SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4774-18

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHEEDLEY PIERRE,

Defendant-Appellant.

Submitted March 30, 2022 – Decided April 29, 2022

Before Judges Messano and Accurso.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 17-02-0548.

Joseph E. Krakora, Public Defender, attorney for appellant (Laura B. Lasota, Assistant Deputy Public Defender, of counsel and on the brief).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent (Hannah Faye Kurt, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

After successfully withdrawing his guilty plea to first-degree armed robbery, which, pursuant to a plea agreement, exposed him to a maximum fifteen-year sentence with an eighty-five percent period of parole ineligibility under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, defendant Sheedley Pierre proceeded to trial.[1] A jury convicted him of second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and 15-1(a)(2) (count one); the lesser-included offense of second-degree robbery, N.J.S.A. 2C:15-1 (count two); first-degree felony murder, N.J.S.A. 2C:11-3(a)(3) (count three); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count four); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count five); and second-degree employing a juvenile to commit a criminal offense, N.J.S.A. 2C:24-9 (count six).

After merging counts one, two and five with the felony murder conviction, the judge sentenced defendant to a forty-year term of imprisonment, subject to NERA. He imposed a concurrent seven-year term on the unlawful possession of a handgun conviction, and a consecutive seven-year term of imprisonment on the employing a juvenile conviction.

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[1] The State also agreed to recommend a maximum sentence of ten years' imprisonment if defendant provided truthful testimony if necessary against his "co-actors."

Defendant appealed and raises the following arguments for our consideration:

> POINT I
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> THE TRIAL COURT ERRED IN PERMITTING THE STATE TO PRESENT EVIDENCE ABOUT A PRIOR CAB DRIVER ROBBERY COMMITTED BY [J.W.[2]] BECAUSE DEFENDANT HAD NO INVOLVEMENT IN THAT ROBBERY, AND BECAUSE [J.W.] WAS NOT TRIED WITH DEFENDANT, EVIDENCE OF [J.W.]'S PRIOR ROBBERY WAS IRRELEVANT AND ITS ADMISSION WAS UNDULY PREJUDICIAL. (Not Raised Below).
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> POINT II
>
> THE TRIAL COURT ERRED IN PERMITTING THE STATE TO ELICIT TESTIMONY ABOUT [J.W.]'S CONFESSION TO THE ROBBERY AND SHOOTING. BECAUSE [J.W.]'S HEARSAY STATEMENTS WERE NOT MADE IN FURTHERANCE OF THE CONSPIRACY, THEIR ADMISSION WAS IMPROPER UNDER N.J.R.E. 803(B)(5). (Partially Raised Below).
>
> POINT III
>
> THE TRIAL COURT ERRED IN CHARGING THE JURY ON SECOND-DEGREE ROBBERY AS A LESSER-INCLUDED OFFENSE TO FIRST-

[2] We use initials to identify any juveniles involved pursuant to Rule 1:38-3(d)(5).

DEGREE ROBBERY OVER DEFENDANT'S OBJECTION.

POINT IV

DEFENDANT'S AGGREGATE [FORTY-SEVEN]-YEAR SENTENCE, SUBJECT TO A PAROLE DISQUALIFIER GREATER THAN [FORTY] YEARS, IS EXCESSIVE AND THE PRODUCT OF SEVERAL SENTENCING ERRORS. (Partially Raised Below).[3]

Because we agree with the arguments raised in Point I, we reverse defendant's convictions, vacate his sentence and remand for a new trial.

I.

The indictment charged defendant of conspiring with a juvenile, "Z.W., a/k/a J.W." to commit first-degree robbery, and the State contended defendant and J.W. killed cabdriver Jonas Larose during an attempted robbery shortly after 11:00 p.m. on November 30, 2016, in Orange. J.W. was charged as a juvenile not only with the crimes alleged on November 30, but also with the armed robbery of another cabdriver, Ronald Nicolas, the night before. Tried in the Family Part, J.W. was adjudicated delinquent of the felony murder of

[3] We omit the sub-points in defendant's brief.

