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Distinguished by State v. Vauters, N.J.Super.A.D., January 15, 2016

190 N.J. 114

Supreme Court of New Jersey.

STATE of New Jersey, Plaintiff–Appellant,

v.

Jayson S. WILLIAMS,
Defendant–Respondent.

Argued Oct. 30, 2006.

|

Decided April 11, 2007.

Synopsis

Background: After defendant's manslaughter trial ended in a mistrial and the State decided to retry defendant on the charge, defendant filed a motion to preclude evidence of his post-shooting conduct. The Superior Court, Law Division, Hunterdon County, granted defendant's motion to preclude the State from introducing evidence of defendant's post-shooting conduct. The State appealed. The Superior Court, Appellate Division, 2005 WL 3968822, affirmed. The State sought leave to appeal.

Holdings: After granting leave to appeal, the Supreme Court, LaVecchia, J., held that:

[1] evidence of defendant's post-shooting conduct was relevant in reckless manslaughter trial in regards to defendant's state of mind at the time of shooting, and

[2] probative value of post-shooting conduct outweighed any undue prejudice.

Reversed and remanded.

Zazzali, C.J., filed a dissenting opinion joined by Long and Wallace, JJ.

West Headnotes (10)

[1] Criminal Law Relevancy in General110 Criminal Law110XVII Evidence110XVII(D) Facts in Issue and
Relevance110k338 Relevancy in General110k338(1) In general

In relevance determinations, the analysis focuses on the logical connection between the proffered evidence and a fact in issue. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 401.

18 Cases that cite this headnote

[2] Criminal Law Relevancy in General110 Criminal Law110XVII Evidence110XVII(D) Facts in Issue and
Relevance110k338 Relevancy in General110k338(1) In general

If the evidence makes a desired inference more probable than it would be if the evidence were not admitted, then the required logical connection has been satisfied to make the evidence relevant. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 401.

14 Cases that cite this headnote

[3] Criminal Law Presumptions**Criminal Law** Intent110 Criminal Law110XVII Evidence110XVII(B) Presumptions and
Inferences110k305 Presumptions110k305.1 In general

110 Criminal Law

110XVII Evidence

110XVII(B) Presumptions and Inferences

110k305 Presumptions

110k312 Intent

The key to the admissibility of circumstantial evidence generally, and as applied to state-of-mind questions specifically, is whether it bears a logical connection to the disputed fact.

4 Cases that cite this headnote

[4] **Criminal Law**

🔑 Motive or absence of motive

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

110k342 Motive or absence of motive

When an individual's state of mind is at issue, a greater breadth of evidence is allowed.

6 Cases that cite this headnote

[5] **Criminal Law**

🔑 Intent

110 Criminal Law

110XVII Evidence

110XVII(B) Presumptions and Inferences

110k305 Presumptions

110k312 Intent

Courts admit circumstantial evidence that has a tendency to shed light on defendant's mental state or which tends fairly to explain a defendant's actions, notwithstanding that the evidence relates to conduct that occurred before the offense.

6 Cases that cite this headnote

[6] **Criminal Law**

🔑 Subsequent Condition or Conduct of Accused

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

110k351 Subsequent Condition or Conduct of Accused

110k351(1) In general

Post-crime consciousness of guilt evidence can support a logical connection to a desired inference about mental state in specific and non-specific intent crimes. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 401.

20 Cases that cite this headnote

[7] **Criminal Law**

🔑 Subsequent Condition or Conduct of Accused

110 Criminal Law

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

110k351 Subsequent Condition or Conduct of Accused

110k351(1) In general

Post-crime consciousness of guilt evidence can illuminate a defendant's state of mind in a crime involving recklessness. N.J.S.A. 2C:2-2(b)(3); N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 401.

22 Cases that cite this headnote

[8] **Homicide**

🔑 Suppression or destruction of evidence

203 Homicide

203IX Evidence

203IX(D) Admissibility in General

203k1012 Subsequent Incriminating or Exculpatory Circumstances

203k1029 Suppression or destruction of evidence

(Formerly 110k351(10))

Evidence of defendant's post-shooting conduct was relevant in reckless manslaughter trial in regards to defendant's state of mind at the time of shooting; defendant's attempts to

immediately cover up his role in the shooting by making it appear as though the victim committed suicide could support an inference that defendant was aware that moments earlier he engaged in the conscious disregard of risk that could make him criminally culpable. N.J.S.A. 2C:11-4(b)(1); N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 401.

11 Cases that cite this headnote

The probative value of other crimes evidence of defendant's post-shooting conduct regarding his attempts to cover up his role in the shooting was not outweighed by undue prejudice in reckless manslaughter trial, and thus, the evidence was admissible for purposes of assessing defendant's state of mind. N.J.S.A. 2C:11-4(b)(1); N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

41 Cases that cite this headnote

[9] Criminal Law

🔑 Similarity to Crime Charged

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)12 Nature and Circumstances of Other Misconduct Affecting Admissibility

110k373.7 Similarity to Crime Charged

110k373.8 In general

(Formerly 110k369.15)

When other-crimes evidence is proffered for the permitted purpose of identity, where such evidence is particularly at risk of being confused as predisposition evidence, courts require special emphasis on the similarity of the crime to avoid predisposition prejudice. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

14 Cases that cite this headnote

Attorneys and Law Firms

***91** Charles Ouslander, Assistant Prosecutor, argued the cause for appellant (Jeffrey Patrick Barnes, Hunterdon County Prosecutor, attorney).

Joseph A. Hayden, Jr., Roseland, argued the cause for respondent (Walder, Hayden & Brogan and Blank Rome, attorneys; Mr. Hayden and William R. Martin, a member of the District of Columbia bar, of counsel; Mr. Hayden, Mr. Martin, Shawn M. Wright, Washington, DC, a member of the District of Columbia bar, and Christopher D. Adams, on the briefs).

Catherine A. Foddai, Assistant Bergen County Prosecutor, argued the cause for amicus curiae County Prosecutors' Association (John L. Molinelli, Bergen County Prosecutor, President, attorney).

Lawrence S. Lustberg argued the cause for amicus curiae Association of Criminal Defense Lawyers of New Jersey (Gibbons, Del Deo, Dolan, Griffinger & Vecchione, attorneys; Mr. Lustberg and Claudia Van Wyk, Newark, on the brief).

Opinion

Justice LaVECCHIA delivered the opinion of the Court.

***117** In connection with the February 2002 shooting death of Costas “Gus” Christofi, defendant Jayson Williams was charged with

[10] Criminal Law

🔑 Homicide, mayhem, and assault with intent to kill

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)2 Admissibility in Prosecutions for Particular Offenses in General

110k368.28 Homicide, mayhem, and assault with intent to kill

(Formerly 110k369.2(4))

aggravated manslaughter, *N.J.S.A. 2C:11-4(a)* (1) (count one); reckless manslaughter, *N.J.S.A. 2C:11-4(b)(1)* (count two); possession of a weapon for an unlawful purpose, *N.J.S.A. 2C:39-4(a)* (count three); aggravated assault by knowingly pointing a firearm at or in the direction of another, *N.J.S.A. 2C:12-1(b)(4)* (count four); hindering apprehension, *N.J.S.A. 2C:29-3(b)* (count five); tampering with a witness, *N.J.S.A. 2C:28-5(a)* (count six); tampering with evidence, *N.J.S.A. 2C:28-6(1)* (count seven); and fabricating physical evidence, *N.J.S.A. 2C:28-6(2)* (count eight).¹ After a lengthy trial, defendant was convicted on all counts concerning his post-shooting conduct (counts five through eight). The jury acquitted defendant of ****92** aggravated manslaughter, possession of a weapon for an unlawful purpose, and aggravated assault by knowingly pointing a firearm at or in the direction of another, but could not reach a verdict on reckless manslaughter. The court therefore accepted the jury's verdict on all of the counts except for reckless manslaughter and declared a mistrial as to that count.

Facing retrial on the reckless manslaughter charge, defendant filed a motion to exclude evidence of his conduct immediately after the shooting.² Defendant asserted that his post-shooting conduct is irrelevant to whether he acted recklessly at the time of the shooting, and that the evidence is unduly prejudicial. The State argued that, notwithstanding that the crime involves a reckless ***118** *mens rea* element, the evidence is relevant as demonstrative of a consciousness of guilt that is probative of defendant's state of mind during the shooting incident. The State also disputed that the evidence would cause undue prejudice.

The trial court held the evidence to be inadmissible. Its determination was grounded on the conclusion that post-crime evidence of consciousness of guilt is not relevant to demonstrate recklessness. Moreover, the court found that introduction of the post-shooting-conduct evidence would be unduly prejudicial to defendant in the retrial, notwithstanding the court's contrary conclusion at the first trial when it declined to sever the post-shooting counts from the shooting counts. In

an unpublished opinion, the Appellate Division affirmed.³

We granted the State leave to appeal, *187 N.J. 487, 901 A.2d 951* (2006), and now, we reverse.

I.

A.

For context, we recount briefly the circumstances surrounding Christofi's shooting as presented during the first trial. The events transpired during the evening of February 13, 2002, when defendant, his long-time friend Kent Culuko, and several others attended a Harlem Globetrotters basketball game held at Lehigh University. During halftime, defendant invited the Globetrotters players to join him for dinner. Four members of the team accepted—Curly “Boo” Johnson, Leonard Benoit Benjamin, Christopher Morris, and Paul Gaffney. Defendant arranged for the players to be picked up at their hotel and driven to the agreed-upon ***119** restaurant by a hired van. The driver of that van was Gus Christofi.

The engagement had an inauspicious start for Christofi. During dinner, while defendant and his guests ate and drank, Christofi, who was waiting in the restaurant, was subjected to loud embarrassing remarks by defendant questioning Christofi's right to be present in the restaurant. Defendant ultimately said he was joking, but only at the end of the humiliating experience.

****93** The group left the restaurant at approximately 1:00 a.m. and traveled to defendant's home. After a tour of defendant's property, the Globetrotters players, Christofi, and others entered the house and eventually congregated in a study attached to defendant's bedroom. At a certain point, defendant, Benjamin, Morris, Gaffney, and Christofi were all in defendant's bedroom. Culuko stood in the entranceway between the study and the bedroom, and Johnson remained in the study. While in his bedroom, defendant retrieved a Browning Citori shotgun that was kept in a gun

cabinet. As defendant wielded the shotgun in Christofi's direction, the weapon discharged. The circumstances of the shotgun's discharge will be the focus of the retrial; however, we note at this time that there was testimony that defendant uttered a curse at Christofi moments before the shot was fired. The shotgun blast struck Christofi in the chest, killing him.

Culuko, Benjamin, and Morris witnessed the fatal shot. Gaffney and Johnson did not see the shooting, but they did observe defendant's conduct immediately following the shooting. All five testified for the State during the first trial. Their testimony established that defendant took several steps immediately following the shooting to conceal his involvement in Christofi's death. According to their collective testimony, after Christofi was struck by the shotgun blast defendant dropped to his knees and exclaimed, "Oh my God, what just happened," "Sh*t," and "I f**ked up my life." As Christofi lay bleeding and gasping for air, Gaffney and Culuko attempted to help him by checking for a pulse. Defendant, on the other hand, tended to his gun, wiping off *120 the weapon with a cloth to remove his fingerprints. Holding the shotgun in one hand, defendant moved it into Christofi's hand, pressing Christofi's fingers and palm on the weapon. Defendant also destroyed evidence of Christofi's blood on himself, including changing his clothes and giving the ones he had been wearing to Culuko to discard. The witnesses testified that defendant instructed them to lie to the police by reporting that Christofi committed suicide. When the police arrived, defendant denied involvement in the shooting.

It is that post-shooting evidence that defendant moved to exclude from the retrial.

B.

As noted, defendant sought to sever the post-shooting counts from the shooting counts in his first trial.⁴ He argued that his cover-up conduct had no relevance to the shooting and did not bear on whether he shot Christofi recklessly—the *mens rea* required for counts one and two of the indictment.

Rather, defendant asserted that the material issue at trial would be whether the shooting was the result of an accident or reckless behavior. As to that, defendant argued, the cover-up constitutes an unrelated and separate occurrence that does not illuminate his state of mind during the earlier events. As for count four (aggravated assault by knowingly pointing a gun at or in the direction of another), defendant conceded that the evidence was not unrelated to the intent element applicable to that offense. Instead, he argued that the prejudicial effect of the evidence outweighed its probative value.

The trial court denied the motion to sever, noting that the indictment included at least one specific intent crime, that judicial **94 *121 economy favored trying the counts together, that the State could choose not to accept defendant's offer to stipulate on his identification as the shooter thereby permitting the introduction of relevant evidence on that issue at trial, and that the post-crime conduct constituted evidence of consciousness of guilt. In ruling on the second severance motion, the court again noted that the post-shooting conduct "would also be admissible at [a] separate trial in demonstrating consciousness of guilt, state of mind."

Accordingly, the court admitted the evidence with a limiting instruction. The trial resulted in defendant's acquittal on the aggravated manslaughter charge (count one) and two other shooting-related charges (counts three and four). One shooting charge was unresolved—the reckless manslaughter charge.

Defendant again sought to bar evidence of the cover-up conduct, this time from the State's re-prosecution of the remaining reckless manslaughter charge. He also sought to bar evidence of two prior gun-discharge incidents in which he had been involved.⁵ The trial court granted the applications and, pursuant to a Rule 404(b) analysis, barred the evidence defendant sought to exclude. The State filed an interlocutory appeal and the Appellate Division affirmed, also employing a Rule 404(b) analysis. Although we did not grant leave to appeal from the panel's affirmance of the exclusion of defendant's prior gun-discharge incidents, we

did agree to review the exclusion of defendant's cover-up conduct for which he has now been convicted. The admissibility of that other-crimes *122 evidence is governed by Evidence Rule 404(b), as the trial court and the Appellate Division correctly understood.

II.

Evidence Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a person in order to show that such person acted in conformity therewith. Such evidence may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident when such matters are relevant to a material issue in dispute.

