



State v. Gabriel Garcia

2021 | Cited 0 times | Supreme Court of New Jersey | March 10, 2021

SYLLABUS

This syllabus is not part of the . It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Court. In the interest of brevity, portions of an opinion may not have been summarized.

State v. Gabriel Garcia (A-47-19) (083568)

Argued November 9, 2020 -- Decided March 10, 2021

ALBIN, J., writing for the Court.

The Court considers, under the plain error doctrine, whether the exclusion of a cell summation remarks, directly at odds with the video, denied defendant a fair trial.

Defendant was charged with second-degree aggravated assault and related charges

in September 2016. During a four-day jury trial, the State and defense presented starkly different accounts of the events in dispute.

According to Urbanski and his wife, they were outside around 1:00 a.m. when defendant parked two houses away and began

his car with a box cutter in hand and, after a physical struggle, slashed and finger. called the police. Detective Janixza Domenech and other police officers responded. Domenech spoke with Urbanski and took a formal statement from his wife. Domenech stated she canvassed the area for witnesses but found none. She stated that, to her knowledge, no other witnesses came forward.

In contrast, defendant testified that, after parking honking his horn three times, Urbanski approached his vehicle and banged on his car roof. When defendant exited the car, Urbanski, armed with a bottle, along with two other armed men, chased defendant. After being punched by Urbanski, defendant pulled a box cutter, used for work, from his belt. Defendant was struck in the head with a bottle; defendant flung his hand in fear and slashed



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Meanwhile, d mother, stepfather, and sister gathered on the porch. Their testimony of the events they witnessed . They each

During cross-examination, the prosecutor elicited the same basic responses from -- they spoke to defense counsel and each other before testifying and hoped their testimony would help defendant.

The video portrayed the , with Domenech walking in the background. The trial court excluded the video as inadmissible hearsay, rejecting the argument that the video contained prior consistent statements admissible to meet a charge of recent fabrication under N.J.R.E. 803(a)(2).

members, urging the jury to disbelieve their testimony because they did not come forward and give their accounts to police at the scene. The prosecutor also intimated that it was preposterous to think that the police would not take information from an available witness.

Defendant was convicted of all charges. The Appellate Division affirmed the convictions

defendant a fair trial. 241 N.J. 15 (2020).

HELD: The trial court erroneously kept admissible evidence from the jury. The video rebutted what the prosecutor implied during cross-examination -- witnesses lied about their attempt to speak with the police at the scene. That video also

the area for witnesses. In summation, the prosecutor exploited the suppression of the video to present a false narrative and improperly suggested to the jury that the defense witnesses made no effort to give their accounts to the officers at the scene. The

inappropriate remarks during summation had the clear capacity to cause an unjust result.

1. The video recording constituted extrinsic evidence that simultaneously contradicted

witnesses and supported the family m the police. It was admissible under N.J.R.E. 607(a), which permits introduction of

The on-scene video arguably resolved the conflict. The prosecutor dispelled any doubt about the relevance and importance of the withheld video when he urged the jury to reject about their attempted cooperation. If the jury accepted

to the police, the jury was entitled to reject the entirety of their testimony, including their testimony that defendant acted in self-defense. (pp. 24-26) 2. The video was admissible to rebut a charge of recent fabrication pursuant to N.J.R.E. 803(a). The combination of testimony that no witnesses came forward at family members -- eliciting answers that they met with defense counsel and each other



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before testifying and that their bonds of affection toward defendant made them want to help him -- inescapably suggested that they were fabricating their testimony or had an improper motive in testifying. The contemporaneously recorded video of the contact between the family members and the police at the scene rebutted the implied charge, raised by the (pp. 26-27)

3. In his summation, the prosecutor attacked members, misrepresenting that they made no attempt to speak with the police at the scene. The prosecutor specifically discredited the mother, arguing that the mother was aware she had to speak with the detective and not the police officers, that she saw Domenech taking notes, and that she did not respond the way a mother naturally would respond if she had helpful information concerning her son about what had happened. The excluded video refuted the image he conveyed to the jury. The prosecutor exploited a favorable evidentiary ruling to strike an unfair blow at the defense and give a misleading presentation to the jury untethered to the truth. (pp. 27-30)

