

 KeyCite Yellow Flag - Negative Treatment
Distinguished by State v. Hurt, N.J. Super. A.D., March 14, 2016

195 N.J. 375

Supreme Court of New Jersey.

STATE of New Jersey, Plaintiff–Respondent.

v.

Diara BARDEN, Defendant–Appellant.

Argued Feb. 19, 2008.

|

Decided June 24, 2008.

Synopsis

Background: Defendant was convicted in the Superior Court of first-degree robbery, second-degree attempted theft, fourth-degree aggravated assault, third-degree unlawful possession of a weapon and second-degree possession of a weapon for an unlawful purpose. Defendant appealed. The Superior Court, Appellate Division, affirmed.

Holdings: After granting defendant's petition for certification, the Supreme Court, Wallace, Jr., J., held that:

[1] testimony by co-defendant, that defendant and co-defendant planned the robbery of co-defendant's client so that co-defendant could purchase drugs, was admissible under the other-crimes evidence rule to show motive and intent;

[2] probative value of testimony by co-defendant, that she had purchased crack cocaine from defendant approximately 30 times in the six months prior to the robbery, was outweighed by such testimony's prejudicial effect and thus was not admissible under the other-crimes evidence rule; and

[3] limiting instruction regarding testimony from co-defendant that she had purchased crack cocaine from defendant approximately 30 times in the six months was insufficient to eliminate the prejudice to defendant and constituted plain error.

Appellate Division reversed, and matter remanded.

Albin, J., concurred and filed opinion, in which Long, J., joined.

West Headnotes (27)

[1] Criminal Law

 Prejudicial effect and probative value

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.13 Prejudicial effect and probative value

(Formerly 110k369.2(1))

Rule governing the admission of other-crimes evidence seeks to strike a balance between the prejudice to a defendant that is inherent in other-crimes evidence and the recognition that the evidence may be highly relevant to prove a defendant's guilt of the crime charged. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

10 Cases that cite this headnote

[2] Criminal Law

 Showing bad character or criminal propensity in general

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.3 Purposes for Admitting Evidence of Other Misconduct

110k368.5 Showing bad character or criminal propensity in general

(Formerly 110k369.1)

If the other-crime evidence is offered solely to prove criminal disposition it is excluded. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

Cases that cite this headnote

[3] **Criminal Law**

🔑 Purposes for Admitting Evidence of Other Misconduct

Criminal Law

🔑 Prejudicial effect and probative value

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.3 Purposes for Admitting

Evidence of Other Misconduct

110k368.4 In general

(Formerly 110k369.2(1))

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting

Admissibility

110k368.13 Prejudicial effect and probative value

(Formerly 110k369.2(1))

If other-crimes evidence is offered to prove facts in issue other than criminal disposition, such as motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, it may be admissible subject to a weighing of the probative value against its apparent prejudice. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

6 Cases that cite this headnote

[4] **Criminal Law**

🔑 Prejudicial effect and probative value

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.13 Prejudicial effect and probative value

(Formerly 110k369.2(1))

Because of the damaging nature of other-crimes evidence, the trial court must engage in a careful and pragmatic evaluation of the evidence to determine whether the probative worth of the evidence is outweighed by its potential for undue prejudice. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

10 Cases that cite this headnote

[5] **Criminal Law**

🔑 Prejudicial effect and probative value

Criminal Law

🔑 Necessity for evidence

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.13 Prejudicial effect and probative value

(Formerly 110k369.2(1))

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.15 Necessity for evidence

(Formerly 110k369.2(1))

In the weighing process used to determine if the probative value of

other-crimes evidence is outweighed by its apparent prejudice, a court should consider the availability of other evidence that can be used to prove the same point. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

8 Cases that cite this headnote

[6] **Criminal Law**

🔑 Necessity for evidence

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.15 Necessity for evidence
(Formerly 110k369.2(1))

A trial judge should be careful to exclude other torts or crimes evidence, even though it is independently relevant, wherever he can reasonably do so without damaging the plaintiff's or prosecutor's case. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

Cases that cite this headnote

[7] **Criminal Law**

🔑 Necessity for evidence

Criminal Law

🔑 Other Misconduct Showing Motive

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.15 Necessity for evidence
(Formerly 110k369.15)

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)6 Other Misconduct Showing Motive

110k371.1 In general

(Formerly 110k371(12))

If a prosecutor has adequate proof of identity, or of motive and the like, he should not be permitted to use the highly inflammatory evidence of other crimes to establish those facts. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

Cases that cite this headnote

[8] **Criminal Law**

🔑 Counterfeiting and forgery

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

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

110k368.22 Counterfeiting and forgery
(Formerly 110k369.2(3.1))

In a forgery case where authorship of the allegedly forged writing is in issue, the trial judge should not under the other-crimes evidence rule admit standards indicating the defendant's guilt of other forgeries if neutral standards of the defendant's handwriting are available to the prosecutor. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

Cases that cite this headnote

[9] **Criminal Law**

🔑 Manner of proving other misconduct

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)13 Proof and Effect

110k374.26 Manner of proving other misconduct

(Formerly 110k374)

In an effort to reduce the inherent prejudice in the admission of other-crimes evidence, a trial court is required to sanitize the evidence when appropriate. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

17 Cases that cite this headnote

[10] Criminal Law

🔑 Limiting effect of evidence of other offenses

110 Criminal Law

110XX Trial

110XX(C) Reception of Evidence

110k673 Effect of Admission

110k673(5) Limiting effect of evidence of other offenses

If a trial court determines that the evidence of other crimes is admissible, in addition to sanitizing the evidence when appropriate the court must carefully instruct the jury as to its limited use. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

3 Cases that cite this headnote

[11] Criminal Law

🔑 Purpose and Effect of Evidence

110 Criminal Law

110XX Trial

110XX(G) Instructions:Necessity, Requisites, and Sufficiency

110k783 Purpose and Effect of Evidence

110k783(1) In general

A trial court's instruction on the limited use of other-crimes evidence should be formulated carefully to explain precisely the permitted and prohibited purposes of the evidence, with sufficient reference to the factual context of the case to enable the jury to comprehend and appreciate the fine distinction to which it is required to adhere. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

11 Cases that cite this headnote

[12] Criminal Law

🔑 Time for giving instructions

110 Criminal Law

110XX Trial

110XX(G) Instructions:Necessity, Requisites, and Sufficiency

110k801 Time for giving instructions

An instruction on the use of other-crimes evidence should be given when the evidence is presented and in the final charge to the jury. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

4 Cases that cite this headnote

[13] Criminal Law

🔑 Other offenses

110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court

110k1153 Reception and Admissibility of Evidence

110k1153.5 Other offenses

In its review of a trial court's determination on the admissibility of the evidence of other crimes, the Supreme Court gives great deference to the decision of the trial court. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

11 Cases that cite this headnote

[14] Criminal Law

🔑 Other offenses

110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court

110k1153 Reception and Admissibility of Evidence

110k1153.5 Other offenses

Only where there is a clear error of judgment should the trial court's

conclusion with respect to the balancing test used to determine the admissibility of other-crimes evidence be disturbed. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

10 Cases that cite this headnote

[15] **Criminal Law**

🔑 Other offenses

110 Criminal Law

110XXIV Review

110XXIV(L) Scope of Review in General

110XXIV(L)4 Scope of Inquiry

110k1134.49 Evidence

110k1134.49(6) Other offenses

When a trial court does not analyze the admissibility of other-crimes evidence under *State v. Cofield*, the Supreme Court may conduct a plenary review to determine its admissibility. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

8 Cases that cite this headnote

[16] **Criminal Law**

🔑 Similarity to Crime Charged

Criminal Law

🔑 Close temporal proximity

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 110k372(1))

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

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

110k373.18 Temporal Relation of Events

110k373.20 Close temporal proximity

(Formerly 110k372(1))

The second prong of test used to determine the admissibility of other-crimes evidence, that the other-crimes evidence must be similar in kind and reasonably close in time to the offense charged, is not applicable in every case and its usefulness as a requirement is limited to cases that replicate the circumstances in *State v. Cofield*. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

10 Cases that cite this headnote

[17] **Criminal Law**

🔑 Other particular offenses

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

110k373.12 Other particular offenses

(Formerly 110k372(14))

Second prong of test used to determine the admissibility of other-crimes evidence, requiring the other-crimes evidence to be similar in kind and reasonably close in time to the offense charged, was not applicable when determining whether testimony of co-defendant, that she had purchased crack cocaine from defendant on approximately 30 occasions during the six months prior to the robbery, that defendant knew she was an addict and that he proposed robbing her client in order for her to obtain money to purchase drugs, was admissible in trial of defendant for first-degree robbery, fourth-degree aggravated assault, second-degree possession of a weapon for an unlawful purpose and other crimes, as defendant was not charged with a drug offense and the prosecution was not attempting

to prove possession. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

8 Cases that cite this headnote

[18] Criminal Law

🔑 Prejudicial effect and probative value

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.13 Prejudicial effect and probative value

(Formerly 110k369.2(1))

The fourth prong of the test used to determine the admissibility of other-crimes evidence, whether the prejudicial effect of the evidence outweighs its probative value, requires a careful weighing of competing interests. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