In State v. Cofield, 127 N.J. 328, 338, 605 A.2d 230 (1992), this Court framed a four-pronged test to determine whether to admit other-crimes evidence for a permitted purpose under N.J.R.E. 404(b). The Cofield test requires that:

1. The evidence of the other crime must be admissible as relevant to a material issue;
2. It must be similar in kind and reasonably close in time to the offense charged;
3. The evidence of the other crime must be clear and convincing; and
4. The probative value of the evidence must not be outweighed by its apparent prejudice.

****95** [Cofield, *supra*, 127 N.J. at 338, 605 A.2d 230 (citing Abraham P. Ordovery, Balancing The Presumptions Of Guilt And Innocence: Rules

404(b), 608(b), And 609(a), 38 Emory L.J. 135, 160 (1989)).]

In this matter, the State seeks to admit evidence of defendant's post-shooting cover-up conduct, for which he has been convicted, for a permitted purpose under the Rule—intent. Defendant's state of mind at the time Christofi was shot is the material issue in dispute in the retrial. Therefore, in applying the test for admission of defendant's other-crimes conduct under Rule 404(b), prong one of Cofield requires examination of the evidence for its relevance to the issue in dispute.

III.

A.

[1] **[2]** Relevant evidence is defined as any evidence that has “a tendency in reason to prove or disprove any fact of consequence to *123 the determination of the action.” N.J.R.E. 401; see also State v. Deatore, 70 N.J. 100, 116, 358 A.2d 163 (1976) (stating that test, which “favors admissibility,” nonetheless must include evaluation of evidence's probative value in respect of point in issue). In relevance determinations, the analysis focuses on “the logical connection between the proffered evidence and a fact in issue.” Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 15, 860 A.2d 435 (2004) (quoting State v. Hutchins, 241 N.J. Super. 353, 358, 575 A.2d 35 (App.Div.1990)). The standard for the requisite connection is generous: if the evidence makes a desired inference more probable than it would be if the evidence were not admitted, then the required logical connection has been satisfied. State v. Davis, 96 N.J. 611, 619, 477 A.2d 308 (1984).⁶

Here the State bears the burden of proving that defendant recklessly caused the death of Gus Christofi. N.J.S.A. 2C:11-4(b)(1). The Code defines the culpability required for recklessness:

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from

his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

[*N.J.S.A. 2C:2-2(b)(3)*.]

The element of criminal recklessness differs from knowing culpability, *N.J.S.A. 2C:2-2(b)(2)*, in that the latter requires a greater degree of certainty that a particular result will occur. *See State v. Simon*, 161 N.J. 416, 464, 737 A.2d 1 (1999) (“Recklessness can generally be distinguished from purposely and knowingly *124 based on the degree of certainty involved. Purposely and knowingly states of mind involve near certainty, while recklessness involves an awareness of a risk that is of a probability rather than certainty.”); *State v. Rose*, 112 N.J. 454, 562, 548 A.2d 1058 (1988) (recognizing same). Nevertheless, **96 even when recklessness is the *mens rea* element of the crime charged, a defendant's knowledge or awareness is material to the determination of culpability. *State v. Sewell*, 127 N.J. 133, 148–49, 603 A.2d 21 (1992) (noting that “recklessness resembles knowledge in that both involve a state of awareness”). As the 1971 Commentary to the Code explains,

[a]s the Code uses the term, recklessness involves conscious risk creation. It resembles acting knowingly in that a state of awareness is involved but the awareness is of risk that is of probability rather than certainty; the matter is contingent from the actor's point of view. Whether the risk relates to the nature of the actor's conduct or to the existence of the requisite attendant circumstances or to the result that may ensue is immaterial; the concept is the same.

[II *The New Jersey Penal Code: Final Report of the New Jersey Criminal Law Revision Commission*, commentary to § 2C:2-2, at 41–42 (1971).]

Accordingly, when the State alleges criminal recklessness, it must demonstrate through legally competent proofs that defendant had knowledge or

awareness of, and then consciously disregarded, “a substantial and unjustifiable risk.” *N.J.S.A. 2C:2-2(b)(3)*.

B.

[3] It is well known that mental state is not conducive to demonstration through direct evidence. *See Wilson v. Amerada Hess Corp.*, 168 N.J. 236, 254, 773 A.2d 1121 (2001) (observing that “one's state of mind is seldom capable of direct proof”); *State v. Rowe*, 838 S.W.2d 103, 111 (Mo.Ct.App.1992) (“Mental state is rarely capable of direct proof.”). In criminal prosecutions, proof of a defendant's mental state often must be “inferred from the circumstances and the jury must make its determination by both the act and by the surrounding circumstances.” *Rowe, supra*, 838 S.W.2d at 111. The key to circumstantial evidence generally, and as applied to state-of-mind questions specifically, is whether it bears a logical connection to the disputed fact. *See, e.g., State v. G.V.*, 162 N.J. 252, 263–64, 744 A.2d 137 (2000) (applying logical *125 inference test in approval of trial court's admission of circumstantial evidence about victim-accuser's state of mind in respect of her motivation for accusing father of molestation); *see also State v. Koskovich*, 168 N.J. 448, 480–82, 776 A.2d 144 (2001) (approving admission of evidence of defendant's personal belongings as circumstantially relevant and admissible on defendant's state of mind, motive, and intent consistent with prosecution's theory of case).

[4] [5] When an individual's state of mind is at issue, a greater breadth of evidence is allowed. We admit circumstantial evidence that has a tendency “to shed light on [defendant's mental state] or which tend[s] fairly to explain [a defendant's] actions,” notwithstanding that the evidence relates to conduct that occurred before the offense. *State v. Rogers*, 19 N.J. 218, 228, 116 A.2d 37 (1955). Similarly, conduct that occurs after the charged offense circumstantially may support inferences about a defendant's state of mind.

We specifically have recognized the relevance of post-crime conduct to a defendant's mental state

when the conduct demonstrates consciousness of guilt. In *State v. Rechtschaffer*, 70 N.J. 395, 413–15, 360 A.2d 362 (1976), evidence of the defendant's post-crime threats made against a witness were admitted because they demonstrated a consciousness of guilt, which could support an inference that was inconsistent with innocence or could tend to establish the defendant's intent. We also have recognized flight as being a type of ****97** post-crime conduct that can demonstrate consciousness of guilt. *State v. Long*, 119 N.J. 439, 499, 575 A.2d 435 (1990) (“Flight of an accused is admissible as evidence of consciousness of guilt”); see generally 2 *Wigmore on Evidence* § 276 (Chadbourn rev. 1979) (“It is universally conceded today that the fact of an accused's flight, escape from custody, resistance to arrest, concealment, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself....”). Thus, evidence of flight occurring after the commission of an offense has been held ***126** probative of guilt and admissible. See *State v. Mann*, 132 N.J. 410, 418–19, 625 A.2d 1102 (1993) (explaining that evidence of flight after charged offense is admissible when probative of guilt).

Admittedly, *Rechtschaffer* and *Long* arose in the context of specific intent crimes. However, our discussion of the worth of consciousness of guilt evidence did not suggest that the evidence's relevance would become nonexistent when a lesser criminal mental state was involved. Rather, we acknowledged generally that a defendant's post-crime conduct evidencing a guilty conscience provided a sound basis from which a jury logically could infer that a defendant was acting consistent with an admission of guilt or that the conduct was illuminating on a defendant's earlier state of mind. See *Rechtschaffer*, *supra*, 70 N.J. at 413–15, 360 A.2d 362.

As aptly noted by another court, when determining an accused's mental state, generally, it is helpful to the fact-finder to be able to draw inferences from a totality of the events, including the “final link[s] in [a] chain of evidence which [is] admissible as indicative of a consciousness of guilt.” *People v. Maldonado*, 3 Ill.App.3d 216, 278

N.E.2d 225, 230 (1971) (addressing, in context of involuntary manslaughter charge, evidence offered to demonstrate defendant's reckless *mens rea*). In *Maldonado*, the defendant-driver of the vehicle involved in a fatal accident that killed two female pedestrians, convinced a passenger to confess to being the driver while defendant fled the police station. Maldonado's consciousness of guilt evidence was not viewed as legally irrelevant simply because recklessness was the *mens rea* of the crime charged. *Ibid.*; see also *Rowe*, *supra*, 838 S.W.2d at 111 (stating that, in context of involuntary manslaughter charge involving recklessness, accused's post-crime statements demonstrated disregard for life and, therefore, constituted relevant evidence for jury's consideration of state of mind).

We have never held that evidence of consciousness of guilt loses legal relevance when less than a specific intent mental state is at issue. Indeed, actions involving death by auto, *N.J.S.A. 2C:11–5* (requiring reckless state of mind), can include evidence of a ***127** person's flight from the scene as relevant evidence of consciousness of liability for the accident. The logical connection between post-crime hit-and-run conduct and the accident is underscored by the penalization of flight from the scene of an accident involving personal injuries. *N.J.S.A. 39:4–129*; see also *State v. Gill*, 47 N.J. 441, 443–44, 221 A.2d 521 (1966) (describing purpose of statute as prohibiting hit-and-run driver from evading responsibility by escape or departure before identification is known). Evidence of the failure to stop, as required by law, “permits an inference of consciousness of lack of care and of liability for the occurrence.” *Jones v. Strelecki*, 49 N.J. 513, 519, 231 A.2d 558 (1967) (recognizing in automobile negligence death action that evidence of flight from scene is relevant to mental state as well as to liability); see also *Tiger v. Am. Legion Post No. 43*, 125 N.J.Super. 361, 367, 311 A.2d 179 (App.Div.1973) ****98** (same). Such evidence belongs in front of the jury; objections thereto should be evaluated by the jury as part of its weighing of the evidence. See *State v. Brown*, 118 N.J. 595, 615, 573 A.2d 886 (1990).

Tellingly, numerous other courts that have addressed relevance challenges to consciousness of guilt evidence in recklessness settings have found post-crime consciousness of guilt evidence to be relevant and admissible. Courts have admitted evidence of flight as probative of consciousness of guilt in prosecutions for vehicular homicide, a crime requiring proof of a reckless state of mind. *See, e.g., Maldonado, supra*, 278 N.E.2d at 230 (admitting evidence in involuntary manslaughter case involving automobile); *State v. Gibbs*, No. 01C01-9611-CC-00464, 1998 WL 85288, at **4-5, 1998 Tenn.Crim.App. LEXIS 214, at **11-12 (Tenn.Crim.App. Feb. 20, 1998)⁷ (admitting flight evidence for consciousness of guilt because jury could conclude from flight “that the defendant was well aware that the [vehicular-homicide] victim's fatal injuries were not the result of mere accident but were caused by the defendant's criminal recklessness”). Post-crime evidence of a defendant's *128 attempts at avoiding detection also has been admitted as consciousness of guilt evidence in various non-specific intent crimes. *See, e.g., People v. Reynolds*, 269 A.D.2d 735, 704 N.Y.S.2d 398, 399 (2000) (allowing evidence of defendant's flight as demonstrating consciousness of guilt of manslaughter). In *Hubbard v. State*, 187 So.2d 885, 886 (Miss.1966), for example, although the defendant sought to preclude post-crime evidence that he pushed his automobile into a lake, that evidence of concealment and tampering with evidence was admitted as consciousness of guilt evidence in a prosecution for manslaughter.

Importantly, jurisdictions admitting post-crime conduct evidencing consciousness of guilt in various mental-state settings recognize that the evidence could support a jury finding of the requisite level of the defendant's awareness that his or her actions were likely to cause harm. *See State v. Worrick*, 139 N.M. 247, 131 P.3d 97, 101 (App.2006) (telling of lies at scene of accident, as well as later inconsistent statements, deemed admissible as consciousness of guilt relevant to issue of defendant's state of mind in reckless crime); *Allen v. State*, 39 Md.App. 686, 389 A.2d 909, 921 (1978) (noting in boating death case that post-impact conduct of accused may be relevant on issue of gross negligence); *see also Commonwealth v. Reynolds*, 67

Mass.App.Ct. 215, 852 N.E.2d 1124, 1129-30 (2006) (permitting evidence of defendant's intentionally false statements in aftermath of accident because jury may be able to infer consciousness of guilt from post-crime deceptions); *State v. Hermanson*, 555 N.W.2d 410 (Wis.Ct.App.1996) (ordering affirmance of trial court's admission of post-crime evidence of tampering with crime scene in prosecution for reckless homicide).

[6] [7] The aforementioned cases' rationales reflect the broad sweep given to “relevance” in respect of circumstantial evidence probative on a disputed issue involving state of mind. In sum, post-crime consciousness of guilt evidence can support a logical connection to a desired inference about mental state in specific and non-specific intent crimes. Post-crime consciousness of guilt evidence can illuminate a defendant's state of mind in a crime *129 involving recklessness, and we agree **99 generally with the decisions that have allowed the use of such evidence for that purpose. Contrary to the trial court's misapprehension of the evidence's relevance, we hold that post-crime consciousness of guilt evidence is relevant to state of mind disputes arising in criminal prosecutions for reckless conduct.

C.

[8] In this matter, defendant's post-shooting conduct can support inferences having a logical tendency to prove that defendant was aware that the victim's fatal injuries were not the product of an accident, but were caused by defendant's criminal recklessness, as is the theory of the State's case.

The prosecution intends to offer multiple acts indicating consciousness of guilt. The State's proffer is classic consciousness of guilt evidence in the form of lying to police, inducing others to lie, and tampering with evidence—not just to destroy it but to make it look as if only the victim handled the gun. The effort to make it appear that the victim shot himself strongly suggests that defendant desperately wanted this incident to appear closer to an accident or suicide. The State may urge the jury to consider that defendant's cover-up attempts were

equivalent to an admission that he had committed a criminal, rather than an accidental, act. Further, the evidence could support the inference that defendant knew that he had to avoid any judging of the care he had taken in his own actions before the shotgun discharged. From that the jury could find a guilty conscience—that defendant was aware that moments earlier he engaged in the conscious disregard of risk that could make him criminally culpable.

We reject the argument that the evidence is too attenuated simply because the conduct occurred after the shot was fired. Defendant's conduct suggests an immediate awareness that the shooting of Christofi was more than a mere accident, and that his actions were reckless of the risk involved and wrongful. The evidence, therefore, could support a jury finding that defendant *130 had a “subjective awareness of the risk—an element essential to establish the underlying *mens rea* of recklessness.” *People v. Roe*, 74 N.Y.2d 20, 544 N.Y.S.2d 297, 542 N.E.2d 610, 613 n. 7 (1989) (noting that post-shooting conduct can be relevant to subjective state of mind necessary for criminal recklessness).

