

 KeyCite Yellow Flag - Negative Treatment
Limitation of Holding Recognized by State v. Rice,
N.J.Super.A.D., April 16, 2012

206 N.J. 141

Supreme Court of New Jersey.

STATE of New Jersey, Plaintiff–Respondent,

v.

Zarik ROSE, Defendant–Appellant.

Argued Jan. 4, 2011.

|

Decided June 8, 2011.

Synopsis

Background: Defendant was convicted by a jury in the Superior Court of being an accomplice to purposeful murder and being an accomplice to felony murder. Defendant appealed. The Superior Court, Appellate Division, affirmed. Defendant appealed.

Holdings: The Supreme Court, LaVecchia, J., held that:

[1] evidence that defendant was incarcerated on an indictment charging him with the attempted murder of victim when the victim was killed was admissible other crimes evidence, and

[2] the trial court was required to rely on the Rules of Evidence, rather than the concept of res gestae, when making evidentiary rulings concerning the admission of evidence.

Affirmed as modified.

Rivera–Soto, J., filed an opinion concurring in part and dissenting in part in which Hoens, J., joined.

West Headnotes (17)

[1] Criminal Law

Reception and Admissibility of Evidence

110 Criminal Law

110XXIV Review

110XXIV(N) Discretion of Lower Court

110k1153 Reception and Admissibility of Evidence

110k1153.1 In general

A trial court's ruling on the admissibility of evidence is reviewed on appeal for abuse of discretion.

36 Cases that cite this headnote

[2] Criminal Law

Objections to evidence in general

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(1) Objections to evidence in general

If the party appealing did not make its objection to admission of evidence known to the trial court, the reviewing court will review for plain error, only reversing if the error is clearly capable of producing an unjust result. R. 2:10–2.

37 Cases that cite this headnote

[3] 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)

The underlying danger of admitting other-crime evidence is that the jury may convict the defendant because he is a bad person in general. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

8 Cases that cite this headnote

[4] **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)

The prosecution may not introduce evidence of other criminal acts of the accused unless the evidence is introduced for some purpose other than to suggest that because the defendant is a person of criminal character, it is more probable that he committed the crime for which he is on trial. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

2 Cases that cite this headnote

[5] **Criminal Law**

🔑 Relevancy

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

110k368.9 Relevancy

(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))

The rule of evidence 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).

39 Cases that cite this headnote

[6] **Criminal Law**

🔑 Showing bad character or criminal propensity in general

Criminal Law

🔑 Materiality

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

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

(Formerly 110k369.1)

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

110k368.10 Materiality

(Formerly 110k369.1)

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))

Evidence of uncharged misconduct would be inadmissible if offered solely to prove the defendant's criminal disposition, but if that misconduct evidence is material to a non-propensity purpose it may be admissible if its probative value is not outweighed by the risk of prejudice. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

27 Cases that cite this headnote

[7] **Criminal Law**

🔑 Relevancy

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

110k368.9 Relevancy

(Formerly 110k369.2(1))

To satisfy the first prong of the *Cofield* test regarding the admissibility of other crimes evidence—the relevancy prong—the evidence must have a tendency in reason to prove or disprove any fact of consequence to the determination of the action.

23 Cases that cite this headnote

[8] **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))

In order to minimize the inherent prejudice in the admission of other-crimes evidence, the courts require the trial court to sanitize the evidence when appropriate. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

8 Cases that cite this headnote

[9] **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

Limiting instructions must be provided to inform the jury of the purposes for which it may, and for which it may not, consider the evidence of defendant's uncharged misconduct, both when the evidence is first presented and again as part of the final jury charge. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

16 Cases that cite this headnote

[10] **Criminal Law**

🔑 Homicide, mayhem, and assault
with intent to kill

Criminal Law

🔑 Homicide, mayhem, and assault with intent to kill

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)6 Other Misconduct

Showing Motive

110k371.13 Homicide, mayhem, and assault with intent to kill

(Formerly 110k371(12))

110 Criminal Law

110XVII Evidence

110XVII(F) Other Misconduct by Accused

110XVII(F)7 Other Misconduct

Showing Intent

110k371.40 Homicide, mayhem, and assault with intent to kill

(Formerly 110k371(4))

Evidence that defendant was incarcerated on an indictment charging him with the attempted murder of victim when the victim was killed was admissible other crimes evidence, during prosecution for being an accomplice to purposeful murder; the evidence was relevant to establish motive and intent, and the evidence was not unfairly prejudicial. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 404(b).

5 Cases that cite this headnote

[11] **Criminal Law**

🔑 Res Gestae; Excited Utterances

110 Criminal Law

110XVII Evidence

110XVII(E) Res Gestae

110k362 Res Gestae; Excited Utterances

110k363 In general

“Res gestae” translates from Latin as “things done”, and from that translation springs its conceptualization both as an independent hearsay exception and as a shorthand reference to intrinsic

evidence of a singular transaction or event.

10 Cases that cite this headnote

[12] **Criminal Law**

🔑 Res Gestae; Excited Utterances

110 Criminal Law

110XVII Evidence

110XVII(E) Res Gestae

110k362 Res Gestae; Excited Utterances

110k363 In general

The theories behind res gestae as a hearsay exception were twofold; the first was that a witness should be allowed to tell his or her story in a natural way by reciting all that happened at the time of the narrated incident, including those details that give it life and color, and the second was that spontaneous statements, by their very nature, exhibit an enhanced degree of trustworthiness and should therefore be admissible.

1 Cases that cite this headnote

[13] **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)

Under the common law, evidence of a defendant's uncharged criminal conduct was not admissible to show criminal propensity.

12 Cases that cite this headnote

[14] **Criminal Law**

 Res Gestae; Excited Utterances110 Criminal Law110XVII Evidence110XVII(E) Res Gestae110k362 Res Gestae; Excited Utterances110k363 In general

The trial court was required to rely on the Rules of Evidence, rather than the concept of res gestae, when making evidentiary rulings concerning the admission of evidence. N.J.S.A. 2A:84A, App. A, Rules of Evid., N.J.R.E. 401–403, 404(b).

6 Cases that cite this headnote**[15]** Courts Dicta106 Courts106II Establishment, Organization, and Procedure106II(G) Rules of Decision106k88 Previous Decisions as Controlling or as Precedents106k92 Dicta

An expression of opinion on a point involved in a case, argued by counsel and deliberately mentioned by the court, although not essential to the disposition of the case becomes authoritative when it is expressly declared by the court as a guide for future conduct.

4 Cases that cite this headnote**[16]** Courts Dicta106 Courts106II Establishment, Organization, and Procedure106II(G) Rules of Decision106k88 Previous Decisions as Controlling or as Precedents106k92 Dicta

Matters in the opinion of a higher court which are not decisive of the primary issue presented but which are germane

to that issue are not dicta, but binding decisions of the court.

8 Cases that cite this headnote**[17]** Courts Decisions of Higher Court or Court of Last Resort106 Courts106II Establishment, Organization, and Procedure106II(G) Rules of Decision106k88 Previous Decisions as Controlling or as Precedents106k91 Decisions of Higher Court or Court of Last Resort106k91(.5) In general

The legal findings and determinations of a high court's considered analysis must be accorded conclusive weight by lower courts.

3 Cases that cite this headnoteAttorneys and Law Firms

****987** Susan Brody, Assistant Deputy Public Defender, argued the cause for appellant (Yvonne Smith Segar, Public Defender, attorney).

Frank Muroski, Deputy Attorney General, argued the cause for respondent (Paula T. Dow, Attorney General of New Jersey, attorney; Mr. Muroski, Robyn B. Mitchell, Deputy Attorney General, and Ashlea D. Thomas, Special Deputy Attorney General, of counsel and on the briefs).

Alison S. Perrone argued the cause for amicus curiae Association of Criminal Defense Lawyers of New Jersey.

Opinion

Justice LaVECCHIA delivered the opinion of the Court.

***145** Defendant Zarik Rose was convicted, as an accomplice, of the purposeful murder of Charles Mosley. The State's theory at trial was that

defendant arranged for the murder while in jail and about to go to trial on earlier charges that he had attempted to murder the victim. In this appeal, we address whether evidence of defendant's previous indictment and incarceration on the pending attempted murder charges was admissible in defendant's trial for murder.

The disputed evidence was introduced at trial through several sources, two of which deserve to be highlighted. Larry Graves testified that, while he and defendant were in jail together and Graves's release date was approaching, defendant solicited him to kill Mosley. In fact, Graves pled guilty to aggravated manslaughter for killing Mosley and, pursuant to his agreement with the State, testified against defendant. Salvatore Puglia, who also met defendant while the two were in jail, testified that defendant had mentioned having Mosley "whacked" or making sure he did not testify in connection with the pending attempted murder charge against defendant. The State's evidence about defendant's pending indictment for attempted murder of Mosley, addressed through the anticipated testimony of Puglia and Graves, was reviewed pretrial by the trial court and declared admissible. The court determined that Graves's testimony was admissible as *res gestae*, but circumspectly provided the jury with a limiting instruction about the use of the evidence. As for Puglia's testimony, the trial court analyzed it under the rubric of *New Jersey Rule of Evidence 404(b)*, found that it was not evidence of another crime but rather was evidence that involved this crime, and admitted the testimony after concluding that its probative value was not outweighed by its prejudicial effect. The court again provided a limiting instruction to channel the jury's use of that evidence. During the trial, defendant stipulated to the admission of a copy of his indictment on the attempted murder charges.

146** Defendant was convicted of purposeful murder and, on appeal, the Appellate Division affirmed. However, in specifically finding no error in the admission of the disputed evidence, the panel engaged in a *988** fundamentally different analysis based on *Evidence Rules 401* and *403*. We issued a limited grant of certification, *State v.*

Rose, 203 N.J. 96, 999 A.2d 465 (2010), to address only the admissibility of the evidence pertaining to defendant's prior indictment and incarceration on charges that he attempted to murder the victim, and now affirm the judgment of the Appellate Division. We conclude that the disputed evidence was admissible under a straightforward application of *Evidence Rule 404(b)*. The evidence went to non-propensity purposes, chiefly motive, but also plan and intent by defendant, and the trial court provided instructions that properly limited the jury's use of the evidence to those legitimate purposes.

That said, the various positions taken by counsel, the trial court, and the Appellate Division on how to analyze the disputed evidence relating to defendant's previous indictment on charges for the attempted murder of the victim, demonstrate that there exists confusion and uncertainty about use of the common law doctrine of *res gestae* and its status as a viable feature of New Jersey's evidence jurisprudence. Accordingly, we address in this appeal the continued invocation of *res gestae* as an explanation for the admission of evidence, and hold that the doctrine of *res gestae* no longer has vitality in light of the formal *Rules of Evidence*.

I.

To set the stage for our review of the evidential rulings in issue, we begin with a recitation of the facts involved in the criminal charges against defendant.

A.

In 1995, defendant was incarcerated on charges relating to the attempted murder of Charles Mosley, the murder victim in the ***147** present appeal. While in jail, defendant met Puglia,¹ and explained to him that he and Mosley had an altercation over \$1,500 that Mosley owed him. According to Puglia, defendant told him that during that altercation "one thing led to another" and that Mosley subsequently "pressed some serious charges" against defendant that defendant

felt were “overinflated.” Defendant told Puglia that he did not want Mosley to appear as a witness against him at trial and that “plan A was to pay [Mosley] off and plan B was to get him whacked.”

¹ The State's brief and the Appellate Division's opinion refer to him as Salvatore Puglio; however, defendant's brief refers to him as Salvatore Puglia and according to the transcript that is also the spelling Mr. Puglia provided at the pre-trial hearing. Accordingly, we use the spelling obtained from the transcript of the pre-trial hearing.

In the fall of 1997, while still in jail awaiting trial on the attempted murder charges, defendant became acquainted with Graves, a fellow inmate. According to Graves, defendant told him on several occasions that he needed Mosley killed because his trial was scheduled to start on December 1, and Mosley was to be the prosecution's key witness. When Graves informed defendant that he was soon to be released from jail, defendant propositioned him: if Graves would kill Mosley, defendant would give him \$2,000 to \$3,000 and a quantity of drugs.

Graves agreed, so defendant conveyed pertinent details about Mosley: defendant gave him Mosley's telephone number and address in Franklinville, New Jersey, and told him that Mosley sold automobiles from his home. They planned to have Graves express interest in a truck with an automatic lift, use that interest to gain entrance into an office located at the front of Mosley's house, and then kill Mosley. ****989** Defendant also warned Graves that Mosley kept guns in his house. They further agreed that after the deed was done, Graves would inform defendant whether he had “sold the car,” which was code for having killed Mosley.

When Graves was released from jail on November 19, 1997, he went to his step-mother's home in Glassboro, and from there, took ***148** a bus to Franklinville the next day. When he arrived at Mosley's house, he found no one home, and his attempts to contact Mosley by telephone were unsuccessful. That night, defendant placed a collect call to Graves and asked whether Graves had “sold the car,” to which Graves responded that he had not, but that he planned to return to Mosley's the

following day. Graves returned to Mosley's home the next day; again no one was home, but this time Graves managed to contact Mosley by phone. That night, defendant again called Graves and asked whether he had “sold the car.” When Graves responded in the negative, defendant sounded a “little bit ... worried”; he instructed Graves to return the following day.

Graves returned the next day for a third time and found Mosley at home. He told Mosley that he wanted to speak with him about a truck and was invited into Mosley's office. As the conversation progressed, Mosley seemingly grew suspicious of Graves. Mosley pointed to a cracked window, told Graves that someone had tried to break into his house, and that individual was now “in the cemetery.” Graves grew “uneasy” and “uncomfortable” and rose to leave, having changed his mind about carrying out the plan. As he walked towards the door, Graves “mentioned something about [defendant],” at which point Mosley “jumped up and grabbed a crowbar or a lug wrench” from the side of his desk and swung it at Graves. Graves managed to dodge the object, grab Mosley, and the two began to wrestle. Graves gained control of the object and used it to strike Mosley in the head. Graves then choked Mosley until he appeared to be dead. Graves took a “few hundred dollars” from Mosley's wallet and searched the house for weapons, but came up empty-handed. That night, Graves received another call from defendant, whom he told that he had “sold the car.”²

² Telephone records confirmed that collect calls were placed from the jail to Graves's step-mother's house on November 20, 21, and 22.

As a result of Mosley's death, the charges against defendant were dropped in December 1997, and he was released from jail. ***149** He went to Graves's house, thanked him, and told him that he would get the money to pay him soon, but he never actually paid Graves. Defendant also cautioned Graves not to tell anyone about what had happened.

Although police suspected that defendant was involved in Mosley's death, they were unable, initially, to connect him to the murder. The only forensic evidence that the police collected was

a fingerprint that did not produce any matches when entered into the Automated Fingerprint Identification System.

However, a few months later, an undercover sting operation led to Puglia's arrest for distribution of marijuana.³ The officers who interviewed Puglia believed that he would be able to help them connect defendant to Mosley's death. Puglia agreed to wear a "wire" to record ****990** his conversations with defendant⁴ and a consensual intercept authorization was obtained from the prosecutor's office. Detective Danielle Lorusso, acting undercover as Puglia's girlfriend, drove Puglia and defendant around. On February 8, 1998, when Puglia spoke with defendant about having someone who had set him up killed, defendant cryptically referenced his situation with Mosley a few times, including the following recorded exchange:

³ It is unclear whether defendant had cooperated with police in the sting operation that led to Puglia's arrest, whether police made Puglia believe that defendant had set him up, or whether Puglia himself independently believed that to be the case.

⁴ The benefit that Puglia received in exchange for his cooperation is uncertain.

[Puglia]: That pussy was talking s* *t last night man.

[Defendant]: Yo, I mean it won't even cost you that much to get him (indiscernible).

[Puglia]: To get him f* *ked up.

[Defendant]: Oh just, I mean I don't think you gonna, it's really not worth killing them, but I mean it, with me it was either, it was a life or death situation, it was either my life all that time behind bars ...

[Puglia]: What'd they offer you[?]

[Defendant]: Or his life. Twenty years man.

***150** [Puglia]: Oh twenty years?

[Defendant]: Yeah.

[Puglia]: Not twenty stip?

[Defendant]: No ten stip. Come on man what the, what the f* *k, you know, what, (indiscernible) gonna be and my daughter would have been nineteen years old when I got out. F* *k that.

[Puglia]: God damn.

[Defendant]: Ain't no f* *king way in hell, f* *k him, he, he got exactly what he deserves.

The following week, as Detective Lorusso was driving Puglia and defendant, she passed by Mosley's house and defendant gave Puglia a "thumbs up sign." A few days later she again drove them past the house and this time defendant "performed a digging motion like he was shoveling" and again gave a "thumbs up sign."

A warrant was issued for defendant's arrest on charges of conspiracy to commit assault.⁵ He was arrested on February 20, 1998 and informed of his *Miranda*⁶ rights, which he waived. Eventually, defendant gave a videotaped statement in which he discussed Mosley's murder, but denied any involvement. Defendant stated that shortly after he was released from jail a "friend" whom he met in jail stopped by his mother's house. The friend, who defendant claimed knew Mosley from prior drug transactions, told defendant that he had gone to Mosley's house and had robbed and killed Mosley. The friend said that he had choked Mosley and then searched the house for money and jewelry, taking over \$1,000. The friend thought that he was doing defendant a favor because of the attempted murder charges that defendant was facing. Defendant told his friend that he made "a big mistake" and "endangered" both of them by killing Mosley, but assured his friend that he would keep quiet.

⁵ The record is not clear whether the warrant was issued in relation to defendant's conversations with Puglia about the individual

who had allegedly set up Puglia or in relation to Mosley's murder.

⁶ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

*151 When defendant was asked who his “friend” was, he replied that his friend's nickname was “Zboo” and that his real name was Larry Brooks. It was soon discovered that defendant was mistaken and defendant confirmed that the friend's name was actually Larry Graves. Defendant stated that he did not know where **991 Graves lived, but that he had Graves's phone number and pager number at his mother's house. Defendant told the officers that he was willing to wear a wire and to talk to Graves in an effort to confirm his version of events. A consensual intercept authorization was obtained that night and defendant was driven to his mother's house so that he could get Graves's phone and pager numbers. Defendant was allowed to enter the house alone. He did not come out. Police searched the house to no avail; they discovered his body wire discarded in the backyard.

On February 28, 1998, an expert compared the fingerprint found at the scene of Mosley's murder to Graves's fingerprints and confirmed that it was a match for Graves's right thumb. Despite the match, Graves was not arrested until seven years later, on March 3, 2005. Police interviewed him twice; both were taped. During the first interview Graves denied killing Mosley. However, when confronted with the fact that his fingerprint was found at the murder scene and shown the videotaped statement that defendant had given implicating him in Mosley's murder, Graves admitted that he had killed Mosley and informed the police about defendant's involvement. Graves stated that he had gone to Mosley's house to make Mosley drop the charges against defendant and that he was not planning on killing Mosley. Graves eventually pled guilty to aggravated manslaughter in exchange for the recommendation of a sentence between twenty-five and thirty years of imprisonment, with an eighty-five percent period of parole ineligibility. As a condition of his plea, Graves had to testify against defendant, and his sentencing hearing was still pending at the time of defendant's trial.

On March 9, 2005, police learned that defendant had been arrested in Vineland on outstanding warrants. Defendant was *152 interviewed and denied knowing Graves, claiming that he did not remember providing a taped statement to police in 1998 implicating Graves in Mosley's murder.

B.

A Gloucester County grand jury indicted defendant on charges that he was an accomplice to purposeful murder, *N.J.S.A. 2C:11-3(a)(1)* and *2C:2-6*, and to felony murder, *N.J.S.A. 2C:11-3(a)(3)* and *2C:2-6*. A pretrial *Rule* 104 hearing was held on January 23, 24, and 25, 2007, in which defendant challenged the admissibility of: (1) his videotaped statement to police; (2) proposed testimony by Graves and Puglia of their discussions with defendant about Mosley while each was in jail; and (3) the surveillance audio tapes recorded when Puglia was wearing a wire. The motion court determined that: (1) defendant knowingly and intelligently waived his *Miranda* rights and that his videotaped statement was therefore admissible; (2) defendant's discussions with Graves and Puglia about having Mosley killed were admissible; and (3) some portions of the surveillance tapes were admissible.

At trial, defendant did not testify or call any witnesses on his behalf. His trial strategy, as he argued on appeal, was that he

had merely asked Graves to try to persuade Mosley to drop the charges against him; that Graves had intended to do nothing more, but had killed Mosley in self-defense when Mosley had attacked him with a tire iron; that any of defendant's statements to Puglia that suggested otherwise represented mere “talk,” and were not credible; and that Graves had falsely implicated defendant in order to get the benefit of a favorable plea bargain.

The jury convicted defendant of being an accomplice to purposeful murder and an ****992** accomplice to felony murder. At sentencing, the court merged defendant's felony murder conviction into his conviction for purposeful murder and granted the State's motion to sentence defendant to an extended term as a persistent offender under *N.J.S.A. 2C:44-3(a)*.⁷ The court sentenced him to forty-five ***153** years in prison with a thirty-five year period of parole ineligibility.

⁷ Defendant had forty-two prior arrests and eighty prior charges against him. He had seventeen prior municipal court convictions and nine prior Superior Court convictions that resulted in six state prison terms with two parole violations, three terms of probation, fifteen county jail terms, and three suspended county jail terms.

