

Supreme Court of New Jersey

DOCKET NO. 090381

CRIMINAL ACTION

STATE OF NEW JERSEY,	:	
	:	On Leave Granted from an Interlocutory
Plaintiff-Appellant,	:	Order of the Superior Court of New
	:	Jersey, Appellate Division.
v.	:	
	:	Sat Below:
THOMAS J. DINAPOLI,	:	Hon. Jack M. Sabatino, J.A.D.,
	:	Hon. Katie A. Gummer, J.A.D.,
Defendant-Respondent.	:	

BRIEF ON BEHALF OF AMICUS CURIAE
THE ATTORNEY GENERAL OF NEW JERSEY

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July 28, 2025

TABLE OF CONTENTS

	<u>PAGE</u>
<u>PRELIMINARY STATEMENT</u>	1
<u>PROCEDURAL HISTORY</u>	3
<u>STATEMENT OF FACTS</u>	6
<u>QUESTION PRESENTED</u>	13
<u>LEGAL ARGUMENT</u>	14
<u>POINT I</u>	
THE APPELLATE DIVISION SHOULD HAVE ORDERED THE TRIAL COURT TO BAR TESTIMONY FROM DEFENDANT’S PROPOSED MEDICAL EXPERTS AS A MATTER OF LAW UNDER THIS COURT’S ESTABLISHED PRECEDENT.	14
<u>CONCLUSION</u>	30

TABLE OF AUTHORITIES

PAGE

CASES

<u>Cruzan v. Director, Missouri Dep’t of Health</u> , 497 U.S. 261 (1990)	23
<u>Garger v. New Jersey</u> , 429 U.S. 922 (1976)	24
<u>In re Farrell</u> , 108 N.J. 335 (1987)	23
<u>In re Quinlan</u> , 70 N.J. 10 (1976), <u>cert. denied sub nom.</u> , <u>Garger v. New Jersey</u> , 429 U.S. 922 (1976)	24
<u>People v. Saavedra-Rodriguez</u> , 971 P.2d 223 (Colo. 1998)	21
<u>Petro v. Platkin</u> , 472 N.J. Super. 536 (App. Div. 2022), <u>certif. denied</u> , 256 N.J. 207 (2024)	27
<u>State v. Brown</u> , 170 N.J. 138 (2001)	17
<u>State v. Buckley</u> , 216 N.J. 249 (2013)	18, 20, 22
<u>State v. Coruzzi</u> , 189 N.J. Super. 273 (App. Div. 1983)	18
<u>State v. DiNapoli</u> , Docket Nos. A-1374-23 and A-2164-23 (App. Div. January 28, 2025)	3, 4, 6
<u>State v. Eldridge</u> , 388 N.J. Super. 485 (App. Div. 2006), <u>certif. denied</u> , 189 N.J. 650 (2007)	18, 22
<u>State v. Hofford</u> , 169 N.J. Super. 377 (App. Div. 1979)	28
<u>State v. J.A.C.</u> , 210 N.J. 281 (2012)	17
<u>State v. Jamerson</u> , 153 N.J. 318 (1998)	20, 21
<u>State v. Jenewicz</u> , 193 N.J. 440 (2008)	17
<u>State v. Martin</u> , 119 N.J. 2 (1990)	20
<u>State v. Parkhill</u> , 461 N.J. Super. 494 (App. Div. 2019)	21
<u>State v. Torres</u> , 183 N.J. 554 (2005)	17
<u>State v. Pelham</u> , 176 N.J. 448, <u>cert. denied</u> , 540 U.S. 909 (2003)	passim

STATUTES

N.J.S.A. 26:16-1	27
N.J.S.A. 26:16-10(a)	27
N.J.S.A. 26:16-6.....	27
N.J.S.A. 26:2H-54(a)	24
N.J.S.A. 2C:11-5	3, 15, 18
N.J.S.A. 2C:11-5(a).....	19
N.J.S.A. 2C:11-5.3	4
N.J.S.A. 2C:12-1(c)(2).....	3
N.J.S.A. 2C:2-2(b)(3).....	18
N.J.S.A. 2C:2-3(a).....	19
N.J.S.A. 2C:2-3(a)(1)	19
N.J.S.A. 2C:2-3(c).....	19, 20
N.J.S.A. 2C:28-5(a).....	4

RULES

N.J.R.E. 104	4
N.J.R.E. 401	18
N.J.R.E. 403	18
N.J.R.E. 702	17

TABLE OF CITATIONS

“Pa” – State’s Motion for Leave to Appeal Brief Appendix, February 20, 2025
“Pma” –State’s Motion for Leave to Appeal Brief Appendix, June 24, 2025
“Db” – Defendant’s brief, April 8, 2025
“1T” – Motion transcript, April 24, 2023
“2T” – Hearing transcript, April 26, 2023
“3T” – Trial transcript, May 1, 2023
“4T” – Trial transcript, May 11, 2023
“5T” – Trial transcript, May 11, 2023
“6T” – Trial transcript, May 16, 2023
“7T” – Trial transcript, May 30, 2023
“8T” – Motion transcript, June 1, 2023
“9T” – Motion transcript, June 5, 2023
“10T” – Motion transcript, June 6, 2023
“11T” – Motion transcript, December 1, 2023