Defendant's immediate post-shooting statements and actions are probative of the very issue that will dominate the retrial. That evidence cannot fairly be kept from the jury as if defendant's conduct that evening could, or should, be freeze-framed at the time of the shotgun's discharge. As noted earlier, numerous jurisdictions have acknowledged the relevance of post-crime consciousness of guilt evidence in factual disputes involving reckless or less specific state of mind issues, including our own. See *Jones, supra*, 49 N.J. at 519, 231 A.2d 558. Moreover, the relevance of such evidence is not limited to circumstances when a defendant's identity is debatable and, for example, the prosecution needs the evidence to debunk an alibi defense. Thus, defendant's concession that he was the shooter does not vitiate the post-shooting evidence's relevance to explaining defendant's earlier conduct and subjective state of mind.

In conclusion then, we reverse the trial court's relevance assessment that held, for purposes of *Rule 404(b)* admission, that defendant's cover-up conduct was legally irrelevant in the re-prosecution of defendant for reckless manslaughter. Further, because of the age of this case and for purposes of judicial economy, we are reluctant to send this matter back for reexamination **100 of the evidence in light of the other *Rule 404(b)* requirements. We believe that all parties would benefit from a final resolution of the admissibility of this evidence at this time. Accordingly, we turn to the remaining *Cofield* prongs.

IV.

Having concluded that the evidence is relevant to a material issue in dispute—defendant's state of mind—*Cofield* prongs two and three state that the “other crimes” must be similar in kind *131 and reasonably close in time (prong two), and that the “other” crime will be demonstrated through clear and convincing evidence (prong three). As for the latter, all seemingly concede that the clear and convincing standard is not at issue here. It requires no further discussion. Similarly, prong two does not require much attention.

The second *Cofield* prong, requiring that the “other acts” be similar in kind and reasonably close in time, was pertinent to the facts presented in that case. In *Cofield, supra*, the State sought to introduce evidence establishing the defendant's constructive possession of drugs during an illegal-drug street encounter that occurred subsequent to the drug incident that was the subject of the prosecution. 127 N.J. at 330, 605 A.2d 230. The State sought to admit that similar and close-in-time other-crimes evidence as relevant to prove the defendant's possession of drugs in the charged offense, an element that was hotly contested. *Id.* at 339, 605 A.2d 230. The test that the Court ultimately fashioned included an aspect that plainly addressed the specific drug evidence at issue in *Cofield*.

The requirement set forth as prong two of *Cofield*, however, is not one that can be found in the language of *Evidence Rule 404(b)*. *Cofield's*

second prong, therefore, need not receive universal application in Rule 404(b) disputes. Its usefulness as a requirement is limited to cases that replicate the circumstances in Cofield. In the instant analysis, application of prong two serves no beneficial purpose and, therefore, we disregard it as unnecessary.

V.

The key issue in respect of this evidence is clearly the weighing of the evidence's prejudicial effect as against its probative value.⁸

132** [9] Rule 404(b) reflects an overarching concern about predisposition evidence. Nonetheless, the codified Rule accepts the common-law evidentiary principle that permits use of other-crimes evidence for certain proofs. See State v. Fortin, 162 N.J. 517, 529, 745 A.2d 509 (2000). To strike a balance between those two interests, we adopted the multi-pronged Cofield standard out of concern that the other-crimes evidence might be overused or be confused *101** as prohibited predisposition evidence. *Ibid.* (citing Cofield, *supra*, 127 N.J. at 338, 605 A.2d 230). Thus, for example, when other-crimes evidence is proffered for the permitted purpose of identity, where such evidence is particularly at risk of being confused as predisposition evidence, we require special emphasis on the similarity of the crime to avoid the predisposition prejudice that the Rule abhors. See *id.* at 530, 745 A.2d 509.

[10] Here, the other-crimes evidence occurs at the end of a chain of events and is being employed for the limited and permitted purpose of shedding light on a defendant's state of mind during the immediately preceding criminal event.⁹ The consciousness ***133** of guilt evidence's probative value on state of mind is weighty in that setting, notwithstanding that the evidence carries with it a prejudicial effect.

To be sure, defendant's efforts to cover-up his involvement in the discharge of his shotgun in his bedroom that evening in February 2002 cast him in an unfavorable light. Consciousness

of guilt evidence, however, is not neutral to begin with. Indeed, it is difficult to conjure a description of evidence that a jury might find to demonstrate consciousness of guilt that did not have a prejudicial effect. Here defendant's cover-up effort was substantial. However, a jury could find that the conduct provides substantial evidence of defendant's immediate awareness that his actions were wrongful, and created an unjustifiable risk of harm to his victim. The evidence's use for state of mind purposes is permitted under Rule 404(b) and any prejudicial concern about predisposition is outweighed by the probative value of the evidence. The fact that the evidence casts defendant in an unflattering position is not reason enough to exclude it.

In these circumstances we conclude that this relevant information should not be kept from the jury. Defendant may provide the jury with alternative explanations for his post-shooting acts. The jury may well reject the State's view of the evidence. The jurors may believe instead that defendant's cover-up efforts were due to a desire to avoid negative publicity that could hurt his career in professional sports or sports-broadcasting, or to avoid being at risk of civil liability, or any other reason he may advance. That determination, however, is for the jury.

We find that the evidence's probative value is not outweighed by undue prejudice. The evidence of defendant's post-shooting words and conduct is admissible under Rule 404(b) for purposes of assessing defendant's state of mind, which will be the disputed issue at the retrial. In an instruction, the court must focus the ***134** jury's attention on the limited use to which this evidence may be put. Specifically, the court must instruct the jury that the evidence may be used only to assess defendant's mental state. The court also must carefully inform the jury of the prohibited purposes of the evidence.

****102** VI.

In conclusion, we hold that the consciousness of guilt evidence is relevant to defendant's mental state at the time of the shooting for which he is

charged with reckless manslaughter. We reverse the judgment of the trial court, affirmed by the Appellate Division, that found that the evidence of defendant's post-shooting conduct was legally irrelevant and that the evidence's prejudicial effect required its preclusion under Evidence Rule 404(b). We hold that at trial on our remand, a strong limiting instruction should be administered by the trial court informing the jury that it should not draw any inference of consciousness of guilt by defendant from his post-crime conduct unless it believes that defendant acted to cover up a crime.

The judgment of the Appellate Division is reversed and the matter is remanded to the Law Division for further proceedings consistent with this opinion.

Chief Justice ZAZZALI dissenting.

The majority presents a comprehensive and viscerally appealing rationale supporting the introduction of defendant Jayson Williams' post-shooting criminal conduct. Because of the proposed evidence's lack of relevancy, the substantial prejudice that the majority's ruling will visit on this defendant, and the deference owed to the trial court's evidentiary determinations, I respectfully dissent.

The majority concludes that the evidence is admissible under N.J.R.E. 404(b) because it satisfies the "other crimes" admissibility test this Court set forth in State v. Cofield, 127 N.J. 328, 605 A.2d 230 (1992). Specifically, the majority finds that defendant's *135 post-shooting criminal conduct is "relevant" because it "can support inferences having a logical tendency to prove that defendant was aware that the victim's fatal injuries were not the product of an accident, but were caused by defendant's criminal recklessness." *Ante* at 129, 919 A.2d at 99. Further, the majority concludes that the evidence's "probative value is not outweighed by undue prejudice." *Ante* at 133, 919 A.2d at 101.

I instead would affirm the trial court's exclusion of the post-shooting conduct under N.J.R.E. 404(b) because the evidence in question is not "relevant to a material issue," Cofield, supra, 127 N.J. at 338, 605 A.2d 230, and, more important, because the

prejudice of such evidence is overwhelming. Indeed, not only is the "probative value ... outweighed by its apparent prejudice," *ibid.*, I believe that the prejudice eclipses any relevance. In any event, I would afford appropriate deference to the trial court's evidentiary ruling under the applicable abuse of discretion standard.

I.

Preliminarily, I consider the post-shooting evidence in question that of other crimes and therefore subject to the strictures of N.J.R.E. 404(b). Because N.J.R.E. 404(b) is a character rule premised on exclusion, State v. Reddish, 181 N.J. 553, 609, 859 A.2d 1173 (2004), we begin with the principle that other-crimes evidence generally should be kept from the jury to prevent the factfinder from deciding the *mens rea* element of a crime based on presumptions about defendant's character. As a result, other-crimes evidence "is handled with particular caution" and "necessitates a more searching inquiry" than other prejudice analyses. *Id.* at 608, 859 A.2d 1173. Other-crimes evidence is recognized as having " 'a unique tendency to turn a jury against the defendant,' " *ibid.* (quoting State v. Stevens, 115 N.J. 289, 302, 558 A.2d 833 (1989)), and "poses a **103 distinct risk that it will distract a jury from an independent consideration of the evidence that bears directly on guilt itself," *136 State v. G.S., 145 N.J. 460, 468, 678 A.2d 1092 (1996). Thus, "the primary focus of [N.J.R.E. 404(b)] ... is to view it as a rule of exclusion rather than a rule of inclusion." State v. Darby, 174 N.J. 509, 520, 809 A.2d 138 (2002) (quoting State v. Marrero, 148 N.J. 469, 482–83, 691 A.2d 293 (1997)) (alteration in original).

II.

Other-crimes evidence under N.J.R.E. 404(b) must pass an established test for admissibility to "avoid [its] over-use." Cofield, supra, 127 N.J. at 338, 605 A.2d 230. As the majority observes, other-crimes evidence must satisfy a four-prong test to be admitted into evidence under N.J.R.E. 404(b):

1. The evidence of the other crime must be admissible as relevant to a material issue;
2. It must be similar in kind and reasonably close in time to the offense charged;
3. The evidence of the other crime must be clear and convincing; and
4. The probative value of the evidence must not be outweighed by its apparent prejudice.

[*Cofield*, *supra*, 127 N.J. at 338, 605 A.2d 230.]

Because the *Cofield* prongs are in the conjunctive, the evidence is inadmissible if it fails any of the prongs.

The first prong of the *Cofield* test evaluates the evidence's relevance. *Ibid.* The relevancy of evidence denotes its "logical connection between the proffered evidence and a fact in issue." *Darby*, *supra*, 174 N.J. at 519, 809 A.2d 138 (quotation omitted). Here, the State seeks to introduce the post-shooting evidence to establish defendant's recklessness, namely, that defendant was aware, after the shooting, that he had "consciously disregard[ed] a substantial and unjustifiable risk." *N.J.S.A. 2C:1-1(b)(3)*. Recklessness connotes "an awareness of a risk," *State v. Simon*, 161 N.J. 416, 464, 737 A.2d 1 (1999), and pre-incident awareness is material to the determination of culpability, *State v. Sewell*, 127 N.J. 133, 148–49, 603 A.2d 21 (1992). The State theorizes that defendant's attempted cover-up of the killing reveals that he knew he had "consciously disregard[ed] a substantial and unjustifiable risk." The State alleges that defendant's post-shooting conduct *137 implies that he knew he had committed a criminal, "reckless" homicide as opposed to a non-criminal, "accidental" killing.

In advance of defendant's pending retrial for reckless manslaughter, the trial court evaluated the evidence's relevancy as part of its *Cofield* analysis. During the hearing, the court noted that the post-shooting conduct had to be relevant to the jury's choice between recklessness and a criminally-blameless accident, the argument advanced by defendant. The trial court explained

that it was "trying to probe with regard to consciousness ... what the post [-]shooting conduct demonstrates." Recognizing that, from the beginning, defendant has argued that he "tragically caused the death of Mr. Christofi but did so accidentally," the court inquired whether defendant merely exhibited "consciousness of accidentally causing the death." The trial court concluded that defendant's post-shooting conduct was not relevant to the reckless manslaughter charge because "post-shooting conduct is really not probative of [defendant's] guilt or his consciousness of guilt as to reckless conduct."

The Appellate Division affirmed, noting that it was "unable to locate any reported **104 decisions allowing 'consciousness of guilt' evidence when the requisite culpable mental state is less than 'knowing.'" ¹ The panel concluded that the trial court "reasonably determined, in this case, that the confidence with which one could attribute the post-shooting conduct to a consciousness of guilt is so minimal as to require exclusion." *State v. Williams*, No. A-2724-04T5 2005 WL 3968822, *6 (App.Div. Apr. 21, 2006).

*138 I agree with the courts below and find that defendant's post-shooting conduct is not relevant to whether there was criminal recklessness at the time of the shooting. Defendant's post-shooting acts are indicative only of his awareness that he just killed Christofi, not whether the act was reckless or accidental. Indeed, as the majority observes, defendant had much to lose from causing even an accidental death, including harming his public reputation as a television broadcaster and former professional basketball player, and exposing himself to potential civil liability. Thus, defendant's deplorable post-shooting conduct is at least as consistent with a recognition that he made a tragic and stupid mistake—but one that was an accident nonetheless—as it is with criminal recklessness. Because the post-shooting conduct is not relevant to determining defendant's "state of mind at the time Christofi was shot," *ante* at 122, 919 A.2d at 95, I find that the evidence fails the first prong of the *Cofield* test and is thus inadmissible.

III.

Quite apart from my conclusion that evidence of defendant's post-shooting conduct is not relevant under the first *Cofield* prong, I also find that the evidence is inadmissible under the fourth *Cofield* prong—comparing the evidence's probative value to its apparent prejudice—because of its undue, and, I believe, extraordinary prejudicial effect.²

To begin, probative value “is the tendency of the evidence to establish the proposition that it is offered to prove.” *State v. Wilson*, 135 N.J. 4, 13, 637 A.2d 1237 (1994). Prejudice, in the context of *N.J.R.E.* 404(b), arises from the “risk that the jury would conclude that defendant had a propensity to commit bad acts and, thus, [committed the crime].” *Reddish*, *supra*, 181 N.J. at 608, 859 A.2d 1173. Under *N.J.R.E.* 404(b), “the party seeking *139 to admit other-crimes evidence bears the burden of establishing that the probative value of the evidence is not outweighed by its apparent prejudice.” *Id.* at 608–09, 859 A.2d 1173 (citing *State v. Long*, 173 N.J. 138, 162, 801 A.2d 221 (2002)). Further, because *N.J.R.E.* 404(b) simply requires that the prejudice “outweigh” the probative value, *Cofield*, *supra*, 127 N.J. at 338, 605 A.2d 230, we need only find that the scale tips slightly towards the evidence's apparent prejudice and away from its probative value to bar its admission.

