Supreme Court of New Jersey
DOCKET NO. 090743

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Certification Granted from a Final Order of the Superior Court of New Jersey, Appellate Division.
v.	:	
JAMAR MYERS,	:	Sat Below: Hon. Robert J. Gilson, P.J.A.D. Hon. Lisa A. Firko, J.A.D.
Defendant-Petitioner.	:	Hon. Avis Bishop-Thompson, J.A.D.

AMICUS CURIAE BRIEF ON BEHALF OF
THE ATTORNEY GENERAL OF NEW JERSEY

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November 24, 2025

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PRELIMINARY STATEMENT

This Court has long recognized the importance of clearly expressing the material terms and conditions of a plea agreement. Once agreed to and approved by the court, both parties have an expectation that the agreement will be meticulously enforced. This case asks whether a defendant can automatically retract his guilty plea to one crime after successfully appealing a separate crime resolved in the same plea agreement when the agreement is silent on the appeal's impact on the first crime. Precedent, public policy, and fairness and finality dictate that he cannot.

The charges against Jamar Myers stem from two separate series of violent crimes committed in 2011, chief of which, for present purposes, are the felony murder of a Trenton pharmacist and the armed robbery of a Hamilton 7-Eleven eight days later. In 2016, defendant pleaded guilty to both charges in a single plea agreement affording him the substantial benefit of a minimum thirty-year sentence for the pharmacy murder, concurrent sentences for the 7-Eleven robbery and three violations of probation, and numerous dismissals across three indictments. As part of the plea agreement, defendant preserved the right to appeal a suppression ruling on the 7-Eleven robbery indictment and a N.J.R.E. 404(b) ruling on the pharmacy murder indictment. Though the plea agreement expressly permitted defendant to withdraw his plea based on the outcome of a

separate Pennsylvania robbery, it never provided that defendant could withdraw from the pharmacy murder if he prevailed on the appeal of the 7-Eleven robbery (or vice versa). After successfully appealing the 7-Eleven robbery conviction, defendant received the benefit of his conditional plea: that case was dismissed.

Unsatisfied, defendant also tried to withdraw his felony-murder guilty plea. After examining the plea agreement's plain language and defendant's reasons for withdrawal, the trial court appropriately denied the motion and the Appellate Division correctly affirmed, finding the agreement did not contemplate defendant being able to withdraw his felony-murder plea based on the successful appeal in a separate case. Plea agreements are judged by their express terms, not conditions which could have been included but were not. Unless specifically bargained for in the plea agreement, a defendant who successfully challenges a pretrial ruling on the appeal of one case is not entitled to withdraw his plea on a separate case not the subject of the pretrial ruling. Without a meeting of the minds, defendant was not entitled to the windfall of withdrawing his plea to a separate crime entered years ago.

The conditional-plea rule dictates the same result. Under that rule, defendant could withdraw his "plea of guilty" if he prevailed on appeal "of any specified pretrial motion." This rule was followed. Had the State not dismissed the indictment first, defendant could have withdrawn his plea to the 7-Eleven

robbery after prevailing on appeal of the suppression ruling. But having lost his appeal of the pretrial ruling in the pharmacy case, defendant had no corresponding right to withdraw his guilty plea to felony murder when the parties did not expressly agree to and the court did not sanction that condition.

That multiple cases are resolved in one agreement does not merit an expansion of the conditional-plea rule beyond its plain meaning, particularly when it would undermine the salient purposes of plea-bargaining. The type of global agreement reached here promoted the efficient administration of justice to the benefit of all. It drastically reduced defendant's sentencing exposure and provided assurance to the State and the victim's family that defendant would be punished. But these interests will be frustrated if his successful appeal of a separate case invalidates his plea. And the impact will be felt beyond this case, as prosecutors will be reluctant to enter a global agreement when it could leave them trying to assemble witnesses and evidence potentially many years later.

Defendant was not without recourse. He had the opportunity to justify withdrawing from his felony-murder plea under the "manifest injustice" standard and the familiar multi-factor test governing such motions. But he was not entitled to an automatic windfall based on an unstated term to which the State did not and likely would not have agreed.

This Court should affirm the Appellate Division's ruling.

STATEMENT OF PROCEDURAL HISTORY AND FACTS[1]

A. The crimes[2]

1. Pharmacy robberies and murder

On the evening of April 29, 2011, a man approached Vizzoni's Pharmacy in Hamilton and left after trying to open the locked door. (Da31-32). Video surveillance showed the man wore all black clothing including a black sweatshirt with a Champion brand emblem, a handkerchief with white spots to cover his face, and boots with tops folded down like "dog ears." (Da37). The man had a bow-legged right leg. And he appeared to be left-handed as he held an object in his pocket with his left hand while trying to open the door with his right hand. (Da37).

Around twenty-five minutes later, a man wearing the same clothing with the same distinctive limp entered the Brunswick Pharmacy in Trenton two miles away. (Da30-31, 36). Video surveillance showed and surviving employees described the suspect brandishing a gun with his left hand and demanding Percocet. (Da30-31). A pharmacist, Arjun Reddy Dyapa, approached the

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[1] The Procedural History and Statement of Facts have been combined for clarity and to avoid repetition.

[2] As there was no trial, the Attorney General's factual recitation is primarily derived from the trial court's factual findings on the N.J.R.E. 404(b) motion and the Appellate Division's factual recitation on the appeal therefrom.

suspect. (Da30). After a brief struggle over the gun, a shot was fired and Mr. Dyapa fell to the floor. (Da30-31). The suspect fled. (Da30). Mr. Dyapa died from the gunshot wound.

2. 7-Eleven robberies

One week later, on May 6, 2011, at around 11:00 p.m., a masked man entered a 7-Eleven in Morrisville, Pennsylvania, brandished a handgun with his left hand, and took $263 from the register before fleeing. (Da32).

Around one hour later, shortly after midnight on May 7, 2011, two masked men wearing dark clothes robbed a 7-Eleven in Hamilton, taking $358 and the store clerk's cell phone. (Da32). One of the men was armed with a handgun in his left hand and wore a dark hoodie with "elite" on the back. (Da34). Police were alerted of the robbery, and shortly thereafter, stopped a car driven by Ajene Drew, with defendant and Peter Nyema as passengers. (Da35); State v. Myers, A-0185-17, 2019 WL 1581430, at *2 (App. Div. Apr. 12, 2019). Police seized a handgun wrapped in a bandana from under the car's hood, dark clothing from inside the vehicle including a hoodie with similar lettering to the one seen on the 7-Eleven surveillance, $55 from Drew, $303 from Nyema, and $230 from defendant. (Da35); Myers, 2019 WL 1581430, at *2.

Following his arrest, Drew spoke to police and implicated defendant both in the 7-Eleven robberies and the pharmacy robberies and murder, stating that

he drove defendant to all the locations.[3] (Da41); Myers, 2019 WL 1581430, at *2. A detective who twice interviewed defendant noticed he used his left hand to sign a Miranda waiver form and his right leg bowed outward as he walked like the suspect in the videos from the pharmacy robberies and the Hamilton 7-Eleven robbery. (Da39); Myers, 2019 WL 1581430, at *2. Defendant suffered an injury to his right leg as a child. (Da39); Myers, 2019 WL 1581430, at *2.

B. The indictments

In July 2011, defendant was charged, under Indictment 11-08-0833, with eight crimes pertaining to the Hamilton 7-Eleven robbery, including first-degree robbery. Nyema and Drew were also charged under the indictment. (Da14-25).

In February 2014, defendant was charged, under superseding Indictment 14-02-0232, with twelve crimes in connection with the attempted robbery of the Vizzoni's Pharmacy in Hamilton and the robbery and murder at the Brunswick Pharmacy in Trenton, including first-degree murder and first-degree felony murder. Drew was also charged on six counts, including murder. (Da1-13).

C. The pretrial motions

Defendant filed a motion to suppress solely on Indictment 11-08-0833 (the 7-Eleven robbery). (Da26). On October 4, 2013, the trial court partly granted and partly denied the motion, suppressing the gun found under the hood but

[3] Drew also implicated Nyema in the Hamilton 7-Eleven robbery. (Da41).

admitting the clothing and cash. (Da26).

