

SUPREME COURT OF NEW JERSEY
Docket No. 090216

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JEREMY ARRINGTON,

Defendant-Petitioner.

ON GRANT OF PETITION FOR
CERTIFICATION FROM THE
SUPERIOR COURT OF NEW
JERSEY, APPELLATE DIVISION

DOCKET NO. A-2662-21

CRIMINAL ACTION

Sat below:

Hon. Jack Sabatino, P.J.A.D.

Hon. Maritza Berdote Byrne, J.A.D.

Hon. Adam E. Jacobs, J.A.D.

BRIEF OF *AMICUS CURIAE*
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JERSEY

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i>	1
PRELIMINARY STATEMENT	3
PROCEDURAL HISTORY AND STATEMENT OF FACTS	5
ARGUMENT	7
I. DEFENDANTS HAVE A FUNDAMENTAL RIGHT TO PRESENT A DEFENSE UNDER THE FEDERAL AND THE NEW JERSEY CONSTITUTIONS.....	7
II. COURTS RARELY MANDATE EXPERT TESTIMONY AND CATEGORICALLY BAR LAY TESTIMONY DURING TRIAL.	14
III. ANY RELEVANT EVIDENCE IN SUPPORT OF AN INSANITY DEFENSE SHOULD BE PERMITTED, WITH ITS WEIGHT TO BE DETERMINED BY THE JURY.	23
CONCLUSION.....	27

TABLE OF AUTHORITES

	Page(s)
Cases	
<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973).....	9
<i>Clark v. Nenna</i> , 465 N.J. Super. 505 (App. Div. 2020)	16
<i>Clifford v. State</i> , 60 N.J.L. 287 (Sup. Ct. 1897).....	20
<i>In re Commitment of M.M.</i> , 384 N.J. Super. 313 (App. Div. 2006)	13
<i>Cowley v. Virtual Health System</i> , 242 N.J. 1 (2020)	15
<i>Crane v. Kentucky</i> , 476 U.S. 683 (1986).....	7
<i>Davis v. Brickman Landscaping, Ltd.</i> , 219 N.J. 395 (2014)	15
<i>DeHanes v. Rothman</i> , 158 N.J. 90 (1999)	17
<i>Holmes v. South Carolina</i> , 547 U.S. 319 (2006).....	7
<i>M’Naghten’s Case</i> , 8 Eng. Rep. 718 (H.L. 1843)	11
<i>Nevada v. Jackson</i> , 596 U.S. 505 (2013).....	7
<i>Nicholas v. Mynster</i> , 2013 N.J. 463 (2013)	15

<i>Estate of Nicolas v. Ocean Plaza Condo. Ass’n, Inc.</i> , 388 N.J. Super. 571 (App. Div. 2006)	20
<i>Perez v. State</i> , 281 Ga. 175 (2006)	21
<i>Rock v. Arkansas</i> , 483 U.S. 44 (1987).....	8
<i>Rosenberg v. Cahill</i> , 99 N.J. 318 (1985)	15
<i>Smart Smr v. Borough of Fair Lawn Bd. Of Adjustment</i> , 152 N.J. 309 (1998)	16
<i>State v. A.L.A.</i> , 251 N.J. 580 (2022)	24
<i>State v. Alston</i> , 311 N.J. Super. 113 (App. Div. 1998).....	24
<i>State v. Bay</i> , 722 P.2d 280 (Ariz. 1986)	21
<i>State v. Bealor</i> , 187 N.J. 574 (2006)	17
<i>State v. Buckley</i> , 216 N.J. 249	24
<i>State v. Budis</i> , 125 N.J. 519 (1991)	7, 10
<i>State v. Burney</i> , 255 N.J. 1 (2023)	2
<i>State v. Cain</i> , 224 N.J. 410 (2016)	12, 18
<i>State v. Campbell</i> , 436 N.J. Super. 264 (App. Div. 2014)	25

<i>State v. Chambers,</i> 252 N.J. 561 (2023)	7
<i>State v. Cole,</i> 229 N.J. 430 (2017)	24
<i>State v. David,</i> 506 S.E.2d 455 (N.C. 1998).....	22
<i>State v. Dock,</i> 205 N.J. 237 (2011)	26
<i>State v. Fortin,</i> 189 N.J. 579 (2007)	16
<i>State v. Garron,</i> 177 N.J. 147 (2003)	9
<i>State v. Hannah,</i> 248 N.J. 148	26
<i>State v. Harris,</i> 156 N.J. 122 (1998)	8
<i>State v. Hess,</i> 207 N.J. 123 (2011)	26
<i>State v. Higgs,</i> 253 N.J. 333 (2023)	2
<i>State v. J.R.,</i> 227 N.J. 393 (2017)	12
<i>State v. Jenewicz,</i> 193 N.J. 440 (2008)	16
<i>State v. Koedatich,</i> 112 N.J. 225	25
<i>State v. Lodzinski,</i> 249 N.J. 116 (2021)	18