Importantly, “[i]n weighing the probative worth of other-crime[s] evidence, a **105 court should consider *not only its relevance but whether its proffered use in the case can adequately be served by other evidence.*” *Stevens*, *supra*, 115 N.J. at 303, 558 A.2d 833 (emphasis added). Thus, when “more important, less prejudicial evidence exists to prove [the same point],” the probative value of other-crimes evidence diminishes. *State v. Jenkins*, 178 N.J. 347, 366, 840 A.2d 242 (2004); accord *Long*, *supra*, 173 N.J. at 164–65, 801 A.2d 221. At the first trial, the State offered myriad other evidence, through witnesses and experts, to prove defendant's recklessness. Defendant drank numerous alcoholic beverages earlier that evening and then sped home, driving erratically, under the influence of alcohol. Once home, defendant retrieved an

already-loaded shotgun from his gun case. When defendant grabbed the shotgun, he swung left, facing Christofi, and pointed the gun at the victim. Then, after defendant unlatched the double-barrel, “break open” shotgun, exposed the breech, looked down at the barrels, and saw that the gun was loaded, he snapped the weapon together directly in front of the victim, with the muzzle six to thirty-six inches from the victim's chest. The gun immediately discharged, killing Christofi. Those events, none of which involve the post-shooting evidence at issue here, are highly probative of defendant's recklessness.

In comparison, defendant's conduct after the shooting—tampering with evidence, changing his clothing, and telling witnesses to lie to authorities—is significantly less probative of his pre-shooting *140 state of mind. That post-shooting conduct instead reveals defendant's post-shooting state of mind: his immediate shock at the gun's firing, his recognition that he had just killed Christofi, and his subsequent distress over his role as the triggerman. Accordingly, because “more important, less prejudicial evidence exists to prove [recklessness],” the probative value of the post-shooting evidence diminishes. *Jenkins*, *supra*, 178 N.J. at 366, 840 A.2d 242.³

In any event, the prejudice to defendant is substantial because the jury could wrongly rely on such evidence to prove that defendant knew he had committed reckless manslaughter as opposed to accidentally killed Christofi. In its own analysis of relevancy, the majority states that “[d]efendant's conduct suggests an immediate awareness that the shooting of Christofi was more than a mere accident, and that his actions were reckless of the risk involved and wrongful,” which “could support a jury finding [of recklessness].” *Ante* at 129–30, 919 A.2d at 99. However, as both the dissent and the majority here recognize, defendant's conduct could also demonstrate concern for civil liability and damage to his reputation. *See supra* at 138, 919 A.2d at 104; *ante* at 135, 919 A.2d at 101. Because the jury will be called on to render judgment on one narrow criminal charge—for there are no other accusations of misconduct remaining—the jury has but one avenue to channel defendant's wrongful conduct,

that is, reckless manslaughter, even though his post-shooting conduct may well find its genesis in other motivations. Importantly, the State “bears the burden of establishing that the probative value of the evidence is not outweighed by its apparent prejudice.” *Reddish, supra*, 181 N.J. at 608–09, 859 A.2d 1173 (citation omitted). Yet, the majority effectively places the onus on defendant to defeat the prejudice of ***141** the evidence by ****106** “provid[ing] the jury with alternative explanations for his post-shooting acts,” *ante* at 133, 919 A.2d at 101.

Prejudice also arises from the very real risk that the jury may conclude that defendant has a propensity to commit the crime merely because he subsequently committed other crimes and is thus the “type of person” who commits manslaughter. Even if it was appropriate for the lower court to admit evidence of the post-shooting conduct to show intent during the first trial, the admission of the evidence at the retrial of the lone reckless manslaughter charge is not. During the first trial, the evidence could arguably be probative of whether defendant possessed the higher level of intent associated with the other shooting-related charges—purposeful or knowing. Now, conversely, with only the reckless manslaughter charge remaining, the jury is not charged with finding a higher level of intent. Rather, the effect of the evidence is to prejudice defendant by tacitly indicating that he “acted in conformity with” his post-shooting conduct. By keeping this evidence from the jury, defendant would be protected from the jury’s instinctive tendency to find convicted felons guilty of additional charged crimes.

The majority recognizes that the admission of the post-shooting evidence will have a “prejudicial effect,” *ante* at 133, 919 A.2d at 101, but would rely on a limiting instruction to cure undue prejudice, *id.* at 134, 919 A.2d at 102 (“[The jury] should not draw any inference of consciousness of guilt ... unless it believes that defendant acted to cover up a crime.”). In underscoring the importance of well-crafted limiting instructions, this Court recently observed in *State v. Blakney* that “other-crimes evidence may indelibly brand the defendant a bad person and blind the jury from a careful consideration of the

elements of the charged offense.” 189 N.J. 88, 93, 912 A.2d 140. A unanimous Court recognized that “‘the inherently prejudicial nature of such evidence casts doubt on a jury’s ability to follow even the most precise limiting instruction.’” *Ibid.* (quoting *Stevens, supra*, 115 N.J. at 309, 558 A.2d 833). In light of *Blakney*, and recognizing ***142** that “more important, less prejudicial evidence exists to prove [recklessness],” *Jenkins, supra*, 178 N.J. at 366, 840 A.2d 242, I cannot support the majority’s reliance on a limiting instruction to curb the prejudicial effect of the post-shooting evidence and ensure the fair administration of justice.

In sum, the risk of prejudice inherent in the post-shooting conduct reflects the intended purpose of *N.J.R.E. 404*. That evidence does more than simply portray defendant in an “unfavorable light” or “unflattering position.” *Ante* at 133, 919 A.2d at 101. In my view, its prejudice may well devastate the defense, notwithstanding limiting instructions. I therefore agree with the trial court, which has the “best feel” of the case, that the prejudice outweighs the evidence’s probative value. I believe the prejudice is so severe that it greatly surpasses the *N.J.R.E. 404(b)* inadmissibility standard set forth in *Cofield*. Accordingly, I find that the post-shooting evidence fails two of the *Cofield* prongs, and that either one of those findings would render the evidence inadmissible.

IV.

I add only this. Because the majority relies on *N.J.R.E. 404(b)*, the same legal framework applied by the trial court, I submit that the majority should have reviewed the trial court’s conclusions for an abuse of discretion instead of de novo. Put differently, the trial court’s determinations in applying *N.J.R.E. 404(b)* deserve deference.

****107** A trial court’s decision regarding the admissibility of other-crimes evidence is reviewed under an abuse of discretion standard because of the trial court’s “intimate knowledge of the case.” *Marrero, supra*, 148 N.J. at 483, 691 A.2d 293 (quoting *State v. Ramseur*, 106 N.J. 123, 266, 524 A.2d 188 (1987)). Moreover, such

determinations pursuant to *N.J.R.E.* 404(b) entail decisions regarding relevancy and undue prejudice. *Id.* at 483, 691 A.2d 293 (citing *Cofield, supra*, 127 N.J. at 338, 605 A.2d 230). Those trial court decisions can be overturned only if there is “a clear error of *143 judgment” which led to a ruling “so wide of the mark that a manifest denial of justice resulted.” *Id.* at 483–84, 691 A.2d 293 (quoting *State v. DiFrisco*, 137 N.J. 434, 496–97, 645 A.2d 734 (1994)).

Here, the majority engages in a plenary review of the trial court's decision to analyze the evidence under *N.J.R.E.* 404(b) and concludes that the evidence is admissible. In doing so, however, the majority does not reach the conclusion that *N.J.R.E.* 404(b) is inapplicable, a determination that I believe is a prerequisite to setting aside the trial court's 404(b) conclusions absent an abuse of discretion. That approach undermines the majority's clean-slate evaluation of the evidence because de novo review is premised on an appellate court's finding that the trial court's initial legal conclusion was in error—a finding that the majority does not make here.

Because the trial court applied an appropriate evidentiary framework, and because the trial court's conclusion is a reasonable interpretation of defendant's conduct, the trial court did not commit “a clear error of judgment” or abuse its discretion by finding the evidence inadmissible. *Marrero, supra*, 148 N.J. at 483–84, 691 A.2d 293 (quoting *DiFrisco, supra*, 137 N.J. at 496–97, 645 A.2d 734). I would thus afford deference to the trial court's judgment under *N.J.R.E.* 404(b).

V.

In conclusion, I would apply *N.J.R.E.* 404(b) and uphold the trial court's exclusion of the evidence on the merits because of its lack of relevancy and because its apparent prejudice outweighs its probative value. I would defer to the trial court's evidentiary determinations because of the absence of any indication of an abuse of discretion. For the foregoing reasons, I respectfully dissent.

Justice LONG and Justice WALLACE join in this opinion.

***144** *For reversal and remandment*—Justices LaVECCHIA, ALBIN, RIVERA-SOTO and HOENS—4.

For affirmance—Chief Justice ZAZZALI and Justices LONG and WALLACE—3.

1 The parties and the courts below have referred to the first four charges as the “shooting counts” and the last four charges as the “post-shooting counts.” We note that during the first trial defendant moved twice for a separate trial on the post-shooting charges. The trial court denied both severance motions.

2 At the same time, defendant also moved to dismiss the reckless manslaughter charge on double jeopardy grounds, and the State moved to admit evidence of two unrelated shooting incidents in which defendant had been involved prior to the Christofi shooting. The trial court denied both motions and, on leave granted, the Appellate Division affirmed.

3 Initially, the Appellate Division denied the State's motion for interlocutory review. However, we granted leave to appeal and summarily remanded to the Appellate Division for reconsideration on the merits. *State v. Williams*, 183 N.J. 290, 873 A.2d 500 (2005).

4 Defendant moved twice to sever the counts because there was a superseding indictment that added the count of possession of a weapon for an unlawful purpose. His arguments in favor of both severance motions were essentially the same.

5 As the Appellate Division described them, [t]he first incident occurred on January 15, 1994, at 2:00 a.m. and involved the discharge of a gun at the Meadowlands. The prosecutor asserted that: “the defendant admitted that he was showing this pistol to a friend and that the pistol accidentally fired, hitting the hubcap of the security vehicle.” The second incident occurred in early August 2001,

and involved defendant's friend, Dwayne Schnitzius, who was living at defendant's home. Schnitzius and defendant entered into a bet requiring Schnitzius to drag defendant's rottweiler outside the home, approximately twenty feet away. When Schnitzius won the bet, defendant returned with a shotgun which he used to kill his dog and threaten Schnitzius.

6 We note that discussions about the relevance of evidence are infused with meaning based on evidence type. *See McCormick on Evidence* § 185 (Cleary ed., 3d ed.1984) (commenting that direct evidence “can never be irrelevant” if offered to establish fact required to be proved; in contrast, there exists wide range of relevancy for circumstantial evidence, which is determined based on whether evidence “justif[ies] any reasonable inference as to the fact in question”); *State v. Allison*, 208 N.J.Super. 9, 17, 504 A.2d 1184 (App.Div.1985) (noting same).

7 *See Tenn. S.Ct. R. 4(H)(1)* (permitting persuasive use of unpublished opinion that has not been designated as “not for publication”).

8 When initially evaluating the post-shooting cover-up conduct during defendant's first trial, the court determined that the prejudicial effect of the consciousness of guilt evidence did not “substantially outweigh” its probative value, which is *Rule 403*'s test for admissibility. Acknowledging the prejudice that the evidence nonetheless generated, the trial court originally believed that the prejudicial effect of the post-shooting conduct could be kept in check by means of a limiting instruction. The State argues that the feared prejudice asserted by defendant did not materialize in that the jury acquitted defendant of the more serious manslaughter charge as well as other charges involving greater culpability (aggravated assault) in spite of having heard all of the post-shooting-conduct evidence. We do not rush to that conclusion, however, because as a reviewing court we will never truly know why a jury determines to convict on some, and acquit on other, charges. *See State v. Banko*, 182 N.J. 44, 53–54, 861 A.2d 110 (2004) (acknowledging that inconsistent jury verdicts are accepted, in part because “[w]e do not speculate why a jury acquits”).

9 Indeed, as our earlier analysis detailed, we find that *Cofield's* “similar in kind and reasonably close in time” prong does not have any applicability in this setting. There is no risk that a jury hearing this other-crimes evidence will confuse it as exhibiting defendant's predisposition to commit a certain type of like crime. Thus, there is a significant difference in respect of the risk of predisposition confusion between this cover-up evidence, occurring at the tail end of this unfortunate incident and being introduced to illuminate defendant's state of mind, and the earlier shooting incidents at the Meadowlands and involving defendant's dog, that properly were excluded under *Rule 404(b)*. The latter similar-in-kind bad acts run a high risk of suggesting to the jury a certain predisposition in defendant.

1 The majority cites numerous out-of-state cases that hold that evidence of post-conduct flight or tampering is relevant to consciousness of guilt of reckless crimes. *See ante* at 127–30, 919 A.2d at 98–99. I am unconvinced by the rationale of those cases and, in any event, their holdings are not binding on this Court. The majority also cites this Court's holding in *Jones v. Strelecki*, 49 N.J. 513, 231 A.2d 558 (1967), to support the proposition that flight is relevant to mental state. However, that civil negligence case has no bearing on the criminal recklessness case now before the Court.

2 I do not need to address the second and third *Cofield* prongs here, except to note my general agreement with the majority that the second prong “need not receive universal application in *Rule 404(b)* disputes,” *ante* at 131, 919 A.2d at 100.

3 The majority identifies other, undisputed evidence that is probative of defendant's recklessness, *see ante* at 119, 919 A.2d at 93, and recognizes that the post-shooting conduct in question has “a prejudicial effect,” *ante* at 133, 919 A.2d at 101. Those observations underscore the applicability of *Jenkins* in this case.