4. In fulfilling the duty to seek justice, a prosecutor must refrain from making inaccurate factual assertions to the jury and from employing improper methods calculated to produce a wrongful conviction. Although the prosecutor is free to discuss the direct and inferential evidence presented at trial, the prosecutor cannot press an argument that is untrue -- that is contradicted by an objective video recording excluded from evidence for reasons unrelated to its authenticity. That otherwise trustworthy and reliable evidence may be deemed inadmissible, for one reason or another, does not give a party, including the prosecutor, a right to freely portray a false picture of events. (pp. 30-32)

5. This case was a pitched credibility contest between the witnesses presented by the St members, in essence, lied when they testified that they tried to speak with the police at the scene had the clear capacity to tip the scales against defendant. For if the jury believed that argument, then it was within its rights to disregard the whole of their -defense claim. Under the plain error doctrine, the improper exploitation of that evidentiary ruling combined to deny defendant a fair trial. (pp. 32-34)

REVERSED and REMANDED for a new trial.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, PATTERSON, FERNANDEZ-VINA, SOLOMON, and PIERRE-LOUIS join in JUSTICE opinion. SUPREME COURT OF NEW JERSEY A-47 September Term 2019 083568

State of New Jersey,

Plaintiff-Respondent,

v.

Gabriel Garcia, a/k/a Gabriel H. Garcia, Gabriel H. Chiriboga, Gabriel G. Chirboga, and Gabriel H.



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Garciachiriboga,

Defendant-Appellant.

On certification to the Superior Court, Appellate Division.

Argued November 9, 2020 Decided March 10, 2021

Marcia Blum, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Marcia Blum, of counsel and on the briefs).

Erin M. Campbell, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Stephanie Davis Elson, Assistant Prosecutor, on the brief).

Karen Thompson argued the cause for amicus curiae American Civil Liberties Union of New Jersey (American Civil Liberties Union of New Jersey Foundation, attorneys; Karen Thompson, Alexander Shalom, and Jeanne LoCicero, on the brief). Dillon J. McGuire argued the cause for amicus curiae Association of Criminal Defense Lawyers of New Jersey (Pashman Stein Walder Hayden, attorneys; CJ Griffin, of counsel and on the brief, and Dillon J. McGuire, on the brief).

Deborah Bartolomey, Deputy Attorney General, argued the cause for amicus curiae Attorney General of New Jersey (Gurbir S. Grewal, Attorney General, attorney; Deborah Bartolomey, of counsel and on the brief).

JUSTICE ALBIN delivered the opinion of the Court.

The trial of defendant Gabriel Garcia presented two diametrically

different accounts of what happened on Sip Avenue in Jersey City on

September 11, 2016. approached defendant about and defendant,

without provocation, slashed his face with a knife. In contrast, the defense

witnesses claimed that Urbanski and two other men -- all armed with weapons

-- assaulted defendant for beeping the horn, and that defendant, as a last resort,

defended himself with his work box cutter.

To implicit charge that the defense witnesses --



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-- fabricated their trial testimony, defendant

sought to introduce a video showing that those witnesses attempted to give

their account to police officers at the scene, only to be turned away and told to

take it to court. The trial court ruled that the video constituted inadmissible hearsay. Without having to explain away the voices and images on the video

that conflicted with his presentation, the prosecutor in his summation

suggested that had the defense witnesses actually observed defendant act in

self-defense, they would have approached the police and investigating

detective at the scene.

The jury convicted defendant of second-degree aggravated assault and

related offenses. The Appellate Division upheld s. The

Appellate Division concluded that the trial court erred in finding the video

inadmissible but that the error did not warrant the grant of a new trial. It found

that -- to which defense counsel offered no

objection -- did not exceed the acceptable bounds of fair comment.

We now reverse. We agree with the Appellate Division that the trial

court erroneously kept admissible evidence from the jury. The video rebutted

what the prosecutor implied during cross-examination -- that witnesses lied about their attempt to speak and cooperate with the police at the

scene. that she had thoroughly canvassed the area for witnesses. In summation, the

prosecutor exploited the suppression of the video to present a false narrative.

The prosecutor improperly suggested to the jury that the defense witnesses



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made no effort to give their accounts to the police officers at the scene -- despite the excluded . On that unjustifiable

testimony

as untrustworthy. That improper gamesmanship had the clear capacity to unfairly tip the scales in this pitched credibility contest.