Larose, the armed robbery of Nicolas and other offenses. In re J.A.W., Jr., No. A-1686-18 (App. Div. Mar. 17, 2022) (slip op. at 14).[4]

Although the State did not contend defendant participated in or had knowledge of the November 29, 2016 robbery of Nicolas, the judge permitted the prosecutor to introduce extensive evidence regarding that robbery, J.W.'s involvement, and the police investigation that followed. Before trial began, defense counsel acknowledged she was stipulating "J.W.'s robbery of . . . Nicolas the day prior . . . [was] admissible to prove [the] identity of co-conspirator J.W."

Additionally, defense counsel stipulated statements J.W. made after the homicide to two other witnesses, Wayne Grant and Jaylen Dawkins, were admissible "statement[s] against interest." Before trial began, however, defense counsel clarified while she was not objecting to admission of statements J.W. allegedly made to Dawkins, she did object to Dawkins' "thinking and his guessing what something meant."

Nicolas testified on the night of November 29, 2016, he picked up a fare in Orange; his eleven-year-old son was with him. Nicolas recognized the two

[4] We affirmed J.W.'s delinquency adjudications and the trial judge's sentence of eleven years but remanded the matter for an evidentiary hearing on J.W.'s motion to suppress. Id. at 25, 46.

young boys who entered the cab. Nicolas knew one, J.N., since J.N.'s childhood. Nicolas recognized the other, later identified as J.W., because he tried to pay Nicolas in the past with a counterfeit bill. When Nicolas demanded payment from the two boys up front, J.W. handed him a counterfeit $50 bill, and Nicolas told both boys to get out of the car. J.N. pulled a gun and pointed it at Nicolas and his son while J.W. took the cabbie's money from a prior fare. When the boys left running from the cab, Nicolas went to the police and reported the incident.

Detectives from the Essex County Prosecutor's Office (ECPO) conducted an out-of-court photographic identification with Nicolas on December 5, 2016. The jury saw the video recording of that procedure in which Nicolas identified a photo of J.W. as the person who "put a gun [to] my head and my son['s] head" on November 29. The jury also saw video surveillance footage of two men waiting for Nicolas' cab and later leaving the cab on foot.

On the evening of November 30, Nicolas received a call for a pick-up at the same address originally given by the two boys the night before. Suspicious, Nicolas referred the call to another cab company, Claudia Limo Service; it dispatched Larose. As the car passed him in traffic, Nicolas called

the limo service again, telling the dispatcher to warn the driver that he (Nicolas) was robbed at gunpoint the night before, and it might be the same two individuals calling for a cab. Nicolas was in the area and saw Larose pick up his fare — two young men — and drive off at high speed shortly before crashing into a tree.

Nicolas did not see the men leave the cab, but Fayau Fontilus, who lived nearby, saw the men enter the cab and heard one say "give me the money," as the car doors closed. Fontilus heard two gun shots as the cab drove away. When it crashed, Fontilus ran from the scene; the two men started to run in the same direction for a short distance before Fontilus turned. Fontilus heard them laughing as they ran, and one said, "I just killed this n*****."

Larose was shot twice in the head and was dead when police arrived. Investigators recovered a spent projectile from the driver's side air conditioning vent, but no shell casings, meaning the gun used was likely a revolver. Investigators also recovered video footage from nearby surveillance cameras that showed the crash and two men running from the vehicle behind Fontilus. Police also obtained some partial descriptions of the men from other eyewitnesses.

Detective Kenneth Poggi of the ECPO was the lead investigator on the homicide, and the judge permitted him to describe in detail, sometimes over defense counsel's objection, the steps he undertook in the investigation. Poggi told of interviewing Nicolas after the homicide and learning J.N.'s name and his potential relationship "to an incident from the prior evening," the November 29 robbery of Nicolas. The prosecutor played video footage from the night of November 29, 2016, showing two men getting into Nicolas's cab. Defense counsel objected, arguing the jury would be confused about what it was seeing and asserting "this has nothing to do with my client." The judge overruled the objection.