The State filed a motion under N.J.R.E. 404(b) on Indictment 14-02-0232 (the pharmacy case) seeking to introduce the video footage from the robberies of the Morrisville and Hamilton 7-Elevens to help prove defendant's identity at trial on the pharmacy crimes. Myers, 2019 WL 1581430, at *3. The State also sought to admit, as evidence of consciousness of guilt, a threatening letter defendant was believed to have written to another man directing a threat at a female witness who had implicated defendant in the murder. (Da52); Myers, 2019 WL 1581430, at *3. Following a two-day evidentiary hearing, on September 30, 2016, the trial court granted the State's motion with respect to the Hamilton 7-Eleven surveillance video footage and threatening letter, and denied the motion with respect to the Morrisville 7-Eleven surveillance video. (Da27-53); Myers, 2019 WL 1581430, at *4. The court reasoned that the suspect in the Hamilton 7-Eleven video had the same distinctive bow-legged gait, left-handedness, and mask as the suspect in the pharmacy crimes.[4] (Da47-48). The court concluded that "the probative value of the identity evidence as shown in the surveillance video from the Hamilton Township 7-Eleven robbery will assist the jury in identifying the suspect in the pharmacy incidents . . . ." (Da50).

[4] The judge did not allow the Morrisville 7-Eleven surveillance because he did not observe the distinctive gait. (Da48).

D. Defendant pleaded guilty to the pharmacy murder and 7-Eleven robbery

On November 29, 2016, two months after the N.J.R.E. 404(b) ruling and with jury selection about to begin on the pharmacy case, defendant appeared for a pretrial hearing. (1T). The court recounted that the prosecutor and defense counsel had been diligently working to resolve the case. The court accurately informed defendant of his sentencing exposure of up to life for murder, and separately up to life on the 7-Eleven robbery due to defendant's apparent eligibility for a persistent-offender extended term, which the prosecutor intended to pursue if defendant were convicted. (1T3-15 to 4-18; 1T11-18 to 12-2). The prosecutor recounted the State's final plea offer of a thirty-year prison sentence with a thirty-year period of parole ineligibility for felony murder, with the promise of a concurrent twelve-year sentence for the Hamilton 7-Eleven robbery. The prosecutor also represented that he would request Pennsylvania authorities run any sentence on the Morrisville 7-Eleven robbery concurrently.[5] (1T5-1 to 6-7). The prosecutor accurately explained, and the court agreed, that due to the separate nature of the three crimes, defendant likely faced consecutive sentences without a plea deal. (1T6-4 to 7; 1T8-18 to 23). The court advised defendant that a guilty plea did not foreclose defendant from

[5] After defendant was sentenced on the instant cases, Pennsylvania declined to prosecute defendant for the Morrisville 7-Eleven robbery. (Da61-62).

filing an appeal, and if the court "was wrong in [its] 404(b) decisions or anything else, [defendant's] guilty plea could be reversed." (1T10-4 to 8).

Defense counsel reiterated defendant's massive sentencing exposure both on the pharmacy case and the 7-Eleven case, either of which alone could be far beyond the "30 do 30." (1T9-3 to 23). Though both he and defense counsel on the 7-Eleven robbery were "two veteran defense attorneys who were able to speak with [defendant] at length," defense counsel requested one last opportunity to speak with defendant before he made his decision on the plea offer, which expired that day. (1T8-11 to 13; 1T9-3 to 11-11)

Defendant decided to plead guilty during a recess and plea papers were completed. (1T12-8 to 15). As memorialized on the plea form, defendant agreed to plead guilty to first-degree felony murder under Indictment Number 14-02-0232 in exchange for a recommended mandatory minimum sentence of thirty years with no parole ineligibility, first-degree robbery under Indictment Number 11-08-0833 with a recommended sentence of twelve years concurrent to the felony-murder sentence, and three separate violations of probation (VOP) with recommended concurrent sentences of time served. (Da54). In addition to the multiple concurrent sentences for clearly separate offenses, the State also agreed to dismiss all remaining counts of the pharmacy and 7-Eleven indictments, and all counts of a third indictment (Indictment Number 11-07-0657) charging

aggravated assault on a law-enforcement officer. (Da56; 1T15-8 to 11).

The agreement specifically contemplated defendant's reservation of the "right to withdraw plea," which the "State does not oppose," if Pennsylvania did not run any sentence on the Morrisville 7-Eleven robbery concurrently. (Da56). By contrast, the plea form indicated defendant was reserving the right to appeal the "404B decision in 14-02-232" and the "motion to suppress physical evidence in 11-08-833," without specifying that defendant reserved the right to withdraw his guilty plea to all charges if he prevailed on either appeal. (Da54). Rather, the plea form reiterated that the only other promise made to defendant was that the State would "reach[] out to [Pennsylvania] authorities" to urge Pennsylvania to run any sentence there concurrently to his New Jersey sentence. (Da58). Defendant circled "No" in response to the next question whether "any promises other than those mentioned on this form" caused him to plead guilty. (Da58). Defendant had no questions concerning his plea. (Da58).

The subsequent plea colloquy laid out the above terms. The prosecutor repeated the recommended sentences, proposed dismissals, and represented that defendant was "free to withdraw his guilty plea without opposition from the State" if Pennsylvania refused to run any sentence there concurrently. (1T14-16 to 15-24). Defense counsel agreed with the prosecutor's recitation of the terms, and added that defendant was "reserving his right to appeal the 404(b)

decision in the homicide case and the motion to suppress physical evidence in the Hamilton armed robbery case." (1T16-21 to 25). The court acknowledged that defendant "has the opportunity to file that appeal." (1T17-10 to 11).

In response to the court's questions, defendant affirmed his understanding of the terms of the plea agreement, including the charges to which he was pleading guilty and the recommended sentence. He had no questions. (1T17-13 to 18-9). Defendant further acknowledged the heavy burden he would face if he later claimed his plea was unknowing. (1T18-10 to 23). Defendant affirmed he had enough time to discuss all his cases with defense counsel who answered all his questions to his satisfaction, and reaffirmed that no promises had been made beyond what was discussed on the record. (1T18-24 to 20-12).

Defendant first gave a factual basis for the Brunswick Pharmacy felony murder. He admitted that on April 29, 2011, Drew drove him to the pharmacy, where defendant intended to pass "a phony prescription for obtaining Percocet." Once he entered, defendant decided to rob the store, brandishing a handgun while demanding Mr. Dyapa give him Percocet. The gun "went off" during the robbery, killing Mr. Dyapa. (1T21-6 to 23-2).

Next, defendant pleaded guilty to the Hamilton 7-Eleven robbery. He admitted that on May 7, 2011, he and another man entered the store armed with a handgun and took money from the owner. Defendant admitted that he was the

man in the surveillance video holding the handgun and wearing a dark hoodie with white graphics on the front. (1T23-5 to 24-18).

Finally, defendant pleaded guilty to the three VOPs, admitting that he violated probation by incurring the new charges. (1T24-25 to 25-12).

After defendant confirmed that he reviewed the plea papers with counsel and the answers on the papers were truthful and his own, the court accepted the "guilty pleas," finding defendant had entered the pleas knowingly, intelligently, and voluntarily on the advice of competent counsel. (1T25-17 to 28-16).

On July 17, 2017, defendant was sentenced according to the plea agreement to thirty years imprisonment with thirty years of parole ineligibility for the Brunswick Pharmacy felony murder, a concurrent twelve-year sentence on the Hamilton 7-Eleven robbery, and concurrent terms of time served on the three VOPs. (2T20-11 to 21-11). The State moved to dismiss the remaining counts of both indictments as well as the third indictment entirely. (2T22-18 to 23-9). Separate judgments of conviction were entered on the pharmacy and 7-Eleven cases accurately reflecting the sentence on each. (Da63-66; Da67-70).

E. Appeal of pretrial rulings

Defendant appealed the denial-in-part of the motion to suppress physical evidence under Indictment 11-08-0833 and the granting-in-part of the N.J.R.E. 404(b) motion under Indictment 14-02-0232. On April 12, 2019, the Appellate

Division affirmed both rulings. Myers, 2019 WL 1581430.