Prosecutors are required to turn square corners because their overriding duty is to do justice. A misleading argument pressed even in the heat of the moment while zealously presenting closing remarks does not lessen the damage remarks during summation had the clear capacity to cause an unjust result.

We therefore reverse the judgment of the Appellate Division and remand for a new trial.

I.

A.

Defendant was charged in a Hudson County indictment with second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); third-degree possession of a weapon with an unlawful purpose, N.J.S.A. 2C:39-4(d); and fourth-degree possession of a knife under circumstances not manifestly appropriate, N.J.S.A. 2C:39-5(d). 1 During a four-day jury trial, the State and defense presented starkly different accounts of the events in dispute. The one point neither side contests is that the bloody confrontation between defendant and Urbanski began with the beeping of a car horn as defendant waited in his BMW outside



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1.

According to the testimony of Urbanski and his wife, Jennifer, on September 11, 2016, at around 1:00 a.m., defendant parked his BMW two doors from their home on Sip Avenue in Jersey City and began his horn. At that moment, Urbanski and Jennifer were outside saying good-bye to J while their three children were asleep inside. Urbanski but defendant may not have seen him, so he walked toward the car with his wife a few feet behind. Defendant then exited his car and approached Urbanski with a box cutter in his hand. The two started arguing loudly, and the confrontation escalated into a physical struggle on a nearby sidewalk. Urbanski decided that he had and then defendant raised the knife high and brought it down, slashing Urbanski

1 A fourth charge was dismissed before trial. In shock and soaked in blood, Urbanski stated he ripped off his shirt and sliced . . . wide open.

Afterwards, defendant left the scene in his car. Jennifer recalled that her husband briefly passed out and when he regained consciousness he went up to , where the mother and other family members had gathered, and a shouting match ensued. Urbanski remembered going to the porch with the thought that defendant was inside the house. Jennifer stated that she and her brother dragged Urbanski away by his t-shirt because he was



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Jennifer called the police.

Jersey City police officers arrived on the scene minutes later, and

Urbanski and Jennifer gave a description of the attacker. Emergency medical services transported Urbanski to the hospital, where he received approximately twenty-six stitches to his face and treatment for nerve damage and a fracture to his pinky, which also required a skin graft.

Detective Janixza Domenech testified that when she arrived on the scene approximately ten police officers were already there -- some of whom were investigating the crime. Detective Domenech spoke briefly with Urbanski while he was receiving medical attention but took a formal statement only from Jennifer. The detective also took Jennifer to a nearby ambulance where she identified defendant . No investigating police officer spoke with defendant, and Detective Domenech made no attempt to do

so. Domenech stated that she canvassed the area for witnesses but found none other than Urbanski and Jennifer. The detective said she did not speak with any member , and, to her knowledge, no other witnesses came forward. When asked whether she knocked on doors looking for witnesses, Detective Domenech responded that she had a victim, and she had a witness who identified the perpetrator. To her mind, and dry.

2.

The defense presented testimony from defendant as well as his mother,



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Migdalia Chirobaga; his stepfather, Jose Canales; his sister, Diana Freire; his uncle, Jorge Salgado; and a police officer friend, Jonathan Colon.

Defendant testified that around 12:00 a.m. on September 11, he went to to pick up his uncle, aunt, and cousin, who were visiting from Venezuela. He planned to take them to his home to stay and from there to visit an indoor waterpark. When he parked near his mother house on Sip Avenue, he honked his horn three times to announce his arrival. Urbanski approached his car uttering expletives about the beeping of the horn. When defendant explained that he was waiting for his uncle, Urbanski banged on his car roof, saying words to the effect of,

Defendant exited his car, and Urbanski attempted to punch him. As defendant backed up, Urbanski and two other men began to chase him. All three men were armed -- Urbanski with a bottle, one with a stick, and another with a knife who stabbed the tires of Over the course of the confrontation, Urbanski punched defendant several times. Defendant ran Aroused by the screaming outside, d , sister, and uncle came onto the porch. Their testimony generally paralleled by Urbanski her son and pleaded with the men to stop, but one of them pushed her away. Defendant carried a small box cutter on his belt that he used at work as a mechanic. He pulled the box cutter out after Urbanski had punched him and as the men continued to menace him. When one of the men struck defendant in



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the head with a bottle, defendant, in fear, flung out his hand that held the box cutter and slashed Urbanski Defendant managed to escape and enter his car, and with the men banging on s family retreated into the house, as Urbanski, in a rage, kicked and broke the front door and threatened to kill the family members inside.