15 Cases that cite this headnote

[19] Criminal Law

🔑 Prejudicial effect and probative value

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)1 Other Misconduct as Evidence of Offense Charged in General

110k368.7 Factors Affecting Admissibility

110k368.13 Prejudicial effect and probative value

(Formerly 110k369.2(1))

If other less prejudicial evidence may be presented to establish the same issue, the balance in the weighing process, when determining whether the probative value of other-crimes

evidence is outweighed by its prejudicial effect, will tip in favor of exclusion. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

9 Cases that cite this headnote

[20] Criminal Law

🔑 Multiple offenses

Criminal Law

🔑 Multiple offenses

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)6 Other Misconduct Showing Motive

110k371.26 Multiple offenses
(Formerly 110k371(12))

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)7 Other Misconduct Showing Intent

110k371.53 Multiple offenses
(Formerly 110k371(8), 110k371(1))

Testimony by co-defendant, that defendant and co-defendant planned the robbery of co-defendant's client so that co-defendant could purchase drugs and that co-defendant and defendant had known one another for some time, was relevant to show motive and intent and admissible under the other-crimes evidence rule, in trial of defendant for first-degree robbery, fourth-degree aggravated assault, second-degree possession of a weapon for an unlawful purpose and other crimes. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

Cases that cite this headnote

[21] Criminal Law

🔑 Robbery

Criminal Law

🔑 Robbery

Criminal Law Number of other acts110 Criminal Law110XVII Evidence110XVII(F) Other Misconduct by
Accused110XVII(F)6 Other Misconduct

Showing Motive

110k371.21 Robbery

(Formerly 110k369.13, 110k369.1)

110 Criminal Law110XVII Evidence110XVII(F) Other Misconduct by
Accused110XVII(F)7 Other Misconduct

Showing Intent

110k371.48 Robbery

(Formerly 110k369.13, 110k369.1)

110 Criminal Law110XVII Evidence110XVII(F) Other Misconduct by
Accused110XVII(F)12 Nature and
Circumstances of Other Misconduct
Affecting Admissibility110k373.26 Number of other acts

(Formerly 110k369.13)

Probative value of testimony by co-defendant, that she had purchased crack cocaine from defendant approximately 30 times in the six months prior to the robbery, was outweighed by such testimony's prejudicial effect and thus was not admissible under the other-crimes evidence rule, in trial of defendant for first-degree robbery, fourth-degree aggravated assault, second-degree possession of a weapon for an unlawful purpose and other crimes; evidence of drug transactions between defendant and co-defendant was not needed to show motive and intent for the robbery as that could have been established by testimony regarding co-defendant's drug addiction and that she and defendant planned the robbery to obtain money to purchase drugs, and the risk was too high that the jury could conclude that because defendant was involved in numerous prior drug

sales he was prone to criminal activity in general. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

1 Cases that cite this headnote**[22] Criminal Law** Purpose and Effect of Evidence**Criminal Law** Evidence and witnesses110 Criminal Law110XX Trial110XX(G) Instructions:Necessity,
Requisites, and Sufficiency110k783 Purpose and Effect of
Evidence110k783(1) In general110 Criminal Law110XXIV Review110XXIV(E) Presentation and
Reservation in Lower Court of Grounds
of Review110XXIV(E)1 In General110k1038 Instructions110k1038.1 Objections in General110k1038.1(3) Particular Instructions110k1038.1(5) Evidence and witnesses

Trial court's limiting instruction on other-crimes evidence, testimony from co-defendant that she had purchased crack cocaine from defendant approximately 30 times in the six months prior to the robbery, was insufficient to eliminate the prejudice to defendant and constituted plain error, in trial of defendant for first-degree robbery, fourth-degree aggravated assault, second-degree possession of a weapon for an unlawful purpose and other crimes; though instruction explained that the evidence could not be used to find defendant guilty for that reason and that the evidence could be used to explain the circumstances under which co-defendant acted, instruction failed to focus the jury precisely on the permissible uses of the evidence in the context of the facts and those issues genuinely in dispute, and, given that the other-crimes evidence should not have

been admitted, there was a reasonable doubt whether the error led the jury to a result it otherwise might not have reached. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b); R. 2:10-2.

7 Cases that cite this headnote

[23] Criminal Law

🔑 Purpose and Effect of Evidence

110 Criminal Law

110XX Trial

110XX(G) Instructions:Necessity, Requisites, and Sufficiency

110k783 Purpose and Effect of Evidence

110k783(1) In general

A carefully crafted limiting instruction must explain to the jury the limited purpose for which the other-crime evidence is being offered. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

Cases that cite this headnote

[24] Criminal Law

🔑 Purpose and Effect of Evidence

110 Criminal Law

110XX Trial

110XX(G) Instructions:Necessity, Requisites, and Sufficiency

110k783 Purpose and Effect of Evidence

110k783(1) In general

A trial court in an instruction on other-crimes evidence must clearly explain precisely the permitted and prohibited purposes of the evidence with sufficient reference to the factual context of the case to enable the jury to comprehend and appreciate the fine distinction to which it is required to adhere. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

10 Cases that cite this headnote

[25] Criminal Law

🔑 Necessity of Objections in General

110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1030 Necessity of Objections in General

110k1030(1) In general

The test for plain error is whether the possibility of injustice is sufficient to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached. R. 2:10-2.

5 Cases that cite this headnote

[26] Criminal Law

🔑 Plain or fundamental error

110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1038 Instructions

110k1038.1 Objections in General

110k1038.1(2) Plain or fundamental error

An erroneous charge will rarely stand under the plain error rule on the ground that the error was harmless. R. 2:10-2.

9 Cases that cite this headnote

[27] Criminal Law

🔑 Other offenses and character of accused

110 Criminal Law

110XXIV Review

110XXIV(E) Presentation and Reservation in Lower Court of Grounds of Review

110XXIV(E)1 In General

110k1036 Evidence

110k1036.1 In General

110k1036.1(3) Particular Evidence

110k1036.1(8) Other offenses and character of accused

The likelihood of prejudice is acute, for purposes of the plain error rule, when the proffered evidence is proof of a defendant's uncharged misconduct. R. 2:10-2.

Cases that cite this headnote

Attorneys and Law Firms

****823** Alison S. Perrone, Designated Counsel, argued the cause for appellant (Yvonne Smith Segars, Public Defender, attorney; Ms. Perrone and Julie A. Higgs, Designated Counsel, on the briefs).

Natalie A. Schmid Drummond, Deputy Attorney General, argued the cause for respondent (Anne Milgram, Attorney General of New Jersey, attorney).

Opinion

Justice WALLACE, JR., delivered the opinion of the court.

382** In this case, the trial court admitted evidence that defendant sold drugs to co-defendant over a six-month period prior to the robbery under a theory of *res gestae*. On appeal, the Appellate Division affirmed, but held that the other-crimes evidence *824** was properly admitted under N.J.R.E. 404(b) to show defendant's motive with respect to the crimes charged and that the corresponding limiting instruction was appropriate. We granted certification "limited solely to the question of whether testimony that defendant sold drugs to the co-defendant over a six-month period prior to the robbery of September 7, 2003, was improperly admitted by the trial court under either a theory of *res gestae* or N.J.R.E. 404(b)." We now reverse. We conclude that the evidence that defendant sold drugs to the co-defendant over a six-month period was evidence of other crimes that was unduly prejudicial and should have been excluded.

I.

A.

The State presented the following evidence at trial. Sixteen-year-old Andrea Gendron was addicted to crack cocaine since mid-2003. She supported her drug habit by means of prostitution, theft, and burglary. Gendron purchased crack cocaine from defendant Diara Barden on approximately thirty occasions for six months prior to September 2003.

On Sunday, September 7, 2003, Gendron asked defendant to give her some crack cocaine and promised to pay him later because she had no money. Defendant declined but suggested that they rob one of Gendron's clients. Gendron agreed and selected Robert Brown as the victim because he kept money in a ***383** safe in his bedroom. She also told defendant that Robert's brother, Randall Brown, lived in the same house.

Gendron called Robert and received permission to come see him. Defendant then drove Gendron to Robert's house in a burgundy Mustang, but before going there they stopped at a house on Olden Avenue where defendant retrieved a handgun. Gendron and defendant arrived at Robert's house around 9:30 p.m. Prior to entering the house, the two agreed that they would tell Robert that defendant was Gendron's bodyguard and was there to protect her. When they knocked on the door, Robert refused to allow defendant to enter with Gendron. Defendant returned to his car while Robert and Gendron went upstairs to a bedroom. Soon thereafter, Gendron heard defendant beeping the car horn. She excused herself from Robert and left the house to go talk to defendant. Several minutes later, Gendron returned to the house with defendant. When they were inside, Robert approached them and asked defendant to leave. As he escorted defendant to the door, defendant drew a handgun and demanded that Robert call his brother who was also in the house. Defendant and Robert then walked to the kitchen where Robert yelled for Randall. Defendant was distracted when Randall entered the room, allowing Robert the opportunity to grab defendant's wrist.