This Court originally denied defendant's petition for certification on October 21, 2019. State v. Myers, 240 N.J. 22 (2019). But on February 12, 2021, this Court granted the petition on reconsideration "limited to the issue of whether the police officer had reasonable articulable suspicion to stop the car" after the Appellate Division reached the opposite conclusion on co-defendant Nyema's appeal of the suppression ruling. State v. Myers, 245 N.J. 250 (2021); State v. Nyema, 249 N.J. 509, 515-16, 522 (2022).

On January 25, 2022, this Court held defendant's suppression motion should have been granted, vacated the conviction for the 7-Eleven robbery, and remanded to the trial court for further proceedings.[6] Nyema, 249 N.J. at 535. On February 25, 2022, the 7-Eleven case was dismissed on the State's motion. (Da71).

F. Motion to withdraw guilty plea

On April 14, 2022, defendant filed a pro se motion to withdraw his guilty plea under Rule 3:9-3(e).[7] (Da72-74). In his supporting certification, defendant

[6] Co-defendant Drew is referred to by his alias, Tyrone Miller, in this Court's Nyema opinion.

[7] Rule 3:9-3(e) ("Withdrawal of Plea") provides: "If at the time of sentencing the court determines that the interests of justice would not be served by effectuating the agreement reached by the prosecutor and defense counsel or by imposing sentence in accordance with the court's previous indications of

stated that he was "innocent" and "only accepted the plea because he could not get a fair trial to prove his innocence." (Da74). Defendant further stated that he wished to withdraw "his global plea because overwhelmingly prejudic[ial] 404-B evidence that was improperly admitted into defendant's homicide trial has been suppressed." (Da74).

The trial court heard oral argument on defendant's motion on March 3, 2023. (3T). Defense counsel argued that defendant should be permitted to withdraw his plea under State v. Slater, 198 N.J. 145 (2009), because of his "fear of not being able to have a fair trial" knowing that N.J.R.E. 404(b) evidence was permitted. (3T10-11 to 11-25). Defense counsel further argued that defendant and his family were facing threats from his co-defendant to "take the charges." (3T12-5 to 14-7). Defense counsel never referenced the conditional-plea rule, Rule 3:9-3(f), but argued that due to the "contingent plea," defendant believed "that if something came back, then they all came back . . . ." (3T14-9 to 16-17).

The trial court denied the motion, finding that defendant failed to meet his burden under the Slater four-factor test. (3T41-7 to 52-9; Da 75). First, the court found that defendant had not raised a colorable claim of innocence. (3T44-15 to 46-8). Second, defendant's reasons for withdrawal were unpersuasive.

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sentence, the court may vacate the plea or the defendant shall be permitted to withdraw the plea."

(3T48-18 to 20). In this regard, the court emphasized "the parties contemplated retaining a lot of rights in terms of appeals, in terms of dealing with what was going on in Pennsylvania but there was never any discussion or preservation of any rights to do anything regarding the homicide conviction if the robbery conviction ultimately got reversed." (3T48-7 to 13). The court further found defendant's professed fears of an unfair trial and for his family's safety found no support in the record of the plea or his motion papers. (3T48-21 to 49-16). Third, this was a negotiated plea agreement in which defendant received the benefit of concurrent sentences on numerous additional indictments "consistent with what the defendant's wishes were." (3T50-3 to 13). Finally, the court highlighted the unfair prejudice to the State in having to proceed to trial twelve years after the murder when the State was trial ready at the time of defendant's guilty plea six years earlier. (3T50-14 to 51-20).

Defendant's appeal was initially heard on the March 19, 2024 sentencing oral argument calendar. (4T). Defense counsel argued that defendant was entitled to withdraw his plea to felony murder under Rule 3:9-3(f), and that the trial court incorrectly evaluated the motion under Slater. (4T2-24 to 4-10). The Appellate Division issued an order affirming the denial of defendant's motion, finding the trial court did not abuse its discretion under Slater. (Da83). The Appellate Division subsequently granted defendant's motion for reconsideration

and transferred the matter to the plenary calendar. (Da84).

On May 6, 2025, the Appellate Division affirmed the denial of defendant's motion in an unpublished decision. (Dpa1-17). The panel ruled that "[t]he plea agreement did not give defendant the right to withdraw his felony-murder conviction if the 7-Eleven robbery conviction was subsequently overturned on appeal." (Dpa12). The panel's "plain reading" of the plea agreement showed that the felony-murder and armed-robbery charges and the right to appeal certain pretrial motions were listed "separately and distinctly." (Dpa13-14). Thus, when this Court reversed defendant's motion to suppress the evidence in the 7-Eleven case, "defendant got exactly what he conditionally bargained for in the plea agreement: his plea to the robbery conviction was vacated." (Dpa14).

The panel further found that defendant had not demonstrated a manifest injustice or any of the Slater factors. (Dpa15). In this regard, defendant "baldly" asserted his innocence to the felony murder, which did not refute his admissions under oath when pleading guilty. (Dpa15). Defendant also did not present persuasive reasons for withdrawal since the plea agreement clarified that the felony-murder plea was "separate and distinct" from the robbery plea. (Dpa16). Moreover, the panel rejected defendant's claim that suppression of the evidence in the 7-Eleven case would have undermined the pharmacy case because the State still could have relied on the 7-Eleven surveillance footage to establish

defendant's identity, the threatening letter defendant allegedly wrote, and Drew's testimony. (Dpa16). The panel emphasized the unfair prejudice to the State in permitting defendant to withdraw his plea when the State was "prepared to go to trial" in 2016, pointing to its agreement with Drew and the challenge of "marshal[ing] all the evidence that it had available in late 2016."[8] (Dpa16). Accordingly, the panel affirmed the trial court's ruling. (Dpa17).

On September 9, 2025, this Court granted defendant's petition for certification. (Dsa1).

LEGAL ARGUMENT

POINT I

UNLESS EXPRESSLY BARGAINED OTHERWISE, A DEFENDANT'S SUCCESSFUL CHALLENGE TO ONE CASE DOES NOT ENTITLE HIM TO WITHDRAW HIS PLEA TO A SECOND CASE RESOLVED IN THE SAME PLEA AGREEMENT.

Absent a defendant specifically preserving as a condition of a plea agreement the right to withdraw his guilty plea to case one if he successfully appeals a pretrial ruling on case two, the plea to case one should stand. Because defendant failed to bargain for such a condition or obtain the State's consent and

[8] This Court can take judicial notice that Drew—who had agreed to testify against defendant at trial—was sentenced on both cases on December 8, 2017. (AGa1-4; AGa5-8); N.J.R.E. 201(b)(4).

the court's approval when he entered his guilty pleas nine years ago, the trial court and Appellate Division correctly rejected his attempt to withdraw his guilty plea to felony murder after his successful appeal of a separate robbery. The essential purposes of plea bargaining, precedent, and fairness principles warrant this Court's affirmance.

"'Plea bargaining [is] firmly institutionalized in this State as a legitimate, respectable and pragmatic tool in the efficient and fair administration of justice.'" State v. Means, 191 N.J. 610, 618 (2007) (quoting State v. Taylor, 80 N.J. 353, 360-61 (1979)). "A key component of plea bargaining is the 'mutuality of advantage' it affords to both [the] defendant and the State." Ibid. (quoting Taylor, 80 N.J. at 361). Plea bargaining accommodates societal interests "by helping the criminal justice system keep pace with the ever-burgeoning caseload" and benefits defendants "by reducing penal exposure." State v. Pennington, 154 N.J. 344, 362 (1998). In light of these mutual benefits, plea agreements are treated like contracts between the State and defendant. Means, 191 N.J. at 622. "It requires a meeting of the minds upon the negotiated pleas and is an executory agreement since it depends on the approval of the sentencing court." State v. Smith, 306 N.J. Super. 370, 383 (App. Div. 1997); see also Means, 191 N.J. at 622.