Defendant drove up the block and parked, as blood streamed down his face onto his shirt. Defendant then contacted his friend from church, Jonathan Colon, an off-duty Jersey City police officer, and asked him to call the police.

...

[and] As defendant requested, Officer Colon called dispatch to send police units to the scene.

According to defendant, as soon as the police arrived in front of his returned and parked in front of a patrol car. Urbanski then approached his car and began punching him through the window -- an act also members. A police officer pulled Urbanski away, and defendant was taken from his car and arrested. When he attempted to explain what had ndant was placed in an ambulance and eventually transported to a hospital where he was treated for a head injury requiring a number of staples. stepfather, and sister each testified that they

Each gave an account of police indifference to listening to their side of the story. The sister stated,



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[n]obody came up to us. Not one detective

came up to us. Not one of them heard our story, and when the family

The mother

explained that they tried to tell the police officers what had happened but were

The mother stated that she saw nearby a

female detective in civilian clothes with a notebook, who never asked us

The family members recalled that Detective Domenech made no

attempt to interview them, and when they tried to approach mother said, When asked whether he tried to tell

[w]e tried a number of

times. Two or three times, but they ignored us. Simple. They simply ignored

During the cross-examination, the prosecutor elicited generally the same basic responses from the

witnesses: they spoke to the defense attorney and among themselves before

appearing in court, and they hoped their testimony would be helpful to

defendant.

3.

At the start of the second day of testimony, defense counsel notified the

interaction with the police at the scene. Defendant sought to admit the video. The court

conducted a Rule 104 hearing out of the presence of the jury. At the hearing,

the uncle testified and the video was played.

The video revealed, in relevant part, the following exchange between the



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family members and the police:

Police officer: What happened -- . . .

. . . .

Stepfather: Okay. Excuse me. What happened this guy. He -- he come and say me killing me, that that shorter guy over there he got a knife --

call the cops. Did you call the cops?

Stepfather: Yeah. My daughter called the cop.

Mother: We call the cops.

Mother: Yes, we did.

Stepfather: Yeah, yeah.

Mother: We called the cops.

2 N.J.R.E. about whether . . matters out of the

Stepfather: I -- I got a record for the calling I got

Police officer: Okay. You take that to court. Take that to court when you go to court. When you go to court you take it to court.

. . . .

Stepfather: This guy -- this guy no coming, (indiscernible) --

Police officer: Take it to court.

Stepfather: [Killing] everybody in the house.

Police officer: Take it to court. Okay?

The court ruled that the video was inadmissible hearsay offered to

bolster the testimony of the defense witnesses. The court specifically rejected



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the argument that the statements captured on the video were prior consistent statements admissible to meet a charge of recent fabrication, improper influence, or improper motive under N.J.R.E. 803(a)(2). Indeed, the court found that the prosecutor did not suggest, in cross-examining the defense witnesses, that they recently fabricated their testimony or that their testimony was based on an improper influence or motive. 4.

The prosecutor summation targeted family members, urging the jury to disbelieve their testimony because they did

not come forward and give their accounts to Detective Domenech or the police officers at the scene. The prosecutor also intimated that it was preposterous to think that the police would not take information from an available witness.

The prosecutor argued:

And then, again, the f -- and they have to say. And his mother testifies and there was

an important little part of that testimony that I want to emphasize to you that I think is relevant to figure out what happened here, that the mother knew the difference between a police officer and a detective. She they get there and they help secure a scene, they do this

and that. But the detectives, the detectives are the people who investigate, who take the witness statements, who try to get the picture here. And she came here and told you nobody approached her, nobody

approached her, nobody from the Garcia family as he would have you believe approached her.

what happened. And knowing this they still

(indiscernible) and talk to her. If this really happened going to tell the people, the police at the scene, the

detectives at the scene, those charged with this investigation that, no, this -- going on here. But she



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never did, she never did. And that should rule large in your mind.

Another thing [our] common sense tells us, ignore witnesses who have material information. . . .

When people have information about a crime, about an attack, about anything like that, they want people. who want to talk.

[(emphases added).]

Defense counsel raised no objection to those remarks.