PRELIMINARY STATEMENT

Driving while drug-impaired, defendant passed out and drifted across multiple lanes of traffic before crashing head-on into another vehicle. One of the other vehicle's passengers, 94-year-old Michelina Mele, sustained a dozen fractured ribs and a fractured sternum and knee. Hospitalized overnight, Mele remained in severe pain and could not breathe on her own as her condition deteriorated beyond possible recovery. The following day, pursuant to her advance medical directive and in consultation with her family, doctors ceased life-sustaining measures and began palliative and hospice care. Mele died within a few hours, with her official cause of death determined to be "blunt impact injuries" sustained from the crash or, more specifically, the compromised integrity of her chest wall that left her unable to breathe.

This Court has already held that such self-determinative medical decision making is a person's right, thus rendering it foreseeable that a victim injured by such a crime may exercise that right in deciding whether to be placed on or removed from life support systems. Not only that, but such decisions, as a matter of law, will therefore not constitute an independent intervening cause (of death) for purposes of lessening a defendant's criminal liability, particularly in cases of vehicular homicide, when it was the defendant's actions that set in

motion the victim's need for life support in the first place. Yet that is exactly what defendant is attempting to achieve here.

In support of a defense that he did not cause Mele's death, defendant obtained three proposed medical experts who have essentially opined that Mele instead died due to other causes, such as pre-existing medical conditions, her treatment for the crash injuries, the "premature" termination of life-sustaining measures and the administration of "potent narcotics" in conjunction with her palliative care. Notably, none of those experts has posited medical malpractice, let alone gross malpractice, but instead just alternative and irrelevant hypothetical courses of action they believe could have been pursued in Mele's treatment that may have prolonged her suffering and death. But as this Court has previously held, such immaterial opinion evidence and testimony should be precluded from trial as a matter of law.

Nevertheless, the trial court determined it would assess the admissibility of such testimony when offered at defendant's trial. And the Appellate Division, on the State's motion for leave to appeal, compounded the error by remanding the matter for an evidentiary hearing prior to, rather than during, the trial. This Court should reverse the panel's decision and order the trial court to bar defendant's proposed experts as a matter of law in accordance with this Court's precedent.

PROCEDURAL HISTORY

The Attorney General adopts the procedural history set forth in the State's Appellate Division and Supreme Court briefs and the Appellate Division's unpublished per curiam opinion, State v. DiNapoli, Docket Nos. A-1374-23 and A-2164-23 (App. Div. January 28, 2025) (Pa424 to 445), with the following additions.

On January 8, 2020, a Union County Grand Jury returned Indictment No. 20-01-00016 charging defendant, Thomas J. DiNapoli, with second-degree Vehicular Homicide, in violation of N.J.S.A. 2C:11-5 (Count One), and two counts of fourth-degree Assault by Auto, in violation of N.J.S.A. 2C:12-1(c)(2) (Counts Two and Three). (Pa1 to 2).

Defendant was initially tried before the Honorable Candido Rodriguez, Jr., J.S.C., and a jury from May 11 to 30, 2023. (4T; 5T; 6T; 7T). On June 1, 2023, prior to the conclusion of the State's case, defendant moved for a continuance or mistrial based on newly discovered medical-record evidence that he asserted would alter his experts' opinions. (8T). On June 6, 2023, upon confirming the jury's unavailability for the requested additional time, the court granted defendant's motion for a mistrial. (10T).

On June 9, 2023, the State moved to compel defendant to produce the new expert reports. (Pa284). On June 12, 2023, the Honorable Thomas Isenhour,

J.S.C., issued an order requiring defendant to produce the reports by August 1, 2023. (Pa285).

On July 26, 2023, a Union County Grand Jury returned Superseding Indictment No. 23-07-00473 charging defendant with the same three original charges (Counts One, Three and Four) and the additional charges of third-degree Strict Liability Vehicular Homicide, in violation of N.J.S.A. 2C:11-5.3 (Count Two), and third-degree Witness Tampering, in violation of N.J.S.A. 2C:28-5(a) (Count Five). (Pa292 to 294).

On September 29, 2023, after receiving the reports of defendant's three proposed experts, the State moved to preclude the same. (Pa315). On December 1, 2023, the court denied the State's motion, but reserved on the question of preclusion until the proposed defense experts were offered and qualified at trial. (11T; Pa316).