Like contracts, "all material terms and relevant consequences" must be

"clearly disclosed, fully understood, and knowingly and voluntarily accepted by the defendant." State v. Warren, 115 N.J. 433, 444 (1989); see also State v. Bell, 250 N.J. 519, 542 (2022) (emphasizing "clearly agreed-upon delineations of the terms of the sentence recommendations" as supporting fair administration of justice); R. 3:9-3(b) (requiring terms of plea agreement to be "placed on the record in open court at the time the plea is entered."); Goldfarb v. Solimine, 245 N.J. 326, 339 (2021) (stating contract "must be sufficiently definite 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'") (citation omitted).

If an alleged condition is not made explicit and clear, it is not part of the agreement, no matter whether the defendant, State, or court later asserts it. See, e.g., State v. Davila, 443 N.J. Super. 577, 586 (App. Div. 2016) (finding defense counsel's "casual mention of 'all the motions'" and "a difficult-to-read handwritten list" insufficient to preserve issue for appellate review); State v. Conway, 416 N.J. Super. 406, 412 (App. Div. 2006) ("[I]f the State wanted to condition this plea agreement on the co-defendants accepting a plea bargain, the State should have explicitly stated that condition in the written plea agreement or in the prosecutor's confirmation of the agreement on the record."); State v. Salentre, 242 N.J. Super. 108, 112-13 (App. Div. 1990) (finding judge improperly vacated defendant's plea based on condition not part of agreement

reached by parties).

As the Appellate Division correctly ruled, a "plain reading" of the plea agreement shows that defendant received the benefit of his bargain. (Dpa14). The plea form stated that defendant reserved the right to appeal the "404B decision in 14-02-232 (the pharmacy case)" and the "motion to suppress physical evidence in 11-08-833 (the 7-Eleven case)."[9] (Da54). Nowhere did the form provide that defendant could withdraw his guilty plea to the pharmacy murder if he prevailed on appeal on the motion to suppress filed in the 7-Eleven robbery. Rather, defendant affirmed that there were no promises made to induce his plea beyond those listed on the form. (Da58).

The plea hearing further supports that the preservation of the pretrial motions was respective to each case on which the motion pertained. Defense counsel noted that defendant was "reserving his right to appeal the 404(b) decision in the homicide case and the motion to suppress physical evidence in the Hamilton armed robbery case," (1T16-21 to 25), without adding anything about defendant's ability to withdraw his plea to one crime if his appeal on the other crime were successful. Rather, defense counsel and defendant affirmed there were no other promises or conditions, and defendant had no questions.

[9] The right to appeal from the denial of defendant's motion to suppress physical evidence did not need to be specifically reserved in the agreement because Rule 3:5-7(d) automatically affords that right.

(1T17-1 to 2; 1T18-24 to 20-12).

Defendant maintains that the judge's comment that if an appellate court found he "was wrong in my 404(b) decisions or anything else, your guilty plea could be reversed," (1T10-5 to 8) (emphasis added), but that equivocal observation was made before the recess when the parties came to terms, and, more to the point, was correct as to the guilty plea on which the motion pertained. Indeed, following defendant's successful appeal of his motion to suppress in this Court, the 7-Eleven case was dismissed. (Da71).

As the trial court correctly observed in denying defendant's motion to withdraw his plea, the silence on any condition allowing defendant to withdraw from his felony-murder guilty plea based on a successful appeal on a separate case stands in stark contrast to how the parties handled the Pennsylvania case. (3T48-7 to 13). The agreement expressly contemplated defendant's "right to withdraw plea" if Pennsylvania refused to run any sentence on the Morrisville 7-Eleven robbery concurrent to the New Jersey sentences. (Da56). This condition, not defendant's ability to withdraw from the entire agreement if the appeal of either motion were successful, was the focal point of the plea hearing and sentencing. (1T5-5 to 24; 1T9-10 to 14; 1T15-12 to 24; 1T29-14 to 23; 2T4-23 to 5-20). And in both the agreement and at the plea hearing, the State made clear this condition was "without opposition," (1T15-24; Da56), showing that

this condition, unlike defendant's alleged ability to withdraw from the entire agreement if either motion appeal were successful, was specifically bargained for by defendant and consented to by the State.

Defendant accepted an extremely favorable offer giving him a concurrent sentence for the entirely separate violent crime of armed robbery; concurrent sentences on three VOPs; a contingency that any sentence for the Morrisville 7-Eleven robbery would run concurrently; dismissal of the remaining ten counts against him on the pharmacy case; dismissal of the remaining eight counts against him on the Hamilton 7-Eleven case; the dismissal of a third indictment; and the opportunity to appeal the pretrial motions, all in exchange for the statutory minimum sentence of thirty years for murder. (Da54-58). Defendant in fact successfully appealed the suppression motion resulting in the 7-Eleven robbery charge being dismissed, satisfying the terms of the plea agreement.[10] It was incumbent on defendant, as the party who sought to preserve his appeal rights, to expressly condition his guilty plea to felony murder on the outcome of the appeal of the suppression motion on the robbery case. Absent such "explicit condition," Conway, 416 N.J. Super. at 412, there was no "meeting of the minds," Means, 191 N.J. at 622, and defendant had no right to withdraw his

[10] The condition that he could appeal the granting of the State's N.J.R.E. 404(b) motion was also fulfilled, although defendant was unsuccessful on that appeal. Myers, 2019 WL 1581430, at *1, certif. denied, 240 N.J. 22 (2019).

felony-murder guilty plea.

Nor is there any reason why defendant could not have tried to include this express provision. All manner of conditions can be bargained for besides the primary agreement that defendant plead guilty to a certain charge in exchange for dismissal of other charges and a recommended sentence. See, e.g., State v. Marshall, 148 N.J. 89, 163 (1997) (finding State may condition plea agreement upon truthful testimony against co-defendants); State v. Shaw, 131 N.J. 1, 15 (1993) (holding that an appearance requirement was not an arbitrary exercise of prosecutorial discretion); Smith, 306 N.J. Super. at 383 (upholding plea agreement contingent upon court's acceptance of co-defendants' pleas and criminal history check showing no prior convictions).

Defendant thus received the benefit of his bargain, and was not entitled to a condition not expressed in the plea agreement.

POINT II

THE CONDITIONAL-PLEA RULE DOES NOT ENTITLE DEFENDANT TO WITHDRAW HIS PLEA TO A CRIME THAT WAS NOT THE SUBJECT OF THE CONDITION.

While defendant maintains this appeal concerns "the application of the conditional plea rule to global plea agreements," (Dsb16), the conditional-plea rule does not apply to this agreement nor does it afford defendant the automatic right to withdraw his guilty plea to a crime separate from the one that was the

subject of the successful appeal in any event.

At the outset, defendant's reliance on the conditional-plea rule in this case is misplaced, as Rule 3:5-7(d) alone gave defendant the right to appeal the denial of the motion to suppress in the 7-Eleven case. See R. 3:5-7(d) (stating that denial of motion to suppress evidence "may be reviewed on appeal from judgment of conviction notwithstanding that such judgment is entered following a plea of guilty"); R. 3:9-3(f) ("Nothing in [conditional-plea rule] shall be construed as limiting the right of appeal provided for in R. 3:5-7(d)."); State v. Knight, 183 N.J. 449, 471 (2005). And the plain language of Rule 3:5-7(d) simply describes the right to appeal. It does not describe the remedy if the defendant's appeal is successful, and certainly does not support defendant's proposed remedy that he be permitted to withdraw his plea to a separate incident.

But even if the superfluous inclusion of the preservation of the right to appeal the motion to suppress triggered Rule 3:9-3(f), the Appellate Division correctly ruled that that condition was fulfilled when his plea to the robbery conviction was vacated, (Dpa14), and neither the Rule's language, its purpose, nor common practice support defendant's expansive interpretation.

A. The plain language of Rule 3:9-3(f) only entitles a defendant to withdraw the "plea" that is successfully appealed.

When interpreting a court rule, this Court "appl[ies] the ordinary canons of statutory interpretation." State v. Tier, 228 N.J. 555, 564 (2017). The

analysis thus "must begin with the plain language of the rule." Ibid. (quoting Wiese v. Dedhia, 188 N.J. 587, 592 (2006)). Words are ascribed their "ordinary meaning and significance." Wiese, 188 N.J. at 592 (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

Rule 3:9-3(f) ("Conditional Pleas") states:

> With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant shall be afforded the opportunity to withdraw his or her plea . . . .
>
> [(Emphasis added).]