B.

The jury returned a guilty verdict on all three charges. The court sentenced defendant on the second-degree aggravated assault conviction to a seven-year term with an eighty-five percent period of parole ineligibility pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2, and on the third-degree possession of a weapon with an unlawful purpose conviction to a concurrent three-year term. The fourth-degree weapons possession conviction was merged into the third-degree weapons conviction. C.

In an unpublished, per curiam opinion, the Appellate Division affirmed s. 3 The Appellate Division, however, disagreed with the ruling that the video was hearsay and instead found that the video its view, the statements in the video were offered not for their truthfulness but only to show that they were made. Nevertheless, the Appellate Division concluded that the trial court did . It



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determined that the exclusion of the video did not deprive defendant of a fair
acted in self-defense

The Appellate Division also held that, in his summation, the prosecutor
did not act unreasonably in impeaching the credibility for
failing to approach Detective Domenech at the scene with the account
favorable to her son that she presented at trial. The court emphasized that the
interacti 3

We do not discuss issues raised before the Appellate Division that are not germane to the appeal
before us. Detective Domenech, and that leading the investigation because the detective was carrying
a notebook. In the

end, the Appellate Division concluded that remarks, including
were a fair commentary on the
evidence and a fair response to investigation was one-

D.

ed to the

summation remarks denied defendant a fair trial. 241 N.J. 15 (2020). We also
granted the motions of the American Civil Liberties Union of New Jersey
(ACLU), the Association of Criminal Defense Lawyers of New Jersey
(ACDL), and the New Jersey Attorney General to participate as amici curiae.

II.

A.

1.



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Defendant attempting to give their account to the police at the scene -- an account that

would have portrayed defendant as a victim who acted in self-defense -- was

admissible on two separate grounds. First, the events and statements captured on the video were not hearsay because they were offered not to prove the truth

but rather to disprove[] assertion that

no one from family came forward at the scene. Defendant

asserts that the contemporaneously recorded video testimony.

Second, defendant contends that the video-recorded evidence was

admissible under N.J.R.E. 803(a)(2) to rebut an implied charge of recent

fabrication. when they testified that they

attempted to give their account to the police at the scene. The on-scene video

of tempt to speak with the police, defendant submits, was

but

indeed the truth.

Defendant also claims that the prosecutor took

unconscionable advantage of the exclusion of the video to mislead the jury and

-defense claim. Defendant maintains that the

prosecutor misrepresented to the jury that family members made

no effort to speak with the police, even though the prosecutor knew that the

excluded cellphone video supported He contends that the prosecutor , thus fatally

undermining his defense and denying him a fair trial. Defendant urges the



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defense evidence was wrongly

the prosecutor

to mislead the

2.

Amici, the ACDL and ACLU, echo jury would reasonably expect the family to speak with police if [d]efendant

had in fact acted in self- r see the

video showing the family members speaking with the police. Nevertheless, the

prosecutor falsely asserted that no family member spoke with the police and

implored the jurors to let that point ose knowing

factual mi the truth-seeking B.

1.

The State counters that the trial court properly excluded the video on the

4

The State contends that defendant offered the video for the

impermissible purpose of bolstering the testimony of his witnesses and that the

- did not capture the events surrounding the slashing of Urbanski. The State

also maintains that the video was not admissible under N.J.R.E. 803(a)(2)

because the testimony and therefore the defense had no charge of fabrication to rebut.

The State, moreover, was

nothing more than fair commentary on the evidence and an appropriate



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-defense claim. too

4 is not supported by the record. Neither the trial

court nor the Appellate Division found a lack of authentication of the video. video. That the voices on the video are in English ability to vouch for the authenticity of the video. armed The State emphasizes that defendant did not object to the

not clearly and unmistakably improper and did not have the capacity to deny him a fair trial.

2.

Amicus, the Attorney General, repeats many of the same arguments

advanced by the State: the video was (1) inadmissible hearsay offered to

bolster the testimony of the defense witnesses; (2) irrelevant because it did not

; (3) occur at the time of the stabbing or support the claim of self-defense; and (4)

cumulative testimony. In the

Attorney General de Attorney General did not exploit the exclusion of the video but rather made fair comment on the

evidence. III.

A.