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Distinguished by	2. <u>State v. Vauters</u>  MOST NEGATIVE 2015 WL 9703473 , N.J.Super.A.D. Defendant Kevin A. Vauters was tried before a jury, found guilty of murder and other offenses, and sentenced to an aggregate term of life imprisonment without parole, plus sixteen...	Jan. 15, 2016	Case		8 10 A.2d

Citing References (180)

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by NEGATIVE	1. State v. Vauters 2015 WL 9703473, *7+ , N.J.Super.A.D. Defendant Kevin A. Vauters was tried before a jury, found guilty of murder and other offenses, and sentenced to an aggregate term of life imprisonment without parole, plus sixteen...	Jan. 15, 2016	Case		8 10 A.2d
Examined by	2. State v. Sgambati 2014 WL 4251874, *6+ , N.J.Super.A.D. Tried before a jury in April and May 2011, defendant James Sgambati was convicted of, most significantly, third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7) (count two);...	Aug. 29, 2014	Case		9 10 A.2d
Examined by	3. State v. Jenewicz 2013 WL 5629169, *10+ , N.J.Super.A.D. The opinion of the court was delivered by Defendant George Jenewicz was tried before a jury and convicted of murder, N.J.S.A. 2C:11-3(a)(1)(2), second degree possession of a weapon...	Oct. 16, 2013	Case		7 8 10 A.2d
Examined by	4. State v. Burden 922 A.2d 844, 850+ , N.J.Super.A.D. CRIMINAL JUSTICE - Evidence. Evidence that defendant tried to bribe alleged victim into not testifying was admissible to show defendant's state of mind.	May 18, 2007	Case		8 9 10 A.2d
Examined by	5. State v. Peltier 116 A.3d 150, 155+ , R.I. CRIMINAL JUSTICE - Evidence. Evidence that defendant resisted arrest was admissible prior bad act evidence.	May 29, 2015	Case		7 A.2d
Distinguished by NEGATIVE	6. State v. Kinney 2010 WL 2869579, *4+ , N.J.Super.A.D. On December 10, 2005, Corrections Officer Samuel Broughton was shot and killed while leaving a Jersey City bar, and his companion, Corrections Officer Brandon Holmes, was wounded...	July 09, 2010	Case		8 10 A.2d
Discussed by	7. State v. Campfield 61 A.3d 1258, 1266+ , N.J. CRIMINAL JUSTICE - Pleas. Plea colloquy established factual basis for reckless manslaughter.	Jan. 10, 2013	Case		8 A.2d
Discussed by	8. State v. Barden 949 A.2d 820, 827+ , N.J. CRIMINAL JUSTICE - Evidence. Probative value of evidence that co-defendant bought cocaine from defendant 30 times was outweighed by prejudicial effect.	June 24, 2008	Case		9 10 A.2d
Discussed by	9. State v. Kemp 948 A.2d 636, 643+ , N.J. CRIMINAL JUSTICE - Evidence. Evidence of prior, uncharged robbery was improperly admitted in robbery and murder trial, and was prejudicial error.	June 16, 2008	Case		10 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	10. State v. Jenewicz 940 A.2d 269, 275+ , N.J. CRIMINAL JUSTICE - Self-Defense. Victim's prior violent conduct was admissible to prove defendant's reasonable belief in the need to use deadly force to protect himself.	Jan. 24, 2008	Case		1 2 6 A.2d
Discussed by	11. State v. Lykes 933 A.2d 1274, 1284+ , N.J. CRIMINAL JUSTICE - Witnesses. Rule regarding inadmissibility of other crimes evidence did not bar limited impeachment use of defendant's earlier admission.	Nov. 05, 2007	Case		9 10 A.2d
Discussed by	12. State v. Wilson 2014 WL 10212772, *7+ , N.J.Super.A.D. Defendant Dante Wilson appeals his conviction for the following offenses: (1) first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1); (2) second-degree conspiracy to possess...	Aug. 12, 2015	Case		7 10 A.2d
Discussed by	13. State in Interest of J.F. 2014 WL 3346469, *7+ , N.J.Super.A.D. J.F. (Jeff), a minor, appeals the Family Part's June 12, 2013 order adjudicating him delinquent based on five counts arising out of conduct that would constitute the third-degree...	July 09, 2014	Case		7 A.2d
Discussed by	14. State v. Orr 2013 WL 5787457, *14+ , N.J.Super.A.D. Defendant Aaron M. Orr appeals his conviction for three counts of first-degree robbery and two counts of second-degree robbery, all in violation of N.J.S.A. 2C:15-1, as well as...	Oct. 29, 2013	Case		10 A.2d
Discussed by	15. State v. Foster 2012 WL 1912282, *3+ , N.J.Super.A.D. In 2009, defendant Clifton Foster was indicted for first-degree robbery, N.J.S.A. 2C:15-1, and second-degree aggravated assault, N.J.S.A. 2C:12-1b(1). The jury acquitted...	May 29, 2012	Case		2 4 A.2d
Discussed by	16. State v. Dennis 2011 WL 709721, *9+ , N.J.Super.A.D. Following a jury trial, defendants Kevin Barnes and Dewan Dennis were convicted of conspiracy, N.J.S.A. 2C:5-2; three counts of first-degree murder, N.J.S.A. 2C:11-3(a)(1) and (2),...	Mar. 02, 2011	Case		1 A.2d
Discussed by	17. State v. Galicia 2010 WL 3834828, *7+ , N.J.Super.A.D. Defendant was indicted for second degree conspiracy to commit robbery, N.J.S.A. 2C:15-1 and N.J.S.A. 2C:5-2 (count five); first degree robbery, N.J.S.A. 2C:15-1 (count six);...	Sep. 22, 2010	Case		6 7 A.2d
Discussed by	18. State v. Goodman 1 A.3d 767, 779+ , N.J.Super.A.D. CRIMINAL JUSTICE - Evidence. Other bad act evidence, namely evidence of defendant's gang membership, was admissible in murder prosecution.	Aug. 09, 2010	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	19. State v. Jacques 2010 WL 2696619, *3+ , N.J.Super.A.D. Defendant Gary Jacques appeals from the judgment of conviction entered against him on August 15, 2006. He was convicted by a jury of second degree robbery, N.J.S.A. 2C:15-1, and...	July 09, 2010	Case		6 7 A.2d
Discussed by	20. State v. Scott 2010 WL 135106, *7+ , N.J.Super.A.D. Following a jury trial, defendant Kevin Scott was convicted of possession of cocaine, N.J.S.A. 2C:35-10(a)(1). The trial judge also convicted defendant of the disorderly persons...	Jan. 15, 2010	Case		3 6 A.2d
Discussed by	21. State v. J.F.G. 2009 WL 2168681, *8+ , N.J.Super.A.D. Defendant J.F.G. appeals from his March 20, 2006 conviction on thirteen counts of endangering the welfare of a child, consisting of: two first-degree convictions under N.J.S.A....	July 22, 2009	Case		4 5 A.2d
Discussed by	22. State v. Alvarez 2009 WL 1506900, *6+ , N.J.Super.A.D. Defendant Joel Alvarez appeals from a February 2, 2007, judgment of conviction for second-degree sexual assault and third-degree endangering the welfare of a child and imposition...	June 01, 2009	Case		10 A.2d
Discussed by	23. State ex rel. M.R. 2008 WL 4841015, *5+ , N.J.Super.A.D. M.R., a juvenile, appeals from an adjudication of delinquency on January 23, 2007, following a bench trial for acts that, if committed by an adult, would constitute third-degree...	Nov. 10, 2008	Case		8 A.2d
Discussed by	24. State v. Castagna 946 A.2d 602, 610+ , N.J.Super.A.D. CRIMINAL JUSTICE - Conspiracy. Other crimes evidence was relevant and material to state's theory of motive in prosecution for conspiracy to commit murder.	May 12, 2008	Case		10 A.2d
Discussed by	25. In re Suspension or Revocation of License of Joachim 2007 WL 4472123, *14+ , N.J.Super.A.D. Following a hearing before an administrative law judge ("ALJ"), the State Board of Medical Examiners ("the Board") suspended the medical license of appellant, Leonard Joachim,...	Dec. 24, 2007	Case		9 10 A.2d
Cited by	26. State v. Cole 163 A.3d 302, 317+ , N.J. CRIMINAL JUSTICE - Evidence. Recordings of interrogation showing stark contrast in defendant's demeanor when officers were not in room were admissible as credibility evidence.	June 27, 2017	Case		6 7 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	27. State v. Garrison  155 A.3d 996, 1003 , N.J. CRIMINAL JUSTICE - Evidence. Evidence of defendant's involvement in game of strip poker with minor victim was admissible other-crimes evidence in sexual-assault prosecution.	Mar. 20, 2017	Case		1 2 6 A.2d
Cited by	 28. State v. Skinner  95 A.3d 236, 248 , N.J. CRIMINAL JUSTICE - Homicide. State's introduction of violent, profane, and disturbing rap lyrics that defendant had written was unduly prejudicial.	Aug. 04, 2014	Case		5 A.2d
Cited by	29. State v. Carlucci 85 A.3d 965, 972 , N.J. CRIMINAL JUSTICE - Evidence. Defendant's statement to police that she had recently used drugs was inadmissible extraneous offense evidence.	Mar. 13, 2014	Case		—
Cited by	30. State v. Yough 31 A.3d 271, 281 , N.J. CRIMINAL JUSTICE - Witnesses. Inconsistencies between robbery victim's pre-trial statement and trial testimony did not warrant new trial.	Nov. 30, 2011	Case		—
Cited by	 31. State v. Rose  19 A.3d 985, 997+ , N.J. CRIMINAL JUSTICE - Evidence. Trial court was required to rely on the Rules of Evidence, rather than res gestae, when making evidentiary rulings.	June 08, 2011	Case		2 6 A.2d
Cited by	 32. State v. Schnabel  952 A.2d 452, 461 , N.J. CRIMINAL JUSTICE - Sex Offenses. Evidence of alleged victims' prior sexual abuse by third party was admissible in first-degree aggravated sexual assault trial.	July 29, 2008	Case		1 2 A.2d
Cited by	 33. State v. Ingram 951 A.2d 1000, 1013 , N.J. CRIMINAL JUSTICE - Presence of Accused. It was error to instruct jury that defendant's absence from trial could be construed as evidence of consciousness of guilt.	July 21, 2008	Case		—
Cited by	 34. State v. Burr 948 A.2d 627, 631 , N.J. CRIMINAL JUSTICE - Evidence. Testimony from expert who had diagnosed defendant with Asperger's Disorder was relevant to defendant's defense and, thus, should have been admitted.	June 11, 2008	Case		2 A.2d
Cited by	35. State v. Wilder 939 A.2d 781, 792 , N.J. CRIMINAL JUSTICE - Instructions. Jury overcharging errors should be subjected on appeal to the "unjust result" standard.	Jan. 31, 2008	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	36. State v. Francis  926 A.2d 305, 317 , N.J. CRIMINAL JUSTICE - Grand Jury. Standard to be applied to defendant's alleged use of grand jury was whether evidence sought was relevant to grand jury's task.	June 27, 2007	Case		2 A.2d
Cited by	37. State v. Zapata-Careno 2017 WL 5898556, *3 , N.J.Super.A.D. Defendant Marcus Zapata Careno appeals from a January 8, 2016 order denying his petition for post-conviction relief ("PCR") without an evidentiary hearing. We affirm. On June 25,...	Nov. 29, 2017	Case		—
Cited by	38. State v. Green 173 A.3d 1093, 1095 , N.J.Super.A.D. CRIMINAL JUSTICE - Driving While Intoxicated. Other-crime evidence, consisting of two prior DWI convictions, was inadmissible in prosecution for first-degree vehicular homicide...	Oct. 20, 2017	Case		—
Cited by	39. State v. Richardson 2017 WL 4456359, *9+ , N.J.Super.A.D. The opinion of the court was delivered by Lacking a valid driver's license, defendant was caught giving a false name during a traffic stop for a motor vehicle violation. The...	Oct. 04, 2017	Case		—
Cited by	40. State v. Thigpen 2017 WL 3443100, *5 , N.J.Super.A.D. A jury convicted defendant Dennis Thigpen, Jr. of first-degree conspiracy to commit murder, N.J.S.A. 2C:11-3(a) and N.J.S.A. 2C:5-2 and second-degree unlawful possession of a...	Aug. 11, 2017	Case		—
Cited by	41. State v. M.E.D.  2017 WL 2883235, *3 , N.J.Super.A.D. Defendant M.E.D. was convicted of crimes connected with sexual assaults against her younger sister, K.B. Defendant was indicted with D.C., her boyfriend at the time of the...	July 07, 2017	Case		1 2 3 A.2d
Cited by	42. State v. Butler  2017 WL 1179845, *7 , N.J.Super.A.D. Following a joint trial, a jury convicted defendants Ahmar D. Butler and Jonathan P. Thomas of murder, N.J.S.A. 2C:11-3(a)(1), (2); aggravated assault, N.J.S.A. 2C:12-1(b)(1),...	Mar. 30, 2017	Case		10 A.2d
Cited by	43. R.G. v. R.G.  156 A.3d 1074, 1083 , N.J.Super.A.D. FAMILY LAW - Protection Orders. In adult brother's action seeking restraining order against sibling, evidence was inadequate to support finding that sibling's conduct constituted...	Mar. 14, 2017	Case		10 A.2d
Cited by	44. State v. Grant  2017 WL 968884, *5 , N.J.Super.A.D. A victim was robbed at knife-point by two men after responding to a Craigslist advertisement for discounted iPads and iPhones. In separate jury trials, defendants Jeremy Grant and...	Mar. 13, 2017	Case		7 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	45. State v. Scharf 2017 WL 439895, *8 , N.J.Super.A.D. The Supreme Court remanded this appeal after reinstating defendant Stephen F. Scharf's first-degree murder conviction, N.J.S.A. 2C:11-3(a)(1) and (2). State v. Scharf, 225 N.J....	Jan. 27, 2017	Case		8 A.2d
Cited by	46. State v. Campbell 2016 WL 4916961, *8 , N.J.Super.A.D. Following a jury trial, defendant Terry E. Campbell was convicted of first-degree attempted murder, N.J.S.A. 2C:5-1 and 2C:11-3(a)(1) (count one); two counts of second-degree...	Sep. 15, 2016	Case		1 3 A.2d