By the rule's plain language, "plea," as used in the second sentence when speaking of a defendant's opportunity to withdraw, refers to the entry of the "plea of guilty" as stated in the first sentence. This is in accordance with the ordinary meaning of "plea" as an accused's formal response to criminal charges against them. See "Plea," Black's Law Dictionary (12th ed. 2024) ("An accused person's formal response of 'guilty,' 'not guilty,' 'or no contest' to a criminal charge."). This is also consistent with our courts' regular distinguishing of guilty pleas versus plea agreements. See, e.g., State v. Sainz, 107 N.J. 283, 292 (1987) (describing sentences "that result from guilty pleas, including those guilty pleas that are entered as part of a plea agreement"); State v. Bellamy, 178

N.J. 127, 135 (2003) (stating a defendant can "withdraw a guilty plea if the court imposes a harsher sentence than that contemplated by the plea agreement"); see also R. 3:9-2 ("A defendant may plead only guilty or not guilty to an offense.").

How "plea" is used elsewhere in Rule 3:9-3 further ss that subsection (f) only describes a defendant's right to withdraw his guilty plea to the case to which the pretrial motion pertains rather than the entire plea agreement. See Tier, 228 N.J. at 564 (quoting Wiese, 188 N.J. at 592) (explaining that "[t]he rules should not be read in isolation" but "'in context with related provisions so as to give sense to the [court rules] as a whole.'"). When Rule 3:9-3 is referring to a "plea agreement," it says so. E.g., R. 3:9-3(c) (explaining how parties may disclose status of "negotiations toward a plea agreement"); R. 3:9-3(d) (discussing "plea agreements" that include provision that defendant will not appeal); R. 3:9-3(e) (describing how defendant may "withdraw the plea" if court finds "effectuating the agreement" contrary to interests of justice).

Inasmuch as the right to appeal from the adverse determination "of any specified pretrial motion" is attached to the "plea of guilty," it follows that a successful appeal allows withdrawal of the plea on the affected case. Indeed, that is the effect in practice. See State v. Desir, 461 N.J. Super 185, 194 (App. Div. 2019), aff'd as mod., 245 N.J. 179 (2021) (remanding to trial court following successful appeal so defendant could "withdraw his plea and proceed

to trial" or "accept his earlier conviction and sentence") (quoting State v. Cummings, 184 N.J. 84, 100 (2005)). But when a plea agreement encompasses multiple cases, it is contrary to the Rule's plain language for a defendant to be permitted to withdraw his plea to a case that is not the subject of "the adverse determination of any specified pretrial motion" and thus not something on which he can "prevail[] on appeal." R. 3:9-3(f).

Applying the conditional-plea rule to permit a defendant to withdraw his guilty pleas to cases that were not the subject of the pretrial motion would yield inconsistent outcomes based on ministerial factors such as how the parties memorialize the agreement or the timing of the plea hearings. For example, under defendant's interpretation, if the same deal had been memorialized on separate plea forms for each indictment instead of on a single form, or if defendant pleaded guilty to the felony murder on Friday and the robbery on Monday instead of at the same hearing, the conditional aspect of each case would only extend to that case. But this exalts form over substance. Defendant should not receive a windfall because as a matter of expediency his pleas were resolved in a single document and heard at the same plea hearing. Indeed, courts should avoid a construction that "leads to an absurd result . . . distinctly at odds with the public-policy objectives" of the provision in question. See State v. Morrison, 227 N.J. 295, 308 (2016).

B. Interpreting Rule 3:9-3(f) to permit a defendant to withdraw a plea to a crime not subject to the successful appeal would run counter to expediency and finality interests, and would hurt defendants, the State, and victims.

The Rule's purpose and the public-policy objectives underlying plea-bargaining further support a construction that limits the preservation of adverse decisions to the particular case unless otherwise specified. See State v. Lane, 251 N.J. 84, 94 (2022) (stating "goal" of interpretative process is "to give effect" to drafters' intent) (quoting State v. Robinson, 217 N.J. 594, 604 (2014)).

The purpose of the conditional-plea rule is expediency in resolving cases. See State v. Robinson, 224 N.J. Super. 495, 499 (App. Div. 1988) (stating R. 3:9-3(f) "was adopted in 1980 after recommendation of the Supreme Court's Task Force on Speedy Trial and which was designed to permit preservation of issues for appeal without the necessity of full trials merely to preserve the issue"); see also Bell, 250 N.J. at 542 (stating plea-bargaining "accommodates the interest of society by helping the criminal justice system keep pace with the ever-burgeoning caseload") (quoting Pennington, 154 N.J. at 362).

This case demonstrates precisely how the efficiency rationale of plea-bargaining would be undermined. The plea agreement here resolved six cases (the three new indictments and the three VOPs). If a successful appeal of one case "voided the entire plea," (Dsb19), the five remaining matters would be resurrected, flooding the court system with previously resolved cases. This

result will not only cause inefficiency on the back end of plea agreements (i.e., after a previously resolved agreement is invalidated), but also on the front end. Namely, prosecutors will be loath to enter global resolutions at all if a defendant had the automatic right to upend an entire plea agreement due to an appeal of a pretrial ruling on a solitary indictment, especially in cases involving a motion to suppress physical evidence (affording the automatic right of appeal under Rule 3:5-7(d)). That is because prosecutors will not make deals that could leave them stuck assembling witnesses and evidence potentially years later when obtaining a conviction is exponentially harder. And prosecutors will face hurdles trying to convince victims or their family members that a defendant's plea is in their best interest when they cannot assure finality. See pages 30-33, infra. With fewer global agreements, courts will be left to resolve more cases individually, whether by separate plea hearings or separate trials.

The resulting discouragement of global plea agreements will negatively impact defendants too. See Bell, 250 N.J. at 542 (noting plea-bargaining "reduc[es] penal exposure"); State v. Rodriguez, 466 N.J. Super. 71, 108 (App. Div. 2021) ("One of the quintessential features of plea bargaining is the State's agreement to reduce a defendant's penal exposure in exchange for the defendant's guilty plea."). Global plea agreements are a boon to defendants because they often result in concurrent sentences, reduced sentences, and

dismissals of other cases. Take this defendant for example. Had he pleaded open without recommendation to the pharmacy murder and 7-Eleven robbery or been convicted after trials, the sentences on each almost certainly would have run consecutively for these separate acts of violence committed eight days apart against separate victims. See State v. Yarbough, 100 N.J. 627, 643-44 (1985). Defendant also faced up to life in prison for the pharmacy murder, and ostensibly qualified for an extended life term on both cases as a persistent offender with seven prior convictions. See (1T4-16 to 25; 1T9-5 to 12-2; 2T19-8 to 12); N.J.S.A. 2C:44-3(a). The plea agreement drastically reduced defendant's sentencing exposure from consecutive life terms to a maximum of thirty years. Not only that, defendant received the dismissal of a third indictment and numerous charges on the two cases to which he pleaded guilty, concurrent terms on his three VOPs, and a condition that he could withdraw from the agreement if Pennsylvania did not sentence concurrently. But if the conditional-plea rule is understood to bestow defendants with the right to void an entire agreement based on the successful appeal of one case, the kind of resolution reached here will become far less common to everyone's detriment, especially defendants.

On the other side of the aisle, allowing defendants out of long-ago resolved cases based on the outcome of an unrelated case will result in a gross injustice. Plea-bargaining of course is to the State's benefit too, because it

"assur[es] the State that the wrongdoer will be punished." Means, 191 N.J. at 618. But this assurance is removed under defendant's expansive reading of Rule 3:9-3(f). Given that appeals can take years to make their way through the courts, the State would often face a more challenging task proving a case than at the time the plea agreement was made. In State v. Herman, 47 N.J. 73 (1966), this Court spoke of the ill effects of allowing a defendant to withdraw a guilty plea after trial started:

> [T]he efficient and orderly administration of justice would be impeded. Criminal calendars would become increasingly congested and the State's efforts to effectively prosecute lawbreakers would be seriously hampered by the delays. It is a difficult task at best for the State to assemble its witnesses and prepare its case for a trial on a specified date; it is neither fair nor just to compel the State to repeat this procedure as to the same defendant when the first trial is terminated by the defendant's own guilty plea given freely and understandingly. . . . Not only may the State now have difficulty in locating the necessary witnesses, but the witnesses' memories of the contested events may have faded with the passage of time.
>
> [Id. at 78-79.]