The prosecutor asked Poggi what steps he took to further the investigation of the homicide. Armed with the name of one of the juveniles involved in the Nicolas robbery, the detective said he tried to obtain J.N.'s "pedigree information" and noted there was "a record from . . . [the] Berkeley Heights Police Department." Defense counsel's objection led to a sidebar, at which the prosecutor explained J.N. and J.W. were arrested together in Berkeley Heights, and J.W.'s arrest photograph was used later to identify him. He also asserted that the two juveniles provided the same address as their

home address, and police ultimately found the murder weapon there when they executed a search warrant.

Defense counsel persisted, "[The prosecutor's] not trying the case against the juvenile. He's trying the case against [defendant]." When the prosecutor retorted by claiming the evidence was "relevant to show the steps that [investigators] took to solve this case," defense counsel asserted, "everybody already knows [J.W. is] the shooter. Why are we going into all this stuff? It really has nothing to do with this case."[5] The judge overruled the objection, reasoning, "Not every piece of information necessarily will touch on [defendant], but as long as it's relevant to the overall investigation, then it's permissible."

Poggi silently reviewed the Berkeley Heights police incident report of November 5, 2016, and testified he "learned [from that report] a potential identity of the second person from the robbery of . . . Nicolas" — J.W. — and secured his photograph. Poggi used the "Berkeley Heights photo[]" in "identification procedures with some witnesses."

[5] Indeed, in opening statements, both counsel referenced defendant's statement to detectives. In that statement, defendant admitted being in the cab with J.W. when he shot and killed Larose.

Poggi also used the Highland Terrace home address J.N. and J.W. supplied to the Berkeley Heights police to further the investigation. On December 2, Poggi and other investigators went to that address and saw J.N. enter an apartment. When their entry was refused, investigators obtained a key from the superintendent and entered. Inside, they found J.N. and J.W., who was wearing clothing similar to that described by witnesses to the homicide and seen on the video surveillance footage from the November 29 robbery of Nicolas. Other men, including Grant, Dawkins, and the apartment's tenant, wheelchair-bound Gary Elysee, were present.

Poggi arrested J.N. for the November 29 robbery of Nicolas, and J.W. for that robbery and the Larose homicide. Police obtained a search warrant for the Highland Terrace apartment. They did not find any weapons in their initial search, but they returned later in the day and seized a revolver near a television stand; the gun had Larose's blood on it. Poggi was permitted, over objection, to testify at length about the factors that led him to conclude J.N. was not involved in the homicide.

On December 5, 2016, after speaking to witnesses and reviewing video surveillance footage from a number of cameras showing two men fleeing the Larose cab, Poggi re-canvassed the area and focused attention on a multi-

family residence on North Center Street because the video showed the two men ran in that direction. Defendant, who lived in an apartment in the building, responded to Poggi's knock on his door.

When Poggi told defendant he was investigating Larose's nearby homicide, defendant said he "had no knowledge of that incident." The prosecutor asked how that response differed "from the responses . . . you got to that point" from other people. The judge overruled defense counsel's hearsay objection, and Poggi explained:

> [I]t's a smaller community and people were very much aware of the fact that the cab driver had . . . been . . . killed on . . . the adjacent block. . . . Most people were aware of it from various different ways and some had information to provide and some didn't have information to provide, but . . . to that point and thereafter, we didn't come across anyone who was completely unaware that it had occurred.

When showed J.W.'s photo, defendant said "he knew him from playing basketball in the park, but hadn't seen him in approximately two weeks." Defendant denied having a cell phone. The prosecutor asked Poggi, "[A]fter that encounter, what did you draw from that?" The judge again overruled defense counsel's objection, and Poggi responded: "At that point, [defendant] became a suspect to me because of the nature of his responses."

On December 8, Poggi returned to defendant's apartment to question him further; defendant agreed to accompany investigators to ECPO offices and provided a statement, after which Poggi arrested defendant for the Larose homicide. Defendant's recorded video statement was played for the jury.