On December 19, 2023, the State moved for leave to appeal, which the Appellate Division granted on January 8, 2024. (Pa415; Pa421 to 423). On January 28, 2025, the Appellate Division issued an unpublished per curiam opinion vacating the trial court's order denying preclusion and remanding for an N.J.R.E. 104 evidentiary hearing prior to trial. State v. DiNapoli, Docket Nos. A-1374-23 and A-2164-23 (App. Div. January 28, 2025) (Pa424 to 445). On

February 5, 2025, the State moved for reconsideration, which the Appellate Division denied on February 13, 2025. (Pa446 to 448).

On February 20 and 27, 2025, the State moved for leave to appeal before this Court, which granted the State's motion on May 8, 2025. (Pma1 to 4).

STATEMENT OF FACTS

The Attorney General adopts the statement of facts set forth in the State's Appellate Division and Supreme Court briefs and the Appellate Division's unpublished per curiam opinion, State v. DiNapoli, Docket Nos. A-1374-23 and A-2164-23 (App. Div. January 28, 2025) (Pa424 to 445), with the following additions.

At about 3:45 p.m. on June 4, 2019, defendant was driving at least 40 miles per hour while heading east on Morris Avenue in Union when he passed out, drifted across four lanes of traffic and entered the westbound lanes. (Pa317 to 326). There, he crashed head-on into a second vehicle with three passengers, including the primary victim, 94-year-old Michelina Mele, who was in the front passenger seat. (Ibid.; Pa338). All three passengers were transported to Trinitas Regional Medical Center in Elizabeth for treatment. Ibid.

Speaking to police at the scene, defendant initially said he did not know what had happened. Ibid. He then claimed that he was coming from work when he heard a big bang and then woke up in his car. Ibid. Later, during a more formal statement to police, defendant acknowledged that he had been drowsy while driving and remembered waking up with his horn going off. Ibid. Detectives also learned from a witness at the scene that after exiting his vehicle following the crash, defendant told her that he had fallen asleep at the wheel.

Ibid. Toxicological examination of blood drawn from defendant about an hour after the crash showed the presence of cocaine metabolites and Clonazepam, an anti-anxiety muscle relaxer, in an amount far exceeding any therapeutic dosage and likely resulting in impairment. (Pa327 to 335).

According to medical records, upon her arrival at the hospital, Mele was quivering, disoriented and uneasy, tense, “crying steadily” with “screams or sobs” and “frequent[ly] complain[ing]” of severe pain, particularly in her “midsternal chest” area. (Pa342 to 344). Although she initially appeared to be breathing normally and became “calm” and “oriented to person, place and time” after receiving morphine, she continued to complain of severe chest pain before reporting shortness of breath. (Pa346 to 347; Pa354). Medical staff first used a non-rebreather mask to increase Mele’s oxygen levels, and then shifted her to high-flow oxygen when the former proved insufficient to “maintain satisfactory oxygenation.” (Pa347 to 348; Pa357).

Mele’s condition continued to deteriorate. X-rays and CT scans showed “multiple areas of pulmonary contusion with multiple rib fractures” and a “patellar fracture with suprapatellar joint effusion.” (Pa364; Pa357; Pa387). She was considered “critically ill with a high probability of imminent or life threatening deterioration” due to “[m]ultitrauma, multiorgan injury.” (Pa357). Medical records indicated that her family history was “non-contributory” and

that the “multitrauma [was] secondary to [the] M[otor] V[ehicle] Accident].” (Pa365 to 366; Pa387; Pa396). Doctors further observed her “worsening lung condition” with “[i]ncreased density [in] both lower lungs consistent with pulmonary contusions” and anticipated she would eventually require a ventilator with intubation. (Pa390; 5T35-17).

Mele was moved to the intensive care unit, where her family was consulted regarding the use of high-flow oxygen and intubation to address her life-threatening decline. (Pa357; Pa364). The family, including her son, a doctor (internist) himself whom Mele had designated as her health care representative, requested that her advance medical directive be respected. Ibid. Mele was then ordered “DNR/DNI” (Do Not Resuscitate/Do Not Intubate), which was also “reviewed/validated by [the] patient” (Mele). (Ibid.; Pa 367; Pa369; 6T29-19 to 30-9).

Mele’s “Advance Directive” or her living will, which is dated December 27, 2007, instructs the following:

If I experience extreme mental or physical deterioration such that there is no reasonable expectation of recovery or regaining a meaningful quality of life, then life-prolonging measures should not be initiated; or if they have been, they should be discontinued. Those life-sustaining procedures or treatments that may be withheld or withdrawn include but are not limited to cardiac resuscitation; respiratory support (ventilator); artificially administered fluids and nutrition; and dialysis.

[(Pa336 to 337).]

The directive further instructs that Mele should “be given appropriate medical care to alleviate pain and keep [her] comfortable.” Ibid.

From that point on, Mele received only pain control and comfort care, which included a low dose of intravenous morphine with “[n]o max dose for palliative care.” (Pa379).¹ Shortly after midnight, Mele awoke and complained of chest pain, “difficulty breathing” and “[s]hortness of breath.” (Pa380). She continued receiving “high flow nasal cannula” and “pain control.” Ibid. The following morning, the day after the crash, a Chaplin provided Mele the Sacrament of the Sick and counseled her family. (Pa393).