<i>State v. Macchia</i> , 253 N.J. 232 (2023)	18
<i>State v. Morehous</i> , 97 N.J.L. 285 (1922), <i>overruled on other grounds by State v.</i> <i>Smith</i> , 32 N.J. 501 (1960)	20
<i>State v. Noel</i> , 157 N.J. 141 (1999)	24
<i>State v. Odell</i> , 227 P.2d 710 (Wash. 1951)	21
<i>State v. Olenowski</i> , 253 N.J. 133 (2023)	2
<i>State v. Perry</i> , 225 N.J. 222 (2016)	10
<i>State v. Pierre</i> , 223 N.J. 560 (2015)	26
<i>State v. Reynolds</i> , 550 N.E.2d 490 (Ohio Ct. App. 1988).....	21
<i>State v. Risdén</i> , 106 N.J. Super. 226 (App. Div. 1969), <i>modified</i> , 56 N.J. 27 (1970).....	20
<i>State v. Savage</i> , 120 N.J. 594 (1990)	26
<i>State v. Singleton</i> , 211 N.J. 157 (2012)	11, 17
<i>State v. Worlock</i> , 117 N.J. 596 (1990)	22
<i>United States v. Scheffer</i> , 523 U.S. 303 (1998).....	8
<i>Wiggins v. Hackensack Meridian Health</i> , 259 N.J. 562 (2025)	16

Statutes

Ga. Code Ann. § 16-3-2	21
N.J.S.A. 2C:4-1	<i>passim</i>
N.J.S.A. 2C:4-5	11

Other Authorities

<i>ACDL-NJ's History and Mission</i> , ACDL-NJ, https://www.acdlnj.org/about (last accessed May 29, 2025)	1
<i>Amicus Representation</i> , ACDL-NJ, https://www.acdlnj.org/what-acdl-nj-does/amicus (last accessed May 29, 2025)	2
Edward J. Imwinkelried, <i>A Minimalist Approach to the Presentation of Expert Testimony</i> , 31 Stetson L. Rev. 105, 109-10 (2001)	14
<i>Modern Criminal Jury Charge</i> , “Insanity” (rev. Oct. 17, 1988)	18, 19, 20
Note, <i>The Legal Standard for Determining Criminal Insanity: A Need for Reform</i> , 20 Drake J. Rev. 353 (1971)	23

Rules

N.J.R.E. 401	13
N.J.R.E. 609	2
N.J.R.E. 701	2, 13, 20
N.J.R.E. 702	9, 12, 14
N.J.R.E. 803(c)(4)	13

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus Curiae the Association of Criminal Defense Lawyers of New Jersey (the “ACDL-NJ” or “*Amicus*”) is a nonprofit voluntary professional association, established in 1984. The ACDL-NJ serves as “the primary organized voice for the criminal defense bar in New Jersey.”¹ The ACDL-NJ aims to, among other things, “respond to the continuing problems confronting criminal defense lawyers when they honestly, ethically, but zealously represent their clients; to protect and insure compliance with those individual rights guaranteed by the New Jersey and United States Constitutions; and to encourage cooperation among criminal defense lawyers engaged in the furtherance of those objectives.”²

The ACDL-NJ has a significant interest in this case because it implicates one of the most fundamental rights of criminal defendants when their liberty is on the line: their right to fully defend against the accusations brought against them by putting on a case. Here, this issue involves a complex interplay between statute, rules of evidence, and constitutional rights, on all of which the ACDL-NJ is uniquely positioned to provide insight, as it has in “nearly every significant criminal case in the New Jersey Supreme Court and the New Jersey Appellate

¹ *The ACDL-NJ’s History and Mission*, ACDL-NJ, <https://www.acdlnj.org/about> (last accessed May 29, 2025).

² *Id.*

Division,”³ including many involving issues regarding defendants’ rights to present certain types of evidence on their behalf, as here. *See, e.g., State v. Higgs*, 253 N.J. 333 (2023) (addressing whether evidence about past investigations into a police officer and prior convictions of defendant were admissible under N.J.R.E. 609, and whether testimony by a detective not present at the scene was admissible under N.J.R.E. 701); *State v. Olenowski*, 253 N.J. 133 (2023) (examining principles to assess admissibility of Drug Recognition Evaluation testimony in criminal and quasi-criminal cases); *State v. Burney*, 255 N.J. 1 (2023) (addressing whether the expert testimony regarding the coverage range of a cell phone tower was admissible).

In line with its mission, the ACDL-NJ seeks here to ensure that defendants’ right to present a defense—a fundamental right guaranteed by the federal and New Jersey constitutions—is afforded the respect it deserves. Thus, *Amicus* appreciates the Court’s grant of leave to file a brief in this case and respectfully submits that the Court reverse the dangerous and erroneous decision below.

³ *Amicus Representation*, ACDL-NJ, <https://www.acdlnj.org/what-acdl-nj-does/amicus> (last accessed May 29, 2025).

PRELIMINARY STATEMENT

Among the bedrock principles of fairness, due process, and justice in criminal proceedings is the principle that a defendant facing criminal charges has the right to defend against those charges. In this case, the Appellate Division erroneously affirmed a trial court ruling that it is somehow proper to completely deny a criminal defendant the right to advance his only defense to the extremely serious accusations brought against him. As set forth below, the Appellate Division's holding is contrary to the caselaw, to the rules of evidence, and to long-established constitutional principles, and it is not, and cannot be, the law.