Defendant acknowledged calling Nicolas' cab company on the night of November 30, 2016, but claimed he got the number from a Google search; in fact, investigators extracted information from defendant's cell phone demonstrating he never searched for the number and had actually called it twice. Defendant gave conflicting versions of why he summoned a cab on November 30, why J.W., who he knew as "Little Bro," was in the cab with him and when the two first met that evening. At one point, defendant admitted knowing J.W. planned to rob the driver but did not know J.W. had a gun. Defendant eventually acknowledged seeing what he thought was a gun in J.W.'s jacket, and he assumed J.W. would use it to rob the cab driver. Defendant said he planned to pay the fare and leave when he arrived at his destination, stating repeatedly that he had seven dollars in his pocket ready to pay Larose. Defendant claimed he did not know J.W. would shoot Larose.

Defendant also said he had no contact with J.W. over social media. Yet, defendant's cell phone data showed he blocked J.W. on Facebook after

speaking with Poggi on December 5. After the homicide, defendant texted a woman in New York City at 1:00 a.m. — "I need your help. Do you live by yourself?" J.W. sent a message to defendant at 9:20 a.m. on December 1 stating, "Son we good. N***** just want to make sure we don't get bagged." J.W. sent a second message at 9:31 a.m., "Remember the story brush I told you to tell [those] n*****." Both messages had been deleted from defendant's phone before it was seized.

Also on December 8, detectives executed a search warrant at defendant's apartment and seized a blue puffy jacket in a suitcase under defendant's bed. Later expert DNA testimony revealed the major source of blood on the jacket was Larose. Detectives also discovered ammunition in defendant's bedroom dresser that was compatible with the revolver found at the Highland Terrace apartment.

The State called Grant and Dawkins as witnesses. The judge declared Grant a hostile witness after he frequently said he could not recall the events of December 2, the day police entered the apartment on Highland Terrace.[6] Grant

[6] N.J.R.E. 611(c) permits leading questions "when a witness demonstrates hostility or unresponsiveness," but here the prosecutor's questions were more than leading. They essentially asked Grant to simply confirm various things he told police in a formal statement.

said J.W. came to the apartment earlier that day and hid a revolver next to a PlayStation console in the bedroom. An argument broke out between J.W. and Elysee, after J.W. spilled soda on some counterfeit money. Elysee yelled at J.W. for "always fucking up." Grant said at some point, the conversation turned to the killing of a cab driver; J.W. said it was an "accident," and he was trying to rob the driver but "the car driver tried him." J.W. did not say he was with anyone else during the robbery. Grant testified he did not know defendant.

Dawkins' testimony was generally consistent with Grant's, although he said J.W. claimed the cab driver was "tussling" with him when he fired the shots.[7] When Dawkins repeatedly claimed an inability to remember other details, the prosecutor requested a sidebar. Before either counsel spoke, the judge said, "I think that a Gross [h]earing is in order."[8] Defense counsel objected, asking the prosecutor, "[W]hat else is [it] that you're looking to get

[7] The medical examiner testified neither shot that struck Larose was fired at close range.

[8] State v. Gross, 121 N.J. 1, 10 (1990), in which the Court identified a non-exhaustive list of factors the judge should consider before determining the reliability of a witness's out-of-court statement and admitting it in evidence as a prior inconsistent statement pursuant to N.J.R.E. 803(a)(1).

from him that he hasn't already given you?" The prosecutor complained Dawkins' testimony was "not really compelling . . . compared to the Gross."

The judge dismissed the jury and conducted a Gross hearing; Detective Carlos Olma, who interviewed Dawkins, testified, and the court viewed the video recording of the statement. Defense counsel reiterated her earlier objection and also specifically objected to "a ton of hearsay" in Dawkins' statement. The judge overruled the objections, considered the Gross factors, and admitted a redacted version of the statement into evidence. The judge overruled the request to redact Dawkins' references to statements made by J.W., accepting the prosecutor's assertion that J.W.'s statements were admissible under the co-conspirator exception to the hearsay rule. See N.J.R.E. 803(b)(5) (excepting from the hearsay rule "a statement made at the time the party-opponent and the declarant were participating in a plan to commit a crime or civil wrong and the statement was made in furtherance of that plan").