On appeal, defendant raised three arguments: (1) that, in general, all evidence relating to the fact that he was incarcerated on charges of the attempted murder of Mosley when Mosley was killed was improperly admitted; (2) that the jury charge should have included accomplice to aggravated manslaughter, a lesser-included offense of murder;⁸ and (3) that his motion for an acquittal on the felony murder charges was improperly denied because there was no rational basis for finding him guilty of felony murder. The Appellate Division rejected defendant's arguments, and affirmed his conviction and sentence.

⁸ Defendant also filed handwritten pro se supplemental briefs in support of this argument.

C.

Because the limited grant of certification in this appeal focuses on the evidential rulings, the details of the *Rule* 104 hearing require elucidation, as do the trial court's and the Appellate Division's analytic approaches to the disputed evidence.

At the *Rule* 104 hearing, defense counsel argued that allowing Graves and Puglia to testify

about their conversations would unduly prejudice defendant because it would require him to defend not only the current charges concerning the murder of Mosley, but also the earlier charge of attempted murder of Mosley because that was the reason that defendant was in jail and ostensibly had Mosley killed. Counsel also raised the applicability of *Rule* 404(b), arguing that it should require exclusion of the evidence.

The prosecutor argued in response as follows:

***154** The other issues with 404-B before the Court were the discussions, which Mr. Puglia begrudgingly testified to from the stand, that he had with Mr. Rose in jail about having the guy not show up either by paying him off by or having him whacked.

The prior Indictment that was marked, I would submit, goes to motive.

....

The other 404-B—I don't even know if it's 404-B but it's just a—it's just planning. There's Mr. Graves' testimony. There are jail records at some point, which would be proffered, to corroborate housing situations with he and—with Mr. Graves and Mr. Rose, as well as Mr. Rose and Mr. Puglia.

....

Mr. Puglia was brought in to give context to that and to discuss background, as far as he and Mr. Rose. How he knew him, et cetera. But also to discuss prior discussions that he had with Mr. Rose, although they were I guess the summer before #96.

So I would submit under either a motive analysis, planning and intent analysis and as I said in my case, the res [gestae] analysis, which I'm not real big ****993** on—I guess that's Latin. I don't know. But it basically talks about all these things come from the same cloth.

That you can't just take a piece out because it's part of the mosaic of the events that took place here and that's what this is. I mean, this whole

case is going to be a mosaic of people coming in and they're saying their bits and pieces as to what they know about this. And what this hearing this week was, was a couple of the pieces of the mosaic.

And to say that they aren't relevant or aren't pertinent under *Cofield*,^[9] I think is incorrect, as I stated in my Brief for the reasons I stated in my Brief. They are relevant. They are pertinent. They do explain issues such as motive. Whether it's believed or not is a jury issue.

⁹ State v. Cofield, 127 N.J. 328, 605 A.2d 230 (1992).

They do explain motives like intent. They do explain issues of planning. They do explain issues of how these witnesses know each other. And under *Cofield*, I think it satisfies all the prongs of *Cofield*, as was previously set forth in my Brief, which I'm not going to sit here and reread that to the Court.

But for 404-B, those were the items that I sought to admit and those were the reasons that they were sought to be admitted. And I think that they're properly presented to the Court and they're properly relevant and properly admissible.

The trial court placed an oral decision on the record, reasoning that the proposed testimony of

Graves, concerning the killing of Mr. Mosley and the reason therefore, does directly relate to the commission of the crime charged in the Indictment.

And I don't find 404 applies to that. That's—res [gestae], as Mr. Gangloff said, is a term that is used. I know when I was in law school, I thought we were told *155 that res [gestae], you shouldn't use that with regard to evidence. You should find a real rule that applies and that was kind of general language.

But it seems back in the case law and basically talks about, as I read it, as being part of the crime itself. It's so woven into that that it needs to be part of the evidence. That the 404-B

analysis doesn't really apply. And I find that with regard to Mr. Graves' testimony regarding what happened in the jail.

A different question arises, a slightly different question with regard to Mr. Puglia's testimony of the discussions in jail by the Defendant. Mr. Graves alleges he was solicited. Mr. Puglia wasn't solicited. There were merely conversations in the jail regarding this.

And I do find that a 404-B type of analysis would come into play with regard to that in a sense. Although it is evidence frankly not of another crime, which is one of the *Cofield* factors. Is the evidence of the other crime must be admissible as relevant to a material issue.

There really is evidence of this crime, evidence to show motive and intent and plan and so forth. So there are items under 404-B that clearly relate to this evidence, although it isn't a traditional 404-B type of evidence because it isn't evidence of a different crime. It's evidence of this crime.

So the—as I said, the 404-B analysis—type analysis applies but I don't find it's really 404-B material in any event. The question would be whether the evidence under 403, its probative value would be substantially outweighed **994 by the other factors. And I find that it would not ...

At trial, defendant stipulated to the admission of a copy of his prior indictment for attempted murder. Puglia and Graves testified in accordance with the court's ruling from the *Rule 104* hearing. Defense counsel did not object to the testimony by either Puglia or Graves. Nonetheless, the trial court repeatedly provided the jury with limiting instructions about its use of the evidence. When the jury first learned that defendant was incarcerated on charges of the attempted murder of Mosley when Mosley was killed, the trial court instructed the jury, in part, that

you may not use this evidence to decide that the Defendant has a tendency to commit crimes or that he is a bad person. That is, you may not decide that just because the Defendant ... had charges pending against him, or was incarcerated

in the County Jail, that he must be guilty of the present crime.

Admitted—I have admitted the evidence only to help you decide the specific question of his knowledge of what happened or his motive and/or intent to have Mr. Mosley killed and/or his formulation of a plan to have him killed.

You may not consider it for any other purpose and may not find the Defendant guilty simply because the State has offered evidence that he has committed other crimes, wrongs or acts.

***156** That charge was given again following Puglia's testimony and as part of the final jury charge. The trial court also provided a limiting instruction after Graves testified, informing the jurors that they

may not use this evidence to decide that the Defendant has a tendency to commit crimes or that he is a bad person. That is, you may not decide that just because he was in jail, he must be guilty of the present crime.

I have admitted the evidence only to provide you with the location of the discussions, to assist you in your understanding of the context and background of them. You may not consider it for any other purpose and may not find the Defendant guilty now simply because the State has offered evidence that he was incarcerated in the County Jail at any time.

That instruction also was repeated during the final jury charge.

In his appeal to the Appellate Division and to this Court, defendant has characterized his arguments at the *Rule* 104 hearing as constituting “generalized objections” to the introduction of any evidence during trial that related to the fact that he was incarcerated on an indictment charging him with the attempted murder of Mosley when Mosley was killed. The Appellate Division rejected that proposition, stating that “[c]ounsel was obligated to announce an objection when any offending material was offered during the trial.” Because defendant did not object to either Puglia's or Graves's testimony at trial, and stipulated to the introduction of a

copy of his indictment, the panel concluded that the plain error standard applied. *See R. 2:10–2*. In rejecting defendant's argument about the evidence's inadmissibility, the panel reasoned that defendant's failure to object deprived the trial court of the “opportunity to determine: whether the vehicle used to convey those facts was proper; whether the evidence should have been precluded by application of *N.J.R.E.* 403; or whether, despite its admissibility, the prejudicial impact of evidence of the prior indictment could have been lessened by an appropriate jury instruction.”

In pertinent part, the panel explained that

****995** [d]efendant has spent a good deal of energy in arguing against the application of *N.J.R.E.* 404(b) and the so-called *res gestae* doctrine as they may relate to evidence of the prior indictment. But, as we have observed, the evidence specifically noticed ***157** in the appeal brief was properly admitted without reference to either *N.J.R.E.* 404(b) or *res gestae*.

Neither the Pugli[a] testimony nor the stipulated prior indictment was offered to show that defendant had engaged in prior bad acts, as the judge properly held in his oral decision at the conclusion of the *N.J.R.E.* 104 hearing. This evidence, insofar as it revealed the existence of the prior indictment, was only offered to prove what was relevant—that defendant had been charged and that Mosley was a material witness against him, two facts that suggested defendant's motive in participating in Mosley's murder.

And, although the judge expressly relied on the *res gestae* doctrine to permit evidence of the prior indictment, we do not find that questionable rationale to have any bearing upon the issues presented on appeal. That is, we discern from the trial judge's ruling that he viewed evidence relating to the prior indictment as tending to show defendant's motive; such a ruling is fully supported by *N.J.R.E.* 401 and does not require reliance upon the *res gestae* doctrine, which may or may not lurk among the interstices of our rules of evidence.

Defendant petitioned for certification to this Court, reasserting the same issues raised before the Appellate Division; however, our grant of certification was “limited to the issue of whether evidence that defendant was previously indicted and incarcerated on charges that he attempted to murder the victim was admissible at defendant's trial pursuant to *N.J.R.E.* 404(b), *res gestae*, or some other legal doctrine.” *Rose, supra*, 203 N.J. at 96, 999 A.2d 465. Accordingly, we turn to address the admissibility of the disputed evidence.

II.

A.

[1] [2] A trial court's ruling on the admissibility of evidence is reviewed on appeal for abuse of discretion. *See Brenman v. Demello*, 191 N.J. 18, 31, 921 A.2d 1110 (2007). However, if the party appealing did not make its objection to admission known to the trial court, the reviewing court will review for plain error, only reversing if the error is “clearly capable of producing an unjust result.” *R.* 2:10–2.

When specifically reviewing the sensitive admissibility rulings made pursuant to the weighing process demanded by *Rule* 404(b), which deals with evidence of other crimes or bad acts, we have *158 further said that “[o]nly where there is a clear error of judgment should the trial court's conclusion with respect to that balancing test be disturbed.” *State v. Barden*, 195 N.J. 375, 391, 949 A.2d 820 (2008) (citation and internal quotation marks omitted). That deferential approach does not fit in cases where the trial court did not apply *Rule* 404(b) properly to the evidence at trial; in those circumstances, to assess whether admission of the evidence was appropriate, an appellate court may engage in its own “plenary review” to determine its admissibility. *Ibid.* (citation omitted); *see State v. Lykes*, 192 N.J. 519, 534, 933 A.2d 1274 (2007) (citing *State v. Reddish*, 181 N.J. 553, 609, 859 A.2d 1173 (2004), for proposition that appellate review is de novo when *Cofield* analysis is required but not performed).

Here, with respect to the admission of defendant's indictment, defendant interposed no objection. He stipulated to its **996 admission at trial. Nor did he object to Puglia's and Graves's testimony at trial. The Appellate Division did not accept defendant's “generalized objection” argument about that evidence. That said, under the standard for reviewing evidence of other crimes or acts, an appellate body is permitted to perform its own plenary review of the evidence to determine whether the evidence was properly admitted. *Barden, supra*, 195 N.J. at 391, 949 A.2d 820. Here, a straightforward application of *Rule* 404(b) leads to the conclusion that defendant suffered no error due to the admission of the disputed evidence about his former indictment (and incarceration pending trial) on charges that he had attempted the murder of the victim in his present trial.

B.

[3] [4] *Rule* 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.

[*N.J.R.E.* 404(b).]

*159 “The underlying danger of admitting other-crime evidence is that the jury may convict the defendant because he is a bad person in general.” *State v. Cofield*, 127 N.J. 328, 336, 605 A.2d 230 (1992) (citation and internal quotation marks omitted). Thus, “the prosecution may not introduce evidence of other criminal acts of the accused unless the evidence is introduced for some purpose other than to suggest that because the defendant is a person of criminal character, it is more probable that he committed the crime for which he is on trial.” *Id.* at 335–36, 605 A.2d 230 (quoting 1

McCormick on Evidence § 190, at 798 (Strong ed., 4th ed.1992) (footnotes omitted)).

[5] [6] Rule 404(b) “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.” Barden, supra, 195 N.J. at 388, 949 A.2d 820. Thus, evidence of uncharged misconduct would be inadmissible if offered solely to prove the defendant's criminal disposition, but if that misconduct evidence is material to a non-propensity purpose such as those listed in Rule 404(b), it may be admissible if its probative value is not outweighed by the risk of prejudice. See ibid.

The seminal case in New Jersey on the proper application of Rule 404(b) to evidence of uncharged misconduct is State v. Cofield.¹⁰ In Cofield, supra, the Court articulated the following four-part test to determine if evidence of uncharged misconduct is admissible at trial:

¹⁰ Cofield addressed application of Rule 404(b)'s predecessor, New Jersey Evidence Rule 55. Cofield, supra, 127 N.J. at 330, 605 A.2d 230. The two Rules contain substantially similar language, and the test articulated in Cofield still frames the analysis for the admissibility of evidence under Rule 404(b). See, e.g., State v. P.S., 202 N.J. 232, 254–55, 997 A.2d 163 (2010); Barden, supra, 195 N.J. at 388–89, 949 A.2d 820.

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

2. It must be similar in kind and reasonably close in time to the offense charged;

*160 3. The evidence of the other crime must be clear and convincing; and

**997 4. The probative value of the evidence must not be outweighed by its apparent prejudice.

[127 N.J. at 338, 605 A.2d 230 (quoting Abraham P. Ordovery, Balancing The

Presumptions Of Guilt And Innocence: Rules 404(b), 608(b), And 609(a), 38 Emory L.J. 135, 160 (1989) (footnote omitted)).]

[7] To satisfy the first prong of the Cofield test—the relevancy prong—the evidence must have “a tendency in reason to prove or disprove any fact of consequence to the determination of the action.” See N.J.R.E. 401 (defining “relevant evidence”). “The standard for the requisite connection is generous: if the evidence makes a desired inference more probable than it would be if the evidence were not admitted, then the required logical connection has been satisfied.” State v. Williams, 190 N.J. 114, 123, 919 A.2d 90 (2007). The evidence must also bear on a material issue in dispute, such as motive, intent, or an element of the charged offense, and so “the Court should consider whether the matter was projected by the defense as arguable before trial, raised by the defense at trial, or was one that the defense refused to concede.” State v. P.S., 202 N.J. 232, 256, 997 A.2d 163 (2010). The second prong of the Cofield test is understood as “limited to cases that replicate the circumstances in Cofield.” Williams, supra, 190 N.J. at 131, 919 A.2d 90. Temporality and similarity of conduct is not always applicable, and thus not required in all cases. See P.S., supra, 202 N.J. at 255 n. 4, 997 A.2d 163. Moving on to the third prong, the prosecution must establish that the act of uncharged misconduct which it seeks to introduce into evidence actually happened by “clear and convincing” evidence. Cofield, supra, 127 N.J. at 338, 605 A.2d 230.

[8] [9] The fourth prong of the Cofield test is typically considered the most difficult to overcome. Barden, supra, 195 N.J. at 389, 949 A.2d 820. “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.” Ibid. (citation and internal quotation marks omitted). *161 That standard is more exacting than Rule 403, which provides that relevant evidence is admissible unless its probative value is *substantially* outweighed by the risk of undue prejudice. Reddish, supra, 181 N.J. at 608, 859 A.2d 1173. And, “[i]f other less prejudicial evidence may be presented to establish the same

issue, the balance in the weighing process will tip in favor of exclusion.” *Barden, supra*, 195 N.J. at 392, 949 A.2d 820 (citation omitted); see *P.S., supra*, 202 N.J. at 256, 997 A.2d 163. Additionally, in order to minimize “the inherent prejudice in the admission of other-crimes evidence, our courts require the trial court to sanitize the evidence when appropriate.” *Barden, supra*, 195 N.J. at 390, 949 A.2d 820 (citation omitted). Finally, limiting instructions must be provided to inform the jury of the purposes for which it may, and for which it may not, consider the evidence of defendant's uncharged misconduct, both when the evidence is first presented and again as part of the final jury charge. *Ibid.* A suitable limiting instruction “explain[s] 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.” *Ibid.* (citation and internal quotation marks omitted).

With those principles as our guide, we turn to review the disputed evidence in defendant's trial.

****998 C.**

[10] Defendant reiterates the objections he raised at the *Rule 104* hearing to challenge the introduction of any evidence during the trial relating to his incarceration on an indictment that charged him with the attempted murder of Mosley when Mosley was killed. His focus is on three pieces of evidence: (1) Puglia's testimony that defendant spoke with him about having Mosley killed while the two men were in jail; (2) Graves's testimony that defendant solicited him and provided him instructions on killing Mosley while they were incarcerated together; and (3) defendant's indictment for the attempted murder of Mosley. The trial court ***162** did not consider *Rule 404(b)* applicable to that evidence. Instead, the court admitted the indictment through a stipulation, allowed Graves's testimony about his solicitation to be admitted as part of the *res gestae* of the charged crime, and declared Puglia's testimony about his conversation with defendant, in which defendant's expressed his plans for Mosley, to be evidence of

this crime and not “other” crime evidence, and therefore exempt from *Rule 404(b)*'s requirements for admission. Thus, we can and will conduct our own review of the evidence's admissibility under *Rule 404(b)*.¹¹ See *Barden, supra*, 195 N.J. at 391, 949 A.2d 820 (citation omitted). Under that analysis, one begins—as is always the case, whether under *Rules 401* and *403* or under *Rule 404(b)*—by addressing the relevance of the evidence.

¹¹ At the outset we note that this case is unlike other cases involving *Rule 404(b)*. In other cases, the prosecutor can charge the defendant with the acts of uncharged misconduct that the prosecutor wishes to have admitted into evidence but chooses not to, perhaps for strategic reasons. Here, because of Mosley's murder, the indictment charging defendant with attempted murder had to be dismissed because Mosley was the key witness in that case.

Cofield's initial prong requires an examination of the “other” crime or act evidence for relevance. Here the fact that defendant was indicted for the attempted murder of Mosley was relevant to material issues in dispute at trial, namely defendant's motive for having Mosley killed, his intent that Graves kill Mosley, and the plan that he formulated with Graves on how to kill Mosley. The fact that defendant was in jail because he had attempted to kill Mosley was not introduced into evidence by the State to show that defendant was a criminal capable of killing someone and thus should be convicted on that basis. Rather, the State relied on the fact that defendant was in jail for the attempted murder of Mosley, when Mosley was killed, to highlight the fact that defendant had a motive, the requisite intent, and a plan to have Mosley killed—all proper non-propensity purposes under *Rule 404(b)*.

Although the trial court did not explicitly consider all of the challenged evidence under *Rule 404(b)*, the court did recognize ***163** and state on the record that the evidence in issue was relevant to defendant's “motive and intent and plan.” Indeed, as part of defendant's strategy, he argued at trial that he

had merely asked Graves to try to persuade Mosley to drop the charges against him; that Graves had intended to do nothing more, but had killed Mosley in self-defense when Mosley had attacked him with a tire iron; that any of defendant's statements to Puglia that suggested otherwise represented mere "talk," and were not credible; and that Graves had falsely implicated defendant in order to get the benefit of a favorable plea bargain.

****999** Thus, defendant's intent that Graves actually kill Mosley and not just "try to persuade [him] to drop the charges" was a disputed material issue. Also in dispute was whether defendant had formulated a plan with Graves about how to kill Mosley, which contradicted defendant's contention that "Graves had intended to do nothing more [than persuade Mosley to drop the charges], but [then] had killed Mosley in self-defense." Likewise, although defendant did not expressly place the issue in dispute, his motive was material, and vitally so, because it was the string that tied the State's entire case together. Without knowing that defendant was in prison on charges that he attempted to murder Mosley at the time that Mosley was killed, the jury would have been left without a crucial piece of evidence: why defendant wanted Mosley killed. Thus, the first prong of the *Cofield* test plainly was satisfied in this case.

The second prong of the *Cofield* test, addressing the similarity and temporality of the evidence, is not found in Rule 404(b), and is not universally required. See *P.S., supra*, 202 N.J. at 255 n. 4, 997 A.2d 163 (citing *Williams, supra*, 190 N.J. at 131, 919 A.2d 90). It is inapplicable here. Turning to the next requirement, prong three of the *Cofield* analysis requires that the evidence of uncharged acts of misconduct be proven by clear and convincing evidence. See *State v. Hernandez*, 170 N.J. 106, 119–21, 127, 784 A.2d 1225 (2001).

Although here there was no hearing to hold the prosecutor to that burden of proof, the surrounding circumstances adequately support that the third prong of *Cofield* was satisfied. Defendant had been indicted on the attempted murder charge and was in jail awaiting a trial that was scheduled to start in a matter *164 of weeks when Mosley was killed. The criminal justice system may not be infallible, but nevertheless those facts provide sufficient support for finding that the clear and convincing standard of proof was met in regard to the pending charges against defendant for previously attempting to kill Mosley. Indeed, because the key witness in respect of those charges—Mosley—was murdered, it would be perverse to allow defendant to benefit from Mosley's murder by foiling the State's use of the evidence based on this prong of the *Cofield* analysis.

Finally, the fourth prong of *Cofield* requires a balancing of the probative value of the evidence as compared to its prejudicial effect, and necessarily implicates an examination into whether less inflammatory sources of evidence that are equally probative are available. *Barden, supra*, 195 N.J. at 392, 949 A.2d 820. Evidence that defendant was incarcerated for the attempted murder of Mosley was the most prejudicial piece of evidence against him. But, it was prejudicial in the way that all highly probative evidence is prejudicial: because it tends to prove a material issue in dispute. The determinative question is whether the evidence was *unfairly* prejudicial, that is whether it created a significant likelihood that the jury would convict defendant on the basis of the uncharged misconduct because he was a bad person, and not on the basis of the actual evidence adduced against him. We conclude that the evidence admitted here was not overly prejudicial. It was carefully presented so as not to suggest to the jury that defendant had a propensity to commit bad acts and should be convicted on that basis. Rather, it was admitted for the proper purpose of explaining why defendant committed this particular crime, something that would not have been possible without admitting evidence that defendant was awaiting trial on charges that he had attempted to murder Mosley.