The witnesses for the State and defense presented starkly different

accounts of what occurred in the early morning hours on Sip Avenue -- and the

outcome of the case largely depended on the credibility of those witnesses. The jury had to decide whether defendant, when

confronted by Urbanski for honking his horn, exited his car, pulled a knife,

and then during the ensuing argument slashed Urbanski. Or whether an



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enraged Urbanski and other armed companions pursued defendant, surrounded

, and struck him in the head

with a bottle, leading defendant to slash Urbanski in self-defense.

violent attack on defendant and his attempt to defend himself. Whether the

jury accepted that account depended on the credibility of those witnesses --

and the prosecutor unsurprisingly sought to impair their credibility.

Detective Domenech testified that she canvassed the area for witnesses,

which presumably included the vicinity of the occurred, and found no witnesses other than Urbanski and his wife, Jennifer.

testified that, outside their home, they attempted to convey to the police their side of what happened only to be pushed away and told to say it in court.

Thus, the credibility of the detective and the family members was also at issue.

In cross-examining the family-member witnesses, the prosecutor elicited

that, before testifying, they all had spoken with the defense attorney, they all

had conversed with each other about the events, and they all had sufficient

affection for defendant that they would do what they could to help him. That

line of questioning is not unusual and certainly not nefarious, but it suggests

that the witnesses coordinated their testimony among themselves, and that they might have a motive to bend the truth for a

beloved family member.

Within that context, we must determine whether the trial court erred in

barring the admission of the video recording at the



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scene -- a recording that showed the family members attempting to speak with police officers about what they had witnessed and that depicted a plainclothes female officer (evidently Detective Domenech) carrying a notepad walking only a few feet away from them. 5

We defer to a evidentiary ruling absent an abuse of

discretion. *State v. Nantambu*, 221 N.J. 390, 402 (2015). We will not

substitute our judgment for the trial court's unless the evidentiary ruling is so wide of the mark

in judgment. See *State v. Medina*, 242 N.J.

397, 412 (2020) (first quoting *State v. Brown*, 170 N.J. 138, 147 (2001); and

then quoting *State v. Scott*, 229 N.J. 469, 479 (2017)). Every mistaken

evidentiary ruling, however, will not lead to a reversal of a conviction. Only

those that have the clear capacity to cause an unjust result will do so. See

State v. Prall, 231 N.J. 567, 581 (2018); see also R. 2:10-2.

B.

Defense counsel learned of the existence of the video the evening after

the first day of trial testimony and brought it to the attention of the prosecutor

and court the next morning. Defense counsel stated that the video would

corroborate his witnesses. Although defendant and his sister had already

testified, his mother, stepfather, and uncle had yet to do so. The court

withheld a decision on the admissibility of the video until after those family



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members were called to the stand. After they testified, defense counsel offered the admission of the vid citing to a specific evidentiary rule as authority. Noting that the request to admit the video was untimely, the court nevertheless addressed the merits of testified Detective Domenech. determined that the video did not constitute a prior consistent statement to meet a charge of recent fabrication, N.J.R.E.

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of the family witnesses.

To be sure, defense counsel did not artfully present the case for the admissibility of the video, and we do not excuse the failure of defense counsel to cite specific rules of evidence to support her position. Nonetheless, two clear grounds justified the admission of that critical evidence.

First, the video recording constituted extrinsic evidence that testimony that she

canvassed the crime scene looking for witnesses and supported the family provides, in relevant part, that [f]or the purpose of attacking or supporting the credibility of a witness, any party including the party calling the witness may examine the witness and introduce extrinsic evidence relevant to the issue of

N.J.R.E. 607(a) (emphasis added). The video recording was

relevant evidence -- 401; see also State v. Timmendequas, 161 N.J. 515, 596 (1999) (noting that extrinsic evide determinations). The testimony of Detective Domenech and the family were in direct conflict. The on-scene video -- seemingly unimpeachable extrinsic



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evidence -- arguably resolved the conflict. The prosecutor, moreover, dispelled any doubt about the relevance and importance of the withheld video when he urged the jury to reject the because they failed to come forward at the scene.

The power of a video of contemporaneously recorded events at the crime scene can hardly be disputed. assessment of credibility by providing a more complete picture of what State v. Cole, 229 N.J. 430, 450-51 (2017) (alteration in original) (quoting State v. Cook, 179 N.J. 533, 556 (2004)). The importance in this case cannot be underestimated. I argument that the family members testified falsely about coming forward to the police at the scene, the jury was entitled to reject the entirety of their testimony, including their testimony that defendant acted in self-defense.