Cited by	47. State v. Hentz 2016 WL 4410718, *1 , N.J.Super.A.D. Defendant Aaron J. Hentz appeals from his conviction for fourth-degree operating a motor vehicle during a period of license suspension for a second offense of driving while...	Aug. 19, 2016	Case		—
Cited by	48. State v. Prall 2015 WL 11438112, *4 , N.J.Super.A.D. Defendant Tormu Prall was convicted of murder, attempted murder and aggravated arson after a jury found he set fire to the bedroom where his brother and his brother's girlfriend...	Aug. 12, 2016	Case		—
Cited by	49. State v. Williams 2016 WL 3245390, *7 , N.J.Super.A.D. On May 1, 2008, twenty-year-old Arrel Bell was found dead in a park in Trenton. Bell had been shot twice at close range in the back of his head. Following an investigation,...	June 14, 2016	Case		10 A.2d
Cited by	50. State v. Gaskins 2016 WL 1637208, *6+ , N.J.Super.A.D. Defendant appeals from his convictions for second-degree conspiracy to distribute cocaine, N.J.S.A. 2C:5-2 and 2C:35-5(a)(1) and (b)(2); third-degree conspiracy to distribute...	Apr. 26, 2016	Case		5 A.2d
Cited by	51. State v. Padilla 2016 WL 1368893, *3+ , N.J.Super.A.D. In the early morning hours of October 24, 2002, Carlos Freitas was shot and killed in the Ugha Ugha Social Club, an after-hours bar in Newark. The shooter fled from the scene and...	Apr. 07, 2016	Case		1 A.2d
Cited by	52. State v. Ramirez 2016 WL 830850, *3 , N.J.Super.A.D. Defendant Manuel Ramirez was present when a co-defendant assaulted and stabbed a victim. Defendant and two co-defendants then fled and the victim later died of his stab wounds. A...	Mar. 04, 2016	Case		10 A.2d
Cited by	53. State v. L.K. 2016 WL 440168, *2 , N.J.Super.A.D. Following a second jury trial, defendant L.K. was convicted of threatening his wife and beating her in the following charges: 1) second-degree aggravated assault, attempting to...	Feb. 05, 2016	Case		6 7 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	54. State v. Gomez 2016 WL 363139, *2 , N.J.Super.A.D. Defendant was charged, along with others, for his involvement in a murderous late night attack in a Newark schoolyard on August 4, 2007, that resulted in the deaths of three of...	Feb. 01, 2016	Case		—
Cited by	55. State v. Pryor 2015 WL 9436733, *3 , N.J.Super.A.D. After a jury trial, defendant Michael Pryor was convicted of one count of third-degree possession of cocaine, a controlled dangerous substance (CDS), in violation of N.J.S.A....	Dec. 28, 2015	Case		—
Cited by	56. State v. Fortin 2015 WL 6132920, *7 , N.J.Super.A.D. The opinion of the court was delivered by Following a guilt-phase retrial, defendant Steven Fortin was convicted of first-degree purposeful and knowing murder of M.P. (Mary), ...	Oct. 20, 2015	Case		1 A.2d
Cited by	57. State v. Chase 2015 WL 4770503, *6+ , N.J.Super.A.D. Defendant Dashand D. Chase was tried with co-defendant Tony L. Burnham. Defendant appeals from his judgments of conviction for robbery, witness tampering, and related charges. We...	Aug. 14, 2015	Case		—
Cited by	58. State v. Randolph 120 A.3d 237, 255 , N.J.Super.A.D. CRIMINAL JUSTICE - Searches and Seizures. Defendant had reasonable expectation of privacy in apartment from which drug distribution operation was being conducted.	Aug. 07, 2015	Case		6 7 A.2d
Cited by	59. State v. Melia 2014 WL 10186793, *11+ , N.J.Super.A.D. Defendants Robert S. Melia, Jr. and Heather Lewis were indicted, tried, and convicted together. They each appeal from their judgments of conviction. We consolidate these...	Aug. 03, 2015	Case		6 7 A.2d
Cited by	60. State v. Hallett 2015 WL 3999024, *5 , N.J.Super.A.D. Defendant Corey Hallett appeals from his conviction after trial of fourth-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a) (3) (count one);...	July 02, 2015	Case		2 A.2d
Cited by	61. State v. Cole 2015 WL 3822383, *4 , N.J.Super.A.D. On August 12, 2011, a jury convicted defendant Anthony K. Cole of first degree attempted murder, N.J.S.A. 2C:11-3(a)(1); fourth degree unlawful possession of a weapon, N.J.S.A....	June 22, 2015	Case		7 A.2d
Cited by	62. State v. Norwood 2015 WL 1943841, *3 , N.J.Super.A.D. Defendant Victor Norwood appeals from his conviction by a jury on charges of eluding and resisting arrest and his sentence of ten years imprisonment. We affirm the convictions and...	May 01, 2015	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	63. State v. Blevin 2014 WL 8240515, *6 , N.J.Super.A.D. Following a trial, a jury convicted defendant Troy Blevin of second-degree theft by failure to make a required disposition in an amount exceeding \$75,000, N.J.S.A. 2C:20-9. The...	Mar. 23, 2015	Case		—
Cited by	64. State v. K.M.B. 2014 WL 7150697, *5+ , N.J.Super.A.D. Following a jury trial, defendant K.M.B. was convicted of the first-degree aggravated sexual assault of K.G., N.J.S.A. 2C:14-2a(1), and second-degree endangering the welfare of...	Dec. 17, 2014	Case		10 A.2d
Cited by	65. State v. Lacoste 2014 WL 6886069, *3 , N.J.Super.A.D. Defendant Herne Lacoste (defendant) was tried along with defendant Shanikah S. Daniels (Daniels) on various charges, and convicted of kidnapping, aggravated assault, hindering and...	Dec. 09, 2014	Case		9 A.2d
Cited by	66. State v. J.M., Jr. 102 A.3d 1233, 1237+ , N.J.Super.A.D. CRIMINAL JUSTICE - Evidence. Evidence of alleged prior sexual assault was not admissible under other-crimes rule at trial for sexual assault.	Nov. 21, 2014	Case		9 A.2d
Cited by	67. State v. Foglia 2014 WL 6460720, *4 , N.J.Super.A.D. In State v. Foglia, 415 N.J.Super. 106 (App.Div.), certif. denied, 205 N.J. 15 (2010), we were compelled to reverse defendant's conviction for murder and related charges because of...	Nov. 19, 2014	Case		—
Cited by	68. L.T. v. F.M. 102 A.3d 398, 407 , N.J.Super.A.D. FAMILY LAW - Protection Orders. Former boyfriend was not barred by the doctrine of collateral estoppel from challenging the Family Part's findings in final restraining order case.	Nov. 14, 2014	Case		10 A.2d
Cited by	69. State v. Gatti 2014 WL 5460827, *3 , N.J.Super.A.D. Defendant appeals from her conviction and sentence following a jury verdict finding her guilty of two counts of third-degree uttering a forged instrument, N.J.S.A. 2C:21-1(a)(3),...	Oct. 29, 2014	Case		10 A.2d
Cited by	70. State v. Daidone 2014 WL 4288811, *3 , N.J.Super.A.D. Following a jury trial, defendant Charles J. Daidone was convicted of third-degree eluding, N.J.S.A. 2C:29-2b, and fourth-degree hindering apprehension or prosecution, N.J.S.A....	Sep. 02, 2014	Case		10 A.2d
Cited by	71. State v. Roberts 2014 WL 3843153, *18 , N.J.Super.A.D. Defendant Veanzeil Roberts was tried before a jury and convicted of first degree attempted murder of Monica Penalba, N.J.S.A. 2C:5-1 and 2C:11-3(a); first degree conspiracy to...	Aug. 06, 2014	Case		7 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	72. State v. Dawson 2014 WL 3818685, *4 , N.J.Super.A.D. Following a three-day trial, a jury convicted defendant Andre M. Dawson, Jr. of third-degree attempted burglary, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:18-2 (count one), and fourth-degree...	Aug. 05, 2014	Case		—
Cited by	73. State v. S.S. 2014 WL 3798198, *5 , N.J.Super.A.D. This appeal concerns the admission of testimony regarding a criminal defendant's sexual preferences, the allowance of the jury to view video-recorded statements in the jury room...	Aug. 04, 2014	Case		1 3 A.2d
Cited by	74. State v. Gray 2014 WL 3731758, *5 , N.J.Super.A.D. Defendant Joshua D. Gray appeals from his March 2, 2012 conviction by a jury for second-degree aggravated assault, N.J.S.A. 2C:12-1b(1) and the sentence imposed by the court. On...	July 30, 2014	Case		1 A.2d
Cited by	75. State v. Rosario 2014 WL 3579405, *6 , N.J.Super.A.D. Defendant Juan Rosario was charged with three counts of threat to kill, two counts of terroristic threats and one count of witness tampering. He was acquitted of witness tampering...	July 22, 2014	Case		10 A.2d
Cited by	76. State v. Careno 2014 WL 3557696, *8+ , N.J.Super.A.D. Defendant Marcus Zapata Careno was convicted of first-degree kidnapping, N.J.S.A. 2C:13-1(b), and simple assault, N.J.S.A. 2C:12-1(a)(1), a lesser-included offense of second-degree...	July 21, 2014	Case		7 A.2d
Cited by	77. State v. Royal 2014 WL 3015453, *6 , N.J.Super.A.D. The Cumberland County grand jury returned a twelve-count indictment charging defendant James Royal in counts one through five with events that occurred on January 16, 2003,...	July 07, 2014	Case		10 A.2d
Cited by	78. State v. Volpe 2014 WL 1775200, *5 , N.J.Super.A.D. Tried to a jury, defendant Joseph V. Volpe, Jr., was convicted of attempted burglary. On appeal, he claims the identification by the homeowner was unreliable and the product of an...	May 06, 2014	Case		1 2 A.2d
Cited by	79. State v. Smith 2014 WL 1757881, *5 , N.J.Super.A.D. Following a jury trial, defendant was found guilty of the following controlled dangerous substance (CDS) offenses set forth in Middlesex County indictment 08-09-01543: third-degree...	May 05, 2014	Case		—
Cited by	80. State v. Hardwick 2014 WL 1032138, *4 , N.J.Super.A.D. Defendant David Hardwick appeals from the judgment of conviction and sentence imposed following his guilty pleas to two counts of the lesser-included offense of aggravated...	Mar. 19, 2014	Case		8 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	81. <u>State v. Hernandez</u> 2014 WL 714715, *4+ , N.J.Super.A.D. The opinion of the court was delivered by This direct appeal arises from a criminal trial in which defendant Angel Hernandez was convicted of a number of charges stemming from his...	Feb. 26, 2014	Case		—
Cited by	82. <u>State v. Pettis</u> ¶ 2013 WL 6817655, *5+ , N.J.Super.A.D. Following an October 2011 jury trial, defendant Jason Pettis was convicted of second-degree aggravated assault, N.J.S.A. 2C:12-1b(1), as a lesser-included offense of first-degree...	Dec. 27, 2013	Case		10 A.2d
Cited by	83. <u>State v. Ragland</u> 2013 WL 5942238, *7+ , N.J.Super.A.D. Tried by a jury, defendant Dyshon Ragland was convicted of first-degree armed robbery, N.J.S.A. 2C:15-1; first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2 and 2C:11-3;...	Nov. 07, 2013	Case		—
Cited by	84. <u>State v. Manderville</u> ¶ 2013 WL 4821237, *19 , N.J.Super.A.D. Defendant Corey Manderville was indicted along with Lawrence “Reds” Willis and Michael Jay Coombs (a/k/a “Rico”) on multiple charges arising from the robbery and shooting death of...	Sep. 11, 2013	Case		10 A.2d
Cited by	85. <u>Fernandes v. Dar Development Corp.</u> ¶ 2013 WL 2660745, *6+ , N.J.Super.A.D. Defendants, DAR Development Corp. and DAR Construction, Incorporated (collectively DAR and/or defendant) appeal from a jury verdict awarding plaintiff, Rolando Fernandes, damages...	June 14, 2013	Case		1 2 A.2d
Cited by	86. <u>State v. Holmes</u> ¶ 2013 WL 1663280, *7 , N.J.Super.A.D. Defendant Omar Holmes appeals from his conviction by a jury for murder and weapons offenses. The charges arose from the shooting of a young man outside a club in Elizabeth after a...	Apr. 18, 2013	Case		10 A.2d
Cited by	87. <u>State v. Anderson</u> 2013 WL 141569, *4+ , N.J.Super.A.D. After a two-day jury trial, defendant Tracy Anderson was found guilty of the second-degree offense of eluding a police officer, N .J.S.A. 2C:29-2b. Defendant had been chased and...	Jan. 14, 2013	Case		—
Cited by	88. <u>State v. Johnson</u> ¶ 2013 WL 57696, *4+ , N.J.Super.A.D. Defendant appeals from his convictions for first-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and 2C:15-1; five counts of first-degree robbery, N.J.S.A. 2C:15-1; two counts...	Jan. 07, 2013	Case		9 A.2d
Cited by	89. <u>State v. Clifton-Short</u> ¶ 2012 WL 4009080, *6 , N.J.Super.A.D. Following a jury trial, defendant was convicted of purposeful or knowing murder and related charges. On the murder conviction, he was sentenced to life imprisonment, with a...	Sep. 13, 2012	Case		4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	90. State v. Skinner 2012 WL 3762431, *18 , N.J.Super.A.D. The first jury to hear this case was unable to reach a verdict. A second jury found defendant Vonte L. Skinner guilty of attempted murder, N.J.S.A. 2C:5–1a(3), 2C:11–3a(1);...	Aug. 31, 2012	Case		5 A.2d
Cited by	91. State v. Boyd 2012 WL 2974910, *10+ , N.J.Super.A.D. Defendant was convicted in absentia of first-degree robbery with a simulated deadly weapon, N.J.S.A. 2C:15–1. He was sentenced to a term of eighteen years, with a parole...	July 23, 2012	Case		—
Cited by	92. State v. Hall 2012 WL 2603622, *5 , N.J.Super.A.D. Following a jury trial, defendant Stacy Hall was convicted of second-degree aggravated arson, N.J.S.A. 2C:17–1a (count one); two counts of third-degree arson, N.J.S.A. 2C:17–1b...	July 06, 2012	Case		5 A.2d