****1000** Thus, despite the potential prejudice of admitting evidence that defendant was incarcerated

on charges that he attempted to kill Mosley, it was also the most probative piece of evidence in the case. Forcing the prosecution to ignore such a key piece of *165 evidence would have left the jury with more questions than answers. Without that knowledge, the jurors would have been left with a huge gap in understanding the evidence at the center of the case; they would have known that defendant wanted Mosley killed but would have had no idea why that was the case. At a very basic level the evidence was classic motive evidence. A wide range of motive evidence is generally permitted, and even where prejudicial, its admission has been allowed in recognition that it may have “extremely high probative value.” *State v. Long*, 173 N.J. 138, 164–65, 801 A.2d 221 (2002); see *State v. Rogers*, 19 N.J. 218, 228, 116 A.2d 37 (1955) (discussing usefulness and wide admissibility of motive evidence). Parsed more finely, the three pieces of evidence—the indictment, Puglia's testimony, and Graves's testimony—properly went to defendant's motive, as well as to defendant's intent and plan, and the probative value of the evidence was not outweighed by its prejudice.

As for whether less prejudicial means of conveying the relevant information were available, one could argue that it was questionable whether all three pieces of evidence needed to be admitted when they were in some ways cumulative to each other. In particular, Puglia's testimony is weak in this respect because it concerned general discussions and not solicitations to kill Mosley or formulation of a concrete plan to effectuate Mosley's murder, as was the case concerning defendant's discussions with Graves. However, it did provide independent evidence that went to defendant's plan or intent to murder Mosley while he was in jail awaiting trial on the attempted murder charges where Mosley would be the chief witness against him. In these circumstances, we are not convinced that Puglia's testimony should have been excluded on this basis, particularly in view of the extensive and repetitive limiting instructions provided.

Although the trial court did not analyze all of the evidence in issue under *Rule 404(b)*, it did provide appropriate jury instructions to limit the prejudice suffered by defendant as if all the evidence had been

scrutinized through *Rule 404(b)*'s filter. Limiting *166 instructions were given when the jury first learned that defendant was incarcerated on charges that he had attempted to murder Mosley, after Puglia's testimony, after Graves's testimony, and again during the final jury charge. One instruction informed the jury:

[Y]ou may not use this evidence to decide that the Defendant has a tendency to commit crimes or that he is a bad person. That is, you may not decide that just because the Defendant ... had charges pending against him, or was incarcerated in the County Jail, that he must be guilty of the present crime.

Admitted—I have admitted the evidence only to help you decide the specific question of his knowledge of what happened or his motive and/or intent to have Mr. Mosley killed and/or his formulation of a plan to have him killed.

You may not consider it for any other purpose and may not find the Defendant guilty simply because the State has offered evidence that he has committed other crimes, wrongs or acts.

That limiting instruction properly informed the jury about the distinction between the permitted and prohibited uses of the evidence in sufficient reference to the specific facts of this case. The trial court also instructed the jury that it could not **1001 rely on the fact that defendant was incarcerated at the time Mosley was killed as evidence that he “has a tendency to commit crimes or that he is a bad person. That is, you may not decide that just because he was in jail, he must be guilty of the present crime.” That piece of evidence, the trial court cautioned the jury, was only admitted

to provide you with the location of the discussions, to assist you in your understanding of the context and background of them. You may not consider it for any other purpose and may not find the Defendant guilty now simply because the State has offered evidence that he was

incarcerated in the County
Jail at any time.

And, to the extent that it could be argued that the fact that defendant was in jail at the time should have been sanitized, that fact was necessary to explain why defendant could not kill Mosley himself and solicited Graves to do it and also highlighted defendant's overarching motivation, which was to get out of jail.

In sum, our independent analysis leads to the conclusion that the evidence in issue would have been admissible under Rule 404(b). Although a proper and thorough Rule 404(b) analysis should have been conducted in respect of all of the evidence related to defendant's indictment and incarceration on charges for *167 the attempted murder of Mosley, we hold that defendant suffered no error, let alone reversible error, as a result of the admission of the evidence. In that respect, we affirm as modified, the judgment of the Appellate Division.

III.

The various positions taken by counsel, the trial court, and the Appellate Division, as to how to analyze the disputed misconduct evidence, demonstrate that there exists confusion and uncertainty about the use of the common law doctrine of res gestae, and its very status as a viable feature of New Jersey's evidence jurisprudence. Its insinuation into this case's evidential issues led the analysis to stray from the preferred examination for the admission and use of misconduct evidence required by Rule 404(b). One must ask what value there is in condoning continued reliance on a common law doctrine whose continued use is asserted to be redundant at best and confusing at worst.

The doctrine of res gestae has been controversial, to say the least, and not just of late. Critics of the doctrine have long noted that evidential rulings explained on the basis of res gestae tend to be result-oriented and conclusory, leading to imprecise and discordant admissibility determinations. An incantation that evidence is “res gestae” is

said to lack, fundamentally, the analytic rigor, precision, and uniformity that evidential rulings were intended to have under the codified *Rules of Evidence*. In order to give those arguments proper consideration, it is useful to review some background, much of which has been covered at various times in the past when res gestae's continued use was questioned.¹²

¹² Justice Stein called for re-examination of res gestae's use in *State v. Long*, 173 N.J. 138, 166–71, 801 A.2d 221 (2002) (Stein, J., concurring in part, dissenting in part). From time to time since, there have been separate opinions urging the Court to consider abandoning the doctrine. See, e.g., *State v. Kemp*, 195 N.J. 136, 157–63, 948 A.2d 636 (2008) (Albin, J., concurring).

*168 IV.

[11] Res gestae translates from Latin as “things done,” and from that translation springs its conceptualization both as an independent hearsay exception and as a **1002 shorthand reference to intrinsic evidence of a singular transaction or event. See *Black's Law Dictionary* 1423 (9th ed.2009). The term has been traced to 1637, but did not become commonly used until the 1800s. See 6 *Wigmore on Evidence* § 1767, at 254 & n. 1, 255 (Chadbourn rev.1976).¹³ It has since evolved into a term of art that embodies the two aforementioned distinct concepts.

¹³ New Jersey courts have used res gestae as an evidentiary doctrine since 1819. See *Ogden v. Gibbons*, 5 N.J.L. 612, 631–32 (Sup.Ct.1819) (admitting hearsay evidence as res gestae of charged trespass because evidence was necessary to establish motive); *Den v. Vancleve*, 5 N.J.L. 695, 758 (Sup.Ct.1819) (explaining res gestae as exception to rule against hearsay).

A.

The first concept relates to its historical pedigree as a hearsay exception. In the nineteenth century

“the theory of hearsay was not well developed, and the various exceptions to the hearsay rule were not clearly defined. In this context, the phrase *res gestae* served as a convenient vehicle for escape from the hearsay rule....” 2 *McCormick on Evidence* § 268, at 245 (Broun ed., 6th ed.2006). At that time there were no codified evidence rules, and *res gestae* played an important role in the development of evidence law and, in particular, to the demarcation of the modern exceptions to the hearsay rule. See *B & K Rentals & Sales Co. v. Universal Leaf Tobacco Co.*, 324 Md. 147, 596 A.2d 640, 644 (1991) (“[T]he term [*res gestae*] came into usage at a time when the theory of hearsay was not well developed and the various exceptions not clearly defined.”).

[12] Thus, *res gestae* was conceived of as an exception to the hearsay rule that allowed for the admission of statements that were made at the time that the principal act in issue occurred. 2 *McCormick on Evidence, supra*, § 268, at 245–46. Over time that *169 conception of *res gestae* expanded to allow for the introduction of statements that accompanied any act relevant to the case in issue. *Id.* at 246. The theories behind *res gestae* as a hearsay exception were twofold. The first was that a witness should be allowed “to tell his or her story in a natural way by reciting all that happened at the time of the narrated incident, including those details that give it life and color.” *Ibid.* The second was that spontaneous statements, by their very nature, exhibit an enhanced degree of trustworthiness and should therefore be admissible. *Ibid.*

The first comprehensive discussion of *res gestae* in New Jersey reflects those purposes to the doctrine. In *Hunter v. State*, 40 N.J.L. 495, 534–45 (E. & A.1878), the Court of Errors and Appeals held that the admission of hearsay evidence that expressed a present sense impression was admissible as *res gestae*, further explaining as follows:

The *res gestae* may therefore be defined as those circumstances which are the undesigned incidents of a particular litigated act, which are admissible when illustrative of such act. These incidents may be separated from the act by a lapse of time more or less appreciable. They may consist of speeches of any one concerned, whether

participant or bystander; they may comprise things left undone as well as things done. Their sole distinguishing feature is that they should be the necessary incidents of the litigated act; necessary, in this sense, that they are part of the immediate preparations for, or emanations of such act, and are not produced by the calculated policy of the actors.

****1003** [*Id.* at 538–39 (quotation marks omitted).]

New Jersey courts validating the admission of evidence under the doctrine of *res gestae* generally looked to whether the evidence was so closely related to the matter at hand that it was indispensable to fair adjudication. As indicated by this Court's often-quoted rationale, truth was the justifying principle for the admission of *res gestae* evidence:

[T]he admissibility of the proofs as *res gestae* has as its justifying principle that truth, like the Master's robe, is of one piece, without seam, woven from the top throughout, that each fact has its inseparable attributes and its kindred facts materially affecting its character, and that the reproduction of a scene with its multiple incidents, each created naturally and without artificiality and not too distant in point of time, will by very quality and texture tend to disclose the truth.

[*Robertson v. Hackensack Trust Co.*, 1 N.J. 304, 312, 63 A.2d 515 (1949).]

Relying on the search for truth as an animating principle for expansion, *res gestae* embraced both hearsay statements and *170 other acts, which included both bad acts that are separate from the charged crime and bad acts that are components of the charged crime.¹⁴ Focusing on the hearsay use, the doctrine became an exception to the general prohibition of hearsay evidence, rendering admissible out-of-court statements connected to an act because they were necessary in order to understand the events and had an inherent guarantee of trustworthiness. See, e.g., *Robertson, supra*, 1 N.J. at 312, 63 A.2d 515; *Hunter, supra*, 40 N.J.L. at 538–39. To be *res gestae*, the statements

had to be “so connected with an act” as to constitute a part of the act. See *Hunter, supra*, 40 N.J.L. at 537. Further, the statements had to be “incidental to” and “inherently [a] part of ‘a particular litigated act.’ ” *State v. Branch*, 182 N.J. 338, 358, 865 A.2d 673 (2005) (quoting *Robertson, supra*, 1 N.J. at 313, 63 A.2d 515). “The declaration and the act must make up one transaction.” *Hunter, supra*, 40 N.J.L. at 537. The *Hunter* Court reasoned that

14 Res gestae also has been cited as the explanation for admitting relevant evidence. See, e.g., *State v. Deegan*, 133 N.J.L. 263, 44 A.2d 104 (E. & A.1945) (permitting photographs of decedent and family to be admitted as res gestae); *State v. Weiner*, 101 N.J.L. 46, 49, 127 A. 582 (Sup.Ct.1925) (admitting as res gestae evidence of skid marks at accident scene); *State v. Hill*, 65 N.J.L. 626, 632, 47 A. 814 (E. & A.1900) (holding that coat's presence in room at time of murder would be admissible as res gestae).

[t]he theory justifying [res gestae] is that, when such declarations are thus coupled with a provable act, they receive confirmation from it; but if they stand alone, without such support, they depend altogether for their credence on the veracity of the utterer, and thus conditioned, they are pure hearsay, and inadmissible.

[*Ibid.*]

Despite initially requiring that a statement be strictly contemporaneous with the action, see *Hayes v. Jersey City, Hoboken & Paterson St. Ry. Co.*, 73 N.J.L. 639, 641–42, 64 A. 119 (E. & A.1906), that requirement was loosened to permit courts to evaluate whether circumstances beyond the temporal proximity indicated the veracity of the statement. See *State v. Simmons*, 52 N.J. 538, 542, 247 A.2d 313 (1968).

As res gestae, statements were admitted that expressed the declarant's state of mind, present bodily condition, and present *171 sense impression, as well as statements characterized as excited utterances. **1004 See, e.g., *Rainess v. Grant Finishing Co.*, 133 N.J.L. 611, 611, 45 A.2d 678 (E. & A.1946) (admitting statement of intent as res gestae); *State v. Doro*, 103 N.J.L. 88,

94, 134 A. 611 (E. & A.1926) (admitting excited utterance as res gestae); *Schlemmer v. State*, 51 N.J.L. 23, 29, 15 A. 836 (Sup.Ct.1888) (admitting statement expressing declarant's state of mind as res gestae); *Donnelly v. State*, 26 N.J.L. 601, 612 (E. & A.1857) (admitting as res gestae statement regarding cause of injury made immediately after injury). Those uses of res gestae as a hearsay exception are now recognized as the predecessors to the codified hearsay exceptions in the *Rules of Evidence*. See *State v. Schumann*, 111 N.J. 470, 479, 545 A.2d 168 (1988) (“[T]he ‘res gestae’ exception may be viewed as a shorthand reference to the principles contained in ... [the] exceptions to the Rule excluding hearsay evidence [.]”). Hearsay statements once admitted under the generic term res gestae are recognized as being addressed through specific, codified exceptions to the hearsay rule, namely: (1) present sense impressions, see N.J.R.E. 803(c)(1); excited utterances, see N.J.R.E. 803(c)(2); and statements of then-existing mental, emotional, or physical conditions, see N.J.R.E. 803(c)(3). See 2 *McCormick on Evidence, supra*, § 268, at 245–46; see also *Branch, supra*, 182 N.J. at 357–58, 865 A.2d 673 (“Long before the excited utterance took on a separate identity under our modern rules of evidence, it was grouped along with several hearsay rule exceptions (verbal act, present sense impression, and statement of then existing mental, emotional, or physical condition) under the umbrella of res gestae.”).

B.

[13] The second concept historically embodied in the term res gestae is its use as an independent evidentiary doctrine to admit evidence of other acts. Under the common law, evidence of a defendant's uncharged criminal conduct was not admissible to show criminal propensity. *172 *State v. Hendrick*, 70 N.J.L. 41, 45–46, 56 A. 247 (Sup.Ct.1903). However, res gestae was an exception that was used to admit evidence of other bad acts offered for a non-propensity purpose. *Id.* at 46, 56 A. 247. Evidence of this nature admissible as res gestae can be divided into two categories: (1) bad acts that are intrinsic to the charged crime and (2) separate crimes.

In New Jersey, *res gestae* has been used to admit evidence of other acts if the other act “constitute[s] part[] of the transaction ... without the knowledge of which the main facts might not properly be understood.” *Riley v. Weigand*, 18 N.J. Super. 66, 73, 86 A.2d 698 (App.Div.1952). Second, *res gestae* has been invoked to admit evidence of separate crimes if the evidence was not offered to show propensity. *State v. Sinnott*, 24 N.J. 408, 413–14, 132 A.2d 298 (1957); see, e.g., *State v. Overton*, 85 N.J.L. 287, 291, 88 A. 689 (E. & A.1913) (admitting separate crime evidence under *res gestae* to show motive). Prior to the promulgation of the *Rules of Evidence*, *res gestae* allowed the admission of evidence of separate acts to prove motive or intent. See, e.g., *Sinnott*, *supra*, 24 N.J. at 413–14, 132 A.2d 298; *Overton*, *supra*, 85 N.J.L. at 291, 88 A. 689. When codified, the *Rules of Evidence* incorporated those common law applications of *res gestae* in the rule specifically addressing bad acts evidence. *Rule 404(b)* admits evidence of other crimes or bad acts for non-propensity purposes. The examples of non-propensity purposes listed in *Rule 404(b)* are drawn from *res gestae* jurisprudence, and incorporate the holdings of cases such as *Sinnott*, *supra*, 24 N.J. at 413–14, 132 A.2d 298, and *Overton*, *supra*, 85 N.J.L. at 291, 88 A. 689.

****1005 C.**

A host of courts and commentators have criticized *res gestae* as being outdated and unhelpful.¹⁵ John Henry Wigmore's evidence treatise provides a representative statement:

¹⁵ See *Long*, *supra*, 173 N.J. at 166, 801 A.2d 221 (Poritz, C.J., concurring) (noting that *res gestae*, “standing alone, has been discredited by scholars as a basis to admit otherwise inadmissible evidence”).

***173** The phrase *res gestae* has long been not only entirely useless, but even positively harmful. It is useless, because every rule of evidence to which it has ever been applied exists as part of some other well-established principle and can be explained in the terms of that principle. It

is harmful, because by its ambiguity it invites the confusion of one rule with another and thus creates uncertainty as to the limitations of both. It ought therefore wholly to be repudiated as a vicious element in our legal phraseology. No rule of evidence can be created or applied by the mere muttering of a shibboleth.

[6 *Wigmore on Evidence*, *supra*, § 1767, at 255.] And, such criticism is by no means a recent phenomenon:

The marvelous capacity of a Latin phrase to serve as a substitute for reasoning, and the confusion of thought inevitably accompanying the use of inaccurate terminology, are nowhere better illustrated than in the decisions dealing with the admissibility of evidence as “*res gestae*.” It is probable that this troublesome expression owes its existence and persistence in our law of evidence to an inclination of judges and lawyers to avoid the toilsome exertion of exact analysis and precise thinking.

[Edmund M. Morgan, *A Suggested Classification of Utterances Admissible as Res Gestae*, 31 *Yale L.J.* 229, 229 (1922).]

As one of the earliest critics of *res gestae* noted, “judges, text-writers, and students have found themselves sadly embarrassed by the growing and intolerable vagueness of the expression.” 6 *Wigmore on Evidence*, *supra*, § 1767, at 255 (quoting James B. Thayer, *Bedingfield's Case—Declarations as a Part of the Res Gestae*, 15 *Am. L.Rev.* 1, 5–10 (1881)).

Because specific hearsay exceptions that would have previously fallen under the umbrella of *res gestae* have been codified, many courts have concluded that *res gestae* no longer serves a useful purpose as a free-standing exception to the hearsay rule. See, e.g., *Horton v. State*, 764 P.2d 674, 677 (Wyo.1988) (stating that because *res gestae* hearsay exceptions had been codified in *W.R.E.* 803, *res gestae* should be eliminated); *Miller v. Keating*, 754 F.2d 507, 509 n. 1 (3d Cir.1985) (“Before adoption of the Federal Rules of Evidence, courts applied ‘*res gestae*’ with much confusion to hearsay statements of various sorts.”); see also *infra* note 17. That view

has been strongly encouraged by accepted mavens of evidence law development: “[t]here are words enough to describe the rules of evidence. Even if there were no accepted name for one or another doctrine, any name would be preferable to an

*174 empty phrase [res gestae] so encouraging to looseness of thinking and uncertainty of decision.” 6 *Wigmore on Evidence*, *supra*, § 1767, at 255; see also 2 *McCormick on Evidence*, *supra*, § 268, at 246 (“The ancient phrase [res gestae] ... played a role in the evolution of evidence law and the expansion of the admission of contemporaneously made hearsay statements. [But now, largely it] appears to be a historical relic to be jettisoned from modern hearsay analysis....”).

**1006 With respect to its hearsay use, res gestae appears unnecessary as an independent doctrine for the admission of hearsay evidence. Certainly our prior case law has suggested that the codified rules were drafted to reflect the permitted uses of common law res gestae evidence. See, e.g., *Branch*, *supra*, 182 N.J. at 357–62, 865 A.2d 673 (discussing evolution of res gestae into codified hearsay exceptions); *Schumann*, *supra*, 111 N.J. at 479, 545 A.2d 168 (noting incorporation of res gestae into evidence rules); *Cestero v. Ferrara*, 57 N.J. 497, 503, 273 A.2d 761 (1971) (stating that “[o]ur Rules of Evidence have undertaken to codify this broader res gestae principle”).

Moreover, the notion that res gestae is no longer a viable independent hearsay exception is consistent with the comments of the Supreme Court Committee charged with modification of the *Rules of Evidence* in 1991 and the Court's holdings regarding the comprehensiveness of the *Rules of Evidence* on hearsay and its exceptions. Simply put, the hearsay exceptions provide a comprehensive and cohesive scheme for the permissible introduction of hearsay in our courts. When adopting our codified *Rules of Evidence*, New Jersey specifically declined to adopt a residual hearsay exception, as was adopted in the rules governing practice in the federal courts. See *Fed.R.Evid.* 807 (previously *Fed.R.Evid.* 803(24));¹⁶ Biunno, Weissbard & Zegas, *Current N.J. Rules of Evidence*, 1991 Supreme Court Committee Comment on *N.J.R.E.* 803(c)(24) [Not

*175 Adopted] (2011). In affirmance of that rejection of any residual hearsay exception, hearsay statements that do not conform to the exceptions specifically enumerated in the *Rules of Evidence* are not admissible. See *State v. Brown*, 170 N.J. 138, 152–53, 784 A.2d 1244 (2001).