Given Mele’s significant trauma, severe pain and the comorbidities—particularly her Alzheimer’s dementia—impeding any further recovery, doctors recommended hospice care for comfort. (Pa403). Mele’s son, her medical proxy, agreed with them and requested she be transferred to an inpatient hospice facility. (Pa398; Pa402 to 408). By about mid-day, Mele had become

¹ Mele’s medical records note that no maximum dose exists for comfort care pain medication for a patient receiving palliative care. (Pa379; see also Pa268 to 269). Palliative care is “care provided to an individual suffering from an incurable progressive illness that is expected to end in death, which is designed to decrease the severity of pain, suffering, and other distressing symptoms, and the expected outcome of which is to enable the individual to experience an improved quality of life.” (Pa269).

“completely disabled,” immobile” and “without capacity.” (Pa400 to 401; Pa405). She died at about 5:45 p.m. (Pa412; Pa414).

The medical examiner subsequently determined Mele’s cause of death to be “blunt impact injuries” sustained from the “accident.” (Pa338 to 340). These injuries included a fractured sternum and more than a dozen fractured ribs. (Pa260; 2T25-15 to 20; 2T37-13 to 25). During defendant’s first trial, Mele’s treating physician, Dr. Sabeen Khan, testified that the compromised integrity of Mele’s chest wall due to her crash injuries resulted in her inability to breathe, which ultimately caused her death. (5T20-25 to 22-21; 5T23-7 to 24-8; 5T30-12 to 14; 5T34-24 to 37-23). Khan further testified that, but for the crash, Mele would not have died when she did. (5T41-1 to 42-6).

Following his first trial’s ending with a mistrial, defendant obtained opinions from three proposed experts concerning those conclusions and Mele’s cause of death. Those proposed experts included Dr. Marc Polimeni, an internist, Dr. Robert Pandina, a psychologist, and Dr. Henry Velez, an internist and pulmonologist.

Polimeni essentially opined that none of Mele’s injuries from the crash had been life-threatening, but instead “primarily orthopedic.” (Pa301 to 306). He further opined that Mele had been placed on palliative hospice care not because of those injuries, but due to her Alzheimer’s and dementia “making her

nonfunctioning.” Ibid. He thus disagreed with the medical examiner and instead considered Mele’s cause of death “natural,” attributing it to “very potent narcotics, which were administered under the auspices of palliative hospice care.” Ibid.

Pandina similarly attributed Mele’s death to the impact of the medications she had received during the course of her treatment. (Pa295 to 300). He further mistakenly opined that her doctors should not have abandoned life-sustaining measures because Mele had no advance health directive in place, ibid., even though she plainly did, (see Pa336 to 337).

Velez acknowledged the existence of the advance directive and that Mele’s treatment was appropriate for hospice care but opined that her poor prognosis had been “overestimated.” (Pa307 to 312). According to Velez, it was “more probable than not” that Mele would have survived the crash injuries had she not been placed on hospice care and thereafter suffered respiratory depression and hypoxia due to her medication (opioids). Ibid.

In essence, all three of defendant’s proposed experts basically rendered opinions that Mele died due to her pre-existing medical conditions, her treatment for the crash injuries, the “premature” termination of life-sustaining measures and the administration of “potent narcotics” as part of her palliative care. None

of those experts, however, went so far as to suggest medical malpractice, let alone gross malpractice, had occurred.

The State moved to preclude defendant's use of these experts during his retrial. The trial court denied that motion but reserved its final decision pending a Rule 104 evidentiary hearing once the defense offered those witnesses' testimony at trial. The Appellate Division vacated that determination and remanded the matter with instructions that that evidentiary hearing instead occur prior to trial. This appeal follows.

QUESTION PRESENTED

Can defendant, who was charged with reckless vehicular homicide, introduce expert testimony that the victim died because of her medical care and end-of-life decision-making, in contravention of this Court's prior holding in State v. Pelham that such evidence, when not showing gross medical malpractice, fails to establish an intervening cause of death independent of defendant's actions and is therefore irrelevant and inadmissible as a matter of law?

LEGAL ARGUMENT

POINT I

THE APPELLATE DIVISION SHOULD HAVE ORDERED THE TRIAL COURT TO BAR TESTIMONY FROM DEFENDANT'S PROPOSED MEDICAL EXPERTS AS A MATTER OF LAW UNDER THIS COURT'S ESTABLISHED PRECEDENT.