This Court's sentiments are particularly apt in the context of a plea withdrawal following an appeal given the even greater passage of time. And this case bears out the very real impact of the delay. Co-defendant Drew agreed to testify against defendant in both cases. (Da29-30, 41). But the leverage the State held over him is gone, with Drew having been sentenced years ago.

(AGa1-4; AGa5-8); see State v. Goodwin, 173 N.J. 583, 596 (2002) (noting State's rationale that "once a co-defendant is sentenced, to convince that co-defendant to testify again is extremely difficult because he or she already has received the benefit of a plea bargain"); Slater, 198 N.J. at 161 (considering "loss of or inability to locate a needed witness, a witness's faded memory on a contested point, or the loss or deterioration of key evidence" as facts demonstrating prejudice). The State also had four witnesses prepared to testify that defendant confessed to them. (3T25-5 to 8). And the eyewitnesses—the pharmacy employees—would now be expected to testify as to their memories of a 2011 crime. As the Appellate Division thus found, "[g]iven the passage of nine years, it is not clear that the State would still be able to marshal all the evidence that it had available in late 2016." (Dpa16).

That the State's strong case is now weaker from delay is particularly unjust because there is nothing in the record to indicate that the State would have consented to being placed at this future disadvantage at the time the agreement was reached. Rule 3:9-3(f) requires "the approval of the court and the consent of the prosecuting attorney." See also Davila, 443 N.J. Super. at 586 (stating that conditional plea "must also specifically be approved by the State and by the court."). "The Rule requires prosecutorial consent so that the prosecutor, as part of the negotiated disposition, can evaluate the risks of reversal after the evidence

may become stale or unavailable." State v. Brown, 352 N.J. Super. 338, 359 n.3 (App. Div. 2002) (Stern, P.J.A.D., concurring). But the prosecutor here could not "evaluate the risks of reversal" as to the pharmacy case—including faded memories and the potential loss of a key witness—because the agreement only expressly contemplated defendant being able to withdraw his plea to the 7-Eleven case. And considering the pharmacy murder was the more serious charge and the controlling sentence, it is unlikely and implausible the State would have consented to this plea being voided based on the outcome of a separate case.

Relatedly, application of the conditional-plea rule to cases that were not the subject of the appeal would multiply uncertainty in judgments contrary to the interest in finality. "All plea-bargain jurisprudence recognizes the important interest of finality to pleas." State v. Smullen, 118 N.J. 408, 416 (1990). The State's "strong interest" in finality "'is in having criminal wrongdoers account and in the finality of that accounting.'" Slater, 198 N.J. at 155 (quoting Taylor, 80 N.J. at 365). Victims and their families also have an "obvious interest" in finality. Ibid. That interest is heightened here, where there is a family of a murder victim with an expectation of accountability. Allowing defendant to withdraw his plea now, fourteen years after the crime and based on his appeal of a motion filed on a separate case, runs afoul of this important interest.

In short, defendant's interpretation would undermine efficiency and

finality interests underlying Rule 3:9-3(f) and plea-bargaining in general to the detriment of defendants, the State, and the courts. Defendant received a substantial discount on his sentence and multiple dismissed charges by resolving his cases together, and received the further benefit of the dismissal of his robbery conviction following his successful appeal. He is not entitled to now withdraw his plea to a separate crime nine years later when he did not reserve this right, and certainly the conditional-plea rule did not contemplate such a windfall.

C. Precedent supports that a defendant is only entitled to withdraw the affected plea to a particular case.

In addition to the plain language and purpose of Rule 3:9-3(f) supporting that defendant only preserved the right to withdraw his 7-Eleven robbery plea, accepted practice also supports this construction. "[A]ccepted procedure can have a bearing on the proper interpretation of the Rules." State v. Gonzalez, 114 N.J. 592, 599-600 (1989).

When a decision on appeal affects only part of a plea, a defendant is generally not entitled to withdraw from the agreement in its entirety. Thus, in State v. McDonald, 211 N.J. 4, 29 (2012), this Court held that a remand for reconsideration of whether McDonald understood the penal consequences of one charge did not entitle him to withdraw his plea to another charge in the same agreement. This Court further held that the merger of one conviction into another on appeal, thereby eliminating one of McDonald's convictions and

reducing his sentence, did not permit him to withdraw the plea in its entirety. Id. at 28-29. This Court found McDonald's reasonable expectations under the plea agreement were met. Id. at 28 (citing Slater, 198 N.J. at 159).

Other courts are in accord. In Hammond v. Commonwealth, 569 S.W.3d 404, 411 (Ky. 2019), Hammond bargained for twenty-year concurrent sentences for assault and robbery, each of which could have carried a twenty-year sentence. The assault conviction was reversed on appeal. Id. at 407. The Supreme Court of Kentucky held that despite Hammond's total exposure being reduced by twenty years, the successful appeal "[did] not call the entire plea agreement into question." Id. at 410-11. The court explained that Hammond assumed the risk of this change in circumstances when he preserved his right to appeal, and received his bargained-for sentence. Id. at 411.

Similarly, the Wisconsin Court of Appeals held that its decision permitting a defendant to withdraw his guilty pleas to three counts did not require withdrawal of two remaining convictions. State v. Nelson, 701 N.W.2d 32, 35 (Wis. Ct. App. 2005). The court reasoned that "[j]ust as a defendant should not be vindictively penalized for successfully challenging one of several convictions on appeal, neither should a defendant obtain a windfall from what is, in essence, a breach of his plea agreement with the State." Id. at 519 (citation omitted). By allowing Nelson to be relieved only of the consequences of the

wrongful conviction, he would still receive "the benefit of his bargain." Id. at 519-20 (citation omitted); see also Commonwealth v. Lewis, 136 N.E.3d 1226, 1232 (Mass. App. Ct. 2019) (finding guilty plea on heroin charge survived vacatur of guilty plea on cocaine charge where "defendant failed to show that the parties' intent was that the guilty pleas stand or fall together" even where guilty pleas were made at same time and in same proceeding); People v. Kazadi, 284 P.3d 70, 76 (Colo. Ct. App. 2011) (recognizing precedent invalidating one plea but not the other in a "package deal" "when the basis for voiding one did not necessarily undermine the other").[11]

The Appellate Division here correctly found no indication that both parties intended for defendant's pleas to the pharmacy murder and 7-Eleven robbery to stand or fall together. These two cases involved separate crimes committed in different towns eight days apart, (Da31-35); charged on separate indictments, (Da1-13; 14-25); separate defense counsel, (1T11-6 to 8); separate pretrial motions; separate factual bases, (1T21-6 to 25-13); and separate

[11] Defendant relies heavily on State v. Turley, 69 P.3d 338, 402 (Wash. 2003), in which the Washington Supreme Court held that a plea agreement will be treated as "indivisible" when a defendant pleads guilty to multiple charges at the same time and in the same document absent objective evidence of a contrary intent. But Turley has been distinguished where "the offenses were committed at separate times, charged in separate informations, and resolved in separate documents," even though the pleas were entered in the same proceeding. State v. Olsen, 530 P.3d 249, 256 (Wash. Ct. App. 2023), aff'd on other grounds, 555 P.3d 868 (Wash. 2024).

judgments of conviction, (Da63-66; Da67-70). That the pleas were memorialized in one document does not inexorably bind these separate cases together when the parties listed the right to appeal the pretrial motions "separately and distinctly." (Dpa13-14). At bottom, defendant's successful appeal of the motion to suppress filed on the 7-Eleven robbery and resulting dismissal did not affect the validity of his plea to the pharmacy murder or upset defendant's reasonable expectations.

