from the same analytical failures as the court's third-party-guilt analysis. Slip op. 51-54. The Appellate Division acknowledged that these police witnesses "gave improper lay opinion testimony that usurped the role of the jurors," including offering their opinions on "facts that the jury can evaluate for itself" and giving "an impermissible 'assessment of another witness's credibility.'" *Id.* at 52, 54 (quoting *State v. Frisby*, 174 N.J. 583, 594 (2002)). Yet the Appellate Division found this error harmless as well. *Id.* at 54. In so doing, the Appellate Division again improperly acted as the "thirteenth juror," *Hedgespeth*, 249 N.J. at 253; *Scott*, 229 N.J. at 485, essentially concluding that because the court did not find this evidence unduly persuasive, the evidence could not have improperly affected the jury.

But the harm from each of these two evidentiary errors compounds the other. The trial court excluded competent, admissible evidence of third-party guilt: that Fair confessed to four separate people that he killed Jonelle, not the defendants. The trial court admitted inadmissible police opinion testimony that, through their investigation, they ruled out all of the potential other perpetrators. Spraulding's defense was that he was innocent and therefore someone else must have killed Jonelle. He was improperly barred from presenting that complete defense because the jury never heard that Fair confessed and instead heard that the police ruled out everyone else. These two clearly erroneous rulings, particularly in combination with one another, simply cannot be considered harmless beyond a reasonable doubt. State v. Camacho, 218 N.J. 533, 547 (2014) (“A trial error is defined as an error which occurred during the presentation of the case to the jury,” and must be assessed “in order to determine whether it was harmless beyond a reasonable doubt”); State v. Macon, 57 N.J. 325, 338 (1971) (describing the test as “whether in all the circumstances there was a reasonable doubt as to whether the error denied a fair trial and a fair decision on the merits”).

Finally, the Appellate Division failed to find that there was anything improper in the trial court's handling of a report that a sitting juror “has been Googling the case, showing articles to and talking about it with other people and

has already decided she's going to find them all guilty and going to burn their asses."<sup>2</sup> (31T 22-7 to 17) (emphasis added) Slip op. at 90-104. The Appellate Division held that, "[a]lthough New Jersey courts have not squarely addressed the issue, we believe that less credible allegations of juror misconduct necessitate a less extensive inquiry." *Id.* at 101. This holding is in conflict with well-established New Jersey law. *See, e.g., State v. R.D.*, 169 N.J. 551, 558-59, 560-61 (2001) (holding that where a juror may have been tainted, the trial court "must act swiftly to overcome any potential bias and to expose factors impinging on the juror's impartiality," which requires that the court "inquire into the specific nature of the extraneous information, and whether the juror intentionally or inadvertently has imparted any of that information to other jurors") (emphasis added); *State v. Loftin*, 191 N.J. 172, 187 (2007) ("Our jurisprudence requires that a juror who has formed an unalterable opinion of the defendant's guilt or innocence must be excused from service on the panel.").

The trial court here had a serious allegation of juror misconduct, yet entirely failed to address the specific nature of that misconduct in its vague four-question voir dire of the juror. *See* slip op. at 92-93. This was clear error, contrary to the Appellate Division's conclusion. Even if a "less extensive

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<sup>2</sup> The nature of the allegation was only revealed at a hearing to reconstruct the record when the judge read into the record the information he had received about the juror. (31T)



inquiry” were permitted, which it is not under our law, the trial court’s questioning of this juror fell far short. The court did not ask the juror if she had had been talking about the case at work. The court did not ask the juror if she had formed an opinion about the defendants’ guilt. The court did not ask the juror if she had “Googled” the case. The court did not ask any of the other jurors if they had spoken to this juror about these allegations. And the court did not excuse this juror for cause. (See Db 26-17) Without conducting any appropriate voir dire of the juror, the trial court was not in the position to make appropriate findings on the credibility of the allegations against the juror, and the Appellate Division was in no position to rely on the trial court’s belief that the allegation was not true. The trial court wholly failed in its gatekeeping role to protect Spraulding’s constitutional right to a trial with an impartial jury, and the Appellate Division’s holding further failed to protect that right.

In sum, the Appellate Division correctly found that the trial court made two key evidentiary errors — the court improperly excluded Fair’s four confessions and improperly admitted police opinion testimony that the other potential suspects had been ruled out. But the Appellate Division’s conclusion that both errors were harmless is in direct conflict with this Court’s decisions in Hedgespeth and Scott, holding that the Appellate Division cannot act as the thirteenth juror and find errors harmless simply because it believes the defense

theory of the case is implausible. This Court should grant certification. R. 2:12-4. Certification should further be granted because the Appellate Division's conclusion that there was no error in the wholly inadequate voir dire of a juror who had reportedly already decided that the defendants were guilty and she would "burn their asses" conflicts with this Court's caselaw on the critical gatekeeping role of trial court's in protecting the right to trial by an impartial jury. R. 2:12-4. It was the jury's job in this case to decide whether, in light of all of the admissible evidence, including Fair's confessions and excluding the police witnesses' inadmissible opinions, whether the State had proven Spraulding's guilt beyond a reasonable doubt. The jury never got to do that job, and Spraulding is now serving a life sentence in prison. He respectfully asks this Court to grant his petition for certification, in the interest of justice. R. 2:12-4.

Respectfully submitted,

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