Short of gross malpractice, evidence of medical treatment and decision making is irrelevant to the criminal liability of defendants whose reckless conduct has injured and hospitalized their victims. And should death result, regardless of any pre-existing conditions that may have rendered such victims all the more vulnerable, the only person accountable is the defendant whose actions set in motion the causal chain that culminated in that tragic result. For these reasons, pursuant to this Court's holding in State v. Pelham, defendant's three proposed expert witnesses—who blame the victim's death not on the catastrophic injuries from the car crash caused by defendant, but instead on her pre-existing Alzheimer's dementia, the medical treatment she received and her decision to cease life-sustaining measures—should be precluded from testifying. See 176 N.J. 448, cert. denied, 540 U.S. 909 (2003). Such testimony is plainly irrelevant and immaterial, given that none of the experts' opinions suggest gross malpractice. By failing to establish a valid intervening cause of death under Pelham, this evidence should have been found inadmissible at trial.

In denying the State's motion to bar defendant's three proposed experts, the trial court simply determined that, because causation was clearly a fact issue in the matter and the State intended to use its own experts, the defense should be afforded the same opportunity. (11T70-24 to 72-18; Pa316; Pa430). According to the trial judge,

[t]his is a case where causation the jury is going to decide. There may be some good experts, there may be some bad experts, there may be some horrible experts. Their opinions may be based on absolutely nothing. But that's sometimes what juries have to do.

[(11T71-21 to 72-1).]

The court reserved on rendering a final decision, however, until the proposed experts were offered for qualification at trial. (11T70-24 to 72-18). The court further denied the State's alternative request that a Rule 104 evidentiary hearing on the question occur before, rather than during, defendant's trial. Ibid.

The Appellate Division vacated the lower court's order and remanded the matter with instructions to conduct the requested evidentiary hearing prior to trial. (Pa442 to 443). The panel summarized the proposed defense experts' opinions and discussed the applicable law on vehicular homicide, recklessness, causation and intervening causation before turning to Pelham. (Pa435 to 438). The panel noted this Court's holding in Pelham that a jury deliberating a defendant's guilt under N.J.S.A. 2C:11-5 (Vehicular Homicide) "may be instructed, as a matter of law, that a victim's determination to be removed from

life support is a foreseeable event that does not remove or lessen criminal responsibility for death”; that is, that “removal of life support, as a matter of law, may not constitute an independent intervening cause for purposes of lessening a criminal defendant’s liability.” (Pa438 to 439 (quoting Pelham, 176 N.J. at 451, 465)). The panel further explained, correctly and again from Pelham, that:

if defendant’s actions set in motion the victim’s need for life support, without which death would naturally result, then the causal link is not broken by an unforeseen, extraordinary act when the victim exercises his or her right to be removed from life support and thereupon expires unless there was an intervening volitional act of another, such as gross malpractice by a physician.

[(Pa439 (quoting Pelham, 176 N.J. at 467)).]

Nevertheless, although the panel found that that rationale “applie[d] equally” here, it then confusingly appeared to reach an entirely contradictory conclusion. (Pa440). The panel ruled that, “[t]hough inconsistent and all over the map, the reports of defendant’s experts suggest evidence that potentially could support a conclusion an intervening cause—a decision to place Mele [the victim] on comfort care that was based on erroneous advice about her condition or that was not related to a condition caused by the crash—broke the chain of causation from defendant’s actions.” (Pa441). In remanding for a pretrial hearing, the panel further explained that, “[g]iven their inconsistencies, we cannot determine solely from the reports of defendant’s expert witnesses

whether their testimony at trial would support the existence of an intervening cause and, hence, would be admissible.” (Pa442). This Court should reject the panel’s flawed analysis and reverse the remand for an evidentiary hearing.

A trial court’s evidentiary rulings are discretionary and subject to review under a deferential standard. See State v. J.A.C., 210 N.J. 281, 295 (2012); State v. Brown, 170 N.J. 138, 147 (2001). As such, a “court’s witness-qualification decision is subject to essentially an abuse-of-discretion standard of review and will only be reversed for ‘manifest error and injustice.’” State v. Jenewicz, 193 N.J. 440, 455 (2008) (citing State v. Torres, 183 N.J. 554, 572, 579 (2005)) (additional citation omitted).

N.J.R.E. 702, governing expert testimony, provides that “[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, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” In determining the admissibility of such testimony, a court must make three findings:

(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert’s testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony.

[Jenewicz, 193 N.J. at 454 (citation omitted).]

Still, as with all evidence, the proposed expert testimony must be relevant, “having a tendency in reason to prove or disprove any fact of consequence to the determination of the action.” N.J.R.E. 401. “The inquiry is ‘whether the thing sought to be established is more logical with the evidence than without it.’” State v. Buckley, 216 N.J. 249, 261 (2013) (quoting State v. Coruzzi, 189 N.J. Super. 273, 302 (App. Div. 1983)). But even if relevant in that respect, the testimony may nevertheless be excluded “if its probative value is substantially outweighed by the risk of: (a) [u]ndue prejudice, confusion of issues, or misleading the jury; or (b) [u]ndue delay, waste of time, or needless presentation of cumulative evidence.” N.J.R.E. 403.