Specifically, the Appellate Division in this case adopted a novel rule that in order for a criminal defendant to advance an insanity defense at all, he or she must provide expert testimony at trial. Under this ruling, if such expert testimony is not provided, it is of no moment that lay testimony, medical records or any other proofs may be available to advance that defense. Instead, in the absence of expert testimony—even where, as here, the defendant was denied the opportunity to provide such testimony through no fault of his own—the Appellate Division's ruling not only limited but also denied the defendant's right to assert the only possible defense that he had. In doing so, the Appellate Division effectively negated his right to present a defense at all. But this is not,

and cannot be permitted in our system of justice. This is so for three essential reasons.

First, defendants have a fundamental right under both the United States and the New Jersey constitutions to a meaningful opportunity to present a defense. This right, while not absolute, can only be infringed upon in the most particular circumstances. But this case involves none of those circumstances.

Second, it is extremely uncommon in our system of justice for courts to mandate expert testimony as a necessary condition of presenting a party's position at trial. Indeed, in both the civil and criminal contexts, courts require expert testimony only where truly specialized knowledge is required to establish industry-specific standards of care, or where the issues involved are complex and lie outside the common knowledge of the average juror. In this case, and as set forth below, the jury's factual determination of insanity would not have required such specialized knowledge; thus, it was inappropriate for the trial court to mandate expert testimony during trial as a condition of advancing the defense at all.

Third, instead, any relevant evidence should be permitted, with its weight—as always—to be determined by the jury. Put another way, courts should not, particularly given the constitutional rights at stake, only allow *the best* evidence in a criminal case; instead, they should allow the introduction of

such evidence as is admissible under the Rules of Evidence, and permit the jury to weigh that evidence, with the guidance of appropriate instructions from the Court.

For these reasons, as set forth below, *Amicus* ACDL-NJ respectfully submits that this Court should reverse the erroneous decision below.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Amicus adopts the procedural history and statement of facts set forth in Defendant-Petitioner's Petition for Certification and Supplemental Brief, and here highlights only aspects of the procedural history and facts that are particularly pertinent to this brief.

The State presented evidence that on November 5, 2016, Jeremy Arrington ("Arrington") entered a Newark home and committed terribly violent, indeed horrific, acts. At trial, Arrington sought to present and noticed an insanity defense. However, the expert retained by defense counsel for Arrington's prior competency hearing was unavailable to testify at trial, and defense counsel was later unable to secure approval to hire a different expert to present such testimony. (10T 9-15 to 21, 11-4 to 12).⁴

⁴ 10T refers to the transcript of the January 11, 2022 hearing; 8T refers to the transcript of the December 16, 2021 pre-trial conference; 9T refers to the transcript of the January 5, 2022 pre-trial conference; "Dp" refers to Arrington's Petition for Certification; "Dpa" refers to Arrington's Appendix to his Petition for Certification; "Drb" refers to Arrington's reply brief below.

Meanwhile, the trial court did not initially find the failure to present expert testimony to be fatal to Arrington's insanity defense. *See* 8T 71-9 to 18 (" . . . there has to be some witness I mean it may not be an expert witness, it could be a lay witness if they were capable and . . . if they're able to . . . testify as to his conduct or state of mind. But I think the key is that there has to be some evidence or some witness."). At the time, the defense indicated that it would meet its burden of proof through the State's evidence showing that "an individual would not be able to engage in this type of conduct unless he . . . did not know the difference between right and wrong . . ." (8T 52-3 to 20), as well as "the possible testimony of the defendant." (8T 73-1 to 6). Later, however, the court reversed its prior ruling on the need for a defense expert on insanity, stating that it "had a chance to further think about this unusual situation" and that it did not "see how you can have an insanity case without a doctor or an expert coming into court to testify as to Mr. Arrington's state of mind." (9T 78-12 to 18, 80-5 to 7). Although defense counsel argued that there was no such legal requirement to present a defense expert, the court adhered to its ruling that defense counsel was "just not going to be able to argue insanity." (9T 99-3 to 18). Thus, Arrington's trial proceeded without presenting his insanity defense, or indeed, any defense at all. Deprived of the right to present his defense, Arrington was unsurprisingly convicted of multiple counts of murder, attempted

murder, and related offenses and sentenced to an aggregate sentence of 375 years in prison with 281 years of parole ineligibility.

On appeal, the Appellate Division affirmed in a published opinion. Specifically, the Appellate Division held that a defendant advancing an insanity defense at trial must provide expert testimony in support of that defense. (Dpa17). Thus, the Appellate Division approved the trial court's exclusion of Arrington's proposed lay testimony in support of his defense, leaving intact the denial of Arrington's ability to present any defense at all. (Dpa21). On March 19, 2025, this Court granted the defense's Petition for Certification on the question of whether criminal defendants can advance an insanity defense under N.J.S.A. 2C:4-1 without expert testimony. For the reasons set forth below, *Amicus* ACDL-NJ respectfully submits that they should be able to do so.

ARGUMENT

I. DEFENDANTS HAVE A FUNDAMENTAL RIGHT TO PRESENT A DEFENSE UNDER THE FEDERAL AND THE NEW JERSEY CONSTITUTIONS.

There is no question: “[u]nder both the Federal and the New Jersey Constitutions, criminal defendants . . . have the right to a meaningful opportunity to present a complete defense.” *State v. Chambers*, 252 N.J. 561, 582 (2023) (citing *State v. Budis*, 125 N.J. 519, 531 (1991); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)); *Nevada v. Jackson*, 596 U.S. 505, 509 (2013). *See also Holmes*

v. South Carolina, 547 U.S. 319, 324 (2006) (“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.”). This right specifically encompasses the “Sixth Amendment right to offer any evidence that refutes guilt or bolsters a claim of innocence.” *State v. Harris*, 156 N.J. 122, 177 (1998).