¹⁶ *Fed.R.Evid.* 807 provides a residual hearsay exception for statements with “equivalent circumstantial guarantees of trustworthiness.”

There appears to be no logical reason to treat res gestae hearsay evidence differently except out of some misguided fear that “something” might be excluded. Yet, even in the debate over the hearsay statements in *Long*, *supra*, the evidence was entirely tethered to hearsay exceptions that permitted its admission. 173 N.J. at 153–54, 801 A.2d 221. In sum, continued use of the moniker of res gestae adds nothing more than an interpretative descriptor that risks clouding an evidence-rule analysis or, worse, avoiding its required rigor through invocation of a result-infused term. The evidence rules that govern exceptions to the hearsay rule comprise a fully integrated doctrine and should be given the fulsome and comprehensive effect that they were intended to have. Moreover, our own case law reflects that the codified *Rules* incorporated the previous common law exceptions loosely categorized as res gestae hearsay. It is high time that the consistency that was required in *Brown*, in respect of requiring the admission of hearsay evidence only through codified hearsay exceptions, be applied to hearsay evidence of all forms, including that which has heretofore been described as res gestae.¹⁷

¹⁷ Sister courts overwhelmingly have agreed, expressing no hesitation when finding that res gestae is no longer a valid exception to the hearsay rule. See, e.g., *Stephens v. Miller*, 13 F.3d 998, 1003 (7th Cir.1994) (en banc) (“[T]he use of the term *res gestae*, for purposes of federal law, is essentially obsolete.”); *Keating*, *supra*, 754 F.2d at 509 (same proposition); *State v. Dennis*, 181 Ill.2d 87, 229 Ill.Dec. 552, 692 N.E.2d 325, 331 (1998) (“As a basis for the admissibility of hearsay evidence, Illinois has abandoned the concept of *res gestae* as amorphous, having been applied

indiscriminately and inhibiting any reasonable analysis.”); *State v. Gunby*, 282 Kan. 39, 144 P.3d 647, 663 (2006) (“The concept of *res gestae* is dead as an independent basis for admissibility of evidence in Kansas.”); *State v. Hafford*, 410 A.2d 219, 220–21 (Me.1980) (expressing “disapproval of the use of the term *res gestae*” and noting that the drafters of the *Rules of Evidence* avoided the term “in order to expunge that phrase from [] Maine law of evidence”); *Bynote v. Nat'l Super Mkts., Inc.*, 891 S.W.2d 117, 121 (Mo.1995) (en banc) (“[W]e will no longer recognize the phrase ‘*res gestae*’ as carrying sufficient meaning to support either the admission of or an objection to proffered testimony.”); *State v. Hansen*, 296 Mont. 282, 989 P.2d 338, 354 (1999) (“The better practice is to abandon the use of the phrase [*res gestae*] altogether and to, instead, use the specific rule of evidence or statute that applies to the particular factual situation presented.”); *State v. Flores*, 147 N.M. 542, 226 P.3d 641, 652–53 (2010) (noting that *res gestae* “create[s] more problems than it resolves,” and “is a completely unnecessary term in the evidence context”); *Horton, supra*, 764 P.2d at 677 (calling for elimination of *res gestae* as rationale for admitting hearsay statements).

****1007 *176** The more confounding use of *res gestae* arises in its complication and derailing of the analysis of misconduct evidence called for under *Rule 404(b)*, a problem this case so well demonstrates in respect of the treatment of Graves's and Puglia's testimony.

V.

A.

As noted, the common law's *res gestae* notion of “things done” or “inseparable crimes,” developed into the enlarged doctrine through which was admitted evidence of uncharged misconduct when it was impossible to prove the crime charged without revealing the uncharged misconduct, and also when the uncharged misconduct evidence explained the circumstances surrounding the charged crime. *See, e.g., State v. Martini*, 131 N.J. 176, 240–42, 619 A.2d

1208 (1993) (holding that *Rule 404(b)*'s predecessor, *Rule 55*, did not apply to uncharged acts that, as *res gestae*, are components of offense for which defendant is being tried); *Riley, supra*, 18 N.J. Super. at 73, 86 A.2d 698 (stating that *res gestae* allows admission of evidence of other acts if other act is part of transaction “without the knowledge of which the main facts might not properly be understood”). Although the vast majority of the criticism heaped on *res gestae* has been directed at its existence as an exception to the rule against hearsay, scholars and commentators have explicitly called for the complete abolition of the term, ***177** while retaining the concept of “intrinsic evidence” that it embodies for use in connection with analyses under *Rule 404(b)*.

The term “*res gestae*” should be once and for all abandoned as useless and confusing. Let it be said that such acts are receivable as “necessary parts of the proof of an entire deed,” or as “inseparable elements of the deed,” or as “concomitant parts of the criminal act,” or anything else that carries its own reasoning and definition with it; but let legal discussion sedulously avoid this much-abused and wholly unmanageable Latin phrase.

[1A *Wigmore on Evidence* § 218, at 1888 (Tillers rev.1983).]

How to identify what is and is not intrinsic evidence has become its own debate.

Specifically, in New Jersey, the notion of “intrinsic evidence” lies in the cross hairs of the intersection of *Evidence Rules 401*, *402*, and *403*, on the one hand, and *Rule 404(b)*, on the other. Under *Rules 401* and *402*, relevant evidence is admissible; however, *Rule 403* provides that “relevant evidence [admissible under *Rule 402*] may be excluded if its probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury or (b) undue delay, waste of time, or needless presentation of cumulative ****1008** evidence.” A different approach pertains under *Rule 404(b)*, which 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.

[*N.J.R.E.* 404(b) (emphasis added).]

However, evidence that is intrinsic to the charged crime is exempt from the strictures of *Rule* 404(b) even if it constitutes evidence of uncharged misconduct that would normally fall under *Rule* 404(b) because it is not “evidence of other crimes, wrongs, or acts.” See 22 Charles Alan Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5239, at 445 (1978) (“One of the key words in determining the scope of *Rule* 404(b) is ‘other’; only crimes, wrongs, or acts ‘other’ than those at issue under the pleadings are made inadmissible under the general rule.”).

Thus, evidence that is intrinsic to a charged crime need only satisfy the evidence rules relating to relevancy, most importantly *178 the *Rule* 403 balancing test. Thus, characterization of evidence as “intrinsic” significantly affects the calculus because the principle animating *Rule* 403 is that relevant evidence is admissible unless its probative value is substantially outweighed by a negative feature of the evidence, whereas *Rule* 404(b) operates from the premise that evidence of other bad acts is inadmissible unless proffered for a proper purpose. It is therefore more likely that evidence of uncharged misconduct will be admitted into evidence if it is considered intrinsic to the charged crime and subject only to *Rule* 403 than if it is not considered intrinsic evidence and subject to both *Rule* 404(b) and *Rule* 403.

The difficulty lies in determining what evidence is intrinsic. Like its ancestor, the common law doctrine of *res gestae*, there also has been criticism leveled at the concept of intrinsic evidence. See Stephen A. Saltzburg, Michael M. Martin & Daniel J. Capra, *Federal Rules of Evidence Manual* § 404.02 (9th ed.2010). Some courts have done away with it, preferring to analyze the admissibility of all uncharged misconduct solely under *Rule* 404(b). See, e.g., *United States v. Bowie*, 232 F.3d

923, 926–29 (D.C.Cir.2000); *State v. Fetelee*, 117 Hawai‘i 53, 175 P.3d 709, 737 (2008). Alternatively, a replacement test of “inextricably intertwined evidence”¹⁸ has developed for use in connection with 404(b) analyses, although it suffers from criticism similar to that applied to the test for intrinsic evidence:

¹⁸ See Edward J. Imwinkelried, *The Second Coming of Res Gestae: A Procedural Approach to Untangling the “Inextricably Intertwined” Theory for Admitting Evidence of an Accused’s Uncharged Misconduct*, 59 Cath. U.L.Rev. 719 (2010).

The inherent difficulty in the application of *Rule* 404(b) is that some conduct of the defendant that is not explicitly referred to in the charging document may nonetheless stand in such a relation to the crime charged that it cannot be considered wholly independent. Courts have referred to this uncharged criminal activity as “inextricably intertwined” with the crime charged because it is not totally separate from the crime charged. The range of evidence that is inextricably intertwined with the crime charged is as varied as the fact patterns of specific cases.

[Jennifer Y. Schuster, *Special Topics in the Law of Evidence: Uncharged Misconduct* **1009 Under *Rule* 404(b): The Admissibility of Inextricably Intertwined Evidence, 42 U. Miami L.Rev. 947, 950 (1988) (citations omitted).]

*179 Courts thus have different formulations for determining whether evidence is intrinsic to the charged crime, some referring to it as “inextricably intertwined” evidence, others as “intricately related,” and others as “intimately related.” See *Bowie*, *supra*, 232 F.3d at 928 n. 1 (explaining different formulations). There appears to be no single definitive test for determining whether evidence is intrinsic to the charged crime or even how broad that category of evidence should be; instead courts have applied a case-by-case approach. See Schuster, *supra*, 42 U. Miami L.Rev. at 951 (“Courts have not defined the scope of inextricably intertwined evidence, however, and no guidelines for determining the limits of this class of evidence exist.”).¹⁹

¹⁹ A recent iteration of the inextricably intertwined test appears in *State v. Nelson*, in which the Supreme Court of Iowa reaffirmed the doctrine as a “narrow exception to the general rule against admitting evidence of other crimes” and held that its use may only be allowed “to complete the story of what happened when the other crimes, wrongs, or acts evidence is so closely related in time and place and so intimately connected to the crime charged that it forms a continuous transaction.” 791 N.W.2d 414, 423 (Iowa 2010). Such evidence may be used to complete the story only “when a court cannot sever this evidence from the narrative of the charged crime without leaving the narrative unintelligible, incomprehensible, confusing, or misleading.” *Ibid.*

B.

In readdressing the other bad acts categories of res gestae evidence, we use this opportunity to direct trial courts to make the *Rules of Evidence* the touchstone for the analysis of all such evidence. Whenever the admissibility of uncharged bad act evidence is implicated, a *Rule 404(b)* analysis must be undertaken. The threshold determination under *Rule 404(b)* is whether the evidence relates to “other crimes,” and thus is subject to continued analysis under *Rule 404(b)*, or whether it is evidence intrinsic to the charged crime, and thus need only satisfy the evidence rules relating to relevancy, most importantly *Rule 403*.

Although *Rule 404(b)* is often described as one of exclusion, it focuses on a distinct, worrisome category of evidence that, if *180 presented, is only admissible for limited purposes, and the jury must be informed both as to how the evidence may, and may not, be used. The *Rule* provides an analytical framework through which all potential “other crimes, wrongs, or acts” evidence should be sifted. Hence *Rule 404(b)* shall be the default starting point for analysis of uncharged bad acts that in the past had been also known as res gestae.

To aid courts and litigants in making the threshold determination of whether the evidence relates to

“other crimes” or is intrinsic to the charged crime, we look to the Third Circuit's statement of the test in *United States v. Green*, 617 F.3d 233 (3d Cir.2010). *Green* provides a workable, narrow description of what makes uncharged acts intrinsic evidence of the charged crime, and therefore not subject to *Rule 404(b)*'s directed purpose requirements. As the Court of Appeals explained,

we ... reserve the “intrinsic” label for two narrow categories of evidence. First, evidence is intrinsic if it “directly proves” the charged offense. This gives effect to *Rule 404(b)*'s applicability only to evidence of “other crimes, wrongs, or acts.” If uncharged misconduct directly proves the charged offense, it is not evidence of some “other” crime. Second, “uncharged acts performed contemporaneously **1010 with the charged crime may be termed intrinsic if they facilitate the commission of the charged crime.” But all else must be analyzed under *Rule 404(b)*.

As a practical matter, it is unlikely that our holding will exclude much, if any, evidence that is currently admissible as background or “completes the story” evidence under the inextricably intertwined test. We reiterate that the purpose of *Rule 404(b)* is “simply to keep from the jury evidence that the defendant is prone to commit crimes or is otherwise a bad person, implying that the jury needn't worry overmuch about the strength of the government's evidence.” “No other use of prior crimes or other bad acts if forbidden by the rule,” and one proper use of such evidence “is the need to avoid confusing the jury.”

[*Id.* at 248–49 (emphasis in original) (internal citations omitted)].

The *Green* court's prediction about the impact of its tight delineation of intrinsic evidence is plainly tied to its expectation that a “no confusion” use of *Rule 404(b)* other-crime evidence will provide a better channeled use of such evidence before the jury. *Green* explains that principle through its citation to two cases as examples, *United States v. Taylor*, 522 F.3d 731 (7th Cir.2008), and *United States v. Simmons*, 679 F.2d 1042 (3d Cir.1982), noting that *Simmons, supra*, 679 F.2d at 1050, has

long recognized “that *181 other crimes evidence may be admissible if offered for *any* non-propensity purpose, [including] the need ‘to provide necessary background information’ about the relationships among the players as a proper purpose.” *Green, supra*, 617 F.3d at 249. Thus, the *Green* court added, in a concluding emphasis, that

most, if not all, other crimes evidence currently admitted outside the framework of *Rule 404(b)* as “background” evidence will remain admissible under the approach we adopt today. The only difference is that the proponent will have to provide notice of his intention to use the evidence, and identify the specific, non-propensity purpose for which he seeks to introduce it (*i.e.*, allowing the jury to hear the full story of the crime).

[*Ibid.*]

See also *id.* at 249 n. 15 (adding that even when admissible as having clarifying “background” value, *Fed.R.Evid. 403* balancing is required).

Green's tight description of intrinsic evidence narrows the field of uncharged misconduct that is excluded from 404(b)'s channeled analysis. The addition of a notice requirement for all 404(b) evidence, which has not been required to date, see *State v. Nance*, 148 N.J. 376, 386–87, 689 A.2d 1351 (1997) (omitting notice from listed obligations for *Rule's* operation), but which we now endorse and will require prospectively, will encourage an orderly discussion and analysis of such evidence that will require parties and trial courts to engage in the rigorous and thoughtful analysis of the proper use of such testimony, and thus deter off-the-cuff conclusory explanations to which *res gestae* claims, and rulings, are prone.

There is no need to regard our *Evidence Rule 404(b)* as containing an exhaustive list of the non-propensity purposes permitted of other crime evidence. Just as was recognized in *Green*, there is no reason that our courts cannot allow, under our *Rule 404(b)*, evidence to be admitted for a similar “necessary background” or, as otherwise stated, “the need to avoid confusing the jury,” non-propensity purpose. See *Green, supra*, 617 F.3d at 249. As the Third Circuit has recognized for the

comparable *Federal Rule of Evidence*, and as Judge Posner persuasively discussed in **1011 *182 *Taylor, supra*, 522 F.3d at 734–36, we need not apply the listed exceptions in 404(b) as if they were exhaustive.

[14] In sum, New Jersey's *Evidence Rules* provide the structure by which evidential rulings should be analyzed and explained by trial courts, informed by the paradigm set forth herein. With this opinion, we disapprove of the further use of *res gestae* to support evidential rulings. Fundamentally, invocations of *res gestae* as the basis for the admission of evidence do lack the analytic rigor, precision, and uniformity that evidential rulings were intended to have under the codified *Evidence Rules*.²⁰ Therefore, with this appeal, we end the practice of invoking “*res gestae*” as an explanation for the admission of evidence, in circumvention of the application of the formal *Rules of Evidence*. We do this as an aid for courts and for litigants because it will promote uniformity and predictability in the consideration of evidence. We hold that the *New Jersey Rules of Evidence* must govern the analysis, and support the admission of evidence that heretofore has been referred to as *res gestae*.

²⁰

Although some common law evidentiary exceptions were stated to have survived the adoption of the *New Jersey Rules of Evidence*, our decisions have recognized that the benefit from having codified rules was the capacity to “place both the bench and the bar on notice of the fundamental framework for the admission of evidence during a trial.” See, e.g., *State v. Byrd*, 198 N.J. 319, 345, 967 A.2d 285 (2009) (citing Biunno, *Current N.J. Rules of Evidence*, comment 1 on *N.J.R.E. 102* (2008) (“New Jersey's *Rules of Evidence* provide a comprehensive and coherent structure designed to provide specific instruction to the bench and bar in the vast array of evidentiary contexts that may arise in contested trials.”)). Where a common law evidential principle impedes the uniform and predictable application of the codified rules, it can and should be abandoned, thereby eliminating an obstacle to clarity promised by the adoption of a cohesive set of rules for the admissibility of evidence. Accordingly, with

respect to continued reference to “res gestae” as a basis for the admission of evidence, that finishing point has arrived.

VI.

[15] **[16]** As a final matter, we add the following. According to our dissenting colleagues, any part of a judicial decision by this ***183** Court that goes beyond the minimum needed to accord relief to the parties to an action constitutes non-precedential dicta. That proposition is contrary to the established principle articulated in various respected authorities that

an expression of opinion on a point involved in a case, argued by counsel and deliberately mentioned by the court, although not essential to the disposition of the case ... becomes authoritative[] when it is expressly declared by the court as a guide for future conduct.

[21] *C.J.S. Courts* § 230 (2006).]

Phrased differently, “matters in the opinion of a higher court which are not decisive of the primary issue presented but which are germane to that issue ... are not dicta, but binding decisions of the court.” *5 Am.Jur.2d Appellate Review* § 564 (2007).

As explained in the context of the federal system by the First Circuit:

[A]ppellate courts are bound by the Supreme Court's considered dicta almost as firmly as by the Court's outright holdings, particularly when, as here, a dictum is of recent vintage and not enfeebled by any subsequent statement. If lower courts felt free to limit Supreme Court opinions precisely to the facts of each case, then our system of jurisprudence would be in shambles, with litigants, lawyers, and legislatures left to grope aimlessly for some semblance of reliable guidance.

****1012** [*McCoy v. Mass. Inst. of Tech.*, 950 F.2d 13, 19 (1st Cir.1991) (internal citations omitted), cert. denied, 504 U.S. 910, 112 S.Ct. 1939, 118 L.Ed.2d 545 (1992).]

Judge Easterbrook, writing for the Seventh Circuit, further illustrated the absurdity of a contrary approach:

As with *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), and other comprehensive decisions, almost all of the opinion could be labeled dicta. The details of *Miranda*, for example, could be disregarded on the ground that Ernesto Miranda had not been given any warning, so the Court could not pronounce on the consequences of giving three but not four of the warnings on its list. The Court has rebuffed arguments of this sort, however.

[Faheem-El v. Klincar, 841 F.2d 712, 730 (7th Cir.1988).]

[17] In sum, the legal findings and determinations of a high court's considered analysis must be accorded conclusive weight by lower courts.²¹ Our courts have consistently followed this rule. ***184** See, e.g., *State v. Breitweiser*, 373 N.J.Super. 271, 282–83, 861 A.2d 176 (App.Div.2004), certif. denied, 182 N.J. 628, 868 A.2d 1031 (2005).

²¹ Accord *United States v. Underwood*, 717 F.2d 482, 486 (9th Cir.1983) (“In the decision of individual cases the Court must and regularly does establish guidelines to govern a variety of situations related to that presented in the immediate case. The system could not function if lower courts were free to disregard such guidelines whenever they did not precisely match the facts of the case in which the guidelines were announced.”), cert. denied, 465 U.S. 1036, 104 S.Ct. 1309, 79 L.Ed.2d 707 (1984); *Pub. Serv. Co. v. GE Co.*, 315 F.2d 306, 310 n. 6 (10th Cir.) (“Without exploring the intricate distinctions between dictum and language necessary to decision, we conclude that we must recognize the clear, direct, explicit, and unqualified statement of the Supreme Court.”), cert. denied, 374 U.S. 809, 83 S.Ct. 1695, 10 L.Ed.2d 1033 (1963); *People v. Williams*, 204 Ill.2d 191, 273 Ill.Dec. 250, 788 N.E.2d 1126, 1136 (2003) (“[C]omments in a judicial opinion that are unnecessary to

the disposition of the case, but involve an issue briefed and argued by the parties ... have the force of a determination by a reviewing court and should receive dispositive weight in an inferior court.”); *Luhman v. Beecher*, 144 Wis.2d 781, 424 N.W.2d 753, 755 (App.1988) (“[M]atters not decisive to the primary issue presented but germane to that issue are not dicta, but binding decisions of the court.”).

And when confronting the precise issue of this appeal—the viability of *res gestae*—our sister courts have similarly abolished that doctrine in cases where the contested evidence was deemed admissible through the formal rules of evidence, and thus, where the decision to eliminate *res gestae* did not affect the cases' outcome. *State v. Gumby*, 282 Kan. 39, 144 P.3d 647, 660–61 (2006); *Bynote v. Nat'l Super Mkts., Inc.*, 891 S.W.2d 117, 121 (Mo.1995) (en banc). The abolition of *res gestae* by those courts is hardly, as the dissent would appear to believe, mere dicta that need not be followed.

VII.

The judgment of the Appellate Division is affirmed as modified by this opinion.

Justice RIVERA-SOTO, concurring in part and dissenting in part.

To the extent the majority concludes that the admission of the challenged evidence was proper under *N.J.R.E. 404(b)*, and therefore *185 affirms defendant's conviction, I concur. However, to the extent the majority takes the added, unnecessary step of jettisoning the doctrine of *res gestae* from our jurisprudence, I dissent on two separate grounds: the majority's discussion is plain dicta, deserving of no jurisprudential **1013 value; and the majority's reasoning and conclusions are ill-conceived and simply in error.