To convict a person of the subject crime in this matter, vehicular homicide under N.J.S.A. 2C:11-5, the State must prove “(1) that defendant was driving a vehicle; (2) that defendant caused the death; and (3) that the death was caused by driving a vehicle recklessly.” Buckley, 216 N.J. at 262 (citing State v. Eldridge, 388 N.J. Super. 485, 494 (App. Div. 2006), certif. denied, 189 N.J. 650 (2007)) (internal quotations omitted).

N.J.S.A. 2C:2-2(b)(3), concerning culpability and the requisite mens rea for that crime, provides that

[a] person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that,

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

Recklessness in this context, that of vehicular homicide, may be inferred from evidence that a defendant "fell asleep while driving," "failed to maintain a lane" or "was driving while intoxicated." N.J.S.A. 2C:11-5(a).

Beyond establishing a defendant's recklessness while driving, the State must further prove causation, i.e., that that recklessness caused the subject death.

N.J.S.A. 2C:2-3(a) provides that conduct is the cause of a result when

- (1) It is an antecedent but for which the result in question would not have occurred; and
- (2) The relationship between the conduct and result satisfies any additional causal requirements imposed by the code or by the law defining the offense.

N.J.S.A. 2C:2-3(c) further provides that

When the offense requires that the defendant recklessly or criminally negligently cause a particular result, the actual result must be within the risk of which the actor is aware or, in the case of criminal negligence, of which he should be aware, or, if not, the actual result must involve the same kind of injury or harm as the probable result and must not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense.

In that respect, the causation analysis is two-fold. The vehicular homicide statute, N.J.S.A. 2C:11-5(a), "initially requires the jury to determine whether there is 'but for' causation" under N.J.S.A. 2C:2-3(a)(1), that "the event would

not have occurred absent the defendant's conduct." Buckley, 216 N.J. at 254, 263. "If that threshold determination is made . . . the causation inquiry is [then] governed by the two-pronged standard of N.J.S.A. 2C:2-3(c)," being the culpability assessment as to whether the "actual result" of the defendant's reckless conduct (the victim's death) was within the risk of which he was sufficiently aware. Ibid. See also State v. Jamerson, 153 N.J. 318, 335-36 (1998) ("actual result" in vehicular homicide case is victim's death); State v. Martin, 119 N.J. 2, 12 (1990) (in murder case involving defendant who set fire in a building, death of its occupant victim considered "actual result").

In a vehicular homicide case, the first prong of N.J.S.A. 2C:2-3(c) "requires the jury to assess whether the defendant was aware that his allegedly reckless driving gave rise to a risk of a fatal motor vehicle accident." Buckley, 216 N.J. at 264. To establish this element of causation, the State must "prove[] beyond a reasonable doubt that the defendant understood that the manner in which he or she drove created a risk of a traffic fatality." Ibid. (citing Martin, 119 N.J. at 12).

The second prong of N.J.S.A. 2C:2-3(c), alternatively, addresses situations where actual result, here the victim's death, "involve[s] the same kind of injury or harm as the probable result" that the defendant had risked through his reckless conduct. Buckley, 216 N.J. at 264-65. In assessing this element of

causation, the jury must “determine whether intervening causes or unforeseen conditions lead to the conclusion that it is unjust to find that the defendant’s conduct is the cause of the actual result.” Id. at 265 (quoting Pelham, 176 N.J. at 461) (additional citation and internal quotations omitted). To avoid breaking that causal chain between the defendant’s conduct and the result of that conduct, any “variation between the result intended or risked and the actual result of [the] defendant’s conduct must not be so out of the ordinary that it is unfair to hold [the] defendant responsible for that result.” Buckley, 216 N.J. at 265 (quoting Pelham, 176 N.J. at 461-62) (additional citations and internal quotations omitted).

As such, as the defense attempts to argue here, a defendant “may be relieved of criminal liability for a victim’s death if an ‘independent’ intervening cause has occurred, meaning ‘an act of an independent person or entity that destroys the causal connection between the defendant’s act and the victim’s injury and, thereby becomes the cause of the victim’s injury.’” Pelham, 176 N.J. at 461-62 (quoting People v. Saavedra-Rodriguez, 971 P.2d 223, 225-26 (Colo. 1998)) (additional citations omitted). See, e.g., Jamerson, 153 N.J. 318 (finding victim driver’s disregard of a stop sign relevant to causation determination, as that driving error, rather than defendant’s impaired driving, could have instead caused the fatal crash); State v. Parkhill, 461 N.J. Super. 494 (App. Div. 2019)

(reversing defendant’s vehicular homicide conviction for recklessly speeding and striking a pedestrian at an intersection where trial court failed to instruct the jury on intervening causation given evidence that defendant had a green light and the pedestrian was crossing the road against the light and outside of the crosswalk); Eldridge, 388 N.J. Super. at 485 (reversing defendant’s vehicular homicide convictions for driving while intoxicated, crashing into a tree and causing deaths of two passengers, where trial court failed to instruct jury on intervening causation given evidence one of the passengers had distracted the defendant driver seconds before the crash).