While this right is not absolute, *see, e.g., United States v. Scheffer*, 523 U.S. 303, 308 (1998) (“[a] defendant’s right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions”), it is nevertheless a fundamental right rooted in the constitutional guarantees of compulsory process, due process, and a fair trial, and may only be compromised in under particular circumstances. Specifically, the right to present a defense may only be restricted by evidentiary rules where the exclusion of evidence is not “arbitrary or disproportionate to the purposes [the evidentiary rules] are designed to serve.” *Scheffer*, 523 U.S. at 308 (citing *Rock v. Arkansas*, 483 U.S. 44, 55 (1987)). That is, the exclusion of evidence is “unconstitutionally arbitrary or disproportionate . . . where it has infringed upon a weighty interest of the accused.” *Scheffer*, 523 U.S. at 308 (citations omitted). Thus, where evidence is “critical” to the accused’s defense, evidentiary rules “may not be applied mechanistically to

defeat the ends of justice.” *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973); *State v. Garron*, 177 N.J. 147, 169-70 (2003) (“ . . . when the mechanistic application of a state’s rules of evidence or procedure would undermine the truth-finding function by excluding relevant evidence necessary to a defendant’s ability to defend against the charged offenses, [the defendant’s constitutional rights] must prevail.”).

Here, the Appellate Division did just that, holding that the trial court properly excluded Arrington’s proposed lay testimony in support of his insanity defense. The court justified its decision on the basis of the argument that “by retaining the term “disease of the mind” within N.J.S.A. 2C:4-1 as a predicate to an insanity defense, the statute [defining legal insanity] contemplates that an expert mental health professional, not an amateur layperson, is needed to render such a diagnosis of a mental disease.” (Dpa17). It held that, under New Jersey Rule of Evidence 702, any assessment of whether Arrington was insane during the acts at issue necessitates “scientific, technical, or other specialized knowledge.” (Dpa18). Thus, the Appellate Division affirmed the trial court’s exclusion of Arrington’s proposed lay testimony in support of his defense. The result was that the Appellate Division affirmed the trial court’s complete denial of Arrington’s right to present his proffered defense, and in this case, any defense at all.

This ruling was incorrect, and ran afoul of the principle that the right to present a defense is a fundamental right that cannot be lightly infringed, particularly in circumstances where to do so would result in the complete denial of the right. *See Budis*, 125 N.J. at 532 (the “denial or significant diminution [of the principles of compulsory process] calls into question the ultimate integrity of the fact finding process . . .” (citation omitted)). This is particularly true because no statute or rule specifically prescribes that expert testimony is an absolute requirement for a defendant’s ability to advance an insanity defense. (Dp6). That is, no court in New Jersey had, before the Appellate Division’s decision, ever held that such a requirement exists, and no specific language in N.J.S.A 2C:4-1 or in the Rules of Evidence requires that expert testimony be required in order for a defendant to advance an insanity defense. *Cf. State v. Perry*, 225 N.J. 222 (2016) (holding that the trial court’s exclusion of certain evidence in support of the defense was proper because such exclusion was consistent with the Legislature’s clear objective in enacting the Rape Shield Law).

Indeed, the legal provisions upon which the Appellate Division relied in reaching the conclusion that expert evidence is mandated not only fail to expressly impose this requirement, but are actually to the contrary. Thus, N.J.S.A 2C:4-1 provides: “A person is not criminally responsible for conduct if

at the time of such conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong.” Not only does this statute completely lack any mention of an expert testimony requirement, but it also expressly adopts an 1843 definition⁵ of criminal insanity that, as this Court has expressly held, is distinct from any medical definition of mental illness. *State v. Singleton*, 211 N.J. 157, 173-74 (2012) (“[t]he insanity defense is not available to all who are mentally deficient or deranged; legal insanity has a different meaning and a different purpose than the concept of medical insanity.” (citation omitted)). By contrast, the statute regarding a defendant’s competency, rather than his insanity, does expressly raise the issue of experts, albeit even then, not mandatorily. *See* N.J.S.A. 2C:4-5 (“Whenever there is reason to doubt the defendant’s fitness to proceed, the court may on motion by the prosecutor, the defendant or on its own motion, appoint at least one qualified psychiatrist or licensed psychologist to examine and report upon the mental condition of the defendant.”).

⁵ *See M’Naghten’s Case*, 8 Eng. Rep. 718 (H.L. 1843) (“to establish a defense on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or as not to know that what he was doing was wrong.”).

Perhaps even more to the point, the Appellate Division’s conclusion flies in the face of the specific language of New Jersey Rule of Evidence 702. That Rule provides: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” This Rule *permits*, but does not *require*, expert testimony which may assist the trier of fact in understanding an issue that may require scientific or specialized knowledge. *See State v. J.R.*, 227 N.J. 393, 409 (2017) (“That [New Jersey] Rule [of Evidence 702] *permits* a qualified expert to offer an opinion [i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” (citation omitted) (emphasis added)); *State v. Cain*, 224 N.J. 410, 420 (2016) (“Under *N.J.R.E.* 702, expert testimony is *permissible* if scientific, technical, or other specialized knowledge will assist the trier of fact . . .” (emphasis added)).