I.

As the majority well recognizes, this appeal was fully and completely decided once it concluded that “the evidence in issue would have been admissible

under *Rule 404(b)*,” that “defendant suffered no error, let alone reversible error, as a result of the admission of the evidence[.]” and that, as a result, “we affirm as modified, the judgment of the Appellate Division.” *Ante* at 167, 19 A.3d at 1001. Nevertheless, the majority creates a straw man and then proceeds to knock it down when it asserts that “[t]he various positions taken by counsel, the trial court, and the Appellate Division ... demonstrate that there exists confusion and uncertainty about the use of the common law doctrine of *res gestae*, and its very status as a viable feature of New Jersey's evidence jurisprudence.” *Ibid*.

That justification for addressing and ultimately discarding, in the context of this appeal, the continued viability of the doctrine of *res gestae* lays bare the true nature of the majority's pronouncements on the issue: they are nothing more than “dicta, ‘that is, something that is unnecessary to the decision in the case and therefore not precedential[.]’ ” *State v. McLaughlin*, 205 N.J. 185, 200 n. 10 (2011) (quoting *Dean v. Barrett Homes, Inc.*, 204 N.J. 286, 307, 8 A.3d 766 (2010) (Rivera-Soto, J., concurring in part and dissenting in part) (citations and internal quotation marks omitted)). For that reason, the majority's declaration to “end the practice of invoking ‘*res gestae*’ as an explanation for the admission of evidence, in circumvention of the application of the formal *Rules of Evidence* [.]” *ante* at 182, 19 A.3d at 1011, is categorically and without doubt unnecessary to the outcome of this appeal. It *186 is blunt force dicta—plain and simple—and, as such, it should be disregarded in its entirety.

II.

Furthermore, the majority incorrectly conflates—and thereby improperly confuses—two separate and distinct concepts well grounded in evidence law: the admissibility of other bad act evidence under *N.J.R.E. 404(b)*, and the admission of evidence of *res gestae*. In the established law of evidence, those notions represent, instead, independent principles, each of which is worthy of its own, stand-alone dignity.

By its explicit terms, *Evidence Rule 404* proscribes the admission of “[e]vidence of a person's character or character trait, including a trait of care or skill or lack thereof, ... for the purpose of proving that the person acted in conformity therewith on a particular occasion[.]” *N.J.R.E. 404(a)*. As this Court made clear in *Johnson v. Dobrosky*,

evidence of a person's character or a trait thereof is not admissible when it is not an element of a claim or defense. Admissibility thus depends upon the connection between proffered character evidence and a claim or defense that is actually in issue. That limitation reflects the danger inherent in the introduction of such evidence—its susceptibility to convert a trial of the issue to a judgment of the person. Thus, for character evidence to be admissible ... a person's character or a trait of his character must be related to a specific claim or defense in the case.

[187 N.J. 594, 604, 902 A.2d 238 (2006) (citations and internal quotation marks omitted).]

****1014** More to the point, although *N.J.R.E. 404(b)* repeats the general proposition that “[e]xcept as otherwise provided ... 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[.]” that *Rule* additionally provides that “[s]uch 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.”

Res gestae, in contrast, focuses on a fundamentally different concern. As commentators on our *Rules of Evidence* aptly have ***187** noted, “[c]onduct which is the subject matter of the action being tried cannot be excluded under *N.J.R.E. 404(b)* because the rule is only a consideration with respect to *conduct that occurred on other occasions*.” Biunno, Weisbard & Zegas, *New Jersey Rules of Evidence*, Comment 7 to *N.J.R.E. 404*, at 194 (2011) (emphasis supplied). In straightforward terms, then, res gestae “literally means ‘things done,’ and under the *res gestae* doctrine a contemporaneous statement involving events surrounding a disputed issue [i]s admissible.”

State v. Branch, 182 N.J. 338, 358, 865 A.2d 673 (2005) (citation and internal quotation marks omitted). That principle long has been an integral part of New Jersey's evidence jurisprudence, and most clearly so since one of the earliest cases decided by this Court once its composition was altered under the 1947 Constitution. Thus, in *Robertson v. Hackensack Trust Co.*, this Court proclaimed clearly that

the admissibility of the proofs as *res gestae* has as its justifying principle that truth, like the Master's robe, is of one piece, without seam, woven from the top throughout, that each fact has its inseparable attributes and its kindred facts materially affecting its character, and that the reproduction of a scene with its multiple incidents, each created naturally and without artificiality and not too distant in point of time, will by very quality and texture tend to disclose the truth.

[1 N.J. 304, 312, 63 A.2d 515 (1949).]

Until today, this Court has recognized and honored that difference, and unfailingly has drawn a distinction between res gestae and the proscription against prior bad acts codified in *N.J.R.E. 404(b)*. In so doing, it has emphasized that

“[t]he rule ... is that where the declaration is concomitant with the main fact under consideration and is so connected with it as to illustrate its character, it may be proved as part of the res gestae; but, where it is merely narrative of a past occurrence, it cannot be received as proof of the character of that occurrence.”

[*State v. Long*, 173 N.J. 138, 155, 801 A.2d 221 (2002) (quoting *Blackman v. W. Jersey & Seashore R.R. Co.*, 68 N.J.L. 1, 2, 52 A. 370 (Sup.Ct.1902)).]

The clear salutary effects generated by the prohibition against proof of prior bad acts, on the one hand, and the res gestae doctrine, on the other, more than amply counsel that this Court should continue to consider them separately for a bedrock reason: while res gestae focuses on the statement, act or omission to speak or act as an integral part of

the matter directly at issue, *188 *N.J.R.E.* 404(b) addresses an offer of proof of statements or acts occurring separate and apart from the matter at issue but offered to prove a fact relevant to the matter at issue, something far different than proof of the matter itself. Therefore, to “disapprove of the further use of res gestae to support evidential rulings [purportedly because] invocations of res gestae as the basis for the admission **1015 of evidence ... lack the analytic rigor, precision, and uniformity that evidential rulings were intended to have under the codified *Evidence Rules* [.]” *ante* at 182, 19 A.3d at 1011, as the majority gratuitously has done here, is plainly incorrect and ignores the different focuses and purposes of the two evidentiary rules.

Moreover, in light of the foregoing, it is ironic that, while explicitly discarding the well recognized res gestae doctrine, the majority implicitly preserves its substance by embracing the admissibility of evidence that is “intrinsic to the crime charged.” *Ante* at 179–82, 19 A.3d at 1009–11. By so doing, the majority runs afoul of the Shakespearian injunction: “What’s in a name? That which we call a rose by any other name would smell as sweet.” William Shakespeare, *Romeo and Juliet*, act 2, sc. II. In short, evidence “intrinsic to the crime charged” is res gestae evidence, no matter what moniker it is given.

Because I cannot join in the wholesale and needless abandonment of a time-honored doctrine for what are less-than-convincing reasons, I dissent.

III.

I add only the following. Relying on secondary, nonprecedential sources, *ante* at 182–84, 19 A.3d at 1011–12,¹ the majority *189 seeks to dismiss the concerns raised here by engaging in little more than circular reasoning. According to the majority, what it says in respect of unceremoniously burying the doctrine of res gestae is not dicta for a simple, overbearing reason: because it says so.

¹ To the extent the majority cites to any decisional authority, it is to that of lower

courts rationalizing why they must abide by the dicta issued by their respective courts of last resort. None of those cases addressed the question presented here: whether it is jurisprudentially sound for a court—particularly a court of last resort—to decide a case on narrow grounds and then volunteer a sweeping holding not necessary to the outcome. Although most often discussed and applied in respect of constitutional questions, *see, e.g., Committee to Recall Robert Menendez from the Office of United States Senator v. Wells*, 204 N.J. 79, 141–42, 7 A.3d 720 (2010) (Hoens, J., dissenting) (stating that “our jurisprudence is replete with instances where we have insisted that we do not address constitutional issues when a narrower, non-constitutional result is available” (citations and internal quotation marks omitted; citing cases)); *State v. Reid*, 194 N.J. 386, 945 A.2d 26 (2008) (quoting *Bell v. Twp. of Stafford*, 110 N.J. 384, 389, 541 A.2d 692 (1988), for proposition that “court should not reach constitutional issues unless absolutely imperative to dispose of the litigation”), it is an equally appropriate observation here. And, to the extent a discrete minority of “sister courts” have chosen to jump off this particular cliff, this Court should far more humbly choose not to join them.

The notion that a court of appeals willy-nilly can decide issues unnecessary to the outcome of the case results in the wholesale issuance of advisory opinions, a practice our judicial decision-making system categorically rejects. *See Abbott v. Burke*, 196 N.J. 544, 551, 960 A.2d 360 (2008) (“We cannot give an advisory opinion[.]”). It is a cornerstone of our decisional authority that “[w]e cannot answer abstract questions or give advisory opinions.” *G.H. v. Twp. of Galloway*, 199 N.J. 135, 136, 971 A.2d 401 (2009) (citing *Crescent Park Tenants Ass’n v. Realty Eq. Corp. of N.Y.*, 58 N.J. 98, 107, 275 A.2d 433 (1971); *N.J. Tpk. Auth. v. Parsons*, 3 N.J. 235, 240, 69 A.2d 875 (1949)).² This Court, in *G.H.*, **1016 stated the rationale undergirding the governing rule clearly: “The judicial function operates best when a concrete dispute is presented to the *190 courts.” *Ibid.*; *see also Grand Union Co. v. Sills*, 43 N.J. 390, 410, 204 A.2d 853 (1964) (noting “wholesome policy considerations which confine courts to actual controversies and dissuade them from rendering

abstract or advisory opinions” (citing *Proprietary Ass'n v. Bd. of Pharmacy*, 16 N.J. 62, 72, 106 A.2d 272 (1954))).

2 See also *State v. Harvey*, 176 N.J. 522, 528, 826 A.2d 597 (2003) (quoting *State v. Gartland*, 149 N.J. 456, 464, 694 A.2d 564 (1997) and observing that “ ‘this Court will not render advisory opinions or exercise its jurisdiction in the abstract’ ”); *In re Camden County*, 170 N.J. 439, 448–49, 790 A.2d 158 (2002) (quoting *Crescent Park Tenants Ass'n, supra*, 58 N.J. at 107–08, 275 A.2d 433, for proposition that “ ‘[u]nlike the Federal Constitution, there is no express language in New Jersey’s Constitution [confining] our judicial power to actual cases and controversies. Nevertheless, we will not render advisory opinions or function in the abstract’ ”).

The “concrete dispute” presented in this appeal is answered fully, completely and conclusively by resort to the *Rules of Evidence*, the conclusion the

majority first advances and with which I concur. Anything further is unnecessary to that outcome and, in the exercise of restraint, should be rejected. In sum, if the res gestae doctrine is to be condemned, it should be when the doctrine itself is the issue on appeal, and not some collateral appendage to an opinion that stands squarely on its own without overreaching for a seemingly desired but plainly unnecessary result.

For affirmance as modified—Chief Justice RABNER and Justices LONG, LaVECCHIA, ALBIN, RIVERA-SOTO, HOENS and STERN (temporarily assigned)—7.

For concurrence in part; dissent in part—Justices RIVERA-SOTO and HOENS—2.

All Citations

206 N.J. 141, 19 A.3d 985

Negative Treatment

Negative Citing References (1)

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)
Limitation of Holding Recognized by	1. <u>State v. Rice</u>  MOST NEGATIVE 2012 WL 1252998 , N.J.Super.A.D. The opinion of the court was delivered by Following a jury trial, defendant Brian Rice, an Irvington police officer, was convicted of second-degree conspiracy to commit official...	Apr. 16, 2012	Case		1 2 A.3d

Citing References (266)