Randall joined the struggle as defendant continued to hold the handgun. Defendant yelled for Gendron to stab Robert. Gendron grabbed a pot instead and began hitting Randall on the head. The struggle shifted to the dining room where Robert forced defendant to drop the handgun outside the screened window. Defendant was able to break free and fled from the house with Gendron.

Robert's neighbor, Tom Sliwinski, overheard the commotion and called the police. When the police arrived, Robert outlined what occurred and gave the police a description of defendant and Gendron. Defendant was eventually apprehended and charged with robbery.

***384 B.**

At trial, defendant presented a different picture of the incident. In addition to his ****825** own testimony, he offered the testimony of Towanna Stephens, his cousin; Peggy Barden, his grandmother; Brett Barden, his uncle; and Theresa Jones, Robert's neighbor.

Defendant testified that on the night of September 7, 2003, he, Towanna, Peggy, Brett, and other family members were sitting outside of Peggy's house in Trenton, when they observed a young, white girl who did not live in the neighborhood walking up and down the street, looking lost and confused. After about ten minutes, the girl, later identified as Gendron, approached Peggy's house and asked Brett to give her a ride.

At first Brett agreed to do so. However, after receiving a cell phone call from his girlfriend asking him to pick her up, Brett asked defendant to give the girl a ride. Defendant said he hesitated, but his grandmother persuaded him to do it. Defendant and Gendron departed in a maroon Mustang and drove to 219 Homcrest Avenue in Ewing. When they arrived at the house, Gendron asked him to wait outside while she went inside. Defendant agreed. After about ten minutes, he began blowing the horn to tell Gendron to hurry. At that point,

Theresa came outside and asked him to stop beeping the horn.

Defendant said that Gendron came to the front door and motioned for him to come inside. He entered the house and told Gendron he was leaving. At that point, Robert came downstairs and yelled at defendant for being in his home. The two exchanged insults that led to a verbal altercation. Defendant turned to leave when Robert struck him in the head. Defendant fought back but another man joined in the fight. Defendant testified that it was Robert who displayed a handgun during the fight. At some point during the struggle, they crashed into a window and Robert dropped the handgun outside. Defendant was able to flee from the house, and he drove away with Gendron. Defendant claimed he never saw Gendron before that day and denied having a handgun. Defendant also denied discussing with Gendron the ***385** idea of committing a robbery, and that he made a statement to the police about the incident.

C.

The State called Detective Holt to rebut much of defendant's testimony. Detective Holt testified that defendant came to the police station on September 12, 2003. He administered *Miranda*¹ warnings to defendant, and defendant waived his right to remain silent. After explaining that Gendron had been identified as a suspect of a robbery on Homcrest Avenue, Detective Holt asked defendant if he knew anything about the case. Defendant was silent for about thirty minutes before Detective Holt asked defendant where he was the previous Sunday. Defendant replied that he had traveled to Maryland for a few days and returned on Sunday. When Detective Holt told defendant that the police recovered a handgun and intended to check it for fingerprints, defendant again fell silent for about twenty minutes before asking what would happen if he told him what occurred that day. Detective Holt replied that he could not make defendant any promises. Defendant then told Detective Holt that he drove to a house with Gendron to see "some guy" and while inside, the man's brother came out of the kitchen with a

handgun. Defendant indicated that a fight broke out and the handgun fell out the window. A short while later, he and Gendron fled from the house. Detective Holt testified that defendant indicated he **826 did not want to say anything else and the questioning stopped.

¹ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

The State sought to read a statement that Detective Holt had obtained from Sliwinski, Robert's neighbor, because he was on military duty in Iraq at the time of the trial, and defendant consented. In the statement, Sliwinski outlined that he heard an argument at Robert's house, went outside to investigate, looked into the dining room window, and saw the two Brown brothers fighting a black man. Sliwinski ran home to call the police. He *386 was on the phone when he heard either Robert or Randall yell, "He has a gun." A few seconds later, Sliwinski saw a handgun fall from the window to the ground. Sliwinski walked over and picked up the handgun before he walked to the front of his house where he saw a black male and a petite, white female run from Robert's home and drive away in a Mustang.

D.

The jury found defendant guilty of first-degree robbery, second-degree attempted theft, fourth-degree aggravated assault, third-degree unlawful possession of a weapon, and second-degree possession of a weapon for an unlawful purpose. The jury found defendant not guilty of second-degree burglary. After merger, the trial court imposed a sentence of fifteen years with an eighty-five percent parole disqualifier for the first-degree robbery offense and a concurrent four-year term for the unlawful-possession-of-a-weapon offense.

On appeal, the Appellate Division affirmed in an unpublished opinion. The panel applied the test outlined in State v. Cofield, 127 N.J. 328, 338, 605 A.2d 230 (1992), to assess the admissibility of other crimes evidence under N.J.R.E. 404(b), and found no error in the admission of testimony that defendant sold drugs to Gendron thirty times

during the six months prior to the charged offense. The panel concluded that the evidence of other crimes was properly admitted to demonstrate the reason why defendant participated in the robbery and how the scheme to steal from Robert arose from defendant's refusal to "loan" drugs to Gendron. The panel did not address defendant's contention that the evidence was improperly admitted as *res gestae*. We granted defendant's petition for certification. State v. Barden, 192 N.J. 75, 926 A.2d 858 (2007).

II.

Defendant argues that Gendron's testimony that he sold drugs to her during the six months prior to the date of the offense was *387 not admissible either as evidence of other crimes under N.J.R.E. 404(b) or under a theory of *res gestae*. He contends that the evidence did not satisfy the Cofield test for admission under N.J.R.E. 404(b) because the evidence was not relevant to any material issue, but that even if it were relevant, its probative value was outweighed by the prejudice to him. He urges that if the evidence is deemed relevant and material, at a minimum, the evidence must be sanitized by eliminating the prior drug sales and permitting Gendron to testify that she knew defendant for six months before the robbery, and that defendant was aware of her drug addiction from seeing her around the neighborhood. He urges that the holding of the Appellate Division that the evidence was admissible to demonstrate his intent and motive for the scheme to steal from the victim would serve to invite the jury to find that defendant must have acted in conformity with his propensity for committing crimes. He suggests that we follow State v. Hernandez, 170 N.J. 106, 784 A.2d 1225 (2001), and hold that evidence of the prior sales "smacks of prohibited propensity evidence" that was more prejudicial than probative. **827 Defendant adds that even if the evidence was properly admitted under N.J.R.E. 404(b), it was error not to instruct the jury that the evidence was limited solely to show intent. Further, defendant contends that the trial court erred in admitting the evidence under a *res gestae* theory when the alleged transactions occurred up

to six months before the robbery, were factually separate from the robbery, and were not necessary for the jury to understand the circumstances of the robbery.

In contrast, the State argues that the evidence of the prior drug transactions was admissible under *N.J.R.E.* 404(b) because that evidence was essential to establish defendant's motive and intent for committing the charged offense. The State contends that the *Cofield* test was satisfied and the trial court properly instructed the jury as to its prohibited and permissible uses. Additionally, the State argues that the trial court properly admitted the evidence of prior drugs sales as *res gestae* because it was part and parcel of the offenses tried and gave context for the crime. The *388 State contends that the *res gestae* concept covers not just conduct that occurs at the same time as the charged crimes, but also conduct that may occur at different times and in different places.

III.

A.

On numerous occasions we have stated the principles applicable to the admission of evidence of other crimes under *N.J.R.E.* 404(b). *State v. Kemp*, 195 N.J. 136, 948 A.2d 636 (2008); *State v. Lykes*, 192 N.J. 519, 534–37, 933 A.2d 1274 (2007); *State v. Williams*, 190 N.J. 114, 122, 919 A.2d 90 (2007); *State v. Jenkins*, 178 N.J. 347, 365, 840 A.2d 242 (2004); *State v. G.V.*, 162 N.J. 252, 256–58, 744 A.2d 137 (2000); *State v. Marrero*, 148 N.J. 469, 490–92, 691 A.2d 293 (1997); *State v. Cofield*, *supra*, 127 N.J. at 331–38, 605 A.2d 230, *N.J.R.E.* 404(b), which governs the admissibility of evidence of other crimes, was formerly *Evidence Rule 55*. Thus, any reference in earlier cases to *Evidence Rule 55* would influence our determination under present *N.J.R.E.* 404(b).

N.J.R.E. 404(b) provides that:

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.

[1] [2] [3] The Rule seeks to strike a balance between the prejudice to a defendant that is inherent in other-crimes evidence and the recognition that the evidence may be highly relevant to prove a defendant's guilt of the crime charged. If the “other crime evidence [is] offered solely to prove criminal disposition [it] is excluded under the Rule.” *State v. Stevens*, 115 N.J. 289, 300, 558 A.2d 833 (1989). However, if that evidence is offered to prove other facts in issue such as motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, it may be admissible subject to a weighing of the probative value against its apparent prejudice. *Ibid.*

*389 In *Cofield*, *supra*, the Court articulated a four-part test designed to guide the determination of when to admit such evidence. 127 N.J. at 338, 605 A.2d 230. The Court defined the four-part test as follows:

1. The evidence of the other crime must be admissible as relevant to a material issue;
- **828 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.