Put another way, N.J.R.E. 702 governs the question of whether and when expert testimony *may be admitted*. It has nothing at all to say about when it *must be introduced*. The Appellate Division, however, confused those two concepts in holding that N.J.R.E. 702 “buttressed” its erroneous conclusion that insanity is an issue that “necessitates” expert testimony. (Dpa17-18). In doing so, it also

ignored the effect of other Rules that govern the introduction of non-expert testimony. Those Rules go to relevance, *see* N.J.R.E. 401, *et seq.*, to the admission of lay opinion testimony, *see* N.J.R.E. 701 (“If a witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences may be admitted if it: (a) is rationally based on the witness’ perception and (b) will assist in understanding the witness’ testimony or determining a fact in issue”), and even to the admissibility of certain types of hearsay, such as medical, including psychiatric, evidence. *See* N.J.R.E. 803(c)(4); *In re Commitment of M.M.*, 384 N.J. Super. 313 (App. Div. 2006) (holding that hospital reports which include statements made by the patient for purposes of treatment are admissible pursuant to N.J.R.E. 803(c)(4)). All of these types of evidence, if admitted, may, demonstrate—even if not conclusively—that the defendant suffers from insanity, *i.e.*, that “he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong.” N.J.S.A. 2C:4-1. That there may be better evidence does not establish that this evidence—perhaps of what others observed of him, or of what medical records might say—is inadmissible. But that is the import of the Appellate Division decision, which would be alarming enough without the fact that it infringes constitutional rights. That it does makes

it even more unacceptable in a system that is governed by the Rule of Law, regardless of the heinousness of the offenses.

The decision of the Appellate Division should be reversed.

II. COURTS RARELY MANDATE EXPERT TESTIMONY AND CATEGORICALLY BAR LAY TESTIMONY DURING TRIAL.

The discussion above is supported by a truism: while federal and state evidentiary rules prescribe when expert testimony may be *admissible* during trial in order to assist a trier of fact, *see, e.g.*, N.J.R.E. 702, those evidentiary rules generally do not outline the circumstances under which expert testimony is *necessary* during trial in order for a party to set forth its specific position. And, in fact, in both civil and criminal cases, courts rarely deem expert testimony absolutely necessary in order for a party to set forth its position. *See generally* Edward J. Imwinkelried, *A Minimalist Approach to the Presentation of Expert Testimony*, 31 Stetson L. Rev. 105, 109-10 (2001) (“Attorneys should not assume that it is necessary or even desirable to present expert testimony To be sure, in some cases expert testimony is mandatory. In most instances, a medical malpractice plaintiff has no choice but to offer expert testimony However, in other cases, there is no legal necessity for expert testimony, and the attorney must decide whether the presentation of expert testimony would be

desirable as a matter of tactics.”).⁶ In civil cases, for example, where the same constitutional rights—and the liberty of one of the parties—are not at stake, New Jersey courts generally only mandate expert testimony in that narrow class of cases in which the standard of care must be described so that a juror may assess whether it has been met. *See Davis v. Brickman Landscaping, Ltd.*, 219 N.J. 395, 407 (2014) (“Cases requiring the plaintiff to advance expert testimony establishing an accepted standard of care include the ordinary dental or medical malpractice case.” (citations and internal quotation marks omitted)). *See also Cowley v. Virtual Health System*, 242 N.J. 1, 21 (2020) (holding that expert testimony is necessary to establish the standard of care for overnight nurses’ monitoring of patients); *Nicholas v. Mynster*, 2013 N.J. 463 (2013) (affirming the need for specialized expert testimony to establish the standard of care with respect to the specific medical specialty at issue); *Rosenberg v. Cahill*, 99 N.J. 318, 327 (1985) (holding that expert testimony is necessary for establishing the applicable duty of care with respect to the proper chiropractic practices involved in that case). In cases involving these specialized industries, courts may also, but do not always, require experts in order to establish causation, *see, e.g.*,

⁶ In this case, defense counsel obviously contemplated such testimony but was unable to provide it at trial—first, because its expert was unavailable, (10T 9-15 to 21), and later, after the court had made its position that such testimony was necessary clear, because counsel was unable to obtain approval to hire a different expert to testify. (10T 9-15 to 21, 11-4 to 12).

Wiggins v. Hackensack Meridian Health, 259 N.J. 562, 583 (2025) (outlining that a medical malpractice plaintiff must present expert testimony establishing that the deviation from the applicable standard of care proximately caused the injury). Additionally, courts may, but do not always, require experts in order to calculate certain damages, *see, e.g., Smart Smr v. Borough of Fair Lawn Bd. Of Adjustment*, 152 N.J. 309, 336 (1998) (holding that proof of an adverse effect on property value will generally require expert testimony); *Clark v. Nenna*, 465 N.J. Super. 505, 513 (App. Div. 2020) (holding that expert testimony is generally needed to determine emotional distress damages).