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	1. <u>State v. Garrison</u>  155 A.3d 996, 998+ , 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 8 9 A.3d
Examined by	2. <u>State v. Franklin</u>  2017 WL 711169, *5+ , N.J.Super.A.D. Defendant Curtis A. Franklin was charged in Bergen County Indictment No. 10–05–0857 with second-degree sexual assault of A.M., N.J.S.A. 2C:14–2c(4) (Count One); second-degree...	Feb. 23, 2017	Case		6 13 A.3d
Examined by	3. <u>State v. Jackson</u>  2016 WL 4729581, *3+ , N.J.Super.A.D. Following a jury trial, defendant Tyrell Jackson was convicted of first-degree murder, N.J.S.A. 2C:11-3(a) and/or (c); second-degree possession of a weapon for an unlawful purpose,...	Sep. 12, 2016	Case		6 13 A.3d
Examined by	4. <u>State v. Rodriguez</u>  2016 WL 731935, *2+ , 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		6 A.3d
Examined by	5. <u>State v. Thompson</u> 2015 WL 4507171, *9+ , N.J.Super.A.D. After a seventeen-day bench trial, defendant Robert K. Thompson was found guilty of third-degree official misconduct, N.J.S.A. 2C:30–2(a). On October 18, 2012, defendant was...	July 27, 2015	Case		13 A.3d
Examined by	 6. <u>State v. Brockington</u>  108 A.3d 652, 661+ , N.J.Super.A.D. CRIMINAL JUSTICE - Witnesses. Defendant was deprived of fair trial as result of erroneous introduction of officer's inadmissible opinion testimony.	Feb. 18, 2015	Case		6 13 A.3d
Examined by	7. <u>State v. E.F.</u>  2015 WL 144862, *4+ , N.J.Super.A.D. A Somerset County grand jury charged defendant E.F. with first-degree aggravated sexual assault, N.J.S.A. 2C:14:2a(2) (count one), and second-degree endangering the welfare of a...	Jan. 13, 2015	Case		13 A.3d
Examined by	8. <u>State v. M.R.P.</u>  2014 WL 4375727, *5+ , N.J.Super.A.D. Defendant M.R.P. was convicted by a jury of multiple counts of first-degree aggravated sexual assault, N.J.S.A. 2C:14–2(a); second-degree sexual assault, N.J.S.A. 2C:14–2(b);...	Sep. 05, 2014	Case		13 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Examined by	9. State v. Sheppard  97 A.3d 699, 712+ , 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		5 8 9 A.3d
Examined by	10. 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		3 6 7 A.3d
Examined by	11. State v. A.A.  2014 WL 1613432, *6+ , N.J.Super.A.D. A jury convicted defendant A.A. of sexually abusing his daughter, O.A. (Opal), for over a decade. Defendant was sentenced to an aggregate term of forty years in prison, with...	Apr. 23, 2014	Case		1 6 A.3d
Examined by	12. State v. Younger  2014 WL 1394163, *10+ , 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		9 11 A.3d
Examined by	13. State v. Berisha  2012 WL 2135715, *6+ , N.J.Super.A.D. Following a trial by jury, defendant Zia Berisha appeals from his May 27, 2010 conviction on charges of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a), as a lesser...	June 14, 2012	Case		4 A.3d
Examined by	14. State v. Jones  40 A.3d 1155, 1165+ , N.J.Super.A.D. CRIMINAL JUSTICE - Drugs. Officer's improper expert testimony that defendant possessed cocaine for distribution was plain error.	Apr. 17, 2012	Case		3 4 9 A.3d
Examined by	15. State v. S.O.G.  2011 WL 6341091, *5+ , N.J.Super.A.D. Defendant S.O.G. was convicted by a jury of first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a) (count one); second-degree sexual assault, N.J.S.A. 2C:14-2(b) (count two);...	Dec. 20, 2011	Case		11 A.3d
Examined by	16. State v. B.W.  2011 WL 6088886, *6+ , 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		6 7 A.3d
Limitation of Holding Recognized by 	17. State v. Rice  2012 WL 1252998, *4+ , N.J.Super.A.D. The opinion of the court was delivered by Following a jury trial, defendant Brian Rice, an Irvington police officer, was convicted of second-degree conspiracy to commit official...	Apr. 16, 2012	Case		1 2 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	18. State v. Skinner  95 A.3d 236, 247+ , 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		3 5 7 A.3d
Discussed by	19. State v. M.P.  2017 WL 5664416, *3+ , N.J.Super.A.D. Defendant M.P. appeals from his conviction following a jury trial. He also contends that an error in the judgment of conviction (JOC) requires a remand for its correction. After a...	Nov. 27, 2017	Case		9 A.3d
Discussed by	20. Shtutman v. Carr  2017 WL 4402045, *12+ , N.J.Super.A.D. These appeals arise from a Ponzi scheme involving defendant Everett Charles Ford Miller. Plaintiff Oleg Shtutman claimed he invested over a million dollars in promissory notes (CM...	Oct. 04, 2017	Case		6 9 A.3d
Discussed by	21. State v. Taliaferro  2017 WL 3027631, *10+ , N.J.Super.A.D. Defendant Anna Taliaferro appeals from the May 15, 2014 judgment of conviction, after a jury found her guilty of second-degree official misconduct, N.J.S.A. 2C:30-2; second-degree...	July 18, 2017	Case		5 A.3d
Discussed by	22. State v. Santamaria 2017 WL 2859468, *9+ , N.J.Super.A.D. On October 1, 2010, a Middlesex County grand jury returned Indictment No. 10-10-1436, charging defendant, formerly a middle school science teacher, with various counts of sexual...	June 30, 2017	Case		6 A.3d
Discussed by	23. State v. Brown  2017 WL 2348922, *3+ , N.J.Super.A.D. On December 3, 2014, a Salem County grand jury returned an indictment charging defendant Nafeisha Brown with third-degree aggravated assault, N.J.S.A. 2C:12-1(b) (count one);...	May 31, 2017	Case		5 13 A.3d
Discussed by	24. State v. Butler  2017 WL 1179845, *8+ , N.J.Super.A.D. Following a joint trial, a jury convicted defendants Ahmar D. Butler and Jonathan P. Thomas of murder, N.J.S.A. 2C:11-3(a)(1), (2); aggravated assault, N.J.S.A. 2C:12-1(b)(1),...	Mar. 30, 2017	Case		10 A.3d
Discussed by	25. State v. Walker  2017 WL 1056393, *8+ , N.J.Super.A.D. On January 9, 2012, a Passaic County grand jury returned a fifteen-count indictment, charging defendant Stanley Walker, Jr. in nine of those counts with first-degree murder,...	Mar. 21, 2017	Case		9 13 A.3d
Discussed by	26. State v. Grant  2017 WL 968884, *4+ , N.J.Super.A.D. A victim was robbed at knife-point by two men after responding to a Craigslist advertisement for discounted iPads and iPhones. In separate jury trials, defendants Jeremy Grant and...	Mar. 13, 2017	Case		11 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	27. <u>State v. Tedesco</u> ” 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		5 7 8 A.3d
Discussed by	28. <u>State v. Franklin</u> ” 2017 WL 711168, *3+ , N.J.Super.A.D. A jury convicted defendant Curtis A. Franklin of the second-degree sexual assault of A.M., N.J.S.A. 2C:14–2c(4). The acts of sexual assault occurred on diverse dates between...	Feb. 23, 2017	Case		13 A.3d
Discussed by	29. <u>State v. Nasta</u> ” 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		7 A.3d
Discussed by	30. <u>State v. Parish</u> ” 2017 WL 431803, *2+ , 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		5 A.3d
Discussed by	31. <u>State v. Malandrucca</u> 2017 WL 411368, *2+ , N.J.Super.A.D. Defendant Maryrose Malandrucca appeals from her June 20, 2014 judgement of conviction for second-degree eluding, N.J.S.A. 2C:29–2(b), and fourth-degree obstructing the...	Jan. 31, 2017	Case		—
Discussed by	32. <u>State v. Ortiz</u> ” 2016 WL 7338783, *6+ , N.J.Super.A.D. Defendant Jose Ortiz appeals from a judgment of conviction for third-degree terroristic threats, N.J.S.A. 2C:12–3(b), second-degree burglary, N.J.S.A. 2C:18–2(b)(1), and...	Dec. 16, 2016	Case		2 5 A.3d
Discussed by	33. <u>State v. Bethea</u> ” 2016 WL 6440654, *3+ , N.J.Super.A.D. Defendant appeals from his June 12, 2014 convictions for swindling and cheating at casino gaming, N.J.S.A. 5:12–113(a). We affirm. On August 15, 2013, a craps dealer at the Borgata...	Nov. 01, 2016	Case		13 A.3d
Discussed by	34. <u>State v. Perry</u> ” 2016 WL 4467594, *4+ , N.J.Super.A.D. In our prior opinion, State v. Perry, No. A-1686-12 (App. Div. Aug. 27, 2014), a divided panel reversed defendant Bobby Perry's convictions for second-degree sexual assault,...	Aug. 24, 2016	Case		2 A.3d
Discussed by	35. <u>State v. White</u> ” 2016 WL 3263211, *3+ , N.J.Super.A.D. Defendant appeals his September 29, 2014 judgment of conviction for stealing \$233,672 through deception and extortion, and for making terroristic threats. We affirm. The following...	June 15, 2016	Case		5 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	36. State v. Feliciano  2016 WL 2745851, *10+ , 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		7 A.3d
Discussed by	37. State v. Nail  2016 WL 1418122, *3+ , N.J.Super.A.D. By our leave granted, the State appeals from the March 26, 2015 order of the Law Division excluding evidence of telephone calls made by defendant while he was an inmate at the...	Apr. 12, 2016	Case		3 A.3d
Discussed by	38. State v. Padilla 2016 WL 1368893, *3+ , N.J.Super.A.D. In the early morning hours of October 24, 2002, Carlos Freitas was shot and killed in the Ugha Ugha Social Club, an after-hours bar in Newark. The shooter fled from the scene and...	Apr. 07, 2016	Case		2 8 A.3d
Discussed by	39. State v. Hare  2016 WL 1229092, *10+ , 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		8 9 A.3d
Discussed by	40. 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.3d
Discussed by	41. State v. Pallipurath  2015 WL 10438847, *4+ , N.J.Super.A.D. Defendant Joseph M. Pallipurath was charged in Passaic County Indictment No. 09-03-0377 with: first-degree murder of Reshma James (Reshma), N.J.S.A. 2C:11-3(a)(1), -3(a)(2) (count...	Mar. 11, 2016	Case		11 A.3d
Discussed by	42. State v. Moody 2015 WL 10097363, *3+ , N.J.Super.A.D. Tried by a jury, defendant Lawrence Moody was convicted of third-degree possession of a controlled dangerous substance, heroin, N.J.S.A. 2C:35-10(a) (1) (count one); third-degree...	Feb. 17, 2016	Case		7 A.3d
Discussed by	43. State v. Sabatini  2015 WL 10034280, *9+ , N.J.Super.A.D. Defendant Robert Sabatini appeals from his first-degree murder conviction, N.J.S.A. 2C:11-3(a) (1) and (2), and from the sentence of fifty years in prison subject to the No Early...	Feb. 11, 2016	Case		5 A.3d
Discussed by	44. State v. Fortin  2015 WL 6132920, *9+ , 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		6 8 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	45. 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		1 A.3d
Discussed by	46. State v. Garrison ” 2015 WL 5009222, *1+ , 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		14 A.3d
Discussed by	47. State v. Battles ” 2015 WL 3767483, *2+ , N.J.Super.A.D. Defendant, Raheem Battles, appeals from his conviction for carjacking and theft, arguing the trial court erred in presenting "other crimes" evidence and in barring defendant from...	June 18, 2015	Case		5 A.3d
Discussed by	48. State v. Campo ” 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		6 7 A.3d
Discussed by	49. State v. Laurance ” 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		1 2 A.3d
Discussed by	50. State v. Carney ” 2014 WL 8382902, *8+ , N.J.Super.A.D. Tried by a jury, defendant Barry J. Carney was convicted of second-degree certain persons not to possess a firearm, N.J.S.A. 2C:39-7(b). On November 27, 2012, defendant was...	Mar. 31, 2015	Case		5 7 A.3d
Discussed by	51. State v. McDonald ” 2014 WL 8103789, *6+ , N.J.Super.A.D. The opinion of the court was delivered by An Essex County Grand Jury returned a six-count indictment against defendant Corinthin L. McDonald. Following a five-day trial in June...	Mar. 12, 2015	Case		5 A.3d
Discussed by	52. State v. Serrano ” 2014 WL 7740295, *4+ , 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		5 6 A.3d
Discussed by	53. State v. Barry 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		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	54. State v. Harte ¶ 2014 WL 7506765, *7+ , N.J.Super.A.D. Following a jury trial, defendant Roy Harte was convicted of second-degree conspiracy to distribute and possess with intent to distribute a controlled dangerous substance, N.J.S.A....	Jan. 12, 2015	Case		2 A.3d
Discussed by	55. State v. K.M.B. ¶ 2014 WL 7150697, *4+ , 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		5 A.3d
Discussed by	56. L.T. v. F.M. ¶ 102 A.3d 398, 406+ , N.J.Super.A.D. FAMILY LAW - Protection Orders. Former boyfriend was not barred by the doctrine of collateral estoppel from challenging the Family Part's findings in final restraining order case.	Nov. 14, 2014	Case		9 14 A.3d
Discussed by	57. State v. Sgambati ¶ 2014 WL 4251874, *9+ , N.J.Super.A.D. Tried before a jury in April and May 2011, defendant James Sgambati was convicted of, most significantly, third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(7) (count two);...	Aug. 29, 2014	Case		9 A.3d
Discussed by	58. State v. E.R. ¶ 2014 WL 3905291, *3+ , 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 2 6 A.3d
Discussed by	59. State v. S.S. ¶ 2014 WL 3798198, *5+ , N.J.Super.A.D. This appeal concerns the admission of testimony regarding a criminal defendant's sexual preferences, the allowance of the jury to view video-recorded statements in the jury room...	Aug. 04, 2014	Case		2 A.3d
Discussed by	60. State v. T.M. 2014 WL 3015209, *5+ , 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		—
Discussed by	61. State v. Calloway ¶ 2013 WL 5179750, *2+ , N.J.Super.A.D. In a four-count indictment, defendant Lamonte Calloway was charged with two counts of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a (counts one and three); and...	Sep. 17, 2013	Case		5 A.3d
Discussed by	62. State v. Hutcherson ¶ 2013 WL 3387827, *6+ , N.J.Super.A.D. Defendant Anthony Hutcherson appeals from his judgment of conviction for drug offenses. He challenges the denial of his motion for severance, the jury instructions, the...	July 09, 2013	Case		9 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	63. State v. Sudlow  2013 WL 2986983, *4+ , N.J.Super.A.D. Following a three-day trial, a jury found defendant Ricardo M. Sudlow guilty of second-degree eluding an officer, N.J.S.A. 2C:29-2(b); third-degree aggravated assault on a police...	June 18, 2013	Case		5 A.3d
Discussed by	64. State v. Allen 2013 WL 1976112, *3+ , N.J.Super.A.D. Defendant Leon R. Allen was tried before a jury, found guilty of fourth-degree resisting arrest by flight, N.J.S.A. 2C:29-2(a), and sentenced to fifteen months imprisonment....	May 15, 2013	Case		5 A.3d
Discussed by	65. State v. Holmes  2013 WL 1663280, *5+ , N.J.Super.A.D. Defendant Omar Holmes appeals from his conviction by a jury for murder and weapons offenses. The charges arose from the shooting of a young man outside a club in Elizabeth after a...	Apr. 18, 2013	Case		1 A.3d
Discussed by	66. State v. Fowler  2013 WL 462299, *6+ , N.J.Super.A.D. Defendant Javan Fowler appeals from his September 4, 2008 judgment of conviction and sentence. Defendant was tried by a jury with one of his three codefendants, Lathan Fowler. His...	Feb. 08, 2013	Case		5 A.3d
Discussed by	67. State v. Robertson  2013 WL 398934, *5+ , 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		2 5 A.3d
Discussed by	68. State v. R.M.  2013 WL 275935, *4+ , N.J.Super.A.D. Tried by a jury, defendant R.M. was found guilty of counts one through five of Middlesex County Indictment No. 08-06-1047, charging him with: first-degree aggravated sexual assault...	Jan. 25, 2013	Case		6 A.3d
Discussed by	69. State v. Anderson  2013 WL 141569, *4+ , N.J.Super.A.D. After a two-day jury trial, defendant Tracy Anderson was found guilty of the second-degree offense of eluding a police officer, N .J.S.A. 2C:29-2b. Defendant had been chased and...	Jan. 14, 2013	Case		9 A.3d
Discussed by	70. State v. Pope  2012 WL 3101291, *4+ , N.J.Super.A.D. Defendant was indicted for purposeful or knowing murder, in violation of N.J.S.A. 2C:11-3(a)(1) or (2); possession of a handgun without a permit, in violation of N.J.S.A....	Aug. 01, 2012	Case		5 A.3d
Discussed by	71. State v. Boyd  2012 WL 2974910, *9+ , 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		7 11 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Discussed by	72. <u>State v. Davis</u>  2012 WL 2009258, *12+ , N.J.Super.A.D. These back-to-back appeals stem from the joint trial of defendants Darryl Davis and Quantis L. Goode, where they were convicted of, among other things, the January 7, 2007 murders...	June 06, 2012	Case		3 A.3d
Discussed by	73. <u>State v. Foster</u>  2012 WL 1912282, *3+ , N.J.Super.A.D. In 2009, defendant Clifton Foster was indicted for first-degree robbery, N.J.S.A. 2C:15-1, and second-degree aggravated assault, N.J.S.A. 2C:12-1b(1). The jury acquitted...	May 29, 2012	Case		6 7 A.3d
Discussed by	74. <u>State v. Davis</u>  2012 WL 360200, *4+ , N.J.Super.A.D. Following a jury trial, defendant Charles Davis was convicted of second-degree robbery, N.J.S.A. 2C:15-1; two counts of third-degree theft from the person, N.J.S.A. 2C:20-2b(2)(d)...	Feb. 06, 2012	Case		6 7 A.3d
Discussed by	75. <u>Sudlow v. N.J. Department of Corrections</u>  2017 WL 1051183, *3+ , D.N.J. Presently before the Court is the petition for a writ of habeas corpus of Ricardo Sudlow ("Petitioner") brought pursuant to 28 U.S.C. § 2254 challenging Petitioner's state court...	Mar. 20, 2017	Case		7 A.3d
Cited by	76. <u>State v. Gorthy</u> 145 A.3d 146, 159 , N.J. CRIMINAL JUSTICE - Mental Capacity. Criminal defendant who is found competent to stand trial has autonomy to make strategic decision of whether to assert insanity defense.	Sep. 28, 2016	Case		1 A.3d
Cited by	 77. <u>State v. J.M., Jr.</u>  137 A.3d 490, 497 , N.J. Background: After defendant was charged with second-degree sexual assault and fourth-degree criminal sexual contact, State sought to present evidence of an alleged prior sexual...	May 26, 2016	Case		7 10 A.3d
Cited by	78. <u>State v. Buckley</u> 78 A.3d 958, 969 , N.J. CRIMINAL JUSTICE - Homicide. Evidence that car passenger would have survived collision had he been wearing a seat belt was irrelevant to issue of causation.	May 15, 2013	Case		—
Cited by	 79. <u>New Jersey Dept. of Children and Families, Div. of Youth and Family Services v. A.L.</u> 59 A.3d 576, 584 , N.J. FAMILY LAW - Child Protection. Evidence in abuse and neglect proceedings did not establish substantial risk of harm to child from mother's prenatal drug use.	Feb. 06, 2013	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	80. <u>State v. Herrera</u> ” 48 A.3d 1009, 1028 , N.J. CRIMINAL JUSTICE - Searches and Seizures. Exclusionary rule did not preclude evidence that defendants violently attacked police officer following investigatory stop.	Aug. 07, 2012	Case		5 6 7 A.3d
Cited by	81. <u>State v. Singleton</u> 48 A.3d 285, 306 , N.J. CRIMINAL JUSTICE - Instructions. Trial court's failure to instruct jury on insanity by distinguishing defendant's ability to appreciate legal wrong from moral wrong was not plain...	July 30, 2012	Case		15 A.3d
Cited by	82. <u>State v. Hess</u> ” 23 A.3d 373, 409 , N.J. CRIMINAL JUSTICE - Counsel. Counsel for defendant who killed her husband was ineffective for failing to present evidence at sentencing of husband's abuse of defendant.	July 21, 2011	Case		1 A.3d
Cited by	83. <u>State v. Calleja</u> 20 A.3d 402, 414+ , N.J. CRIMINAL JUSTICE - Homicide. No categorical rule bars admission, to show motive, of deceased victim's hearsay statements that do not express fear of defendant.	June 09, 2011	Case		10 A.3d
Cited by	84. <u>State v. Gillispie</u> 26 A.3d 397, 411+ , 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		7 A.3d
Cited by	85. <u>STATE OF NEW JERSEY, Plaintiff-Respondent, v. DAMIEN JOHNSON, Defendant-Appellant. STATE OF NEW JERSEY, Plaintiff-Respondent, v. BRIAN JOHNSON, Defendant-Appellant.</u> 2018 WL 480295, *9 , 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	86. <u>Bowman v. Teachers' Pension and Annuity Fund</u> ” 2017 WL 6603940, *4 , N.J.Super.A.D. A school nurse tripped, fell, and severely injured herself on school property during her normal work hours. She applied for accidental disability retirement benefits based on...	Dec. 27, 2017	Case		15 A.3d
Cited by	87. <u>State v. Orellana</u> 2017 WL 6048115, *6 , N.J.Super.A.D. The opinion of the court was delivered by A jury found Aldo Orellana guilty of second-degree conspiring to possess, to possess with intent to distribute, and to distribute, heroin....	Dec. 07, 2017	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	88. <u>Kadonsky v. Lee</u> ” 172 A.3d 1090, 1097 , N.J.Super.A.D. CRIMINAL JUSTICE - Drugs. Director of Division of Consumer Affairs had authority to reclassify marijuana from Schedule I controlled dangerous substance to a Schedule IV.	Oct. 31, 2017	Case		15 A.3d
Cited by	89. <u>State v. Green</u> ” 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		6 8 10 A.3d
Cited by	90. <u>Dumont Board of Education v. Borough of Dumont</u> ” 2017 WL 4530780, *2 , N.J.Super.A.D. Plaintiff Dumont Board of Education appeals from a May 24, 2016 Law Division order dismissing its complaint against defendant Borough of Dumont seeking, among other things, the...	Oct. 11, 2017	Case		16 A.3d
Cited by	91. <u>State v. Richardson</u> 2017 WL 4456359, *10 , 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 A.3d
Cited by	92. <u>State v. Fitch</u> 2017 WL 4183276, *6+ , N.J.Super.A.D. Following a jury trial, defendant Lashawn Fitch was convicted of second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1 (count one); second-degree...	Sep. 22, 2017	Case		—
Cited by	93. <u>State v. Beyah</u> ” 2017 WL 3747648, *7+ , N.J.Super.A.D. Defendant, a convicted sex offender, was charged with violating Megan's Law by failing to register as a sex offender, a crime of the third-degree, N.J.S.A. 2C:7-2(c)(3). A jury...	Aug. 31, 2017	Case		5 A.3d
Cited by	94. <u>State v. Novellino</u> ” 2017 WL 3427244, *4 , N.J.Super.A.D. Judith Novellino was murdered on June 19, 2010. She had been stabbed eighty-four times and a pig mask covered her face. A jury convicted her former husband, defendant Anthony...	Aug. 10, 2017	Case		1 A.3d
Cited by	95. <u>State v. White</u> ” 2017 WL 3161092, *9 , N.J.Super.A.D. We have consolidated these appeals to issue a single opinion. Following a joint trial, the jury found defendant Robby Willis guilty of first-degree kidnapping, N.J.S.A....	July 26, 2017	Case		5 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	96. <u>State v. Richardson</u> ” 2017 WL 2960642, *6+ , N.J.Super.A.D. Defendant David Richardson appeals his convictions and aggregate thirty-one-and-a-half year sentence on various charges including burglary, sexual assault, criminal restraint,...	July 12, 2017	Case		1 2 6 A.3d
Cited by	97. <u>State v. M.E.D.</u> 2017 WL 2883235, *2 , N.J.Super.A.D. Defendant M.E.D. was convicted of crimes connected with sexual assaults against her younger sister, K.B. Defendant was indicted with D.C., her boyfriend at the time of the...	July 07, 2017	Case		2 A.3d