The next day, the prosecutor again called Dawkins to the witness stand, asked him about his prior criminal history, and played the recorded statement for the jury. It suffices to say the statement added little to what Dawkins had already testified to through the prosecutor's leading questions. In the

statement, Dawkins asserts J.W. said he shot a cab driver twice while attempting a robbery and during a "tussle"; J.W. never said he was with another person at the time. Dawkins reiterated that J.W. brought a gun to the Highland Terrace apartment and put it by the PlayStation.

Defendant did not testify or call any witnesses. In her summation, defense counsel argued her client did not know J.W. intended to use a gun to rob Larose, nor did he believe J.W. would shoot the cab driver. In his summation, the prosecutor did not reference the November 29 robbery of Nicolas, but rather summarized the strong evidence supporting conviction and the inconsistencies in defendant's version of events.

II.

Before explaining why reversal is warranted, we briefly address the argument defendant raises in Point II and explain why, although it has merit, standing alone it would not require reversal.

Defendant contends it was error to admit the testimony of Grant and Dawkins regarding J.W.'s admissions made in the Highland Terrace apartment on December 2 before police arrived. The State argues the co-conspirator exception to the hearsay rule applied, and defense counsel stipulated to the

admissibility of the evidence. Therefore, the State contends if there was error, it was invited error.

We agree the statements were hearsay and not admissible under the co-conspirator exception to the hearsay rule. "The co-conspirator exception to the hearsay rule, embodied in N.J.R.E. 803(b)(5), provides that statements made 'at the time the party and the declarant were participating in a plan to commit a crime' and 'made in furtherance of that plan,' are admissible into evidence against another member of the conspiracy." State v. Savage, 172 N.J. 374, 402 (2002) (quoting N.J.R.E. 803(b)(5)). "A conspiracy continues until its objective is fulfilled." Id. at 403 (citing State v. Cherry, 289 N.J. Super. 503, 523 (App. Div. 1995)). Here, the attempted robbery and shooting of Larose occurred days before J.W. allegedly confessed to Grant, Dawkins and others to shooting the cab driver. Post-conspiratorial statements are generally not admissible against a defendant. State v. Sparano, 249 N.J. Super. 411, 420–21 (App. Div. 1991).

However, "statements relating to past events may be admissible if they are 'in furtherance' of the conspiracy and 'serve some current purpose, such as to provide cohesiveness, provide reassurances to a co-conspirator, or prompt one not a member of the conspiracy to respond in a way that furthers the goals

of the conspiracy.'" Savage 172 N.J. at 403 (quoting State v. Taccetta, 301 N.J. Super. 227, 253 (App. Div. 1997)). The State contended J.W.'s statements were in furtherance of the conspiracy because J.W. hid the murder weapon in the Highland Terrace apartment. But, the statements J.W. made, as recounted by Grant and Dawkins, were admissions to the shooting of Larose. They had nothing to do with hiding the weapon, nor did they implicate anyone, much less defendant, as being involved in the shooting. They were not made in "furtherance of the conspiracy," and therefore were inadmissible.[9]

We do not think standing alone the admission of J.W.'s statements to Grant and Dawkins requires reversal for two reasons. First, defendant's statement to police contained the same information that J.W. allegedly told his cohorts, specifically that Larose resisted the robbery, which led to shots being fired. Admission of J.W.'s hearsay statements was, therefore, harmless error beyond a reasonable doubt. See, e.g., State v. Scott, 229 N.J. 469, 484 (2017) (explaining harmless error doctrine).

[9] During the pre-trial discussion of the stipulation, the prosecutor and defense counsel alluded to J.W.'s statements being admissible as statements against interest. N.J.R.E. 803(c)(25). However, "[s]uch a statement is admissible against a defendant in a criminal proceeding only if the defendant was the declarant." Ibid.; see State v. Hannah, 248 N.J. 148, 183–84 (2021). J.W.'s statements to Grant and Hawkins were not admissible on this ground.