In criminal cases, New Jersey courts have mandated expert testimony only in certain cases where it is necessary to explain “complex matters that would fall beyond the ken of the ordinary juror.” *State v. Fortin*, 189 N.J. 579, 596 (2007). Most often, that requirement is one that is imposed upon the prosecution. *See, e.g., id.* (“ . . . when the signature-like aspect of a crime [such as bite-marks, in this case] would not be apparent to the trier of fact, expert testimony may be necessary to explain the significance of the evidence.”). But with regard to requiring defense experts, those circumstances are particularly rare; indeed, there are cases reversing convictions based upon the failure to *allow* expert evidence. *See, e.g., State v. Jenewicz*, 193 N.J. 440 (2008) (holding that the trial court erred in precluding an expert’s testimony about cocaine addiction).

In fact, in *State v. Bealor*, 187 N.J. 574 (2006), this Court expressly disavowed an Appellate Division rule that would have mandated expert testimony in all cases to show the nexus between the facts of intoxication and the cause of intoxication. *Id.* at 591. This Court decried such an absolute rule, holding that it “impermissibly impinges on the traditional role of the fact-finder and is explicitly disavowed.” *Id.* Thus, while there may be times when expert testimony is the “preferred” method of proof, *id.* at 592, it is clear that it is usually not mandatory but is instead, a matter that, where introduced, because it addresses “beyond the ken of the average [finder of fact.]” *Id.* at 591 (citing *DeHanes v. Rothman*, 158 N.J. 90, 100 (1999)), is weighed by the jury along with the other evidence before it. Here, however, the Appellate Division held that expert testimony was not merely “preferred,” *Bealor*, 187 N.J. at 592, but required, a holding that is not only extreme but also one that takes no account of the constitutional rights at stake.

In any event, in this case, Arrington was not seeking to establish a standard of care in a specialized field. Nor was the jury being asked to determine an issue for which specialized knowledge of complex matters was absolutely required. To the contrary, the *M’Naghten* test, as codified in N.J.S.A. 2C:4-1, sets forth a definition of insanity that is, as discussed above, distinct from a scientific or medical diagnosis of mental illness or defect. *See supra* at 11 (citing *Singleton*,

211 N.J. at 173-74). The statute reads: “A person is not criminally responsible for conduct if at the time of such conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong.” N.J.S.A. 2C:4-1. But, although the statute contains the phrase “disease of the mind,” a phrase that is much emphasized by the Appellate Division, (Dpa2; Dpa14; Dpa16-19), it is clear that the dispositive factual question is not what precise scientific diagnosis or “disease of the mind” Arrington suffered from, but whether, as a result of “defect of reason” or “disease of the mind” he *knew the nature or quality of his acts or knew what he was doing was wrong*. And that, of course, is the kind of issue that juries, tasked in every case with looking into the mind of the defendant to assess his intent,⁷ can determine based upon a factual record that may, but also may not, include expert testimony. That is, the jury is not, in an insanity case, asked to render a

⁷ See, e.g., *State v. Macchia*, 253 N.J. 232 (2023) (affirming that state of mind, including whether a defendant acted in self-defense, is an issue for the jury to decide); *State v. Lodzinski*, 249 N.J. 116 (2021) (affirming that the jury is the preeminent factfinder in our system of justice and determines state of mind, including whether a defendant acted intentionally or recklessly); *State v. Cain*, 224 N.J. 410 (2016) (holding that a defendant’s intent is an ultimate issue of fact to be determined by the jury). Similarly, in the case of an insanity defense, juries are instructed to consider all the facts and make a determination as to the defendant’s mental capacity to understand his/her acts or to know what he/she was doing was wrong. See *Modern Criminal Jury Charge*, “Insanity” (rev. Oct. 17, 1988).

scientific diagnosis but is instead asked to determine a specific question of fact, and one that has traditionally been left to the factfinder at trial. *See Modern Criminal Jury Charge*, “Insanity” (rev. Oct. 17, 1988) at 2 (instructing the jury that to establish insanity as a defense to the criminal charge in this case the defendant must prove, by a preponderance of the evidence, that defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act, or if defendant did know it, that he/she did not know that what he/she was doing was wrong.”); *id.* at 3 (jury instructed to determine “whether defendant had sufficient mind and understanding to have enabled him/her to comprehend that it was wrong if defendant had used his/her faculties for that purpose”). And as is the case with regard to New Jersey jury instructions in general, juries are instructed to consider all of the facts:

To determine whether the defendant has established by the preponderance of the evidence that, at the time of the commission of the alleged offense, defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he/she was doing, or if defendant did know it, that he/she did not know what he/she was doing was wrong you should consider all of the relevant and material evidence having a bearing on his/her mental condition, including his/her conduct at the time of the alleged act, his/her conduct since, any mental history, any lay and medical testimony which you have heard from witnesses who have testified for the defense and for the State, and such other evidence by the testimony of witnesses or exhibits in this case that may have a bearing upon, and assist you in your determination of the issue of his/her mental condition.

[*Id.* at 3].