Regardless, when disputed, as here, even though causation may generally be a factual determination for jurors to consider, “the jury may consider only that which the law permits it to consider.” Pelham, 176 N.J. at 466 (emphasis added). See, e.g., Buckley, 216 N.J. at 249 (considering evidence that victim passenger was not wearing seatbelt irrelevant to “but for” causation where State alleged defendant driver’s reckless driving caused the fatal crash). And in homicide cases such as the instant matter, this Court has expressly proscribed—as a matter of law—the defensive use of a victim’s decision to cease or forego life-sustaining medical treatment as an independent intervening cause to lessen a defendant’s criminal liability for the actions that injured and hospitalized the victim in the first place. See Pelham, 176 N.J. at 466.

In Pelham, as here, an intoxicated defendant driver crashed into another vehicle, resulting in its occupant sustaining “catastrophic” injuries. 176 N.J. at 451-54. The victim remained on life support during more than five months of hospitalization until his condition deteriorated. Ultimately, the determination was made to end life-supporting measures and he died shortly after his ventilator was removed. Ibid. Although Pelham unsuccessfully moved for dismissal of his resulting manslaughter charge while arguing the ventilator’s removal constituted an independent intervening cause negating his criminal liability, he offered, unlike here, no expert to challenge the causal connection between the victim’s death and the crash injuries. Id. at 454. At the trial’s end, the court had instructed the jurors on intervening causation and that a victim’s decision to remove life support was not a sufficient intervening cause. Id. at 455-56. Following Pelham’s conviction, the Appellate Division reversed based on the causation instruction, but the conviction was reinstated by this Court. Id. at 468.

This Court acknowledged how it is “well settled that competent persons have the right to refuse life-sustaining treatment,” id. at 456-57 (citing In re Farrell, 108 N.J. 335 (1987)), noting that such self-determinative decision-making is a “valuable incident [to the] right to privacy afforded by both the New Jersey and United States Constitutions,” id. at 457 (citing Cruzan v. Director, Missouri Dep’t of Health, 497 U.S. 261 (1990); In re Quinlan, 70 N.J. 10, 41

(1976), cert. denied sub nom., Garger v. New Jersey, 429 U.S. 922 (1976)) (internal quotations omitted). And this Court further acknowledged how, as developed through case law and legislative enactment, “[t]he longstanding, clear policy of this State recognizes the constitutional, common-law, and now statutorily based right of an individual to accept, reject, or discontinue medical treatment in the form of life supporting devices or techniques.” Pelham, 176 N.J. at 462.²

As such, this Court ultimately held in Pelham

[i]t is thus foreseeable that a victim may exercise his or her right not to be placed on, or to be removed from, life support systems. Because the exercise of the right does not break unexpectedly, or in any extraordinary way, the chain of causation that a defendant initiated and that led to the need for life support, it is not an intervening cause that may be advanced by the defendant.

[Id. at 466.]

Observing that “[d]ecisions from other jurisdictions have reasoned similarly,” id. at 462-63 (citing cases), this Court thus expressed its agreement with the now “widely recognized principle that removal of life support, as a matter of law,

² The statutory reference was to the 1991 enactment of the “New Jersey Advance Directives for Health Care Act,” which provides procedures and standards concerning “living wills” or “advance directives” while recognizing “the personal right of the individual patient to make voluntary, informed choices to accept, to reject, or to choose among alternative courses of medical and surgical treatment.” Pelham, 176 N.J. at 459 (quoting N.J.S.A. 26:2H-54(a)).

may not constitute an independent intervening cause for purposes of lessening a criminal defendant's liability," id. at 465. This Court explained the following:

[I]f defendant's actions set in motion the victim's need for life support, without which death would naturally result, then the causal link is not broken by an unforeseen, extraordinary act when the victim exercises his or her right to be removed from life support and thereupon expires unless there was an intervening volitional act of another, such as gross malpractice by a physician.

[Id. at 467.]

Here, moments before the crash, Mele and her two companions had apparently just exited an Applebee's parking lot. (Pa321). But for defendant—intoxicated and passed out, drifting across multiple lanes of traffic and colliding head-on with Mele's vehicle—she would not have required hospitalization and treatment that day. But defendant's recklessness set in motion the causal chain that left Mele with, among other injuries, a broken sternum and more than a dozen broken ribs that compromised her chest wall and made breathing increasingly difficult and painful. Her condition deteriorated overnight to a life-threatening degree, at which point intubation was necessary. But consistent with her advance directive and in consultation with her family and physicians, Mele did not want to continue with such increasingly invasive life-sustaining measures. This was her choice and her right. She received palliative care to relieve her pain and gradually became "completely disabled," "immobile" and

“without capacity” as she succumbed to her injuries, dying due to an inability to breathe on her own because of her collapsed chest wall.