[*Ibid.*]

Recently, we noted that the second prong may be eliminated where it “serves no beneficial purpose.” *Williams, supra*, 190 N.J. at 131, 919 A.2d 90. We explained that the “usefulness [of *Cofield's* second prong] as a requirement is limited to cases that replicate the circumstances in *Cofield*,” in which evidence of drug possession that occurred subsequent to the drug incident that was the subject of the prosecution was relevant to prove possession of the drugs in the charged offense. *Ibid.* Thus, in *Williams*, where the other-crimes evidence was relevant only to the defendant's state of mind, and in other similar instances, the test became a three-part test by elimination of the similar-in-kind prong. *Ibid.*

[4] [5] [6] [7] [8] The fourth prong, whether the probative value of the evidence is outweighed by its apparent prejudice, is generally the most difficult part of the test. Because of the damaging nature of such evidence, the trial court must engage in a “careful and pragmatic evaluation” of the evidence to determine whether the probative worth of the evidence is outweighed by its potential for undue prejudice. *Id.* at 303, 919 A.2d 90. In the weighing process, the court should also “consider the availability of other evidence that can be used to prove the same point.” *Jenkins, supra*, 178 N.J. at 365, 840 A.2d 242 (citation and quotation omitted).

The trial judge should be careful to exclude other torts or crimes evidence, even though it is independently relevant, wherever he can reasonably do so without damaging the plaintiff's or prosecutor's case. For example, if the prosecutor has adequate proof of identity, or of motive and the like, he should not be permitted to *390 use the highly inflammatory evidence of other crimes to establish those facts. In a forgery case where authorship of the allegedly forged writing is in issue, the trial judge, for instance, should not admit standards indicating the defendant's guilt of other forgeries if neutral standards of the defendant's handwriting are available to the prosecutor.

[*Stevens, supra*, 115 N.J. at 303, 558 A.2d 833 (citation and quotation omitted).]

[9] In an effort to reduce the inherent prejudice in the admission of other-crimes evidence, our courts require the trial court to sanitize the evidence when appropriate. *State v. Collier*, 316 N.J. Super. 181, 185, 719 A.2d 1276 (App.Div.1998), *aff'd o.b.*, 162 N.J. 27, 738 A.2d 369 (1999). In *Collier*, the court explained “[t]hat sanitizing accommodates the right of the proponent to present relevant evidence and the right of the objecting party to avoid undue prejudice.” *Id.* at 195, 719 A.2d 1276; *see State v. Brown*, 180 N.J. 572, 584, 853 A.2d 260 (2004) (finding “that any potential for prejudice can be ameliorated by the sanitization of the predicate offense”); *State v. Fortin*, 318 N.J. Super. 577, 598, 724 A.2d 818 (App.Div.1999) (noting that “at trial the judge must ‘sanitize’ the other-crime evidence by confining its admissibility to those facts reasonably necessary for the probative purpose of ‘identity’”), *aff'd*, 162 N.J. 517, 745 A.2d 509 (2000).

[10] [11] [12] If the trial court determines that the evidence of other crimes is admissible, in addition to sanitizing the evidence when appropriate, the court must carefully **829 instruct the jury as to its limited use. “[T]he court's instruction ‘should be formulated carefully to explain precisely the permitted and prohibited purposes of the evidence, with sufficient reference to the factual context of the case to enable the jury to comprehend and appreciate the fine distinction to which it is required to adhere.’” *Fortin, supra*, 162 N.J. at 534, 745 A.2d 509 (quoting *Stevens, supra*, 115 N.J. at 304, 558 A.2d 833). The instruction should be given when the evidence is presented and in the final charge to the jury. *Id.* at 534–35, 745 A.2d 509.

[13] [14] [15] In our review of a trial court's determination on the admissibility of the evidence of other crimes under *N.J.R.E.* 404(b), we give great deference to the decision of the trial court. *391 *Lykes, supra*, 192 N.J. at 534, 933 A.2d 1274. “Only where there is a clear error of judgment should the trial court's conclusion with respect to that balancing test be disturbed.” *Marrero, supra*, 148 N.J. at 483, 691 A.2d 293 (citation and quotation omitted). However, when a trial court does not analyze the admissibility of other-crimes evidence under *Cofield*, we may conduct a plenary review to

determine its admissibility. *Lykes, supra*, 192 N.J. at 534, 933 A.2d 1274.

B.

We turn now to apply the above principles to the present case. At trial, the trial court conducted a hearing out of the presence of the jury to determine the admissibility of Gendron's testimony that during the six months prior to the robbery she purchased crack cocaine from defendant on approximately thirty occasions; that defendant knew she was addicted to crack cocaine; that her relationship with defendant was based solely on the purchase of drugs; and that on the date of the alleged crimes, the two of them agreed to rob Robert to acquire money for Gendron to purchase drugs from defendant.

In performing its gate-keeping function, the trial court found that the evidence was relevant to show defendant's intent and motive to commit an armed robbery. Further, the court found the evidence of the other crimes was shown by clear and convincing evidence, and that its probative value outweighed any prejudicial effect. However, because the evidence was not similar in kind to the crimes charged to satisfy the second prong of *Cofield*, the trial court decided not to admit the evidence under *Rule* 404(b), but found it admissible under a *res gestae* theory.

[16] [17] As previously suggested, the second prong of *Cofield* is not applicable in every case and its "usefulness as a requirement is limited to cases that replicate the circumstances in *Cofield*." *Williams, supra*, 190 N.J. at 131, 919 A.2d 90. Here, we agree with the Appellate Division that under the circumstances presented, *392 the second prong of the test served no beneficial purpose and should not have been considered.

[18] [19] The fourth prong, whether the prejudicial effect of the evidence outweighs its probative value, requires a careful weighing of competing interests. *Stevens, supra*, 115 N.J. at 303, 558 A.2d 833. If other less prejudicial evidence may be presented to establish the same issue, the balance

in the weighing process will tip in favor of exclusion. *Jenkins, supra*, 178 N.J. at 365, 840 A.2d 242.

[20] [21] The evidence that defendant and Gendron planned the robbery so Gendron could obtain money to purchase drugs and that Gendron and defendant had known one another for some time was relevant and admissible. However, the testimony of six months of drug transactions between defendant and Gendron was **830 not needed to show the motive and intent for the robbery. Rather, that could have been established by testimony regarding Gendron's drug addiction; that she sought drugs on the day of the robbery; and that she and defendant planned the robbery to obtain money to purchase drugs. Indeed, Gendron could have testified that she knew defendant for six months prior to the robbery and that defendant was aware of her drug addiction from seeing her around the neighborhood.

Consistent with the view we expressed in *Hernandez, supra*, we find that the evidence that for six months prior to the offense defendant sold drugs to Gendron more than thirty times was unduly prejudicial and "smack[ed] of prohibited propensity evidence." 170 N.J. at 130, 784 A.2d 1225 (noting that evidence defendant sold drugs twenty times during two months prior to arrest was extremely prejudicial and "smacks of prohibited propensity evidence"). The risk was too high that the jury could conclude that because defendant was involved in numerous prior drug sales, he was prone to criminal activity in general. We conclude that the probative value of testimony of six months of prior drug sales was outweighed by its prejudicial effect and the evidence should have been excluded.

*393 C.

[22] In addition, we do not find that the trial court's limiting instruction on the admission of the other-crimes evidence was sufficient to eliminate the prejudice to defendant. Although the trial court admitted the evidence as *res gestae*, and not other-crimes evidence, the court also gave a limiting instruction. The trial court instructed the jury on the limited use of the evidence both at the time the

evidence was admitted and in the final charge to the jury. Immediately following Gendron's testimony that she bought drugs from defendant for six months, the trial court instructed the jury on the following:

You've heard testimony from this witness that she had a drugs-for-money relationship with the defendant, Mr. Barden. Of course, it's for you to weigh her credibility and determine whether that was so. But the Court cautions you about this: Even if you were to find that it was so, you may not conclude that simply because of that relationship, that is, that Mr. Barden was dealing drugs, that he is, therefore, guilty of the offenses charged in the indictment.

This court has allowed this testimony for the reason that it will enable you to understand the circumstances under which all of this allegedly transpired. But again, you may not conclude, even if you find that Mr. Barden was dealing drugs, that he is, therefore, guilty of this offense. They are separate matters and are to be decided separately.

Later, at the close of trial, the court instructed the jury

Evidence has been presented that the defendant, Mr. Barden, had, previously to September 7, 2003, engaged in drug transactions with Andrea Gendron. Normally, evidence that a defendant was involved in other criminal activity is not admissible because it has the tendency to suggest that the defendant must, therefore, be guilty of the crimes charged in the present indictment.

Here, the court permitted testimony that the defendant was involved in prior drug transactions with Andrea Gendron so that you may understand the circumstances under which Andrea Gendron acted. Of course, it is for you, and not the court, to determine whether Andrea Gendron's testimony is credible in the first place. All that the Court has done is to allow you to hear the testimony, ****831** but it does so with the strict admonition that if you find that evidence to be credible, you may not consider it for any other purpose other than to explain Andrea

Gendron's conduct on September 7th, 2003. You may not, even if you find it to be credible, find the defendant guilty simply because you are convinced that he previously was involved in a drug transaction with Andrea Gendron.