Indeed, New Jersey courts have long recognized the value of lay testimony in determining this question of fact. *See Estate of Nicolas v. Ocean Plaza Condo. Ass'n, Inc.*, 388 N.J. Super. 571, 582-83 (App. Div. 2006) (holding that for purposes of a statute of limitation, a “person’s insanity . . . can be established under N.J.R.E. 701, through the testimony of laypersons, without the presentation of expert testimony”); *State v. Risdén*, 106 N.J. Super. 226, 235-36 (App. Div. 1969), *modified*, 56 N.J. 27 (1970) (“It has long been the law of this State that a lay witness ‘may state facts and express an opinion in respect to the sanity of a defendant.’” (quoting *Clifford v. State*, 60 N.J.L. 287, 289 (Sup. Ct. 1897))); *State v. Morehous*, 97 N.J.L. 285, 294-95 (1922), *overruled on other grounds by State v. Smith*, 32 N.J. 501 (1960) (“Lay witnesses on insanity may give their opinion of a person’s sanity or insanity provided such opinions are based on facts within the knowledge of the witness and stated.”). The concurrence below, too, recognized this fact. (Dpa25 (Jacobs, J.S.C., concurring)) (“ . . . we should first acknowledge that not all complex questions require the aid of experts to be resolved. As the bedrock of our justice system, jurors should be trusted to sort through mental processes which may otherwise be overly complicated by expert opinion and abstruse nomenclature.”).

While other states vary as to whether expert testimony is required to advance an insanity defense (Dpa20), the Appellate Division misconstrued the applicable precedents in the law in other states. For example, as the Appellate Division conceded, Arizona and Ohio have clearly allowed defendants to advance an insanity defense without expert testimony under the *M’Naghten* test. *See State v. Bay*, 722 P.2d 280, 284-85 (Ariz. 1986); *State v. Reynolds*, 550 N.E.2d 490, 496 (Ohio Ct. App. 1988). As set forth in Arrington’s briefing below (Drb12, n.2), Washington has also recognized that an insanity defense can be raised through lay witness testimony. *See State v. Odell*, 227 P.2d 710, 722 (Wash. 1951) (“Whatever the rule may be in some other jurisdictions, it is the rule in this state that a nonexpert witness may, in answer to a proper question, given an opinion concerning the sanity, at some stated time, of one on trial for a criminal act.”). Further, as the concurrence below recognized, the Georgia Supreme Court has explicitly held that expert testimony is not necessary to support an insanity defense. (Dpa35 (Jacobs, J.S.C. concurring)); *Perez v. State*, 281 Ga. 175, 176 (2006). Noting this, the Appellate Division majority described Georgia’s insanity standard—which requires that a defendant show a lack of “mental capacity to distinguish between right and wrong,” Ga. Code Ann. § 16-3-2—as “less rigorous” than the *M’Naghten* test (Dpa20, n.5), because it does not contain “any requirement of proving disease.” (citation omitted). *Id.* But the

M’Naghten test—and the explicit text of N.J.S.A. 2C:4-1—do not require proof of a specific mental disease. Instead, N.J.S.A. 2C:4-1 requires proof of the same specific factual question as is described in Georgia’s insanity standard. This factual question is, as stated above, whether a defendant *knew the nature or quality of his acts or knew what he was doing was wrong*. So characterized, Georgia’s articulation of the standard simply shifts the focus to the dispositive factual question. Indeed, this Court has described the *M’Naghten* standard in just those terms. *See State v. Worlock*, 117 N.J. 596, 603 (1990) (“Sometimes described as the “right and wrong” test, [the *M’Naghten* test’s] purpose is to determine whether the defendant had sufficient mental capacity to understand what he was doing when he committed the crime.”).⁸

Further, even leaving aside the constitutional problem that arises from imposing the rule that the Appellate Division proposed, nothing indicates that

⁸ While *Amicus* recognizes that some other states, like California and Pennsylvania, have required expert testimony in order to advance an insanity defense, (Dpa20), *Amicus* emphasizes that many other states recognize that lay witnesses may offer their opinions on the defendant’s sanity, though they cannot diagnose the defendant. *See Drb9-10; State v. David*, 506 S.E.2d 455, 471 (N.C. 1998) (noting that a lay witness could “make a general observation that defendant appeared to be ‘mentally disturbed’” but could not “make a specific psychiatric diagnosis”). As set forth here, *supra* 17-22, *Amicus* submits that it is precisely that question of fact as to whether the defendant knew what he was doing—on which other states have admitted lay testimony—that is to be judged by the jury in reaching a verdict as to the defense; the jury is not, in New Jersey or in these states, asked to reach a decision as to a specific psychiatric diagnosis.

expert testimony was necessary in this case. Indeed, as the concurrence below suggested, (Dpa25 (Jacobs, J.S.C., concurring)), courts should not assume that expert testimony is always even helpful to jurors when a defendant advances an insanity defense, particularly when such proceedings often devolve into a confusing “battle of the experts.” *See generally* Note, *The Legal Standard for Determining Criminal Insanity: A Need for Reform*, 20 Drake J. Rev. 353, 358 (1971) (“ . . . one problem which is consistent throughout all of these “battles [of the experts]” is that the testimony confuses rather than helps the jury. Consequently, the determination by a jury that a defendant is either sane or insane is as often a result of a favorable impression from one or the other expert witnesses as it is a result of the facts to which each testified.”).

III. ANY RELEVANT EVIDENCE IN SUPPORT OF AN INSANITY DEFENSE SHOULD BE PERMITTED, WITH ITS WEIGHT TO BE DETERMINED BY THE JURY.