Cited by	98. <u>State v. Licciardello</u> ” 2017 WL 2687424, *3+ , N.J.Super.A.D. On April 2, 2014, a Gloucester County grand jury returned an indictment charging defendant Joseph Licciardello with fourth-degree criminal sexual contact, N.J.S.A. 2C:14-3b (count...	June 22, 2017	Case		3 A.3d
Cited by	99. <u>State v. Torres</u> 2017 WL 2351078, *5+ , N.J.Super.A.D. Defendant Edgar Torres was charged in a single superseding indictment with five armed bank robberies on different dates between 2006 and 2011. His motion to exclude statements to...	May 31, 2017	Case		—
Cited by	100. <u>State v. Hernandez</u> 2017 WL 2131596, *3 , N.J.Super.A.D. Defendant appeals from the denial of his petition for post-conviction relief (PCR) without an evidentiary hearing. We affirm. In 2010, a jury convicted defendant of first-degree...	May 17, 2017	Case		—
Cited by	101. <u>PPG Industries, Inc. v. J. Goldenberg Inc.</u> ” 2017 WL 1832418, *2 , N.J.Super.A.D. Plaintiffs PPG Industries, Inc. (PPG), Narula Real Estate Associates, LLC (Narula), and Alfred Smith own three lots in Jersey City that their predecessors purchased from defendant...	May 08, 2017	Case		17 A.3d
Cited by	102. <u>State v. Aybar-Santos</u> ” 2017 WL 1456963, *4 , N.J.Super.A.D. Defendant Luis Aybar-Santos appeals from an August 27, 2015 order denying his petition for post-conviction relief (PCR) without an evidentiary hearing. Defendant contends his...	Apr. 25, 2017	Case		11 A.3d
Cited by	103. <u>State v. A.A.</u> 2017 WL 1407287, *4 , N.J.Super.A.D. The opinion of the court was delivered by In October 2006, a Passaic County grand jury indicted defendant A.A. on twenty-seven counts involving sexual offenses against five of his...	Apr. 20, 2017	Case		1 A.3d
Cited by	104. <u>State v. Dupree</u> ” 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		2 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	105. <u>State v. Flarlas, LLC</u> 2017 WL 541427, *5 , N.J.Super.A.D. Defendant Flarlas, LLC appeals a March 31, 2015 Law Division order entered after a de novo trial on an appeal from the Bloomingdale municipal court. The Law Division found...	Feb. 09, 2017	Case		—
Cited by	106. <u>Scheeler v. Office of the Governor</u> ” 153 A.3d 293, 300 , N.J.Super.A.D. GOVERNMENT - Records. Third-party requests for documents from state departments sought by requesters under OPRA were requested with sufficient clarity.	Jan. 27, 2017	Case		16 A.3d
Cited by	107. <u>State v. Glover</u> 2016 WL 6872989, *5 , N.J.Super.A.D. Defendant Quentin L. Glover was arrested in Atlantic City after he fled from police officers who were investigating a report that he was chasing another individual with a gun. At...	Nov. 22, 2016	Case		2 A.3d
Cited by	108. <u>State v. Locane</u> 2016 WL 3943370, *18+ , N.J.Super.A.D. Tried by a jury, defendant Amy Locane was convicted of the lesser-included offense of second-degree vehicular homicide, N.J.S .A. 2C:11–5(a), and third-degree assault by auto,...	July 22, 2016	Case		2 A.3d
Cited by	109. <u>State v. Preto</u> ” 2016 WL 3636560, *4+ , N.J.Super.A.D. Defendant Francis J. Preto appeals his conviction and sentence on two counts of conspiracy to commit murder and one count of attempted murder. For the reasons explained below, we...	July 08, 2016	Case		9 A.3d
Cited by	110. <u>State v. Whye</u> ” 2016 WL 1689827, *4 , N.J.Super.A.D. Defendant Troy A. Whye appeals from a judgment of conviction for murder, weapons offenses, and endangering the welfare of a child after a jury trial. We reverse and remand for a...	Apr. 28, 2016	Case		1 A.3d
Cited by	111. <u>State v. P.P.D.</u> 2015 WL 10569977, *10 , 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	112. <u>In re County of Atlantic</u> ” 135 A.3d 968, 979 , N.J.Super.A.D. LABOR AND EMPLOYMENT - Public Employment. Public Employment Relations Commission lacked authority to summarily reverse dynamic status quo doctrine.	Mar. 09, 2016	Case		17 A.3d
Cited by	113. <u>State v. Ramirez</u> 2016 WL 830850, *4 , N.J.Super.A.D. Defendant Manuel Ramirez was present when a co-defendant assaulted and stabbed a victim. Defendant and two co-defendants then fled and the victim later died of his stab wounds. A...	Mar. 04, 2016	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	114. State v. Claudio  2015 WL 9998836, *4+ , N.J.Super.A.D. In October 2013, a jury convicted defendant Juan Claudio of two counts of third-degree burglary, N.J.S.A. 2C:18-2, (counts one and two), and one count of third-degree theft by...	Feb. 05, 2016	Case	   	9 A.3d
Cited by	115. 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	   	1 A.3d
Cited by	116. State v. Gomez 2016 WL 363139, *4 , N.J.Super.A.D. Defendant was charged, along with others, for his involvement in a murderous late night attack in a Newark schoolyard on August 4, 2007, that resulted in the deaths of three of...	Feb. 01, 2016	Case	   	—
Cited by	117. State v. Pryor 2015 WL 9436733, *3 , N.J.Super.A.D. After a jury trial, defendant Michael Pryor was convicted of one count of third-degree possession of cocaine, a controlled dangerous substance (CDS), in violation of N.J.S.A....	Dec. 28, 2015	Case	   	1 A.3d
Cited by	118. State v. Odums  2015 WL 8802413, *3 , N.J.Super.A.D. Defendant Elonzio Odums was convicted by a jury of third-degree conspiracy, N.J.S.A. 2C:5-2 (count one); third-degree possession of Xanax with intent to distribute, N.J.S.A....	Dec. 16, 2015	Case	   	6 9 A.3d
Cited by	119. Bandler v. Melillo  128 A.3d 695, 700 , N.J.Super.A.D. COMMERCIAL LAW - Debt Collection. Appellate court had no jurisdiction to consider creditor's complaints concerning dictum in trial judge's opinion.	Dec. 15, 2015	Case	   	16 A.3d
Cited by	120. State v. Suarez-Perez 2015 WL 7729061, *5 , N.J.Super.A.D. The opinion of the court was delivered by Defendant Antonio Suarez-Perez appeals from his judgment of conviction for the first-degree murders of Sidney Wakefield and Joseph Fann....	Dec. 01, 2015	Case	   	2 A.3d
Cited by	121. State v. McMillan 2015 WL 7429393, *9+ , N.J.Super.A.D. The opinion of the court was delivered by Sentenced to prison for life after a jury found him guilty of first-degree murder and weapons offenses for shooting his girlfriend through...	Nov. 10, 2015	Case	   	2 A.3d
Cited by	122. State v. Scheld 2015 WL 6758250, *4+ , N.J.Super.A.D. Following a bench trial, defendants Dawn Scheld and Leroy Thomas were convicted of various animal cruelty offenses arising from their operation of an animal shelter in Middle...	Nov. 06, 2015	Case	   	—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	123. State v. Thomas 2015 WL 9694263, *5 , N.J.Super.A.D. Defendant appeals his convictions for murder and disturbing human remains, and argues: POINT I DAMAGING HEARSAY STATEMENTS BY THE DECEDENT WERE IMPROPERLY ADMITTED INTO EVIDENCE...	Aug. 31, 2015	Case		1 A.3d
Cited by	124. State v. Richardson ” 2015 WL 5008963, *9 , N.J.Super.A.D. Defendant Lamont T. Richardson was convicted by a jury of first-degree murder, N.J.S.A. 2C:11-3(a) (1) and (2), of his ex-girlfriend, twenty-three-year-old Ashle McKinney, and...	Aug. 20, 2015	Case		2 A.3d
Cited by	125. State v. Chase ” 2015 WL 4770503, *7 , N.J.Super.A.D. Defendant Dashand D. Chase was tried with co-defendant Tony L. Burnham. Defendant appeals from his judgments of conviction for robbery, witness tampering, and related charges. We...	Aug. 14, 2015	Case		5 A.3d
Cited by	126. Milici v. Dubois ” 2015 WL 4726465, *3 , N.J.Super.A.D. In this personal-injury suit arising from a motor-vehicle accident, defendant Kern Dubois appeals from a jury award of \$432,000 in favor of plaintiff Paul Milici, and the denial of...	Aug. 11, 2015	Case		1 A.3d
Cited by	127. State v. Deas 2015 WL 4661391, *5 , N.J.Super.A.D. Defendant Michael D. Deas appeals his judgment of conviction entered October 17, 2012. He challenges the denial of suppression and claims errors at trial. We affirm. We summarize...	Aug. 07, 2015	Case		2 A.3d
Cited by	128. State v. Comperchio ” 2015 WL 4643609, *4 , N.J.Super.A.D. Following the entry of his negotiated guilty plea to fourth-degree abuse of a minor, N.J.S.A. 9:6-3, defendant moved pursuant to the plea negotiation and Rule 3:9-2 for a civil...	Aug. 06, 2015	Case		15 A.3d
Cited by	129. State v. Melia 2014 WL 10186793, *10 , N.J.Super.A.D. Defendants Robert S. Melia, Jr. and Heather Lewis were indicted, tried, and convicted together. They each appeal from their judgments of conviction. We consolidate these...	Aug. 03, 2015	Case		—
Cited by	130. In re A.D. ” 119 A.3d 241, 253 , N.J.Super.A.D. CRIMINAL JUSTICE - Sex Offenders. Statute authorizing termination of sex offender registration requirements did not limit disqualifying “offense” to sex offense.	July 20, 2015	Case		16 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	131. State v. Hinds  2015 WL 4078339, *10, N.J.Super.A.D. A Camden County grand jury returned Indictment No. 11–02–0440, charging defendant Clive Hinds with two counts of first-degree murder in the deaths of Muriah Huff and Michael...	July 07, 2015	Case		5 A.3d
Cited by	132. State v. Fowlkes 2014 WL 9887195, *2, N.J.Super.A.D. Defendant Anthony C. Fowlkes appeals his February 1, 2013 judgment of conviction, claiming that it was error to mention his arrest warrant at trial. He also challenges his...	June 15, 2015	Case		2 A.3d
Cited by	133. State v. Norwood  2015 WL 1943841, *2, N.J.Super.A.D. Defendant Victor Norwood appeals from his conviction by a jury on charges of eluding and resisting arrest and his sentence of ten years imprisonment. We affirm the convictions and...	May 01, 2015	Case		2 A.3d
Cited by	134. State v. Laboy 2014 WL 8726307, *2, N.J.Super.A.D. A jury found defendant Rafael A. Laboy guilty of first-degree robbery, N.J.S.A. 2C:15–1; second-degree burglary, N.J.S.A. 2C:18–2; third-degree aggravated assault, N.J.S.A....	Apr. 27, 2015	Case		—
Cited by	135. State v. Montgomery 2015 WL 1880058, *4, N.J.Super.A.D. In appealing his conviction for burglary and other offenses, defendant argues he was deprived of a fair trial, claiming, among other things: the jury was not instructed on the...	Apr. 27, 2015	Case		—
Cited by	136. State v. Gregorio  2015 WL 1860802, *6, N.J.Super.A.D. Defendant Romulo Gregorio appeals from his conviction by a jury on charges including murder and arson and his sentence of fifty years imprisonment. We affirm. On September 1, 2009,...	Apr. 24, 2015	Case		5 A.3d
Cited by	137. State v. Strickland 2015 WL 1809000, *6, N.J.Super.A.D. Defendant Kenneth Strickland appeals from his conviction for third-degree possession of heroin, N.J.S.A. 2C:35–10(a)(1), third-degree possession of heroin with intent to...	Apr. 22, 2015	Case		—
Cited by	138. State v. Martin 2014 WL 8264797, *6+, N.J.Super.A.D. Defendant Terrance L. Martin appeals from his convictions for third-degree possession with intent to distribute a controlled dangerous substance, N.J.S.A. 2C:35–5(a)(1) and...	Mar. 24, 2015	Case		5 A.3d
Cited by	139. State v. Cathcart 2014 WL 8036917, *2, N.J.Super.A.D. We granted leave to the State to appeal from a January 14, 2014 pretrial ruling, which held that oral statements of witnesses and an oral statement attributed to one co-defendant...	Mar. 05, 2015	Case		1 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	140. State v. Sorensen ” 110 A.3d 97, 107 , N.J.Super.A.D. CRIMINAL JUSTICE - Driving While Intoxicated. Breath test machine operator was not required to provide defendant test results report absent request made by defendant.	Feb. 27, 2015	Case		16 A.3d
Cited by	141. Myers v. Ocean City Zoning Bd. of Adjustment ” 106 A.3d 576, 580 , N.J.Super.A.D. REAL PROPERTY - Zoning and Planning. Zoning statute does not require a governing body to affirmatively act in response to re-examination report.	Jan. 16, 2015	Case		16 A.3d
Cited by	142. State v. Gentry 2014 WL 7510785, *12 , N.J.Super.A.D. The opinion of the court was delivered by Defendant Jacob R. Gentry appeals from his September 20, 2011 conviction for first-degree aggravated manslaughter, N.J.S.A. 2C:11-4a, and...	Jan. 13, 2015	Case		1 A.3d
Cited by	143. State v. J.H. ” 2014 WL 7466558, *3+ , N.J.Super.A.D. Tried before a jury on a five-count indictment, defendant J.H. was convicted of first-degree aggravated sexual assault (sexual penetration upon X.W. when X.W. was less than 13...	Jan. 06, 2015	Case		2 A.3d
Cited by	144. State v. Etienne 2004 WL 7086641, *5 , N.J.Super.A.D. Following a seven-day trial, defendant Hummler Etienne was convicted of third-degree possession of a prohibited weapon (sawed-off shotgun), N.J.S.A. 2C:39-3b, (count one), and was...	Dec. 16, 2014	Case		2 A.3d
Cited by	145. State v. Jones ” 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 A.3d
Cited by	146. State v. Alston ” 2014 WL 6885996, *8+ , N.J.Super.A.D. Defendant appeals from his convictions for third-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10a(1); second-degree possession of CDS with intent to...	Dec. 09, 2014	Case		5 7 A.3d
Cited by	147. State v. Lacoste ” 2014 WL 6886069, *3 , N.J.Super.A.D. Defendant Herne Lacoste (defendant) was tried along with defendant Shanikah S. Daniels (Daniels) on various charges, and convicted of kidnapping, aggravated assault, hindering and...	Dec. 09, 2014	Case		5 7 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	148. State v. Limehouse  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 A.3d
Cited by	 149. State v. J.M., Jr.  102 A.3d 1233, 1240, N.J.Super.A.D. CRIMINAL JUSTICE - Evidence. Evidence of alleged prior sexual assault was not admissible under other-crimes rule at trial for sexual assault.	Nov. 21, 2014	Case		7 A.3d
Cited by	150. State v. Foglia 2014 WL 6460720, *3, N.J.Super.A.D. In State v. Foglia, 415 N.J.Super. 106 (App.Div.), certif. denied, 205 N.J. 15 (2010), we were compelled to reverse defendant's conviction for murder and related charges because of...	Nov. 19, 2014	Case		1 A.3d
Cited by	151. Aiges v. Fuccillo 2014 WL 5114378, *4, N.J.Super.A.D. Plaintiff Hillary Aiges alleged she was bitten by a dog belonging to defendants Jane Levin Fuccillo and William Fuccillo. The jury found the dog bit her, but that she had been...	Oct. 14, 2014	Case		2 A.3d
Cited by	152. State v. Range 2014 WL 4843893, *5, N.J.Super.A.D. The opinion of the court was delivered This appeal and another decided today, No. A-0949-11, concern the trial of two codefendants, Taquan K. Range and Ezekiel Snyder. Range and...	Oct. 01, 2014	Case		—
Cited by	153. State v. Snyder 2014 WL 4843901, *9, N.J.Super.A.D. The opinion of the court was delivered This appeal and another decided today, No. A-822-11, concern the trial of two codefendants, Taquan K. Range and Ezekiel Snyder. Range and...	Oct. 01, 2014	Case		—
Cited by	154. State v. Williams  2014 WL 4745499, *2+, N.J.Super.A.D. After a jury was unable to reach a unanimous verdict, the second jury convicted defendant Duron J. Williams of second-degree reckless manslaughter, N.J.S.A. 2C:11-4(b);...	Sep. 25, 2014	Case		1 A.3d
Cited by	155. State v. Payano 2014 WL 4636342, *2, N.J.Super.A.D. Defendant Andres J. Payano appeals from his judgment of conviction for a street drug sale. At trial, his defense was that the police had misidentified him as the man selling the...	Sep. 18, 2014	Case		2 A.3d
Cited by	156. State v. Burris  2014 WL 4450387, *3, N.J.Super.A.D. Tried by a jury, defendant Travis Burris appeals from his conviction of first-degree murder, first-degree attempted murder, and various related charges stemming from two shootings,...	Sep. 11, 2014	Case		5 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	157. <u>State v. Scharf</u> 2014 WL 3891665, *4 , N.J.Super.A.D. Tried by a jury, defendant Stephen F. Scharf was convicted of first-degree purposeful and knowing murder, N.J.S.A. 2C:11-3(a)(1) and N.J.S.A. 2C:11-3(a)(2). On October 21, 2011, he...	Aug. 11, 2014	Case		1 A.3d
Cited by	158. <u>State v. Roberts</u> 2014 WL 3843153, *17 , 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		6 A.3d
Cited by	159. <u>State v. Shepherd</u> 2014 WL 3818680, *7+ , N.J.Super.A.D. The Middlesex County grand jury returned Indictment No. 06-02-0252 (the "first indictment"), charging defendant William Shepherd with first-degree attempted murder, N.J.S.A. 2C:5-1...	Aug. 05, 2014	Case		—
Cited by	160. <u>State v. Brown</u> 2014 WL 3672121, *3 , N.J.Super.A.D. Following a jury trial, defendant Tyrell L. Brown was convicted of second-degree aggravated assault of Dmitri Gizas, N.J.S.A. 2C:12-1(b)(1) (causing or attempting to cause serious...	July 25, 2014	Case		2 A.3d
Cited by	161. <u>State v. Cason</u> 2014 WL 2742820, *2+ , N.J.Super.A.D. Defendant Robert G. Cason was tried to a jury on charges of second-degree eluding, N.J.S.A. 2C:29-2b, and third-degree resisting arrest, N.J.S.A. 2C:29-2a(3)(a). At the conclusion...	June 18, 2014	Case		—
Cited by	162. <u>State v. Gobel</u> 2014 WL 2217924, *4 , N.J.Super.A.D. Tried by a jury, defendant Peter J. Gobel appeals from the October 19, 2012 judgment of conviction for second-degree eluding, N.J.S.A. 2C:29-2(b). We affirm. On January 31, 2011,...	May 30, 2014	Case		2 A.3d
Cited by	163. <u>State v. Patterson</u> 89 A.3d 616, 621 , N.J.Super.A.D. CRIMINAL JUSTICE - Arguments and Opening Statement. Prosecutor did not make improper suggestion of indigency as motive for crime during closing argument at drug trial.	May 09, 2014	Case		1 2 A.3d
Cited by	164. <u>State v. Oprihory</u> 2014 WL 1796361, *6 , N.J.Super.A.D. Defendant Francene Oprihory appeals a judgment of conviction and sentence entered on an indictment charging her with two third-degree crimes committed against Bergen County...	May 07, 2014	Case		6 A.3d
Cited by	165. <u>State v. Terc</u> 2014 WL 1281481, *6 , N.J.Super.A.D. Defendant Robert A. Terc appeals his convictions for crimes arising from the stabbing of his former girlfriend, Jill Zayas, and her friend, Jeremy Hubbard. A jury found defendant...	Apr. 01, 2014	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	166. 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		2 A.3d
Cited by	167. New Jersey Div. of Youth and Family Services v. K.W. 2014 WL 941355, *4 , N.J.Super.A.D. In these consolidated appeals, defendant K.W. (Mother) appeals from three orders in Family Part proceedings. We affirm. Mother and Father have two daughters, A.L. born in July...	Mar. 12, 2014	Case		13 A.3d
Cited by	168. State v. Hernandez 2014 WL 714715, *4 , N.J.Super.A.D. The opinion of the court was delivered by This direct appeal arises from a criminal trial in which defendant Angel Hernandez was convicted of a number of charges stemming from his...	Feb. 26, 2014	Case		—
Cited by	169. State v. Odina 2014 WL 463306, *4 , N.J.Super.A.D. Defendant Adegoke Odina appeals from the Law Division's affirmance of his judgment of conviction in Municipal Court for simple assault. We affirm. The evidence heard by the...	Feb. 06, 2014	Case		2 A.3d
Cited by	170. State v. Kearney 2014 WL 103228, *5+ , N.J.Super.A.D. Tried by a jury, defendant Latisha M. Kearney was convicted of second-degree aggravated assault, N.J.S.A. 2C:12-1B(1), and third-degree possession of a weapon for an unlawful...	Jan. 13, 2014	Case		—
Cited by	171. State v. Williams 2013 WL 6800051, *6 , N.J.Super.A.D. Tried by a jury, defendant Walter H. Williams was convicted of third-degree eluding, N.J.S.A. 2C:29-2b, and fourth-degree resisting arrest, N.J.S.A. 2C:29-2a(2). After appropriate...	Dec. 26, 2013	Case		6 A.3d
Cited by	172. State v. Quarwee Walker 2013 WL 6479576, *7 , N.J.Super.A.D. Defendants Quarwee Walker and Bryan Witherspoon were tried jointly and convicted of drug offenses and conspiracy. They claim plain error in the jury instructions and errors at...	Dec. 11, 2013	Case		—
Cited by	173. Burlington Coat Factory Warehouse v. Director, Div. of Taxation 2013 WL 6169206, *3 , N.J.Super.A.D. TAXATION - Sales and Use. Services associated with construction of inventory handling system were not exempt from sales tax.	Nov. 26, 2013	Case		1 A.3d
Cited by	174. State v. Ragland 2013 WL 5942238, *7 , N.J.Super.A.D. Tried by a jury, defendant Dyshon Ragland was convicted of first-degree armed robbery, N.J.S.A. 2C:15-1; first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2 and 2C:11-3;...	Nov. 07, 2013	Case		3 6 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	175. State v. Garland  2013 WL 4859632, *5 , N.J.Super.A.D. The Essex County grand jury returned Indictment No. 2009–7–2033, charging defendant Raphael Garland, and co-defendants Tyreese Evans and Ebony Johnson, with second-degree...	Sep. 13, 2013	Case		1 A.3d
Cited by	176. State v. Seabrooks 2013 WL 4859653, *9+ , N.J.Super.A.D. On July 15, 2006, defendant left his home in Bushkill, Pennsylvania, purchased a .380 semi-automatic handgun at a Pennsylvania firearms and sporting goods store, and loaded it with...	Sep. 13, 2013	Case		—
Cited by	177. State v. Manderville  2013 WL 4821237, *18 , 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		7 A.3d
Cited by	178. 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		1 A.3d
Cited by	179. 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		—
Cited by	180. State v. Lawrence 2013 WL 4045596, *9+ , N.J.Super.A.D. A jury found defendant, Ernest Lawrence, guilty of murder, two weapons offenses, and hindering his own prosecution; and a judge sentenced him to an aggregate forty-five year prison...	Aug. 12, 2013	Case		5 A.3d
Cited by	181. State v. Richardson 2013 WL 3490814, *6+ , N.J.Super.A.D. A grand jury indicted defendants Charles Richardson (Richardson) and Kenneth Boddie (Boddie) for first-degree murder, N.J.S.A. 2C:11–3a(1) and (2); second-degree possession of a...	July 15, 2013	Case		—
Cited by	182. Villanueva v. Zimmer  69 A.3d 131, 138 , N.J.Super.A.D. TRANSPORTATION - Motor Vehicles. Hearsay determination of SSA that driver became disabled on collision date was inadmissible under public-records exception.	June 21, 2013	Case		11 A.3d
Cited by	183. M.D. v. Verno  2013 WL 3064593, *4 , N.J.Super.A.D. Plaintiff appeals from the trial court's order dismissing his verified complaint and action for three writs of mandamus seeking to: (1) compel defendant Michele Verno, in her...	June 20, 2013	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	184. State v. Perez  2013 WL 1953554, *5+ , N.J.Super.A.D. Defendant Jennifer Perez appeals from the November 20, 2009 judgment of conviction of distribution of cocaine within 500 feet of public property, N.J.S.A. 2C:35–5(a) and 7.1, for...	May 14, 2013	Case	   	9 A.3d