This is especially true because the pharmacy murder was the controlling sentence with which the other sentences ran concurrently and the focal point of the agreement for both parties. Defendant's maximum sentence permitted by the plea agreement—thirty years—remained the same after the 7-Eleven case was dismissed. In this regard, Bell, on which defendant relies, is distinguishable. Bell received two consecutive five-year prison terms for violating N.J.S.A. 2C:11-5.1. 250 N.J. at 522. After ruling Bell could not be charged with separate violations of this statute, this Court remanded to allow Bell to negotiate a new plea agreement or withdraw his guilty plea and stand trial. Id. at 544. This Court rejected the Appellate Division's remedy of simply lopping off one five-year sentence, which was "not contemplated by the terms of the plea agreement." Id. at 523. The Court found this remedy would upset the basis for the trial court's sentence, which was "significantly influenced by

the terms of the plea agreement," itself "predicated on a misapplication of N.J.S.A. 2C:11-5.1." Id. at 544. Bell thus shows that a defendant is not entitled to an automatic windfall just because an appellate court later says a judge made a mistake. See also State v. Rodriguez, 97 N.J. 263, 273 (1984) (holding that defendant was not entitled to windfall sentence reduction following successful appeal on merger grounds but rather "resentencing on the resultant merged conviction because the legal basis for his original sentences will have been removed or altered."). The pertinent inquiry is whether the successful appeal upsets the parties' expectations and the basis for the original sentence.

Here, the plea agreement specifically contemplated a thirty-year sentence for felony murder. And the judge's imposition of this minimum sentence was not based on any misconception about the robbery sentence; indeed, that sentence ran concurrently. Thus, defendant's successful appeal of the robbery affected neither the substantive basis for the felony-murder conviction nor the sentence imposed for that crime. A thirty-year sentence following the dismissal of the robbery conviction thus meets the parties' reasonable expectations expressed in the agreement and approved by the court.

Defendant's other arguments similarly fail. Defendant relies on State v. Diloreto, 362 N.J. Super. 600 (App. Div. 2003), where the Appellate Division preliminarily considered whether the defendant's challenges to his statements

were reviewable. The court determined they were, and that it should review them because "our plea preservation rules give the defendant the right to withdraw a guilty plea when the right to appeal survives the plea and defendant succeeds on appeal." Id. at 616. In the ensuing footnote, the court added that "[i]f the defendant simultaneously pleads to multiple indictments and the pre-plea motion relates to only one, the same principle generally applies." Id. at 616 n.6. Inasmuch as Diloreto was a single indictment case, the footnote is dictum. And the footnote is entitled to little weight as it is "mere obiter" without citing any authority or rationale for the proposition. In re A.D., 441 N.J. Super. 403, 422-23 (App. Div. 2015) (quoting Barreiro v. Morais, 318 N.J. Super. 461, 468 (App. Div. 1999)). And further unlike Diloreto, which was a direct appeal, the instant case involves an appeal from a motion to withdraw a guilty plea. Diloreto thus does not answer the question before the Court.

If anything, the remainder of the footnote indicates that the conditional-plea rule does not provide a means to withdraw from the separate indictment:

> If, however, the defendant pleads guilty after a plea in which an issue is preserved, the subsequent plea is not subject to withdrawal upon reversal of the first conviction unless it is expressly so provided as part of the plea. See R. 3:9-3(f). These issues should be addressed at the time of plea. See State v. Brown, supra, 352 N.J. Super. at 357 (concurring opinion).
>
> [Diloreto, 362 N.J. Super. at 616 n.6 (emphasis added).]

The court did not explain what makes a plea "simultaneous" versus "subsequent." But the author of the opinion, Judge Stern, stated the importance of fleshing these issues out at the time of the plea and referred to his concurring opinion in Brown, which emphasized the importance of considering appealability issues "during the plea negotiations" when the parties could make an informed decision. 352 N.J. Super. at 357, 359; see also pages 32-33, supra.

Finally, defendant's reliance on fundamental fairness is to no avail, because this doctrine only requires "that the defendant be placed in no worse position than he was at the time of the plea bargain." State v. Lightner, 99 N.J. 313, 317 (1985) (citing State v. Thomas, 61 N.J. 314, 322 (1971)). Defendant, whose robbery conviction and resulting sentence was "eliminated," is in a better position. See McDonald, 211 N.J. at 28; see also Waits v. People, 724 P.2d 1329, 1338 (Colo. 1986) (noting invalidation of plea with concurrent sentence "is not a hollow victory" and finding defendant received benefit of his plea because he received sentence to which he agreed).

D. The conditional-plea rule is to be read in conformity with Rule 1:1-2.

There should be no ambiguity that Rule 3:9-3(f)'s application is limited to the case subject to the appeal. In any event, it must be construed in accordance with Rule 1:1-2(a), which states, "[t]he rules . . . shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the

elimination of unjustifiable expense and delay." All four purposes are furthered by construing Rule 3:9-3(f) to apply to the plea subject to the appeal unless the agreement expressly provides otherwise.

First, limiting the Rule to the case subject to the appeal secures a just determination because unrelated cases are left intact. Second, simplicity in procedure is furthered when the parties know that only the plea subject to appeal is implicated, and when the State, defendant, and court are not placed at square one on the remainder of the cases subject to the plea agreement, unless that is explicitly made part of the plea agreement and approved by the court. Third, ensuring the agreement is governed by clearly agreed-upon terms promotes fairness in administration. Finally, construing the Rule this way will eliminate unjustifiable expense and delay by promoting plea-bargaining and global resolutions while ensuring that long-ago resolved cases are not reopened at the expense of finality and just determinations of guilt.

Courts should thus construe Rule 3:9-3(f) in accordance with these purposes. If this Court finds Rule 3:9-3(f) does not govern, then in "the absence of rule," it should "proceed in [a] manner compatible with these purposes," R. 1:1-2(a), which is enforcing defendant's felony-murder plea. And even if the Court accepted defendant's interpretation, Rule 3:9-3(f) should be "relaxed" since strict "adherence to it would result in an injustice" here. R. 1:1-2(a).

POINT III

THE TANGENTIAL EVIDENTIAL CONNECTION BETWEEN THE ROBBERY AND MURDER IS PROPERLY ANALYZED UNDER SLATER.

The indirect link—via N.J.R.E. 404(b) evidence—between the 7-Eleven and pharmacy cases is not a basis to read a condition into the plea agreement that was never expressed. Rather, it supports why the trial court and Appellate Division properly considered defendant's motion to withdraw the felony-murder plea under Slater.

Defendant is incorrect on both counts when he argues that he is entitled to withdraw his plea under Rule 3:9-3(f) "regardless of the connection between the two cases," but that his successful appeal in Nyema "had a particularly strong impact on his negotiating position." (Dsb25). As to his first argument, to be entitled to withdraw the pharmacy murder plea under Rule 3:9-3(f), the motion to suppress would have to be filed on that case. See Point II, supra. But as the plea agreement states, defendant only preserved the right to appeal the ruling on the "motion to suppress physical evidence in 11-08-833 (7-Eleven case)" (Da54) because that was the case to which the motion to suppress attached. (Da26). Alternatively, defendant could have tried to negotiate for an express provision, with the consent of the prosecutor and approval of the court, allowing him to withdraw the pharmacy murder plea if he prevailed on the appeal of the motion

to suppress. But he did not do that either. He is thus not entitled to withdraw his plea under Rule 3:9-3(f).

Defendant also is incorrect that his successful appeal in the 7-Eleven case would retroactively improve his negotiating position. At the time the plea agreement was entered, the court had already granted in-part the State's N.J.R.E. 404(b) motion in the pharmacy case, a decision ultimately affirmed. Myers, 2019 WL 1581430. Since defendant never filed a motion to suppress in the pharmacy case, his successful appeal in the 7-Eleven case could have no impact on it.

Even overlooking this procedural hurdle, the suppression of evidence in the 7-Eleven case would not compel its exclusion from the pharmacy case. This Court's suppression of the cash and clothes in the 7-Eleven case, resulting in the total dismissal of a first-degree robbery case that alone could have subjected defendant to an extended term of life imprisonment, adequately served the exclusionary rule's purpose. Extending this decision to preclude the use of this evidence in a separate murder case committed eight days earlier when there was no connection between the unlawful police action and the murder case would give defendant an undeserved windfall with no associated benefit.