The admissibility of lay testimony, including the kind that Arrington proposed, is consistent with long-held principles of criminal law. Under these principles, in order for a party to present its position, the law does not require a party to set forth the *best* evidence in support of its position; the law only requires a party to meet the burden of proof imposed upon it in the case at issue. And that, of course, is the case in New Jersey, where “[i]nsanity is an affirmative defense which must be proved by a preponderance of the evidence.” N.J.S.A.

2C:4-1. And the caselaw, rather than mandating that expert testimony be adduced in support of such a defense, makes clear that, instead, the jury be instructed—as with all affirmative defenses—to examine “*all* the evidence” and determine whether “there was a rational basis for the jury to conclude that the affirmative defense was demonstrated.” *State v. Alston*, 311 N.J. Super. 113, 121 (App. Div. 1998). Indeed, “[t]he rational-basis test sets a low threshold,” and in deciding whether the defense has met its burden of production, “the trial court must view the evidence in the light most favorable to the defendant.” *State v. A.L.A.*, 251 N.J. 580, 695 (2022) (citations omitted). But here, the trial court—and Appellate Division—improperly created a much higher threshold as a bar to presenting the defense at all. (Dpa2).

For the very same reason, courts often admit evidence, leaving it to the jury to assess its weight: on appeal, these determinations are regularly affirmed by appellate tribunals which hold that the court’s ruling was correct, because the question was the weight, not the admissibility, of the proof. *See, e.g., State v. Cole*, 229 N.J. 430 (2017) (affirming distinction between the probative value of evidence and its admissibility); *State v. Buckley*, 216 N.J. 249, 261 (2013) (holding that evidence need not be dispositive or even strongly probative in order to be admitted); *State v. Noel*, 157 N.J. 141, 147 (1999) (finding that the production of a large quantity of comparable samples affects the weight, not the

admissibility, of the evidence); *State v. Koedatich*, 112 N.J. 225, 316 (1988) (upholding trial court's treatment of evidentiary issue as one of weight rather than admissibility); *State v. Campbell*, 436 N.J. Super. 264, 271 (App. Div. 2014) (affirming that a party can dispute the strength of evidence after a court admits it). But here, the Appellate Division's decision would pretermitt that inquiry, disallowing the defense altogether, even where there is evidence supporting it. This is not and cannot be consistent with the law.

Finally, the Appellate Division ruling raises a practical, procedural issue that should weigh in the decision—and especially the opinion—of this Court. If the law is that an insanity defense always requires that an expert be provided, it would be extraordinarily unfair to retroactively impose that requirement on the defendant here. Clearly, from the record of this case, defense counsel proceeded, initially with the trial court's approval, on the assumption that it would meet its burden of production without expert testimony. (8T 73-1 to 6). But the court then reversed course shortly before trial and ruled that it would not permit the insanity defense without expert testimony. (10T 4-13 to 24). The court maintained this ruling even after defense counsel explained that he was now unable to get approval to hire a different expert to testify at trial. (10T 8-20 to 23, 9-2 to 9, 9-15 to 21, 11-4 to 12). The result is that this ruling became a trap for counsel, suddenly making him/her vulnerable to an ineffective assistance of

counsel claim. *See, e.g., State v. Hannah*, 248 N.J. 148 (2021) (holding that counsel's failure to elicit testimony supporting a third-party-guilt defense and to argue for the admission of critical evidence under the statement-against-interest rule rendered representation constitutionally deficient); *State v. Pierre*, 223 N.J. 560 (2015) (holding that defense counsel was ineffective for failing to present testimony from the defendant's brother and family members to rebut the State's claim regarding a speeding ticket because such evidence was critical to his defense); *State v. Hess*, 207 N.J. 123 (2011) (holding that counsel was ineffective for failing to provide mitigating evidence showing that defendant was suffering from battered women's syndrome at sentencing); *State v. Savage*, 120 N.J. 594 (1990) (holding that counsel was ineffective for failing to investigate and consider a psychiatric defense when there were several indications of mental health problems in the record). More practically, what this means is that even if the Court is to affirm the Appellate Division decision, it will consign this case to a petition for Post-Conviction Relief in which a new trial will be the absolutely necessary result, given the facts of the case. Accordingly, even if the Court determines that the Appellate Division should be affirmed, it should only impose the rule requiring expert testimony prospectively, and should reverse this conviction and remand for further proceedings, and appropriate process, consistent with that new rule. *See, e.g.,*

State v. Dock, 205 N.J. 237, 254 (2011) (with regard to retroactive application, courts should consider “more generally . . . what is just and consonant with public policy in the particular situation presented.”).

CONCLUSION

Few situations are more Kafka-esque than one facing horrific accusations in a court of law while being prevented from defending against such accusations. Fortunately, New Jersey courts, statutes, and evidentiary rules, which operate under the framework of the United States and New Jersey constitutions, do not permit this to occur by mandating that only one type of evidence—and not other admissible proofs—be allowed. But that is what occurred here. *Amicus* ACDL-NJ accordingly submits that this Court should follow long-established caselaw, uphold the basic principles of the United States and New Jersey constitutions, and thus reverse the erroneous decision below.

Respectfully submitted,

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