Indeed, the court charged the jury on the false in one, false in all doctrine. 6

Second, the video was admissible, as an exception to the hearsay rule, to rebut a charge of recent fabrication. N.J.R.E. 803(a) provides that a statement -witness testifies and is

subject to cross-examination about a prior otherwise admissible statement, and

the statement: . . . (2) is consistent with the declarant- is offered to rebut an express or implied charge against the declarant-witness

of (A) recent fabrication or (B Accord

N.J.R.E. 607(b) t statement shall not be admitted to support



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the credibility of a witness except: (1) to rebut an express or implied charge against the witness of recent fabrication or of improper influence or motive, and (2) as otherwise provided by the law of evidence. (emphasis added)).

came forward at the scene crafted questions posed

6 showing that at a prior time a witness or perhaps witnesses said something or

the trial. . . . [I]f you believe that any witness or party willfully or knowingly

testified falsely to any material facts in the case with intent to deceive you, you may give such weight to [his] or her testimony as you may deem is entitled. You may believe some of it or you may -- eliciting answers that they met with defense

counsel and each other before testifying and that their bonds of affection

toward defendant made them want to help him -- inescapably suggested that

they were fabricating their testimony or had an improper motive in testifying.

That line of prosecutorial questioning, however permissible, had no other

purpose than to intimate .

For that reason, the contemporaneously recorded video of the contact between

the family members and the police at the scene rebutted the implied charge,

s, of recent fabrication and improper

motive.

IV.

A.

With the video excluded and without the constraint of the images and

voices on the video played before the jury, the prosecutor launched a damning



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attack in his summation on the credibility of ,
misrepresenting that they made no attempt to speak with the police at the
scene. The prosecutor characterized the notion that the police disregarded
-- supposedly out there and nobody cares what they have
to say. Another thing [our] common sense tells us, p ignore witnesses who have material information.
...

When people have information about a crime, about an attack, about anything like that, they want
(indiscernible) people have to say. people.

[(emphases added)].

Yet, the video showed that the family members attempted to provide
information to the uniformed officers, only to be told repeatedly: You take
that to court. ; Take it to court. ;

The prosecutor specifically discredited the mother by imputing to her a
first-hand knowledge of the police chain of command, an understanding that
.

From that premise, the prosecutor argued that the mother was aware she had to
speak with the detective and not the police officers. But Detective Domenech
made no such distinction in her testimony. Domenech stated that some of the
police officers were also investigating the crime scene. family was imploring the police officers to
listen.

The prosecutor indicated around with a notebook . . striking
images on the video not seen by the jury: a plainclothes woman walking



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around with a notebook, just feet from the family members whose way was

blocked by the uniformed officers. The video -- had it been seen by the jury -- would have stood as an unimpeachable refutation of testimony that she was canvassing the area for witnesses.

testimony based on the natural maternal instinct to come to the defense of a

child at the first opportunity -- and falsely argued nothing of that nature

occurred at the scene:

If this really happened like that, you running out there at the scene, the detectives at the scene, those charged

with this investigation that, no, this -- else going on here. But she never did, she never did.

And that should rule large in your mind.

[(emphasis added.)]

Remarkably, the prosecutor advanced an argument he knew to be untrue -- an

argument -- even though the

excluded video he reviewed that very day refuted the image he conveyed to the

jury. He drove home that falsehood by urging the jury to remember that

ay a mother naturally would respond

if she had information that would spare her son from a wrongful arrest: she

had happened. That point,

the prosecutor emphasized,

The prosecutor exploited a favorable evidentiary ruling -- the exclusion

of the video -- to strike an unfair blow at the defense. Unburdened by having to explain the images and voices on the video, the prosecutor then gave a



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misleading presentation to the jury untethered to the truth.

production of the video that morning coupled with overzealous advocacy in which he was carried by the current of the moment cannot excuse the purposeful presentation of a fiction to the jury.

B.