[23] **[24]** Despite the trial court's diligence in giving limiting instructions to the jury both at the time of the admission of the ***394** other-crimes evidence and in the final charge, we find that the instructions were incomplete. "A carefully crafted limiting instruction must explain to the jury the limited purpose for which the other-crime evidence is being offered." *Hernandez, supra*, 170 N.J. at 131, 784 A.2d 1225. That is, the court must clearly "explain precisely the permitted and prohibited purposes of the evidence with sufficient reference to the factual context of the case to enable the jury to comprehend and appreciate the fine distinction to which it is required to adhere." *Cofield, supra*, 127 N.J. at 341, 605 A.2d 230. Although the court explained that the jury could not use the evidence that defendant committed prior drug deals to simply find him guilty for that reason, and that the evidence could be used to explain the circumstances under which Gendron acted, the charge failed to "focus the jury precisely on the permissible uses of the other-crime evidence in the context of the facts of this case and those issues genuinely in dispute." *Hernandez, supra*, 170 N.J. at 132, 784 A.2d 1225. That is, the jury charge should have informed the jury that the evidence was limited solely to establish defendant's motive and intent.

[25] **[26]** Because defense counsel did not object to the court's instruction, we consider the error under the plain error rule. R. 2:10-2. Plain error is reversible if it is "clearly capable of producing an unjust result." R. 2:10-2. The test is whether the possibility of injustice is sufficient "to raise a reasonable doubt as to whether the error led the jury to a result it otherwise might not have reached." *State v. Macon*, 57 N.J. 325, 336, 273 A.2d 1 (1971). However, an erroneous charge will rarely stand on the ground that the error was harmless. *State v. Weeks*, 107 N.J. 396, 410, 526 A.2d 1077 (1987).

[27] As we noted above, it was error to admit the evidence of other crimes. "The likelihood of

prejudice is acute when the proffered evidence is proof of a defendant's uncharged misconduct.” Stevens, supra, 115 N.J. at 302, 558 A.2d 833 (citations omitted). In combination with the error in the admission of the other-crimes evidence and the shortcomings in the jury charge, we *395 find a “reasonable doubt whether the error led the jury to a result it otherwise might not have reached.” Macon, supra, 57 N.J. at 336, 273 A.2d 1; see R. 2:10-2.

IV.

The State also argues that Gendron's testimony that defendant sold her drugs on numerous occasions prior to the day of the robbery was admissible as *res gestae*. Defendant not only argues against the admissibility of the evidence as *res gestae*, but urges that the Court should no longer apply the concept.

We noted in State v. Long, 173 N.J. 138, 153, 801 A.2d 221 (2007), that “the ancient *res gestae* concept has been used to admit a wide variety of evidence in both the criminal and civil context under circumstances that are now codified as hearsay exceptions in the *New Jersey Rules of Evidence*.” (emphasis added). Further, we also explained that “[d]espite the urging of **832 some to abandon the use of the principle denominated as *res gestae*, ... courts continue to cling to it.” Ibid. In a concurrence, Chief Justice Poritz pointed out that “although the *res gestae* principle, standing alone, has been discredited by scholars as a basis to admit otherwise inadmissible evidence, where, as here, its use is tethered to specific *Evidence Rules*, it remains a useful interpretive tool.” Id. at 166, 801 A.2d 221 (Poritz, C.J., concurring) (emphasis added). In his concurrence/dissent, Justice Stein urged that the Court eliminate the concept of *res gestae* because “the principles that historically have comprised the *res gestae* exception have been codified, but without use of the words ‘*res gestae*.’ ” Id. at 169, 801 A.2d 221 (Stein, J., concurring in part, dissenting in part). Justice Stein was of the view that

the *res gestae* concept has been superseded by four separate hearsay exceptions: present sense impressions, excited utterances, present

bodily conditions, and present mental states and emotions. Because those principles have been codified by specific exceptions, the Court would be better served by abandoning continued reference to the phrase *res gestae* and replacing it with the precise analysis contemplated by our *Rules of Evidence*.

[Id. at 170, 801 A.2d 221 (emphasis added).]

*396 We need not decide the debate whether *res gestae* should remain a viable concept in our jurisprudence. We are convinced that even if *res gestae* remains a viable theory, it should not have formed the basis for the admission of evidence that Gendron had purchased drugs from defendant over the past six months. That highly prejudicial evidence was simply not needed to establish defendant's motive and intent. See Kemp, supra, 195 N.J. at 162, 948 A.2d 636.

V.

The judgment of the Appellate Division is reversed and the matter is remanded for a new trial.

Justice ALBIN, concurring.

I fully concur with the majority's opinion, but add these few words. For the reasons I expressed in State v. Kemp, 195 N.J. 136, 157–63, 948 A.2d 636 (2008) (Albin, J., concurring), I believe that the time has come for this Court to abandon the discredited doctrine of *res gestae* as an independent basis for the admission of evidence. I look forward to the Court addressing whether *res gestae* has any continuing relevance in our evidence law when the issue is squarely before us.

Justice LONG joins in this opinion.

For reversal and remandment—Chief Justice RABNER and Justices LONG, LaVECCHIA, ALBIN, WALLACE, RIVER-SOTO and HOENS—7.

For concurrence—Justices LONG and ALBIN—2.

All Citations

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Negative Treatment

Negative Citing References (3)

The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by	1. <u>State v. Cowan</u> 2009 WL 196187 , 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		17 21 A.2d
Distinguished by	2. <u>State v. Nadzak</u> 2010 WL 3516776 , N.J.Super.A.D. CRIMINAL JUSTICE - Appeals. Testimony of a state expert related to an element the state had the burden to prove and thus was not an improper legal opinion regarding defendant's...	Sep. 03, 2010	Case		22 A.2d
Distinguished by	3. <u>State v. Hurt</u>  MOST NEGATIVE 2016 WL 937166 , N.J.Super.A.D. Defendant appeals from an August 8, 2013 conviction for aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1) after entering a guilty plea. We affirm. R.W. died after being stabbed on...	Mar. 14, 2016	Case		1 A.2d

Citing References (135)

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	1. State v. Rose   19 A.3d 985, 995+ , 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		1 4 19 A.2d
Examined by	2. State v. Ames  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		11 22 24 A.2d
Distinguished by 	3. State v. Hurt  2016 WL 937166, *2+ , N.J.Super.A.D. Defendant appeals from an August 8, 2013 conviction for aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1) after entering a guilty plea. We affirm. R.W. died after being stabbed on...	Mar. 14, 2016	Case		1 A.2d
Distinguished by 	4. 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		17 21 A.2d
Discussed by	5. State v. Garrison  155 A.3d 996, 1005+ , 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		5 9 18 A.2d
Discussed by	 6. State v. Gillispie  26 A.3d 397, 412+ , 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		1 4 9 A.2d
Discussed by	7. State v. Tedesco  2017 WL 876339, *7+ , N.J.Super.A.D. Defendant Giuseppe Tedesco appeals from the judgment of conviction entered after a jury found him guilty of first-degree murder, N.J.S.A. 2C:11-3(a), second-degree unlawful...	Mar. 06, 2017	Case		4 9 18 A.2d
Discussed by	8. State v. Khan  2017 WL 281008, *7+ , N.J.Super.A.D. Following a trial on a four-count Essex County indictment, a jury convicted defendant Khalid Kahn of first-degree murder, N.J.S.A. 2C:11-3(a) (count one); fourth-degree unlawful...	Jan. 23, 2017	Case		4 18 19 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	9. 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		4 9 18 A.2d
Discussed by	10. 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		11 18 24 A.2d
Discussed by	11. 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		4 9 18 A.2d
Discussed by	12. State v. Sheppard 97 A.3d 699, 714+ , N.J.Super.A.D. CRIMINAL JUSTICE - Assault and Battery. Admission of witness testimony that defendant made derogatory verbal references about Hispanic persons was reversible error.	Sep. 03, 2014	Case		11 19 24 A.2d
Discussed by	13. State v. E.R.  2014 WL 3905291, *4+ , N.J.Super.A.D. Defendant E.R. was charged under Passaic County Indictment No. 09-09-1077 with first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1) (count one); second-degree sexual...	Aug. 12, 2014	Case		1 A.2d
Discussed by	14. State v. Lindsey 2014 WL 2971236, *7+ , N.J.Super.A.D. Defendant Lloyd Lindsey appeals from denial of his petition for post-conviction relief (PCR) alleging ineffective assistance of counsel. The court did not conduct an evidentiary...	July 03, 2014	Case		9 10 A.2d
Discussed by	15. State v. Brown  2014 WL 1923375, *1+ , N.J.Super.A.D. Defendant Vanessa Brown awaits trial on charges of aggravated manslaughter, N.J.S.A. 2C:11-4, and vehicular homicide, N.J.S.A. 2C:11-5a. Based on the percentage of alcohol in her...	May 15, 2014	Case		4 18 A.2d
Discussed by	 16. State v. Willis  2013 WL 1163942, *5+ , N.J.Super.A.D. Defendant appeals from his sentence and convictions for third-degree criminal restraint, N.J.S.A. 2C:13-2(b)(2) (count one); second-degree sexual assault, N.J.S.A. 2C:14-2(c)(1)...	Mar. 22, 2013	Case		16 17 18 A.2d
Discussed by	17. State v. Foster  2012 WL 1912282, *2+ , 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		11 24 A.2d