Second, defense counsel stipulated to the admissibility of J.W.'s statements to Grant and Dawkins, and any objections she did make had nothing to do with the actual content of J.W.'s alleged statements. As such, the invited error doctrine applies. See, e.g., State v. A.R., 213 N.J. 542, 561 (2013) ("Under that settled principle of law, trial errors that 'were induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal.'" (quoting State v. Corsaro, 107 N.J. 339, 345 (1987))).

In Point I, defendant asserts it was error to permit the State to introduce evidence of the November 29 armed robbery of Nicolas because it was irrelevant and deprived defendant his due process rights.[10] The State contends

[10] In announcing defense counsel's stipulation to the admission of evidence of the robbery of Nicolas, the prosecutor said the stipulation was to "de-necessitate hav[ing] a [N.J.R.E.] 404b motion for the things that happened on [November 29]." We assume believing it necessary to address this canard, defendant also contends in his brief that the evidence was barred by N.J.R.E. 404(b), which excludes evidence of uncharged other crimes or bad acts except in limited circumstances. However, the State never asserted defendant was involved in the Nicolas robbery, and evidence regarding the November 29 robbery was not "other crimes" evidence as traditionally understood. State v. Figueroa, 358 N.J. Super. 317, 325–26 (App. Div. 2003); see also Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 7 on N.J.R.E. 404(b) (2022) ("The rule applies only to other acts of the defendant; thus, evidence that includes references to bad conduct by the defendant's accomplices does not implicate [N.J.R.E. 404(b)].").

the evidence regarding the November 29 robbery was relevant because it assisted police in developing the case, identifying J.W., and finding the murder weapon. The State also argues the admission of the evidence was not plain error.

N.J.R.E. 401 defines "[r]elevant evidence" as "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." (Emphasis added). Evidence "need not be dispositive or even strongly probative in order to clear the relevancy bar." State v. Cole, 229 N.J. 430, 447 (2017) (quoting State v. Buckley, 216 N.J. 249, 261 (2013)). "When a court decides whether evidence is relevant, 'the inquiry should focus on the logical connection between the proffered evidence and a fact in issue.'" Ibid. (emphasis added) (quoting State v. Bakka, 176 N.J. 533, 545 (2003)); see also State v. Santamaria, 236 N.J. 390, 405 (2019) ("[T]he relevancy threshold is met '[o]nce a logical relevancy can be found to bridge the evidence offered and a consequential issue in the case.'" (alteration in original) (quoting Cole, 229 N.J. at 448)).

A court may admit relevant evidence "unless exclusion is warranted under a specific evidence rule." State v. Trinidad, 241 N.J. 425, 449 (2020) (quoting State v. Burr, 195 N.J. 119, 127 (2008)). "One such rule excluding

relevant evidence is N.J.R.E. 403," ibid. (quoting Cole, 229 N.J. at 448), which provides relevant evidence "may be excluded if its probative value is substantially outweighed by the risk of . . . [u]ndue prejudice, confusion of issues, or misleading the jury, or . . . [u]ndue delay, waste of time, or needless presentation of cumulative evidence," N.J.R.E. 403. "For exclusion, the evidence must be more than prejudicial: '[d]amaging evidence usually is very prejudicial but the question here is whether the risk of undue prejudice was too high.'" Trinidad, 241 N.J. at 449 (alteration in original) (quoting Cole, 229 N.J. at 448).

Immediately before trial, the prosecutor announced defense counsel's stipulation that "J.W.'s robbery of . . . Nicolas the day prior . . . [was] admissible to prove [the] identity of co-conspirator J.W." Undoubtedly, the identity of defendant's co-conspirator was a "consequential issue" in the case, since count one of the indictment specifically alleged defendant conspired with J.W. to commit robbery.