Cited by	93. State v. Askins 2012 WL 2579532, *11+ , N.J.Super.A.D. After his pretrial motion for severance was denied, defendant Michael Anthony Askins was tried before a single jury principally on charges of sexual assault and other various...	July 05, 2012	Case		10 A.2d
Cited by	94. State v. Norman 2012 WL 2505631, *5 , N.J.Super.A.D. Defendant Vincent Norman appeals from his conviction by a jury on charges of criminal mischief and attempted escape from a county jail and his sentence of four years imprisonment....	July 02, 2012	Case		—
Cited by	95. State v. Franklin 2012 WL 2344602, *6 , N.J.Super.A.D. A jury found defendant Darryl Franklin guilty of third-degree possession of a weapon, a knife, for an unlawful, purpose, N.J.S.A. 2C:39–4d, and fourth-degree unlawful possession...	June 21, 2012	Case		—
Cited by	96. State v. Santos 2012 WL 2051873, *4 , N.J.Super.A.D. Defendant was convicted by a jury of second-degree eluding, N.J. S.A. 2C:29–2(b), and disorderly persons shoplifting, N.J.S.A. 2C:20–11, and was sentenced as a persistent offender,...	June 08, 2012	Case		10 A.2d
Cited by	97. State v. Carnesi 2012 WL 1948623, *7+ , N.J.Super.A.D. Defendant appeals from a June 25, 2010 conviction for second-degree aggravated assault, N.J.S.A. 2C:12–1b(1); second-degree possession of a weapon for an unlawful purpose, N.J.S.A....	May 31, 2012	Case		10 A.2d
Cited by	98. State v. Murphy 2012 WL 1697392, *6 , N.J.Super.A.D. Defendant Tysheim Murphy appeals from his conviction for first-degree armed robbery, and associated offenses, and from the aggregate sentence of thirty-eight years in prison...	May 16, 2012	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	99. State v. Sanborn  2012 WL 1604908, *3+ , N.J.Super.A.D. Defendant Vincent Sanborn appeals his conviction for second-degree aggravated assault, contrary to N.J.S.A. 2C:12-1(b)(1) (count one); third-degree aggravated assault, contrary to...	May 04, 2012	Case		6 7 A.2d
Cited by	100. State v. Vega 2012 WL 1161608, *8+ , N.J.Super.A.D. Tried jointly in a twenty-one day jury trial in September, October and November 2008, defendants Jose Vega and Juan Rosario were convicted of the slaying of Ralph Pinto and the...	Apr. 10, 2012	Case		—
Cited by	101. State v. Minor 2012 WL 1123532, *3 , N.J.Super.A.D. Defendant James E. Minor appeals from his conviction, following a guilty plea, for second-degree burglary, contrary to N.J.S.A. 2C:18-2(b); and fourth-degree contempt of a court...	Apr. 05, 2012	Case		—
Cited by	102. State v. Harris 2012 WL 671927, *4 , N.J.Super.A.D. We granted the State leave to appeal the Law Division's order barring it from using previously-taken photographs of defendant Dayshoun Harris holding a sawed-off shotgun at his...	Mar. 02, 2012	Case		—
Cited by	103. State v. Davis  2012 WL 360200, *4+ , N.J.Super.A.D. Following a jury trial, defendant Charles Davis was convicted of second-degree robbery, N.J.S.A. 2C:15-1; two counts of third-degree theft from the person, N.J.S.A. 2C:20-2b(2)(d)...	Feb. 06, 2012	Case		4 A.2d
Cited by	104. State v. Aquilina 2012 WL 140851, *7 , N.J.Super.A.D. Defendant Debra Aquilina appeals from her May 1, 2009 conviction on charges of first-degree murder, N.J.S.A. 2C:11-3 (count one); first-degree conspiracy to commit murder, N.J.S.A....	Jan. 19, 2012	Case		1 A.2d
Cited by	105. State v. Peterson 2012 WL 86876, *4 , N.J.Super.A.D. Defendant Norvil Peterson appeals from the judgment of conviction and sentence imposed following a jury trial at which he was found guilty of: one count of third-degree conspiracy...	Jan. 12, 2012	Case		10 A.2d
Cited by	106. State v. Smith 2011 WL 6820285, *9 , N.J.Super.A.D. Based on the shooting death of Omar Kennedy, defendant Awan Smith was convicted of first-degree murder, N.J.S.A. 2C:11-3a(1); third-degree unlawful possession of a rifle without a...	Dec. 29, 2011	Case		—
Cited by	107. State v. B.W.  2011 WL 6088886, *7+ , N.J.Super.A.D. Following a jury trial, defendant B.W. was convicted of three counts of second-degree luring, N.J.S.A. 2C:13-6; fourth-degree possession of a stun gun, N.J.S.A. 2C:39-3h, and, as...	Dec. 08, 2011	Case		4 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	108. <u>State v. Carlucci</u> 2011 WL 3611323, *5, N.J.Super.A.D. Defendant appeals from her conviction for third-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1) (crack cocaine), and a violation of probation...	Aug. 18, 2011	Case		—
Cited by	109. <u>State v. Bullock</u> 2011 WL 3611347, *5+, N.J.Super.A.D. Defendant was indicted, along with co-defendant Antwan Mitchell, for purposeful and knowing murder, N.J.S.A. 2C:11-3(a)(1)-(2); felony murder, N.J.S.A. 2C:11-3(a)(3); armed...	Aug. 18, 2011	Case		6 7 A.2d
Cited by	110. <u>Mecca v. Suarez</u> 2011 WL 3178583, *5+, N.J.Super.A.D. Plaintiff Michael Mecca appeals following an adverse jury verdict in his malicious prosecution suit against defendant Anthony Suarez, an attorney and the mayor of Ridgefield. The...	July 28, 2011	Case		10 A.2d
Cited by	111. <u>State v. Rossano</u> 2011 WL 2671921, *4+, N.J.Super.A.D. A jury found defendant Kathleen Rossano guilty of third degree theft of property, N.J.S.A. 2C:20-3 (Count Three); third degree computer theft, N.J.S.A. 2C:20-25a (Count Five);...	July 11, 2011	Case		10 A.2d
Cited by	112. <u>State v. D.M.</u> 2011 WL 2321226, *9, N.J.Super.A.D. Defendant—now sixty-four years old—appeals from his 2009 conviction and fifty-five-year sentence for numerous sexual offenses involving three children: his two granddaughters—Eve...	May 24, 2011	Case		—
Cited by	113. <u>State v. McCoy</u> 2011 WL 1466143, *6, N.J.Super.A.D. Defendant Gino McCoy, a/k/a Geno McCoy, appeals from the judgment of conviction and sentence imposed following a jury trial at which he was found guilty of first-degree robbery,...	Apr. 18, 2011	Case		10 A.2d
Cited by	114. <u>State v. Moore</u> 2011 WL 941509, *4, N.J.Super.A.D. A jury acquitted defendant Jerrell Moore of murder, N.J.S.A. 2C:11-3, but found him guilty of second-degree passion-provocation manslaughter, N.J.S.A. 2C:11-4(b)(2); second-degree...	Mar. 16, 2011	Case		10 A.2d
Cited by	115. <u>State v. Scott</u> 2011 WL 487834, *6, N.J.Super.A.D. After a previous trial resulted in a hung jury, defendant Stephen Lamont Scott was convicted at his second jury trial of second-degree sexual assault upon a nine-year-old girl,...	Feb. 14, 2011	Case		—
Cited by	116. <u>State v. Deiana</u> 2011 WL 6102, *6, N.J.Super.A.D. Defendant Luigi Deiana appeals from the judgment of conviction and sentence imposed following a jury trial at which he was convicted of second-degree possession of a firearm for an...	Jan. 03, 2011	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	117. <u>State v. Mitchell</u> 2010 WL 5376365, *4 , N.J.Super.A.D. After a jury trial, defendant Francis Mitchell was convicted of one count of first-degree robbery, N.J.S.A. 2C:15-1 and one count of second-degree robbery, N.J.S.A. 2C:15-1. He now...	Nov. 09, 2010	Case		—
Cited by	118. <u>State v. Arellano</u> 2010 WL 3516853, *8 , N.J.Super.A.D. Defendant was convicted of luring or enticing a child, N.J.S.A. 2C:13-6 (count one), attempted child endangerment, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:24-4(a) (count four), and...	Sep. 01, 2010	Case		4 A.2d
Cited by	119. <u>State v. Massey</u> 2010 WL 3419186, *7 , N.J.Super.A.D. CRIMINAL JUSTICE - Jury. Excusing of two jurors was not racially motivated in a trial for three capital murders.	Aug. 31, 2010	Case		—
Cited by	 120. <u>New Jersey Div. of Youth and Family Services v. I.H.C.</u> ” 2 A.3d 1138, 1150 , N.J.Super.A.D. FAMILY LAW - Child Protection. Evidence from father's ex-wife was admissible in protective custody proceeding to prove that he posed risk of harm to children.	Aug. 05, 2010	Case		—
Cited by	121. <u>State v. Bolt</u> 2011 WL 9132, *6 , N.J.Super.A.D. Defendant Kawan Bolt appeals from his conviction by a jury on charges of armed robbery, attempted theft, aggravated assault, and possession of a weapon for an unlawful purpose. He...	Aug. 04, 2010	Case		7 A.2d
Cited by	122. <u>State v. Foglia</u> 1 A.3d 703, 713+ , N.J.Super.A.D. CRIMINAL JUSTICE - Evidence. Defendant's testimony could not be attacked through specific instances of defendant's bad conduct.	July 16, 2010	Case		1 A.2d
Cited by	123. <u>State v. T.E.</u> 2010 WL 4025935, *5+ , N.J.Super.A.D. CRIMINAL JUSTICE - Sentencing. Trial judge failed to explain why four consecutive sentences were imposed on defendant, convicted of four counts of aggravated sexual assault.	July 08, 2010	Case		6 A.2d
Cited by	124. <u>Raimer v. Rosenberg, Hammer & Smith, Inc.</u> 2010 WL 1526507, *4 , N.J.Super.A.D. LITIGATION - Discovery. Although trial court erred in permitting defendant's late amendment to interrogatory answers and submission of an expert report in a slip and fall case, the...	Apr. 16, 2010	Case		1 6 A.2d
Cited by	125. <u>State v. Boston</u> 2010 WL 86411, *12+ , N.J.Super.A.D. CRIMINAL JUSTICE - Confessions. Substantial evidence supported a determination that a defendant was not too intoxicated to validly waive his Miranda warnings.	Jan. 12, 2010	Case		10 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	126. <u>State v. Fowlkes</u> 2010 WL 26480, *12 , N.J.Super.A.D. CRIMINAL JUSTICE - Homicide. The judge did not mistakenly exercise his discretion in admitting autopsy photographs into evidence in defendant's trial for first degree murder.	Jan. 07, 2010	Case		—
Cited by	127. <u>State v. Van Wyk</u> 2009 WL 5125087, *3+ , N.J.Super.A.D. Following a jury trial, defendant Roy Van Wyk was convicted of fourth-degree harassment, N.J.S.A. 2C:33-4(e), and fourth-degree contempt, N.J.S.A. 2C:29-9(a). He was sentenced to...	Dec. 30, 2009	Case		—
Cited by	128. <u>State v. Salter</u> 2009 WL 4981169, *6+ , N.J.Super.A.D. CRIMINAL JUSTICE - Evidence. A defendant's conviction for charges of aggravated sexual assault, criminal sexual contact, and endangering a child was reversed due to the...	Dec. 24, 2009	Case		1 2 A.2d
Cited by	129. <u>State v. Gillispie</u> 2009 WL 2496683, *8 , N.J.Super.A.D. In these back to back appeals, defendants Dwayne Gillispie and Gregory Buttler, appeal their convictions for offenses arising out of a double homicide that occurred in Barnegat,...	Aug. 18, 2009	Case		—
Cited by	130. <u>State v. Ames</u> 2009 WL 2168254, *3 , N.J.Super.A.D. Tried to a jury, defendant was convicted of second-degree eluding, N.J.S.A. 2C:29-2b (Count One); third-degree receiving stolen property (a motor vehicle), N.J.S.A. 2C:20-7a (Count...	July 22, 2009	Case		9 A.2d
Cited by	131. <u>State v. Rosales</u> 2009 WL 1705677, *14 , N.J.Super.A.D. Following a ten-day jury trial, defendant Graciano Martinez Rosales was found guilty of aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1), as a lesser-included offense of murder, and...	June 19, 2009	Case		8 A.2d
Cited by	132. <u>State v. Kuhn</u> 2009 WL 1562938, *6 , N.J.Super.A.D. Defendant Ivan Kuhn appeals from the judgment of conviction and sentence imposed following a jury trial at which he was found guilty of third-degree creating a false public alarm,...	June 05, 2009	Case		—
Cited by	133. <u>State v. Wright</u> 2009 WL 1077314, *10+ , N.J.Super.A.D. Defendant James H. Wright, Jr., appeals from a final judgment of conviction. Tried to a jury, he was convicted of lewdness, N.J.S.A. 2C:14-4b(1), and endangering the welfare of a...	Apr. 23, 2009	Case		6 A.2d
Cited by	134. <u>State v. Tirado</u> 2009 WL 259356, *18 , N.J.Super.A.D. Following a jury trial conducted between May 10 and July 7, 2005, defendant Christopher Tirado was found guilty of nine counts of an eleven-count indictment. The jury found...	Feb. 05, 2009	Case		9 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	135. State v. Lichtenberger 2009 WL 259399, *4, N.J.Super.A.D. Defendant appeals his conviction for second-degree robbery and fourth-degree unlawful possession of a weapon. On this appeal he argues: POINT I THE DEFENDANT'S RIGHT TO BE FREE...	Feb. 05, 2009	Case		—
Cited by	136. State v. Cowan 2009 WL 196187, *5+, N.J.Super.A.D. Tried by a jury, defendant Herbert Cowan was convicted of conspiracy to commit robbery in the first degree, N.J.S.A. 2C:5-2a and 2C:15-1; four counts of robbery in the first...	Jan. 29, 2009	Case		—
Cited by	137. State v. Gilmore 2008 WL 5170299, *5, N.J.Super.A.D. Tried to a jury, defendant Kevin J. Gilmore was convicted of first-degree robbery, contrary to N.J.S.A. 2C:15-1 (count one); third-degree possession of a weapon for an unlawful...	Dec. 11, 2008	Case		10 A.2d