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Discussed by	18. State v. McCoy  2011 WL 1466143, *7+ , 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		11 12 15 A.2d
Discussed by	19. State v. Moore  2011 WL 941509, *3+ , 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		1 A.2d
Discussed by	20. State v. Gandy  2011 WL 831935, *6+ , N.J.Super.A.D. Defendant Leon Gandy was convicted by a jury of conspiracy to distribute cocaine, N.J.S.A. 2C:5-2 and 2C:35-5b(1), for which he was sentenced to five years in prison. He was...	Mar. 11, 2011	Case		3 A.2d
Discussed by	21. State v. Foglia  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		15 A.2d
Discussed by	 22. State v. Gillispie  2009 WL 2496683, *1+ , 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		17 A.2d
Discussed by	23. State v. J.F.G.  2009 WL 2168681, *7+ , 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		16 17 A.2d
Discussed by	24. State v. R.F.  2009 WL 1347396, *5+ , N.J.Super.A.D. On February 1, 2006, a Bergen County Grand Jury indicted defendant, R.F., charging him with multiple counts of aggravated sexual assault against his daughter, A.G., born in May...	May 15, 2009	Case		11 22 24 A.2d
Discussed by	25. State v. LaConti  2008 WL 4820818, *8+ , N.J.Super.A.D. Pursuant to Passaic County Indictment No. 04-02-0115-I, defendant David M. LaConti, a sergeant in the Ringwood Police Department, was charged in four counts: official misconduct,...	Nov. 07, 2008	Case		14 16 A.2d
Discussed by	26. 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		3 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Distinguished by NEGATIVE	27. State v. Nadzak 2010 WL 3516776, *4+ , N.J.Super.A.D. CRIMINAL JUSTICE - Appeals. Testimony of a state expert related to an element the state had the burden to prove and thus was not an improper legal opinion regarding defendant's...	Sep. 03, 2010	Case		22 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		16 A.2d
Cited by	29. State v. Sterling 71 A.3d 786, 810 , N.J. CRIMINAL JUSTICE - Joinder and Severance. Burglaries and sexual assaults against two victims on two different dates were not subject to being tried together as signature crimes.	July 29, 2013	Case		9 A.2d
Cited by	30. STATE OF NEW JERSEY, Plaintiff-Respondent, v. DAMIEN JOHNSON, Defendant-Appellant. STATE OF NEW JERSEY, Plaintiff-Respondent, v. BRIAN JOHNSON, Defendant-Appellant. 2018 WL 480295, *8+ , N.J.Super.A.D. Defendants Brian Johnson and Damien Johnson were tried together and were convicted by a jury of the following offenses: murder, N.J.S.A. 2C:11-3(a) (2) and N.J.S.A. 2C:2-6; two...	Jan. 18, 2018	Case		—
Cited by	31. 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		4 18 19 A.2d
Cited by	32. 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		5 16 17 A.2d
Cited by	33. State v. Thigpen 2017 WL 3443100, *4+ , 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		13 14 A.2d
Cited by	34. State v. Goldberg 2017 WL 1788283, *7 , N.J.Super.A.D. Defendant appeals from his convictions for first-degree conspiracy to commit murder, N.J.S.A. 2C:11-3(a), and N.J.S.A. 2C:5-2, (count one); and first-degree attempted murder,...	May 05, 2017	Case		13 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	35. State v. Dupree  2017 WL 655512, *4+ , N.J.Super.A.D. A jury found defendant guilty of robbing Claire with a knife. The trial court sentenced defendant to twenty years in prison. He appeals, arguing: POINT I REPEATED AND PREJUDICIAL...	Feb. 17, 2017	Case		1 9 A.2d
Cited by	36. State v. Parish  2017 WL 431803, *3+ , N.J.Super.A.D. Defendant appeals from his convictions for fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(4) (Count Four); second-degree unlawful possession of a weapon, N.J.S.A....	Feb. 01, 2017	Case		1 3 A.2d
Cited by	37. State v. Feliciano 2016 WL 2745851, *8 , N.J.Super.A.D. Tried to a jury, defendant Jose Feliciano appeals from his convictions for first degree murder, N.J.S.A. 2C:11-3(a)(1) and (2) (count one); first degree felony murder, N.J.S.A....	May 12, 2016	Case		14 A.2d
Cited by	38. State v. Padilla 2016 WL 1368893, *4+ , 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		9 A.2d
Cited by	39. State v. P.P.D. 2015 WL 10569977, *7 , N.J.Super.A.D. Defendant P.P.D. appeals from the judgment of conviction and order for commitment entered after a jury found him guilty of sexually assaulting his niece over the course of five...	Apr. 01, 2016	Case		—
Cited by	40. State v. Hare  2016 WL 1229092, *9+ , N.J.Super.A.D. Defendant Abraham Hare appeals his conviction after a jury trial of a single count of third-degree terroristic threats, N.J.S.A. 2C:12-3(a). At sentencing the trial court imposed a...	Mar. 30, 2016	Case		9 16 A.2d
Cited by	41. State v. Rodriguez 2016 WL 731935, *4+ , N.J.Super.A.D. The Camden County grand jury returned Indictment No. 11-08-1761, charging defendant Tremayne Rodriguez with first-degree murder, N.J.S.A. 2C:11-3a(1) and (2); two counts of...	Feb. 25, 2016	Case		19 A.2d
Cited by	42. 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		14 A.2d
Cited by	43. State In Interest of Q.C. 2015 WL 5511687, *2+ , N.J.Super.A.D. Juvenile Q.C., now age 19, appeals from an adjudication of delinquency for conduct that, if committed by an adult, would constitute second-degree robbery, N.J.S.A. 2C:15-1(a). The...	Sep. 16, 2015	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	44. <u>State v. A.R.</u> 2015 WL 5446690, *5 , N.J.Super.A.D. Defendant A.R. appeals his sentence and convictions for second degree sexual assault, second degree endangering the welfare of a child, and offensive touching. After carefully...	Sep. 14, 2015	Case		13 A.2d
Cited by	45. <u>State v. Garrison</u> 2015 WL 5009222, *5+ , N.J.Super.A.D. Defendant, Carl J. Garrison, appeals his conviction for aggravated sexual assault, sexual assault, and endangering the welfare of a child. Since we conclude that the court's ruling...	Aug. 17, 2015	Case		9 A.2d
Cited by	46. <u>State v. Samero</u> 2015 WL 4630654, *3 , N.J.Super.A.D. A grand jury indicted defendant Marcel Samero for first-degree robbery, N.J.S.A. 2C:15-1(a)(1) (count one); second-degree conspiracy to commit unarmed robbery, N.J.S.A. 2C:5-2(a)...	Aug. 05, 2015	Case		26 A.2d
Cited by	47. <u>State v. Campo</u> 2015 WL 2259161, *7+ , N.J.Super.A.D. Following a conditional guilty plea, defendant appeals from the March 14, 2013 amended judgment of conviction finding him guilty of second-degree sexual assault, N.J.S.A. 2C:14-2b,...	May 15, 2015	Case		19 A.2d
Cited by	48. <u>State v. Laurance</u> 2014 WL 8481101, *10 , N.J.Super.A.D. Following a jury trial, defendant Lenroy Laurance was convicted of first-degree kidnapping, N.J.S.A. 2C:13-1(b)(1) (count one); first-degree felony murder during a kidnapping,...	Apr. 07, 2015	Case		14 A.2d
Cited by	49. <u>State v. Serrano</u> 2014 WL 7740295, *3 , N.J.Super.A.D. Tried by a jury, defendant Ariel Serrano was convicted of second-degree certain persons not to possess a firearm, N.J.S.A. 2C:39-7(b). On May 9, 2013, defendant was sentenced to...	Feb. 04, 2015	Case		1 9 A.2d
Cited by	50. <u>State v. Barry</u> 2014 WL 7723570, *4 , N.J.Super.A.D. On December 11, 2009, while alone in her family's home, defendant Keri J. Barry gave birth on a bathroom floor. Four days later, the police found the baby's body wrapped in towels...	Feb. 02, 2015	Case		14 A.2d
Cited by	51. <u>State v. Jones</u> 2014 WL 7074384, *1+ , N.J.Super.A.D. After pleading guilty, defendant appeals from his convictions for two counts of third-degree attempted burglary, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:18-2. The primary issue pertains to...	Dec. 16, 2014	Case		1 16 A.2d
Cited by	52. <u>State v. Limehouse</u> 2014 WL 6608350, *4+ , N.J.Super.A.D. Defendant appeals from his convictions for six counts of third-degree uttering counterfeit currency, N.J.S.A. 2C:21-1a(3); and third-degree theft by deception, N.J.S.A. 2C:20-4a....	Nov. 24, 2014	Case		1 16 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	53. State v. Roberts 2014 WL 3843153, *19 , 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		11 24 A.2d
Cited by	54. State v. Royal  2014 WL 3015453, *7 , 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		15 18 A.2d
Cited by	55. State v. Younger  2014 WL 1394163, *9 , N.J.Super.A.D. Tried to a jury, defendant Manfred J. Younger was convicted of murdering Tierra Pressley, attempting to murder Adrien Jackson, and other related crimes. He was sentenced to sixty...	Apr. 11, 2014	Case		10 13 15 A.2d