But defendant’s proposed experts essentially opine instead that Mele’s injuries from the crash were not fatal and that she would not have died, but for the treatment she received, particularly the palliative-care medications. Defendant’s appellate brief flatly asserts, based on those opinions, that “there was no need to give her such care based on her injuries from the accident,” and that “she would have recovered from those injuries if given normal and routine medical care,” but that she was not given such standard care “because a full recovery for her would have meant a return to a debilitated state of health.” (Db14). Defendant’s brief describes Mele’s “preexisting state” as including “dementia, cirrhosis of the liver, and a host of other ailments that were not caused by the automobile accident.” (Db10). In that respect, according to defendant, his proposed experts would essentially support a defense as morally bereft as it is legally incognizable—“that Ms. Mele would have recovered from her injuries if her son had not chosen to euthanize her, apparently because her recovery would have meant a return to the debilitated state she was in before the accident.” (Db13).

The notion that Mele’s son, rather than defendant, is somehow responsible for Mele’s death—let alone by euthanizing her—not only is abhorrent, but

virtually accuses him of committing a crime himself while completely misconstruing palliative and hospice care with euthanasia, which is illegal in New Jersey. The closest legal process to euthanasia in this state is described in the Medical Aid in Dying Act, N.J.S.A. 26:16-1 et seq., which imposes several specific requirements.³ For example, the patient must make multiple requests orally and in writing during a specified timeframe involving several weeks, and consultations must occur during which a physician must discuss, among other things, “feasible alternatives to taking the [life-ending] medication, including, but not limited to, concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control.” See N.J.S.A. 26:16-6; N.J.S.A. 26:16-10(a).

Mele was not treated pursuant to the Medical Aid in Dying Act, let alone euthanized. The subject crash occurred in June 2019, about two months before that law even took effect that August. Regardless, as with euthanasia, “medical aid in dying” is not “palliative care, comfort care, hospice care, [or] pain control.” See N.J.S.A. 26:16-6 (referring to such care as “alternatives” to

³ That law “permits an adult New Jersey resident with a terminal illness and whose physician has determined that he or she has a life expectancy of six months or less to be considered a ‘qualified terminally ill patient’ [who may then] request and obtain from his or her physician a prescription for medication that the patient can choose to self-administer to end his or her life in a ‘humane and dignified manner.’” See Petro v. Platkin, 472 N.J. Super. 536, 547 (App. Div. 2022), certif. denied, 256 N.J. 207 (2024).

medical aid in dying). Palliative and hospice care is not designed or intended to end life, but to provide relief for what remains of one's life when dying, to relieve "the severity of pain, suffering, and other distressing symptoms" of an incurable condition that is expected to end in death. (See Pa269).

Beyond that, to the extent that Mele's Alzheimer's or any of her pre-existing conditions may have factored into or exacerbated her injuries, pain or determined need for palliative care, they are completely irrelevant. A "defendant's criminal liability is not lessened by the existence in the victim of a medical condition that, unbeknownst to the defendant, made the victim particularly vulnerable to attack." See Pelham, 176 N.J. at 467 (citing State v. Hofford, 169 N.J. Super. 377 (App. Div. 1979)).

Moreover, as a matter of clear and longstanding policy founded on constitutional, common law and statutory based rights, Mele and her family were entitled to pursue the course of medical treatment, or non-treatment, for the injuries and situation that defendant caused based on Mele's best interests. Conversely, criminal defendants, as a matter of law if not mere common sense, have no right to recklessly place the life of another person at risk, and then attempt to dictate, question or second guess the decisions made by that person and family members in pursuing treatment, especially when those defendants are merely trying to avoid the consequences of their own criminal actions.

Defendant finally asserts that the principles described in Pelham—particularly that defendants cannot escape criminal liability, as a matter of law, based on their victims’ medical self-determination and end-of-life decision-making when it was those same defendants who put them in such dire conditions and situations—do not apply because, according to his experts, Mele would not have succumbed to her injuries from the crash. (Db19). Defendant could not be more mistaken. Mele suffered for about 24 hours, remained in severe pain and unable to breathe while receiving medical treatment in accordance with her wishes. She was hospitalized that day for no reason other than defendant’s reckless conduct. Thereafter, short of the gross malpractice that defendants’ experts do not appear to allege, whatever occurred regarding Mele’s treatment and medical self-determination—which she, again, only required in the first place because of defendant’s actions—is irrelevant, immaterial and inadmissible as a matter of law under Pelham.

Because the trial court’s evidentiary decision was contrary to law amounting to a clear abuse of discretion, this Court should reverse the panel’s ruling permitting consideration of such evidence for admissibility and remand the matter for trial with an order barring the proposed defense expert witnesses.

CONCLUSION

This Court should reverse the judgment of the Appellate Division and remand the matter for trial with an order precluding defendant's use of the three proposed defense experts.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read 'Brian Uzdavinis', is written over a horizontal line.

BY: _____

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