Cited by	138. State v. Landrio 2008 WL 4239369, *5+, N.J.Super.A.D. Tried to a jury, defendant Jessica Landrio was convicted of first-degree robbery, kidnapping, carjacking, theft of movable property valued at \$1,000 or less, and acquitted of...	Sep. 18, 2008	Case		8 A.2d
Cited by	139. State v. Jaramillo 2008 WL 3890655, *6, N.J.Super.A.D. Defendant was convicted of aggravated assault, as a lesser-included offense of murder, and of three counts of official misconduct. He was sentenced to the custody of the...	Aug. 25, 2008	Case		—
Cited by	140. State v. Taylor 2008 WL 3164718, *8, N.J.Super.A.D. Background: Defendant was convicted in a jury trial in the Superior Court, Law Division, Passaic County, of second-degree reckless manslaughter, second-degree possession of a...	Aug. 08, 2008	Case		10 A.2d
Cited by	141. State v. Green 2008 WL 3067920, *6, N.J.Super.A.D. Tried to a jury, defendant was convicted of two counts of murder, N.J.S.A. 2C:11-3(a)(1) or (2); two counts of felony murder, N.J.S.A. 2C:11-3(a)(3); one count of attempted murder,...	Aug. 07, 2008	Case		6 7 A.2d
Cited by	142. State v. Rogers 2008 WL 2796472, *14+, N.J.Super.A.D. Defendant, Richard W. Rogers, was found guilty of two counts of first-degree knowing or purposeful murder, N.J.S.A. 2C:11-3a(1), (2), for the 1992 murder of Thomas Mulcahy and the...	July 22, 2008	Case		9 A.2d
Cited by	143. State v. Green 2008 WL 2415175, *11, N.J.Super.A.D. Defendant Tyrius Green appeals from a July 11, 2005 judgment of conviction based upon a May 11, 2005 jury verdict finding him guilty of murder, N.J.S.A. 2C:11-3(a)(1), second...	June 17, 2008	Case		10 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	144. <u>State v. Lacy</u> 2008 WL 564845, *6 , N.J.Super.A.D. On March 3, 2005, an Essex County Grand Jury returned Indictment No. 05-03-0502, a ten-count indictment, which charged defendant Justin Lacy in the first four counts with the first...	Mar. 04, 2008	Case		—
Cited by	145. <u>State v. Amato</u> 2008 WL 398791, *12 , N.J.Super.A.D. Following a jury trial, defendant appeals from convictions for disorderly persons simple assault, third-degree aggravated assault on a law enforcement officer, second-degree...	Feb. 15, 2008	Case		10 A.2d
Cited by	146. <u>State v. Hunt</u> 2007 WL 4355487, *4 , N.J.Super.A.D. Tried to a jury, defendant was convicted of murder, N.J.S.A. 2C:11-3(a); possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and unlawful possession of a weapon,...	Dec. 12, 2007	Case		6 7 A.2d
Cited by	147. <u>State v. Ingram</u> 2007 WL 2188699, *11 , N.J.Super.A.D. Following a jury trial that he did not attend, defendant Shariff Ingram was convicted of felony murder, conspiracy, robbery, and theft. He appeals his convictions on numerous...	Aug. 01, 2007	Case		—
Cited by	148. <u>State v. Thom</u> 2007 WL 1804043, *5 , N.J.Super.A.D. Following a jury trial, defendant, Rickford Thom, was convicted of third degree possession of cocaine, a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10a(1); second degree...	June 25, 2007	Case		6 7 A.2d
Cited by	149. <u>State v. Miller</u> 2007 WL 1574538, *5 , N.J.Super.A.D. Following a jury trial, defendant Anthony Miller was convicted of first degree robbery, N.J.S.A. 2C:15-1. The judge imposed a ten-year term with a No Early Release Act (NERA) ...	June 01, 2007	Case		9 A.2d
Cited by	150. <u>State v. Young</u> 89 A.3d 242, 249 , N.J.Super.L. CRIMINAL JUSTICE - Searches and Seizures. Administrative code allowed opening of letter based solely on inmate's known and addressee's suspected gang affiliations.	June 24, 2013	Case		9 A.2d
Cited by	151. <u>Green v. Warren</u> 2013 WL 6865420, *7 , D.N.J. Petitioner Al-Quaadir Green ("Petitioner"), a prisoner currently confined at New Jersey State Prison in Trenton, New Jersey, has submitted a petition for a writ of habeas corpus...	Dec. 20, 2013	Case		7 A.2d
Cited by	152. <u>State v. J.I.F.</u> 2011 WL 9340, *16 , N.J.Super.A.D. Defendant J.I.F. appeals from a final judgment convicting him of the lesser-included offense of assault, a disorderly persons offense, contrary to N.J.S.A. 2C:12-1a(1);...	Mar. 04, 2010	Case		5 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	153. State v. McMullen 2009 WL 2486458, *2, N.J.Super.A.D. Defendant, Marcus McMullen, was found guilty of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a, and fourth-degree lewdness, N.J.S.A. 2C:14-4a, after exposing...	Aug. 17, 2009	Case		6 A.2d
Cited by	154. State v. Hassan 2008 WL 2964905, *7, N.J.Super.A.D. Defendant Alim Hassan appeals from an order entered on April 18, 2006 denying his petition for post-conviction relief (PCR) by which defendant sought to withdraw his plea of guilty...	Aug. 05, 2008	Case		—
Cited by	155. Miller ex rel. Miller v. Lewis 963 N.Y.S.2d 533, 535, N.Y.Sup. TRANSPORTATION - Motor Vehicles. Evidence of truck driver's post-accident conduct was admissible as evidence of driver's consciousness of liability.	Mar. 20, 2013	Case		2 A.2d
Mentioned by	156. State v. Perry 137 A.3d 1130, 1138, N.J. CRIMINAL JUSTICE - Sex Offenses. Unidentified semen stain on shorts worn by victim on night of assault was inadmissible to support third-party guilt theory.	May 17, 2016	Case		1 A.2d
Mentioned by	157. State v. Herrera 48 A.3d 1009, 1028, N.J. CRIMINAL JUSTICE - Searches and Seizures. Exclusionary rule did not preclude evidence that defendants violently attacked police officer following investigatory stop.	Aug. 07, 2012	Case		10 A.2d
Mentioned by	158. State v. Gillispie 26 A.3d 397, 414, N.J. CRIMINAL JUSTICE - Evidence. Erroneous admission of details of prior robbery under other-crimes rule was harmless in murder trial.	June 09, 2011	Case		—
Mentioned by	159. State v. P.S. 997 A.2d 163, 177, N.J. CRIMINAL JUSTICE - Sex Offenses. Child victim's out-of-court statements to interviewer were admissible under rule setting forth tender years exception to rule against hearsay.	June 07, 2010	Case		9 A.2d
Mentioned by	160. State v. Nasta 2017 WL 711195, *13, N.J.Super.A.D. Tried by a jury, defendant Allison Nasta was convicted of second-degree vehicular homicide, causing serious bodily injury while driving with a suspended or revoked license, and...	Feb. 23, 2017	Case		—
Mentioned by	161. State v. Suarez-Perez 2015 WL 7729061, *7, N.J.Super.A.D. The opinion of the court was delivered by Defendant Antonio Suarez-Perez appeals from his judgment of conviction for the first-degree murders of Sidney Wakefield and Joseph Fann....	Dec. 01, 2015	Case		7 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	162. State v. Byrant 2013 WL 5538966, *1, N.J.Super.A.D. Defendant was indicted and charged with second-degree reckless manslaughter, N.J.S.A. 2C:11-4(b), as well as other offenses. The trial judge denied defendant's motion for, among...	Oct. 09, 2013	Case		8 A.2d
Mentioned by	163. State v. Lee 2013 WL 4045542, *12, N.J.Super.A.D. Defendants Jaquan Julius Lee and Tony Lee Canty appeal from their convictions, after a 2010 jury trial, of eight counts of first-degree armed robbery, N.J.S.A. 2C:15-1; two counts...	Aug. 12, 2013	Case		—
Mentioned by	164. State v. Robinson 2010 WL 5427857, *6, N.J.Super.A.D. CRIMINAL JUSTICE - Sex Offenses. There was sufficient evidence to support defendant's conviction for second-degree sexual assault	June 25, 2010	Case		2 6 A.2d
Mentioned by	165. State v. Hester 2011 WL 13844, *8, N.J.Super.A.D. After execution of a personal search warrant upon defendant, Darryl Hester, failed to disclose drugs, but a residential search warrant, executed upon the residence of Theresa...	Mar. 18, 2010	Case		10 A.2d
Mentioned by	166. State v. Henry 2009 WL 4725225, *2, N.J.Super.A.D. CRIMINAL JUSTICE - Evidence. Evidence regarding defendant's shoplifting was relevant to show the defendant's motive in eluding the police.	Dec. 11, 2009	Case		—
Mentioned by	167. State v. Keys 2009 WL 465451, *4, N.J.Super.A.D. Defendant James Keys appeals his conviction by a jury of second degree certain persons not to possess weapons, N.J.S.A. 2C:39-7(b). He was sentenced to a term of ten years with...	Feb. 26, 2009	Case		1 A.2d
—	168. Handbook of Federal Evidence s 404:5, Rule 404(b)(2): crimes, wrongs or other acts Dennis enters a Wal-Mart. He brings a television set to the checkout counter. When the clerk scans the television a \$285 price appears. Dennis hands the clerk fifteen \$20 bills....	2017	Other Secondary Source	—	6 7 8 A.2d
—	169. Jones on Evidence--Civil and Criminal s 17:6.31, New Jersey N.J. R. Evid. 404(b) (N.J.R.E. 404(b)) provides: (b) Other Crimes, Wrongs, or Acts. Except as otherwise provided by Rule 608(b), evidence of other crimes, wrongs, or acts is not...	2017	Other Secondary Source	—	—
—	170. New Jersey Model Criminal Charges NON 2C CHARGES, PROOF OF OTHER CRIMES, WRONGS, OR ACTS (N.J.R.E. 404(b)) New Jersey Model Criminal Charges The State has introduced evidence that the defendant [Describe the evidence of other crimes, wrongs, or acts offered by the State.] Normally, such evidence is not permitted under...	2007	Other Secondary Source	—	6 7 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	171. 2B N.J. Prac. Series N.J.R.E. 401, Definition of "Relevant Evidence" N.J. Prac. Series Rule 401 is similar to N.J.Evid.R. 1(2) in that it incorporates the phrase "evidence having a tendency in reason to prove," but it substitutes for the phrase, "any material..."	2017	Other Secondary Source	—	6 8 10 A.2d
—	172. 2B N.J. Prac. Series N.J.R.E. 404, Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes; Evidence N.J. Prac. Series Rule 404 generally follows Fed.R.Evid. 404 and replaces N.J.Evid.R. 46, 48, and 55. It also incorporates a portion of N.J.Evid.R. 47. Paragraph (a) of Rule 404 is almost identical...	2017	Other Secondary Source	—	8 10 A.2d
—	173. 32 N.J. Prac. Series s 21:57, The prosecutor should, if possible, save evidence of "other bad acts" committed by the defendant for rebuttal N.J. Prac. Series Except when a defendant raises the defense of entrapment, evidence that the defendant committed "other bad acts" (i.e. crimes, wrongs or other acts other than those at issue...	2016	Other Secondary Source	—	8 A.2d
—	174. 33 N.J. Prac. Series s 8:8, Manslaughter N.J. Prac. Series The second degree crime of manslaughter is divided into two categories. The first type of manslaughter is a criminal homicide which is committed recklessly. The second is a...	2017	Other Secondary Source	—	8 A.2d
—	175. Uncharged Misconduct Evidence s 3:4, Acts manifesting defendant's consciousness of guilt Like misdeeds showing the defendant's capacity to commit the charged crime, misconduct manifesting the defendant's consciousness of guilt of the charged crime is admissible....	2017	Other Secondary Source	—	8 A.2d
—	176. Uncharged Misconduct Evidence s 5:39, Use of uncharged misconduct to prove elements of mens rea-Proving defendant's recklessness Recklessness can be the mens rea element of the charged offense. The essence of recklessness is conscious disregard of a known risk. To establish recklessness, the prosecutor must...	2017	Other Secondary Source	—	8 A.2d
—	177. Winning Evidence Arguments s 404:5, Rule 404(b)(2): crimes, wrongs or other acts Dennis enters a Wal-Mart. He brings a television set to the checkout counter. When the clerk scans the television a \$285 price appears. Dennis hands the clerk fifteen \$20 bills....	2018	Other Secondary Source	—	6 7 8 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	178. <u>Am. Jur. 2d Evidence s 318, In criminal cases-Of consciousness of guilt</u> Am. Jur. 2d Evidence So long as the proper foundation is laid, evidence of consciousness of guilt may be relevant and admissible. Evidence of post-crime consciousness of guilt may support an inference...	2018	Other Secondary Source	—	6 7 A.2d
—	179. <u>2011 SETON HALL UNIVERSITY SCHOOL OF LAW SPORTS AND ENTERTAINMENT LAW SYMPOSIUM: PROFESSIONAL AND ETHICAL DILEMMAS FACING ATTORNEYS REPRESENTING ENTITIES, ATHLETES AND ENTERTAINERS</u> 21 Seton Hall J. Sports & Ent. L. 381 , 466+ Introduction. 381 I. Transcript. 383 Panel I: Trial Publicity. 383 Panel II: Twenty-First Century Labor Concerns in Sports and Entertainment. 408 Keynote Speaker Address. 441	2011	Law Review	—	—
—	180. <u>24 NO. 9 West's Criminal Law News 30, Evidence of defendant's post-shooting conduct was relevant in reckless manslaughter trial</u> Evidence of defendant's post-shooting conduct was relevant in his reckless manslaughter trial in regards to his state of mind at the time of the shooting. Defendant's attempts to...	2007	Law Review	—	—