Cited by	56. State v. Little 2014 WL 243113, *8 , N.J.Super.A.D. Defendant Mark A. Little was tried before a jury and found guilty of murder and other offenses. He appeals from the judgment of conviction entered by the trial court on May 21,...	Jan. 22, 2014	Case		11 12 24 A.2d
Cited by	57. State v. Sepulveda 2013 WL 5777809, *3 , N.J.Super.A.D. Defendant Jessie Sepulveda appeals from the June 6, 2008 judgment of conviction for first-degree murder, N.J.S.A. 2C:11-3(a)(1), (2); first-degree felony murder, N.J.S.A....	Oct. 28, 2013	Case		22 25 A.2d
Cited by	58. State v. Manderville  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		4 5 18 A.2d
Cited by	59. State v. Haywood 2013 WL 4553438, *3 , N.J.Super.A.D. Defendant appeals his convictions and the sentences imposed for first-degree kidnapping, N.J.S.A. 2C:13-1b, and complicity, N.J.S.A. 2C:2-6 (Count One); first-degree robbery,...	Aug. 29, 2013	Case		25 A.2d
Cited by	60. State v. Harrity 2013 WL 4503337, *10 , N.J.Super.A.D. Tried to a jury for shooting and killing Alejandro Castro and Alejandro Soto, defendant Raheem Harrity was found guilty of two counts of aggravated manslaughter, one count of...	Aug. 26, 2013	Case		14 A.2d
Cited by	61. 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		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	62. State v. Jones 2013 WL 869603, *7 , N.J.Super.A.D. Defendant Donald R. Jones appeals from a judgment of conviction. As persuasive as the State's admissible evidence was, the State relied on testimony and insinuation suggesting...	Mar. 11, 2013	Case		—
Cited by	63. State v. Robertson 2013 WL 398934, *6 , N.J.Super.A.D. Following a bifurcated trial on charges of unlawful possession of a handgun, N.J.S.A. 2C:39–5b, and possession of a handgun being a person disqualified by prior conviction,...	Feb. 04, 2013	Case		11 24 A.2d
Cited by	64. State v. Moore 2013 WL 238169, *6 , N.J.Super.A.D. A Camden County Grand Jury returned a multi-count indictment charging defendant Earl T. Moore with various offenses against the victim, Dewey Marshall. Following a jury trial,...	Jan. 23, 2013	Case		14 A.2d
Cited by	65. State v. Anderson 2013 WL 141569, *5+ , 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		9 11 24 A.2d
Cited by	66. State v. Silvers 2012 WL 3021004, *3 , N.J.Super.A.D. Following a jury trial, defendant, Phillip S. Silvers, was convicted of third-degree theft by unlawful taking, N.J.S.A. 2C:20–3; and third-degree conspiracy with co-defendant...	July 25, 2012	Case		15 A.2d
Cited by	67. 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		17 A.2d
Cited by	68. State v. Willis 2012 WL 2603614, *5 , N.J.Super.A.D. On leave granted, the State appeals from the trial court's September 15, 2011 order that denied the State's pre-trial motion to admit at defendant Robby Willis's trial evidence of...	July 06, 2012	Case		14 A.2d
Cited by	69. 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		3 5 18 A.2d
Cited by	70. 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		3 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	71. State v. Santos 2012 WL 2051873, *3, 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		13 A.2d
Cited by	72. State v. Araiza-Nava-Avila 2012 WL 1231888, *5, N.J.Super.A.D. Defendant Jesus A. "Chaparro" Araiza-Nava-Avila appeals a judgment of conviction entered on October 9, 2009. After a jury trial, he was convicted of the first two counts of...	Apr. 13, 2012	Case		15 A.2d
Cited by	73. State v. Davis 2012 WL 360200, *5+, 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		18 19 A.2d
Cited by	74. State v. Peterson 2012 WL 86876, *5+, 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		5 A.2d
Cited by	75. 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		18 19 A.2d
Cited by	76. State v. McNeil 2011 WL 5008314, *5, N.J.Super.A.D. Defendant, Keshawn McNeil, appeals from his convictions on charges of first-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1, first-degree armed robbery,...	Oct. 21, 2011	Case		—
Cited by	77. State v. Carlucci 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	78. State v. Sterling 2011 WL 3557585, *23, N.J.Super.A.D. In this opinion, we dispose of two appeals by defendant, Bruce D. Sterling, which we now consolidate for disposition in this single opinion. In Indictment No. 05-10-1410, defendant...	Aug. 15, 2011	Case		9 A.2d
Cited by	79. Mecca v. Suarez 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 Ridgely. The...	July 28, 2011	Case		13 15 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	80. State v. Maloney  2011 WL 3180489, *3, N.J.Super.A.D. A Middlesex County Grand Jury charged defendant with second-degree conspiracy to commit first-degree robbery, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1 (count one); second-degree...	July 28, 2011	Case	   	26 A.2d
Cited by	81. State v. Rossano  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	   	16 17 A.2d
Cited by	82. State v. Castillo 2011 WL 2535271, *5, N.J.Super.A.D. Tried to a jury, defendant Juan Castillo was convicted of murder, N.J.S.A. 2C:11-3(a)(1), unlawful possession of a weapon, N.J.S.A. 2C:39-5(d), and possession of a weapon for an...	June 28, 2011	Case	   	11 24 A.2d
Cited by	83. New Jersey Div. of Youth and Family Services v. G.S. 2011 WL 2518770, *3+, N.J.Super.A.D. Defendant G.S. appeals from an order of the Family Part dismissing G.S. as a party-defendant and removing her name from the birth certificate of A.F., the child of her paramour,...	June 27, 2011	Case	   	25 A.2d
Cited by	 84. State v. Bozeman 2011 WL 2496218, *12, N.J.Super.A.D. This appeal reprises the issues that we left unresolved in our earlier opinion, State v. Bozeman, No. A-0565-06 (App.Div. September 13, 2010). Believing that a remand for an...	June 24, 2011	Case	   	12 A.2d
Cited by	85. State v. D.M. 2011 WL 2321226, *8, 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	   	12 A.2d
Cited by	86. State v. Derrick  2011 WL 2348734, *3, N.J.Super.A.D. A Middlesex County Grand Jury charged defendant Michael Derrick and co-defendant Ebonee Williams with second-degree robbery, N.J.S.A. 2C:15-1 (count one); third-degree theft...	May 24, 2011	Case	   	26 A.2d
Cited by	87. State v. Hassenbey  2011 WL 2320826, *3, N.J.Super.A.D. Following a jury trial, defendant Eman Hassenbey was convicted of third-degree possession of cocaine, N.J.S.A. 2C:35-10(a)(1); third-degree possession of heroin, N.J.S.A....	May 06, 2011	Case	   	22 25 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	88. <u>State v. Ceylan</u> 2011 WL 1641992, *6 , N.J.Super.A.D. CRIMINAL JUSTICE - Obstructing Justice. Evidence that defendant fled from the scene of an accident was admissible in defendant's trial for second-degree eluding.	May 03, 2011	Case		—
Cited by	89. <u>State v. Robinson</u> 2011 WL 1543355, *5 , N.J.Super.A.D. Defendant Kevin L. Robinson appeals from the judgment of conviction and sentence imposed following a jury trial at which he was found guilty of the first-degree murder of Keenan...	Apr. 26, 2011	Case		25 A.2d
Cited by	90. <u>State v. Dennis</u>  2011 WL 709721, *5 , 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		13 15 A.2d
Cited by	91. <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		13 A.2d
Cited by	92. <u>State v. Robinson</u>  2010 WL 4483421, *5 , N.J.Super.A.D. CRIMINAL JUSTICE - Homicide. Admission of evidence that disclosed defendant's prior jail sentence was harmless error.	Nov. 10, 2010	Case		26 A.2d
Cited by	93. <u>State v. Munroe</u>  2011 WL 6114, *5 , N.J.Super.A.D. In these back-to-back appeals consolidated for purposes of this opinion, co-defendants Milton Munroe and Roland Simeon appeal from their convictions, after jury trial, for...	Oct. 21, 2010	Case		26 A.2d
Cited by	94. <u>State v. Bozeman</u> 2010 WL 3720287, *16 , N.J.Super.A.D. CRIMINAL JUSTICE - Identification. Remand was required to determine whether defendant's due process rights were violated when the trial court allowed a witness to make an in-court...	Sep. 13, 2010	Case		—
Cited by	95. <u>State v. Woodward</u>  2010 WL 4120974, *5 , N.J.Super.A.D. In a five-count indictment, defendant Robert Woodward was charged with third-degree possession of a controlled dangerous substance (clonazepam) in violation of N.J.S.A....	Aug. 17, 2010	Case		13 A.2d
Cited by	96. <u>State v. Kenney</u> 2010 WL 3075642, *12+ , N.J.Super.A.D. CRIMINAL JUSTICE - Postconviction Relief. No Brady violation occurred when the state withheld impeachment evidence from the defense.	Aug. 04, 2010	Case		10 22 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	97. <u>State v. Allah</u>  2010 WL 4056898, *5 , N.J.Super.A.D. In August 2006, an Ocean County Grand Jury charged defendant with first-degree carjacking, N.J.S.A. 2C:15-2a (count one); first-degree robbery, N.J.S.A. 2C:15-1 (count two);...	Aug. 02, 2010	Case		26 A.2d