"Suppression of evidence . . . has always been our last resort, not our first impulse." State v. Presley, 436 N.J. Super. 440, 459 (App. Div. 2014) (citation

omitted). The exclusionary rule "is not a 'remedy,' in the classic sense of the term; rather, its purpose is to deter future illegal conduct by the State." State v. Bryant, 227 N.J. 60, 71 (2016); see also United States v. Calandra, 414 U.S. 338, 348 (1974) (noting exclusionary rule "has been restricted to those areas where its remedial objectives are thought most efficaciously served."). Under the New Jersey Constitution, the rule "also serves as the indispensable mechanism for vindicating the constitutional right to be free from unreasonable searches." State v. Carter, 247 N.J. 488, 530 (2021) (quoting State v. Novembrino, 105 N.J. 95, 157-58 (1987)). But there is a "competing concern[]" in "the guilty going free." State v. Williams, 192 N.J. 1, 15 (2007). Accordingly, courts apply the rule "when the benefits of deterrence outweigh its substantial costs." State v. Caronna, 469 N.J. Super. 462, 490 (App. Div. 2021).

It cannot be maintained that the benefits of deterrence outweigh the substantial costs in precluding use of the suppressed evidence in the separate murder case. The evidence seized from the car stop was already suppressed in the 7-Eleven case, meaning defendant already received the substantial benefit of facing no accountability on a first-degree robbery, and future police misconduct was deterred. See State v. Herrerra, 211 N.J. 308, 337 (2012) (finding any police misconduct from car stop "sufficiently deterred" by suppressing cocaine in drug prosecution and "no basis to extend the

exclusionary rule to defendants' prosecution for attempted murder" after attacking officer). The substantial costs in suppressing the truth would far outweigh the benefits if the evidence were also excluded in the pharmacy case. The car stop of defendant, Nyema, and Drew was in response to a police dispatch alert about the Hamilton 7-Eleven robbery. Nyema, 249 N.J. at 514-15. The police could not have predicted the car would contain evidence indirectly probative of a murder at a Trenton pharmacy committed eight days earlier for which there were no apparent suspects. (Da50). Exclusion in this separate case would be gratuitous and thus do nothing to deter official misconduct, would "help immunize defendant[] for separate, deliberate, violent acts that are unrelated to the initial stop," and "deprive the jury" of evidence probative of Mr. Dyapa's killer. Herrerra, 211 N.J. at 314, 337; see also State v. Booker, 135 P.3d 57, 59 (Ariz. Ct. App. 2006) (holding exclusionary rule's deterrent purpose not served when "no cognitive nexus between the police misconduct and the crime for which the defendant is ultimately tried" and thus allowing use of bong seized during illegal search as evidence of motive in subsequent, unrelated assault case); id. at 60-61 (collecting cases).

There is even less reason to mandate exclusion here because the evidence seized after the 7-Eleven stop—clothes and cash—would not be used to directly prove defendant's identity in the pharmacy case. Indeed, the seized hoodie was

not the same hoodie worn by the limping, left-handed suspect in the Brunswick Pharmacy surveillance, (Da34-38, 47-48), and it is reasonable to infer the seized cash was from the 7-Eleven robberies committed that night.[12] (Da32, 35). The clothes and cash seized from the car instead show that defendant is the limping, left-handed suspect in the Hamilton 7-Eleven surveillance, which, in turn, helps establish that the man in the pharmacy surveillance is defendant. This indirect connection further attenuates the unlawful stop from the pharmacy murder and thus further undermines application of the exclusionary rule in the murder case.

The clothes and cash could be used in the pharmacy case for other purposes too. The evidence could still be used to clearly and convincingly show that defendant committed the 7-Eleven robbery under State v. Cofield, 127 N.J. 328 (1992). See State v. J.M., Jr., 225 N.J. 146, 161 (2016) (declining to adopt bright-line rule prohibiting admission of acquitted-act evidence in other cases).

And suppression only applies to the case-in-chief, not to rebuttal evidence. Indeed, suppressed evidence can be used to impeach a defendant in the case in which the unlawful police conduct occurs, so it certainly can be used for impeachment in a separate case. See State v. Burris, 145 N.J. 509, 524 (1996) (recognizing that "New Jersey has also adopted and employed the impeachment exception[,]" which "has been found to extend to violations of constitutional

[12] The pharmacy murder suspect did not take cash. (Da30-31).

rights as well as violations of Miranda[]"); Walder v. United States, 347 U.S. 62, 65 (1954) ("It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths.").

But even if the evidence suppressed in the 7-Eleven case could not be used for any purpose in the pharmacy case, the suppression has no bearing on the trial court's N.J.R.E. 404(b) ruling. The principal N.J.R.E. 404(b) evidence that the State sought to use from the Hamilton 7-Eleven case was the surveillance video. (Da33) ("The State contends the surveillance videos of the two subsequent armed robberies at the 7-Elevens are admissible pursuant to N.J.R.E. 404(b) in the trial of Indictment 14-02-0232 . . . ."); (Da34) ("In determining the admissibility of the surveillance videos, the Court conducted a 404(b) hearing . . . ."); (Da50) ("The court finds the probative value of the identity evidence as shown in the surveillance video from the Hamilton Township 7-Eleven robbery will assist the jury in identifying the suspect in the pharmacy incidents . . . ."); Myers, 2019 WL 1581430, at *8 ("We discern no abuse of discretion in the court's ruling that the State could use the surveillance video footage to prove identification."). The State still had witnesses, including Drew and a detective

who personally observed defendant, who could identify defendant in the 7-Eleven surveillance as the left-handed man with the distinctive bow-legged gait and similar face covering to the pharmacy murder suspect. (Da39, 41, 47-48). Thus, as the Appellate Division correctly found, the 7-Eleven footage would still have been admissible N.J.R.E. 404(b) evidence in the pharmacy case. (Dpa16).

The panel also correctly found that the State had other "substantial evidence against defendant," including Drew's agreement to testify against defendant, the physical attributes of the pharmacy suspect relative to defendant's physical attributes, defendant's incriminating statements, and the threatening letter defendant had written to show his consciousness of guilt. (Dpa16; 3T25-5 to 8).

Ultimately, any question about the impact of the Nyema decision on the pharmacy case only goes to show why the trial court and Appellate Division properly analyzed defendant's motion under Rule 3:21-1 and the Slater factors. The four-factor Slater test, not application of the mechanistic conditional-plea rule, allows for the fact-sensitive inquiry into whether a successful appeal of a plea on an unrelated case pertains to the surviving plea. The second Slater factor ("the nature and strength of defendant's reasons for withdrawal") asks, for example, if "defendant's reasonable expectations under the plea agreement were not met." 198 N.J. at 159. Defendant thus had the opportunity to assert his "fear of not being able to have a fair trial" and his alleged belief "that if something

came back, then they all came back," (3T10-11 to 11-25; 3T14-9 to 16-17), which the trial court considered and rejected. (3T48-7 to 49-16).

And only through application of Slater factor four can the court measure "whether withdrawal would result in unfair prejudice to the State or unfair advantage to the accused," 198 N.J. at 158, a critical consideration here given the passage of nine years since the plea agreement was entered. (3T50-14 to 51-20; Dpa16). Motions brought after sentencing are properly subject to the "manifest injustice" standard. State v. Munroe, 210 N.J. 429, 441 (2012) (citing R. 3:21-1). Defendant's burden to justify withdrawing his plea grows with the passage of time in light of finality interests and the increasing prejudice to the State. State v. O'Donnell, 435 N.J. Super. 351, 370 (App. Div. 2014).

Because the plea agreement only allowed defendant to withdraw his robbery plea if he prevailed on appeal of the suppression ruling, the trial court and Appellate Division properly analyzed defendant's motion to withdraw under Slater and the manifest-injustice standard. See State v. Watson, 954 N.W.2d 679, 681-85 (N.D. 2021) (finding judge properly analyzed motion to withdraw under post-sentencing manifest-injustice rule rather than conditional-plea rule where "'[n]o specific condition'" disclosed to court that plea was conditioned on successful appeal in other cases involving same victim and sentenced on same date). The Appellate Division's decision should thus be affirmed.

CONCLUSION

For the above reasons, the Attorney General urges this Court to affirm the Appellate Division's ruling.

Respectfully submitted,

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