Cited by	185. State v. Eubanks 2013 WL 1830804, *5+ , N.J.Super.A.D. Tried by a jury following the denial of his motion to suppress, defendant Timothy Eubanks was convicted of third-degree possession of heroin, N.J.S.A. 2C:35–10(a)(1) (count one);...	May 02, 2013	Case	   	11 A.3d
Cited by	186. State v. Turner 2013 WL 1798685, *6+ , N.J.Super.A.D. After a May 2011 jury trial, defendant William D. Turner was convicted of third-degree possession of a controlled dangerous substance (“CDS”), specifically heroin, N.J.S.A....	Apr. 30, 2013	Case	   	—
Cited by	187. State v. Whye  2013 WL 1776094, *8 , N.J.Super.A.D. Following a trial by jury, then-self-represented defendant Troy A. Whye was convicted of four crimes: first-degree murder, N.J.S.A. 2C:11–3(a)(1) and (2); third-degree possession...	Apr. 26, 2013	Case	   	1 A.3d
Cited by	188. State v. Sanchez 2013 WL 1629082, *7 , N.J.Super.A.D. A jury found defendant Gabriel Romero Sanchez guilty of first-degree murder, N.J.S.A. 2C:11–3a(1)–(2), two counts of felony murder (one in the course of a burglary and one in the...	Apr. 17, 2013	Case	   	—
Cited by	189. 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	   	2 3 A.3d
Cited by	190. State v. Aguirre  2013 WL 756343, *8 , N.J.Super.A.D. The appeals of co-defendants Victor Aguirre and Luis Macao were calendared back-to-back and are consolidated for purposes of this opinion. They appeal their convictions and...	Feb. 27, 2013	Case	   	1 A.3d
Cited by	191. Rosen v. Earle  2013 WL 173790, *2 , N.J.Super.A.D. Plaintiff, a passenger, had sued defendants, owners and operators of motor vehicles involved in a collision, for damages for injuries allegedly sustained by her in the accident....	Jan. 17, 2013	Case	   	16 A.3d
Cited by	192. State v. Alvarez  2012 WL 6632794, *6+ , N.J.Super.A.D. Defendant Hector S. Alvarez appeals from a September 30, 2010 judgment of conviction for second-degree conspiracy to commit robbery, N.J.S.A. 2C:5–2 and 2C:15–1, and fourth-degree...	Dec. 21, 2012	Case	   	1 2 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	193. State v. Fountain  2012 WL 6554191, *4, N.J.Super.A.D. Defendant Christopher Fountain appeals from his conviction by a jury on charges arising from the shooting of an acquaintance. He also appeals from his twenty-five-year sentence of...	Dec. 17, 2012	Case	   	14 A.3d
Cited by	194. Wernega v. Volpa  2012 WL 6196008, *2, N.J.Super.A.D. In this post-judgment matrimonial matter, plaintiff mother appeals from a March 30, 2012 order granting defendant father's cross-motion seeking an order directing her "to cooperate..."	Dec. 13, 2012	Case	   	16 A.3d
Cited by	195. State v. Aleman  2012 WL 6061698, *5+, N.J.Super.A.D. Defendant Jose Aleman appeals from his murder conviction for fatally shooting Pong Yu and injuring Carlos Smith. He challenges, as plain error, the verdict sheet and jury...	Dec. 07, 2012	Case	   	1 2 A.3d
Cited by	196. State v. J.I.  2012 WL 5990117, *5, N.J.Super.A.D. Defendant appeals from denial of his petition for post conviction relief (PCR) alleging ineffective assistance of counsel and other errors in his trial for sexual abuse of his...	Dec. 03, 2012	Case	   	14 A.3d
Cited by	197. 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	   	6 A.3d
Cited by	198. State v. Hinds-Mohammed 2012 WL 4867555, *8, N.J.Super.A.D. Tried by a jury, defendant, Suzette Hinds-Mohammed, was convicted of first-degree attempted murder, N.J.S.A. 2C:5-1 and N.J.S.A. 2C:11-3a(1); second-degree possession of a weapon...	Oct. 16, 2012	Case	   	5 A.3d
Cited by	199. State v. McInerney 54 A.3d 281, 292+, N.J.Super.A.D. CRIMINAL JUSTICE - Child Endangerment. Instruction on meaning of phrase "person having a legal duty for the care of a child" was erroneous.	Oct. 10, 2012	Case	   	—
Cited by	200. State v. Newman  2012 WL 4795598, *5, N.J.Super.A.D. Tried to a jury, defendant was convicted of first degree attempted murder, N.J.S.A. 2C:5-1 and 2C:11-3 (count one); second degree aggravated assault, N.J.S.A. 2C:12-1(b)(1)(count...	Oct. 10, 2012	Case	   	2 A.3d
Cited by	 201. State v. Gorthy 2012 WL 4773021, *5+, N.J.Super.A.D. Defendant June Gorthy, also known as June Governale, appeals from a jury verdict finding her not guilty by reason of insanity of fourth-degree stalking, N.J.S.A. 2C:12-10(b). See...	Oct. 09, 2012	Case	   	—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	202. State v. Callaway 2012 WL 4448776, *7, N.J.Super.A.D. Defendants David Callaway, Ronald Callaway, and Floyd Tally were linked to Craig Callaway, an Atlantic City politician. When Craig Callaway's mayoral ambitions ended due to a...	Sep. 27, 2012	Case		5 A.3d
Cited by	203. State v. Clifton-Short 2012 WL 4009080, *9, N.J.Super.A.D. Following a jury trial, defendant was convicted of purposeful or knowing murder and related charges. On the murder conviction, he was sentenced to life imprisonment, with a...	Sep. 13, 2012	Case		10 A.3d
Cited by	204. State v. Mamani 2012 WL 3628799, *2+, N.J.Super.A.D. Following a jury trial, defendant was convicted of second-degree attempted passion provocation manslaughter, N.J.S.A. 2C: 11-4b(2) (as a lesser-included offense of first-degree...	Aug. 24, 2012	Case		1 A.3d
Cited by	205. State v. Gordet 2012 WL 3046332, *5+, N.J.Super.A.D. A jury found defendant John M. Gordet guilty of second-degree sexual assault involving the use of physical force or coercion, N.J.S.A. 2C:14-2c(1); third-degree terroristic...	July 27, 2012	Case		—
Cited by	206. State v. Holmes 2012 WL 2890695, *4, N.J.Super.A.D. Tried by a jury, defendant Richard C. Holmes was convicted of second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), and on June 18, 2010, was sentenced to eight...	July 17, 2012	Case		—
Cited by	207. State v. Rodgers 2012 WL 2865782, *3+, N.J.Super.A.D. In State v. Betancourt, No. A-2981-07 (App.Div. Nov. 30, 2009), certif. denied, 201 N.J. 446 (2010), we affirmed defendant's conviction for third-degree aggravated assault of his...	July 13, 2012	Case		—
Cited by	208. State v. White 2012 WL 2735591, *10, N.J.Super.A.D. Following a fifteen-day jury trial, defendant Natasha White was convicted of the disorderly persons offense of criminal mischief, N.J.S.A. 2C:17-3a, amended down from the third...	July 10, 2012	Case		6 7 A.3d
Cited by	209. 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		2 A.3d
Cited by	210. State v. Belen 2012 WL 2579528, *6, N.J.Super.A.D. By leave granted, the State of New Jersey appeals from an order of the Law Division granting defendants Fred Belen and Alexander Lara's motion to sever certain counts from a...	July 05, 2012	Case		6 7 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	211. <u>Marra v. Ryder Transp. Resources</u> 2012 WL 2505731, *7, N.J.Super.A.D. Ryder Transportation Resources (Ryder) appeals from an award of total and permanent disability granted to petitioner Gerard Marra, a former employee, and the dismissal of the claim...	July 02, 2012	Case		1 A.3d
Cited by	212. <u>State v. Clay</u> 2012 WL 2368770, *1, N.J.Super.A.D. In this appeal, defendant argues that the trial judge erred with regard to the admission of "other crimes" evidence and that the sentence he received was excessive. We find no...	June 25, 2012	Case		—
Cited by	213. <u>State v. Miller</u> 2012 WL 2010867, *2, N.J.Super.A.D. Defendant Derrick Miller was tried before a jury over a period of five days and convicted of second degree eluding, N.J.S.A. 2C:29–2(b), and third degree receiving stolen property,...	June 06, 2012	Case		2 A.3d
Cited by	214. <u>State v. Carnesi</u> 2012 WL 1948623, *12, N.J.Super.A.D. Defendant appeals from a June 25, 2010 conviction for second-degree aggravated assault, N.J.S.A. 2C:12–1b(1); second-degree possession of a weapon for an unlawful purpose, N.J.S.A....	May 31, 2012	Case		2 A.3d
Cited by	215. <u>Johnson v. Morse</u> 2012 WL 1948652, *4, N.J.Super.A.D. Plaintiff Carylee Johnson appeals from an order entered by the Law Division on August 22, 2011, granting summary judgment in favor of defendants, Eric Morse and Leigh Ann Morse. We...	May 31, 2012	Case		—
Cited by	216. <u>State v. Tucker</u> 2012 WL 1382223, *4+, N.J.Super.A.D. Defendant, Michael Tucker, appeals from the Law Division's July 23, 2010 order denying his petition for post-conviction relief (PCR). We affirm. The following account of the...	Apr. 23, 2012	Case		14 A.3d
Cited by	217. <u>State v. Vega</u> 2012 WL 1161608, *8, N.J.Super.A.D. Tried jointly in a twenty-one day jury trial in September, October and November 2008, defendants Jose Vega and Juan Rosario were convicted of the slaying of Ralph Pinto and the...	Apr. 10, 2012	Case		7 A.3d
Cited by	218. <u>State v. Williams</u> 2012 WL 752075, *7, N.J.Super.A.D. Following a jury trial, defendant Bryden Williams was convicted of the first-degree murder of Joel Whitley, N.J.S.A. 2C:11–3(a)(1) and (2) (count one); third-degree unlawful...	Mar. 09, 2012	Case		1 A.3d
Cited by	219. <u>State v. Souvenier</u> 2012 WL 738723, *6, N.J.Super.A.D. Throughout an afternoon, evening, and early morning in June 2006, defendant Robert Souvenier subjected his former girlfriend and her disabled cousin to an ordeal during which he...	Mar. 08, 2012	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	 220. <u>State v. Micelli</u> 2012 WL 443996, *7+ , N.J.Super.A.D. Defendant Santino Micelli appeals from his May 21, 2010 conviction on a charge of third-degree eluding police, N.J.S.A. 2C:29-2b, as a lesser included offense of second-degree...	Feb. 14, 2012	Case		—
Cited by	221. <u>Lombardi v. Pat's Tavern</u> 2011 WL 6057905, *4 , N.J.Super.A.D. Plaintiff Gerard Lombardi appeals from a July 9, 2010 order dismissing on summary judgment his complaint against Pat's Tavern for injuries that he suffered outside the Mount...	Dec. 07, 2011	Case		—
Cited by	 222. <u>State v. Sterling</u> 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		5 A.3d
Cited by	223. <u>State ex rel. B.P.C.</u>  23 A.3d 937, 945 , N.J.Super.A.D. FAMILY LAW - Juvenile Justice. Juveniles' rubbing of their bare buttocks on faces of younger boys supported delinquency adjudications of criminal sexual conduct.	July 18, 2011	Case		17 A.3d
Cited by	224. <u>United States v. Lewis</u> 147 A.3d 236, 242 , D.C. CRIMINAL JUSTICE - Searches and Seizures. Warrantless searches incident to arrest may be lawful even if searches precede arrests and it is unclear if arrests were intended before...	Sep. 29, 2016	Case		—
Cited by	225. <u>People v. Jackson</u>  869 N.W.2d 253, 262+ , Mich. CRIMINAL JUSTICE - Evidence. There was no res gestae exception to rule of evidence governing admission of other bad acts evidence.	July 28, 2015	Case		13 A.3d
Cited by	226. <u>State v. Baker</u>  738 S.E.2d 909, 917 , W.Va. Background: Defendant was convicted in the Circuit Court, Greenbrier County, Joseph C. Pomponio, J., of robbery in the second degree and attempted robbery in the second degree....	Feb. 21, 2013	Case		5 11 A.3d
Cited by	227. <u>County of Atlantic, Respondent-Respondent, and PBA Local 243, Charging Party, and FOP Lodge 34 and PBA Local 77, Charging Parties-Appellants; Township of Bridgewater, Petitioner-Respondent, and PBA Local 174, Respondent-</u> 42 NJPER P 117	Mar. 09, 2016	Administrative Decision		15 A.3d
Mentioned by	228. <u>State v. Gouldson</u> 2017 WL 3427271, *8 , N.J.Super.A.D. Defendant Mikhail Gouldson appeals his conviction following a jury trial of possessory weapons offenses. He also appeals his sentence. More particularly, he argues the court erred...	Aug. 10, 2017	Case		1 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	229. <u>State v. Burgos</u> 2017 WL 2471002, *3 , N.J.Super.A.D. Defendant was charged with third-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1) (count one); third-degree possession of CDS with intent to...	June 08, 2017	Case		—
Mentioned by	230. <u>State v. Rosa</u> 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		5 8 A.3d
Mentioned by	231. <u>State v. Blevin</u> 2014 WL 8240515, *6 , N.J.Super.A.D. Following a trial, a jury convicted defendant Troy Blevin of second-degree theft by failure to make a required disposition in an amount exceeding \$75,000, N.J.S.A. 2C:20-9. The...	Mar. 23, 2015	Case		2 A.3d
Mentioned by	232. <u>State v. Willis</u> 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		5 A.3d
Mentioned by	233. <u>State v. Ferrero</u> 274 P.3d 509, 513 , Ariz. CRIMINAL JUSTICE - Sex Offenses. Uncharged sexual conduct evidence was subject to screening for admissibility.	Apr. 11, 2012	Case		11 A.3d
Mentioned by	234. <u>State v. Grier</u> 278 P.3d 225, 230 , Wash.App. Div. 2 CRIMINAL JUSTICE - Sentencing. Trial court lacked authority to impose mental health and substance abuse treatment as conditions of sentence.	June 07, 2012	Case		12 14 A.3d
—	235. <u>Admissibility, under Rule 404(b) of Federal Rules of Evidence, of evidence of other crimes, wrongs, or acts not similar to offense charged</u> 41 A.L.R. Fed. 497 This annotation collects and analyzes those federal cases which have discussed the question of the admissibility, under Rule 404(b) of the Federal Rules of Evidence, of evidence of...	1979	ALR	—	5 A.3d
—	236. <u>Handbook of Federal Evidence s 803:2, Rule 803(2): excited utterance; abandonment of "res gestae"</u> Mary contends that she was sexually assaulted by her date in lovers lane. She runs out of the car and heads home on foot. It takes her a good hour to get home. She passes several...	2017	Other Secondary Source	—	11 12 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	237. <u>Handbook of Federal Evidence s 803:3, Rule 803(3): then-existing mental, emotional, or physical condition; intent as proof of doing act intended; statement as proof of fact remembered or believed; will cases</u> Bob and Ralph died when the company plane crashed in the ocean near Boston. A week before leaving on his flight from New York to Boston, Bob said to his wife at dinner, "I really...	2017	Other Secondary Source	—	10 A.3d
—	238. <u>Jones on Evidence--Civil and Criminal s 24:6, "Res gestae"</u> "Res gestae" is a Latin phrase meaning "the subject matter of the thing done[.] ... As long as the main transaction continues, deeds emanating from it become a part of that...	2017	Other Secondary Source	—	14 A.3d
—	239. <u>Jones on Evidence--Civil and Criminal s 17:13, "Extrinsic" vs. "intrinsic" acts</u> The substantive and procedural rules that regulate extrinsic act evidence apply only to acts that are "extrinsic" to "i.e. not part of" the events that are the subject-matter...	2017	Other Secondary Source	—	—
—	240. <u>Jones on Evidence--Civil and Criminal s 17:14, "Res gestae"; acts arising from same transaction; "inextricably intertwined" acts; "necessary to complete the story"</u> Admissibility of extrinsic act evidence is sometimes more-or-less mandated by the definition of the crime for which defendant is being tried. Even without a statutory mandate,...	2017	Other Secondary Source	—	14 A.3d
—	241. <u>Jones on Evidence--Civil and Criminal s 17:6.31, New Jersey</u> N.J. R. Evid. 404(b) (N.J.R.E. 404(b)) provides: (b) Other Crimes, Wrongs, or Acts. Except as otherwise provided by Rule 608(b), evidence of other crimes, wrongs, or acts is not...	2017	Other Secondary Source	—	5 A.3d
—	242. <u>McCormick on Evidence s 186, Character, in general</u> Evidence of the general character of a party or witness almost always has some probative value, but in many situations, the probative value is slight and the potential for...	2016	Other Secondary Source	—	6 A.3d
—	243. <u>McCormick on Evidence s 190, Bad character as evidence of criminal conduct: Other crimes</u> If anything, the rule against using character evidence to prove conduct on a particular occasion applies even more strongly in criminal cases. Indeed, some courts have intimated or...	2016	Other Secondary Source	—	5 A.3d
—	244. <u>McCormick on Evidence s 268, Res gestae and the hearsay rule</u> The term res gestae seems to have come into common usage in discussions of admissibility of statements accompanying material acts or situations in the early 1800s. At this time,...	2016	Other Secondary Source	—	12 14 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	245. 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	—	2 A.3d
—	246. 2B N.J. Prac. Series N.J.R.E. 402, Relevant Evidence Generally Admissible N.J. Prac. Series Rule 402 is essentially the same as both N.J.Evid.R. 7(f) and Fed.R.Evid. 402. The subject of N.J.Evid.R. 7(a) and (c) (qualification of witnesses) is covered by Rule 601....	2017	Other Secondary Source	—	13 14 A.3d
—	247. 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	—	5 7 10 A.3d
—	248. 2D N.J. Prac. Series N.J.R.E. 803(c)(2), Excited Utterance N.J. Prac. Series Excited utterance. Rule 803(c)(2) is identical to Fed.R.Evid. 803(2) except that it adds the phrase "without opportunity to deliberate or fabricate," taken from N.J.Evid.R....	2017	Other Secondary Source	—	11 12 14 A.3d
—	249. 2D N.J. Prac. Series 803(c)(2):2 (N.J.R.E.), Developments in the law N.J. Prac. Series The cases involving "fresh complaint" have been placed under the excited utterance rule even though the complaint is generally made after the event. It is called a fresh...	2017	Other Secondary Source	—	—
—	250. 32 N.J. Prac. Series s 21:13, Hearsay evidence-No more res gestae N.J. Prac. Series In State v. Rose the New Jersey Supreme Court declared that "the doctrine of res gestae no longer has vitality in light of the formal Rules of Evidence." The Court held that it...	2016	Other Secondary Source	—	12 14 A.3d
—	251. 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	—	10 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	252. <u>40 N.J. Prac. Series s 4.6, Mistaken exercise of discretion</u> N.J. Prac. Series The "mistaken exercise of discretion" or "abuse of discretion" standard is quite similar to the clearly erroneous standard. This standard is applied to issues that are...	2017	Other Secondary Source	—	1 A.3d
—	253. <u>55 N.J. Prac. Series s 2:6, Opposing authorities-Generally</u> N.J. Prac. Series State v. Garrison, 228 N.J. 182, 155 A.3d 996 (2017) (in prosecution for aggravated sexual assault and endangering welfare of child, trial court did not abuse its discretion in...	2017	Other Secondary Source	—	10 A.3d
—	254. <u>55 N.J. Prac. Series s 7:37, Opposing authorities-Relevant to material issue</u> N.J. Prac. Series Evidence Rule 404(b) states as follows: Except as otherwise provided by Rule 608(b), evidence of other crimes, wrongs, or acts is not admissible to prove the disposition of a...	2017	Other Secondary Source	—	10 A.3d
—	255. <u>Uncharged Misconduct Evidence s 3:17, Evidence of uncharged misconduct that shows defendant's motive for committing charged crime-Category no. 1: Cases in which uncharged crime supplies motive for charged crime-Examples</u> At this point, the theory of using motive to prove the defendant's identity may still strike the reader as a bit abstract. For that reason, this section gives several concrete...	2017	Other Secondary Source	—	10 A.3d
—	256. <u>Uncharged Misconduct Evidence s 6:27, Commission of uncharged crime simultaneously with charged crime-Res gestae doctrine</u> As we saw in the last section, the courts sometimes use the res gestae label to justify the admission of references to uncharged misconduct that the defendant uttered during the...	2017	Other Secondary Source	—	14 A.3d
—	257. <u>Uncharged Misconduct Evidence s 6:31, Commission of uncharged crime simultaneously with charged crime-Trend toward requiring independent logical relevance</u> The two versions of the res gestae theory set forth in §§ 6:28- 6:29, permitting admission of evidence of uncharged crimes solely on the basis of temporal relation, have been...	2017	Other Secondary Source	—	14 A.3d
—	258. <u>Winning Evidence Arguments s 404:5, Rule 404(b)(2): crimes, wrongs or other acts</u> Dennis enters a Wal-Mart. He brings a television set to the checkout counter. When the clerk scans the television a \$285 price appears. Dennis hands the clerk fifteen \$20 bills....	2018	Other Secondary Source	—	3 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	259. <u>Winning Evidence Arguments s 803:2, Rule 803(2): excited utterance; abandonment of "res gestae"</u> Mary contends that she was sexually assaulted by her date in lovers lane. She runs out of the car and heads home on foot. It takes her a good hour to get home. She passes several...	2018	Other Secondary Source	—	11 12 A.3d
—	260. <u>Winning Evidence Arguments s 803:3, Rule 803(3): then-existing mental, emotional, or physical condition; intent as proof of doing act intended; statement as proof of fact remembered or believed; will cases</u> Bob and Ralph died when the company plane crashed in the ocean near Boston. A week before leaving on his flight from New York to Boston, Bob said to his wife at dinner, "I really...	2018	Other Secondary Source	—	10 A.3d
—	261. <u>Am. Jur. 2d Trial s 248, Reception of evidence</u> Am. Jur. 2d Trial The admission or exclusion of evidence is initially left to the discretion of the trial court. Jurors need not be told why a judge admitted evidence. Where the admissibility of...	2018	Other Secondary Source	—	1 A.3d
—	262. <u>s 1698. Limiting effect of evidence of other crimes, wrongs, or acts</u> Corpus Juris Secundum Criminal Procedure and Rights of the Accused Evidence of other crimes, wrongs, or acts of the defendant may be properly admitted in a criminal case if the evidence is offered for a proper purpose, is relevant, its probative...	2017	Other Secondary Source	—	—
—	263. <u>CJS Homicide s 334, Generally</u> CJS Homicide In a prosecution for homicide, evidence tending to show the existence of a motive for the commission of the crime is admissible, especially where the evidence against the accused...	2017	Other Secondary Source	—	10 A.3d
—	264. <u>28 NO. 14 West's Criminal Law News 18, Trial court was required to rely on the Rules of Evidence, rather than res gestae, when making evidentiary rulings</u> The trial court was required to rely on the Rules of Evidence, rather than the concept of res gestae, when making evidentiary rulings concerning the admission of evidence.	2011	Law Review	—	—
—	265. <u>50 NO 6 Criminal Law Bulletin ART 7, Present Sense Impression and Excited Utterance Hearsay Exceptions: Interesting Application Questions</u>	2014	Other Secondary Source	—	11 12 14 A.3d

Treatment	Title	Date	Type	Depth	Headnote(s)
—	<u>266. P 190,894 GERARD MARRA, PETITIONER-RESPONDENT, V. RYDER TRANSPORTATION RESOURCES, RESPONDENT-APPELLANT, AND SECOND INJURY FUND, RESPONDENT-RESPONDENT.</u> Labor & Employment Law GERARD MARRA, Petitioner—Respondent, v. RYDER TRANSPORTATION RESOURCES, Respondent—Appellant, and SECOND INJURY FUND, Respondent—Respondent. No. A—5274—10T4Superior Court of New...	2012	Other Secondary Source	—	1 A.3d