However, as defense counsel noted during one of her many objections to the reams of evidence that came before the jury about the uncharged November 29 robbery, the identity of defendant's alleged co-conspirator was never in dispute. Defendant identified him in his statement to police; the jury

saw defendant specifically identify a photo of J.W. During summation, the prosecutor referenced other evidence, including video surveillance footage from the night of Larose's murder, from which the jury could infer defendant and J.W. were together before leaving defendant's apartment building to catch the cab, entered the cab together, ran together from the cab after it crashed, and communicated with each other the next morning. Defense counsel may have initially stipulated to the admissibility of some evidence regarding the November 29 robbery of Nicolas, but, as we hopefully made clear above, she objected again and again as the State essentially tried a case-within-a-case.

The State also contends the evidence was admissible to show the course of investigation that ultimately led to recovery of the murder weapon. At times, the prosecutor asserted this same rationale during trial as a basis for admitting evidence of J.W.'s participation in the Nicolas robbery. While some evidence of the Nicolas robbery may have been relevant, simply put, the details of the Nicolas robbery and its investigation were irrelevant to defendant's trial. Yet, the judge permitted the jury to view video surveillance footage of the Nicolas robbery, hear Poggi's testimony about obtaining J.N.'s pedigree and J.W.'s photo from another police department, and see video of Nicolas' out-of-court identification of J.W. All that evidence proved J.W.'s

guilt in Nicolas' robbery; it had nothing to do with defendant's involvement in the homicide.

We see no reason why Poggi could not simply have told the jury that after speaking with Nicolas, he secured a photo of J.N. and J.W. and showed them to Nicolas, who identified them as his assailants. Poggi could simply have said he went to the Highland Terrace address where he believed both lived and saw one of the juveniles entering a specific apartment. Evidence of what followed, including the recovery of the murder weapon, would have been admitted as it was at trial. In short, the abundance of evidence showing the steps in the investigation demonstrated perceptive and dedicated efforts of law enforcement professionals, but based on its extremely limited relevance, the judge should not have admitted most of the evidence at defendant's trial. It was unduly prejudicial to defendant and clearly outweighed its very limited relevancy. N.J.R.E. 403.

The only close issue is whether the admission of all the evidence about Nicolas' robbery, in which defendant played no part, was harmful error "clearly capable of producing an unjust result." R. 2:10-2. "The possibility must be real, one sufficient to raise a reasonable doubt as to whether [it] led the jury to a verdict it otherwise might not have reached." State v. Lazo, 209

N.J. 9, 26 (2012) (alteration in original) (quoting State v. R.B., 183 N.J. 308, 330 (2005)). "That determination must be made in the context of the entire record." State v. Sowell, 213 N.J. 89, 108 (2013).

Undoubtedly, the State's case against defendant was strong, as we have outlined throughout this opinion. However, the admission of substantial, irrelevant evidence about J.W.'s involvement in the Nicolas robbery was error compounded by the lack of any instruction to the jury about the limited relevance of that evidence. The judge never told the jury why he admitted evidence of the Nicolas robbery.

More importantly, he never told the jury defendant was never suspected of involvement in that robbery, and the jury should not consider evidence of the Nicolas robbery when deciding whether defendant was guilty of Larose's homicide. Instead, the jury was left unconstrained when evaluating the importance and relevance of that evidence. It was, for example, free to consider that J.W., a fourteen-year-old who committed two armed robberies of cab drivers on consecutive nights in the same neighborhood, was an acquaintance of defendant, who was older, and defendant was with J.W. when defendant called for a cab and let him share a cab on November 30, 2016. In

short, the jury was free to attribute J.W.'s illegal actions from the night of November 29 to defendant's conduct on the night of November 30.

We conclude the admission of the substantial trial evidence regarding the Nicolas robbery, without any instructions by the court limiting the jury's use of that evidence, raises a reasonable doubt about the overall fairness of defendant's trial. We therefore reverse defendant's convictions, vacate the sentences imposed and remand the matter for a new trial.

We need not address defendant's other arguments in light of this disposition.

Reversed and remanded for a new trial. We do not retain jurisdiction.