Cited by	98. <u>State v. M.O.</u> 2010 WL 4054265, *2+ , N.J.Super.A.D. A jury convicted defendant of two counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2a(2)(a); two counts of third-degree aggravated criminal sexual contact, N.J.S.A....	July 26, 2010	Case		22 A.2d
Cited by	99. <u>State v. Smith</u>  2010 WL 4028090, *12 , N.J.Super.A.D. Tried by a jury, defendant Nathaniel Smith was convicted of conspiracy to commit armed burglary/robbery, N.J.S.A. 2C:5-2 (count one); first-degree felony murder, N.J.S.A....	July 14, 2010	Case		26 A.2d
Cited by	100. <u>State v. Hudson</u> 2010 WL 4121941, *7 , N.J.Super.A.D. CRIMINAL JUSTICE - Assault and Battery. Sufficient evidence supported the defendant's conviction for third-degree criminal restraint.	May 21, 2010	Case		—
Cited by	101. <u>State v. Kinney</u>  2010 WL 1029497, *4+ , N.J.Super.A.D. CRIMINAL JUSTICE - Lesser Included Offenses. Trial court properly instructed the jury on the degree of aggravated assault to be considered during deliberation.	Mar. 19, 2010	Case		26 A.2d
Cited by	102. <u>State v. Boston</u>  2010 WL 86411, *10 , 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		14 A.2d
Cited by	103. <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		9 A.2d
Cited by	104. <u>In re Freeman</u> 2009 WL 5149960, *3 , N.J.Super.A.D. ESTATE PLANNING AND PROBATE - Claims. The son was not deprived of a property interest without due process of law when he ordered not to enter his mother's home.	Dec. 31, 2009	Case		—
Cited by	105. <u>State v. Van Wyk</u> 2009 WL 5125087, *4+ , 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		9 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	106. 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		16 A.2d
Cited by	 107. State v. Rose  2009 WL 3429689, *4 , N.J.Super.A.D. Defendant was convicted, after a trial, of being an accomplice to the murder and felony murder of Charles Mosley in 1997. In this appeal, we consider among other things whether...	Oct. 23, 2009	Case		—
Cited by	108. State v. Ickes  2009 WL 3171763, *3 , N.J.Super.A.D. On May 10, 2007, an Atlantic County Grand Jury charged defendant in a single count indictment with second-degree robbery, N.J.S.A. 2C:15-1. Tried to a jury, defendant was convicted...	Sep. 30, 2009	Case		26 A.2d
Cited by	109. State v. McMullen 2009 WL 2486458, *3 , 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		5 A.2d
Cited by	110. State v. Stevens 2009 WL 2168795, *9 , N.J.Super.A.D. Following a jury trial, defendant Antoine Stevens was convicted of third-degree possession of a controlled dangerous substance ("CDS"), namely heroin, N.J.S.A. 2C:35-10(a)(i)...	July 22, 2009	Case		—
Cited by	111. State v. Beacham 2009 WL 2146392, *18 , N.J.Super.A.D. Defendant Bruce Beacham appeals his conviction by a jury on charges of felony murder, armed robbery, and related offenses. He alleges that five distinct trial errors deprived him...	July 21, 2009	Case		—
Cited by	112. State v. Cibelli 2009 WL 1635250, *6+ , N.J.Super.A.D. Defendant Paul Cibelli, Jr., was convicted of first degree murder, N.J.S.A. 2C:11-3 (count one), third degree hindering apprehension or prosecution, N.J.S.A. 2C:29-3(b) (count...	June 12, 2009	Case		—
Cited by	113. State v. Wright  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		—
Cited by	114. State v. Brown 2009 WL 47394, *3 , N.J.Super.A.D. Defendant was indicted for second-degree burglary, in violation of N.J.S.A. 2C:18-2, and second-degree aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(1). A jury found him...	Jan. 09, 2009	Case		5 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	115. State v. J.I. 2008 WL 5245086, *4 , N.J.Super.A.D. Tried to a jury, defendant was convicted of one count of aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1), a crime of the first degree; one count of sexual assault, N.J.S.A....	Dec. 18, 2008	Case		—
Cited by	116. State v. Smith 2008 WL 5046859, *6+ , N.J.Super.A.D. Defendant Kevin D. Smith was convicted after a March 2001 jury trial of second-degree sexual assault, N.J.S.A. 2C:14-2(c)(1), and a related disorderly persons offense. He appeals,...	Dec. 01, 2008	Case		—
Mentioned by	117. State v. Johnson 2017 WL 2729878, *4 , N.J.Super.A.D. Defendant appeals from an August 4, 2015 order denying his petition for post-conviction relief (PCR). We affirm. We adduce the following facts from the evidence presented at trial....	June 26, 2017	Case		—
Mentioned by	118. 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		4 19 A.2d
Mentioned by	119. State v. Rosa 2014 WL 10186979, *11+ , N.J.Super.A.D. Defendant Kelvin Rosa appeals from his convictions, after a jury trial, for attempted murder and other crimes, all arising from his shooting of a police officer during a burglary....	Aug. 03, 2015	Case		9 A.2d
Mentioned by	120. State v. Mercado 2015 WL 263697, *4 , N.J.Super.A.D. Defendant appeals from his convictions for three counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14–2a(1) and –2a(2)(a); three counts of second-degree sexual assault,...	Jan. 22, 2015	Case		—
Mentioned by	121. 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		3 A.2d
Mentioned by	122. State v. Gatti 2014 WL 5460827, *2 , 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		13 A.2d
Mentioned by	123. State v. Dawson 2014 WL 3818685, *3 , 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		13 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	124. State v. T.M. 2014 WL 3015209, *6 , N.J.Super.A.D. Following multiple jury trials, defendant T.M. was convicted of third-degree criminal restraint, N.J.S.A. 2C:13-2; second-degree endangering the welfare of a child, N.J.S.A....	July 07, 2014	Case		—
Mentioned by	125. State v. M.P. 2014 WL 1225375, *6 , N.J.Super.A.D. A jury found defendant, M.P., guilty of eight crimes involving sexual abuse of his stepdaughter, A.A., and one weapons offense. The abusive conduct commenced in February 2004, when...	Mar. 26, 2014	Case		—
Mentioned by	126. State v. Burr 2013 WL 1942834, *6 , N.J.Super.A.D. Defendant Franklin Jack Burr II was charged in a two-count indictment with second-degree sexual assault, N.J.S.A. 2C:14-2(b) (count one); and second-degree endangering the welfare...	May 13, 2013	Case		5 18 A.2d
Mentioned by	127. State v. Scott 2012 WL 5199608, *7 , N.J.Super.A.D. Defendant Darnell Scott appeals from his conviction, following a jury trial, of two counts of first-degree carjacking, N.J.S.A. 2C:15-2; first-degree robbery, N.J.S.A. 2C:15-1;...	Oct. 23, 2012	Case		—
Mentioned by	128. State v. T.J.D. 2012 WL 4815145, *8 , N.J.Super.A.D. Defendant T.J.D. was tried before a jury and found guilty of various offenses, including sexual assault upon his two minor children, endangering the welfare of the children and...	Oct. 11, 2012	Case		—
Mentioned by	129. State v. Mitchell 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		17 A.2d
—	130. 1A N.J. Prac. Series R 2:10-2, 2:10-2. Notice of Trial Errors N.J. Prac. Series 1. This is a single rule applying to both criminal and civil and to judicial and administrative appeals, and replacing the more particularized provisions of the source rules with...	2017	Other Secondary Source	—	17 22 A.2d
—	131. 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	—	17 21 22 A.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	132. 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	—	11 22 24 A.2d
—	133. 40 N.J. Prac. Series s 4.13, Error in charges to the jury in civil and criminal cases N.J. Prac. Series Alleged errors in charges to the jury are reviewed de novo by appellate courts. The charge, however, must be read as a whole. Said another way, the appellate court will read the...	2017	Other Secondary Source	—	—
—	134. 40 N.J. Prac. Series s 7.27, Objections not made below; plain error N.J. Prac. Series Alleged errors in proceedings below are normally not reviewable on appeal unless appropriate objections were placed on the record. In such situations, the appellant has the burden...	2017	Other Secondary Source	—	22 25 A.2d
—	135. s 1125. Inclusionary and exclusionary rules Corpus Juris Secundum Criminal Procedure and Rights of the Accused A rule of evidence relating to other crime evidence may be either inclusionary or exclusionary. A court applying an inclusionary rule concerning other crime evidence, such as the...	2017	Other Secondary Source	—	1 A.2d