In representing the State in a criminal action, the prosecutor is endowed with a solemn duty -- to seek justice, not merely to convict. *State v. Williams*, 113 N.J. 393, 447 (1988) (quoting ABA Standards Relating to the Administration of Criminal Justice, Standard 3-1.1(c) (2d ed. 1980)). In fulfilling that duty, a prosecutor must refrain from making inaccurate factual assertions to the jury, *State v. Smith*, 167 N.J. 158, 178 (2001), and from em

State v. Ramseur, 106 N.J. 123, 320 (1987) (quoting *State v. Farrell*, 61 N.J. 99, 105 (1972)). To be sure, prosecutors are given wide latitude in making their summations and may sum up *State v.*

Johnson, 31 N.J. 489, 510 (1960); see also *Williams*, 113 N.J. at 447. We are competitive instincts of the advocates. *Ramseur*, 106 N.J. at 320 (quoting *State v. Bucanis*, 26 N.J. 45, 56 (1958)). But a trial is not a gladiatorial contest; it is a forum where justice must be done. In that forum, prosecutors stay within the orbit of strict propriety and adhere to the high ethical standards of their office. *Ibid.* (quoting *Bucanis*, 26 N.J. at 56).



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Although the prosecutor is free to discuss the direct and inferential evidence presented at trial, the prosecutor cannot press an argument that is untrue -- that is contradicted by an objective video recording excluded from evidence for reasons unrelated to its authenticity. That otherwise trustworthy and reliable evidence may be deemed inadmissible, for one reason or another, does not give a party, including the prosecutor, a right to freely portray a false picture of events. Cf. *State v. Francis*, 191 N.J. 571, 594 (2007).

In this case, in the technical sense, the prosecutor may have limited his remarks to the evidence of record, but in the fullest sense, he pursued a course that he knew was not consistent with the truth. Our system of justice places checks on the propagation of falsehood. An object or a video excluded from evidence does not become imaginary or non-existent. For example, a gun suppressed because of a Fourth Amendment violation does not allow a defendant to take the stand and lie -- without contradiction -- that he never possessed the gun when a video reveals that he did. Cf. *State v. Burris*, 145 N.J. 509, 532-34 (1996) (noting that a -court testimony may be impeached by trustworthy out-of-court statements made by defendant but excluded for Miranda violations). Even in our adversarial system, the notion that a trial is a search for truth is not an empty anachronism.

Every prosecutorial misstep will not warrant a new trial. In this case, as in others, we must measure the prejudicial effect of the prosecutorial excesses



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State v. McNeil-Thomas, 238 N.J. 256,

the jury

grant a new trial. Bucanis, 26 N.J. at 56; see also McNeil-Thomas, 238 N.J. at

276 (s

right to a fair trial when they so infect[] the trial with unfairness as to make

the resulting conviction a denial of due process. (alteration in original)

(quoting State v. Jackson, 211 N.J. 394, 409 (2012))).

V.

Defendant did not clearly articulate to the trial court the grounds for the

admission of the video and did summation remarks per exploitation of that evidentiary ruling cumulatively under the plain error doctrine. See R. 2:10-2. Under that

doctrine, an appellate court should disregard errors unless they are Ibid. raise a reasonable doubt as to whether the error led the jury to a result it

State v. Trinidad, 241 N.J. 425, 445

(2020) (first quoting State v. Santamaria, 236 N.J. 390, 404 (2019); and then

quoting State v. Macon, 57 N.J. 325, 336 (1971)).

We conclude that the manifest errors committed in this case have vaulted

that high bar and combined to deny defendant a fair trial. This case was a

pitched credibility contest between the witnesses presented by the State and

the defense. The jury had to determine whether defendant or Raymond

Urbanski was the aggressor and whether defendant acted in self-defense.

Although the prosecutor had a right to attempt to discredit the defense



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witnesses, he did not have a license to do so by unfair means. The

synthetic , in essence,

lied when they testified that they tried to speak with the police at the scene had

the clear capacity to tip the scales against defendant. For if the jury believed

that the family members lied about their attempt to cooperate at the scene, then the jury was within its rights to disregard the whole of their testimony

-defense claim.

The errors here undermined the fundamental fairness of the trial and are

See *ibid.* (quoting *Macon*, 57 N.J.

at 336).

VI.

For the reasons expressed, we reverse the judgment of the Appellate

Division and grant defendant a new trial. We remand to the trial court for

proceedings consistent with this opinion.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, PATTERSON, FERNANDEZ-VINA, SOLOMON, and PIERRE-LOUIS join in JUSTICE

