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SUPREME COURT OF NEW JERSEY
Docket No. 090381
App. Div. Dkts. A-1374-23; A-2164-23
Ind. No.: 23-07-00473

STATE OF NEW JERSEY,	:	
Plaintiff-Movant,	:	Criminal Action
v.	:	On Motion for Leave to Appeal from a Final Order of the
THOMAS J. DINAPOLI	:	Superior Court of New Jersey, Appellate Division, Denying
	:	the State's Motion for Reconsideration.
Defendant-Respondent	:	
		Sat Below: Hon. Jack M. Sabatino, J.A.D. Hon. Katie A. Gummer, J.A.D.

AMENDED BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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DATED: June 24, 2025

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STATEMENT OF PROCEDURAL HISTORY[1]

On January 8, 2020, a Union County Grand Jury returned Indictment No. 20-01-00016, charging defendant-respondent 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:12-1c(2) (counts two and three). (Pa1 to 2). Defendant pleaded not guilty at his January 21, 2020, arraignment before the Honorable Candido Rodriguez, Jr. (Pa3 to 4). On September 26, 2022, defense and the State executed a Trial Memorandum, and scheduled the trial for February 6, 2023. (Pa5 to 7).

On January 5, 2023, defendant disclosed an expert report from Marc

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[1] "Pa" refers to the Appendix to the State's Motion for Leave to Appeal brief, dated February 20, 2025.
"Pma" refers to the Appendix to this brief – the "Plaintiff Merits Appendix."
"1T" refers to the Transcript of proceedings on April 24, 2023.
"2T" refers to the Transcript of proceedings on April 26, 2023.
"3T" refers to the Transcript of proceedings on May 1, 2023
"4T" refers to the Transcript of proceedings on May 11, 2023 (re: Julio Ortiz).
"5T" refers to the Transcript of proceedings on May 11, 2023 (re: Dr. Khan).
"6T" refers to the Transcript of proceedings on May 16, 2023 (re: Dr Khan).
"7T" refers to the Transcript of proceedings on May 30, 2023. (re: Donna Papsun).
"8T" refers to the Transcript of proceedings on June 1, 2023.
"9T" refers to the Transcript of proceedings on June 5, 2023.
"10T" refers to the Transcript of proceedings on June 6, 2023.
"11T" refers to the Transcript of proceedings on December 1, 2023.

Polimeni, who opined that victim Michelina Mele died of natural causes. (Pa8 to 12). The State objected to this "net opinion" on January 13, 2023. (Pa13 to 19). On January 29, 2023, defendant disclosed another expert report, this one from Robert Pandina, who stated he could not determine if Clonazepam caused the crash, despite concluding defendant's "erratic driving behavior was the major contributing factor." (Pa21 to 39). The State moved to preclude both experts on April 8, 2023. (Pa40). On April 24, 2023, Judge Rodriguez denied preclusion of Dr. Pandina, but reserved on Dr. Polimeni pending a N.J.R.E. 104 hearing. (Pa41; 1T21-23 to 22-10).

On April 26, 2023, the court held a N.J.R.E. 104 hearing to determine whether the State's medical examiner, Dr. Beverly Leffers, would be permitted to testify about cause of death. (2T). Judge Rodriguez ruled the jury would decide the medical issues. (2T106-12 to 21). Following further testimony from Dr. Leffers and additional argument on May 1, 2023, the court denied defendant's application to preclude the State's medical examiner. (3T41-13 to 42-2).

Defendant was then tried before Judge Rodriguez and a jury, with the State presenting its case-in-chief from May 11, 2023 to May 30, 2023. On June 1, 2023, defense counsel moved for a continuance or mistrial, claiming newly discovered evidence altered their experts' opinions. (8T4-10 to 8-8;

8T5-16 to 24). On June 5, 2023, counsel proffered that experts would opine the victim was euthanized, requesting weeks to update their reports. (9T34-23 to 24). The State opposed, arguing the proffer was baseless. (9T48-3 to 50-25). Judge Rodriguez reserved judgment to discuss jury availability. (9T51-3 to 5). On June 6, 2023, after determining the jury was unavailable for the requested additional weeks, Judge Rodriguez granted defendant's request for a mistrial over the State's objection and dismissed the jury (9T4-19 to 24).

On June 9, 2023, the State moved to compel the expert opinions that formed the basis for the mistrial application. (Pa284). On June 12, 2023, the Honorable Thomas Isenhour, J.S.C., ordered defendant to produce all expert reports by August 1, 2023. (Pa285). On July 18, 2023, defendant sought more time and discovery, attaching a supplemental report from Robert Pandina, who stated he could not determine the impact of new evidence on his cause of death analysis without further discovery. (Pa286 to 291).

On July 26, 2023, a Union County Grand Jury returned Superseding Indictment No. 23-07-00473, which retained the original charges and added third-degree Strict Liability Vehicular Homicide, in violation of N.J.S.A. 2C:11-5.3a and third-degree Witness Tampering, in violation of N.J.S.A. 2C:28-5a. (Pa292 to 294).

On August 1, 2023, defense counsel provided expert reports from Robert

Pandina (Pa259 to 300), Marc Polimeni (Pa301 to 306), and Henry Velez (Pa307 to 312). The State moved to preclude defendant's experts on September 29, 2023, arguing their opinions were unsupported net opinions and legally impermissible. (Pa315). On December 1, 2023, Judge Isenhour denied the State's motion, opting to reserve on preclusion until the experts were offered and qualified at trial. (Pa316; 11T70-22 to 71-3; 11T72-16 to 18).

On December 19, 2023, the State filed a Motion for Leave to Appeal. (Pa415). On January 8, 2024, the Appellate Division granted the State's motion. (Pa421 to 423). On January 28, 2025, The Appellate Division issued an unpublished opinion, State v. Dinapoli, Nos. A-1374-23, A-2164-23 (App. Div. January 28, 2025), which vacated the trial court's Order denying preclusion of defendant's experts and remanded for a N.J.R.E. 104 hearing. (Pa424 to 445).

The State filed a Motion for Reconsideration with the Appellate Division on February 5, 2025, arguing the decision was internally inconsistent, improperly allowed the defense to present irrelevant issues to the jury, and inappropriately restricted the State ability to present its theory of the case in accordance with the statutory bases set forth in N.J.S.A. 2C:2-3(c). (Pa446 to 447). The Appellate Division denied the State's motion on February 13, 2025. (Pa448).

On February 20, 2025, the State file a Motion for Leave to Appeal to the New Jersey Supreme Court. (Pma1). An amended Notice of Motion for Leave to Appeal was filed on February 27, 2025. (Pma2 to 3). This Court granted the motion on May 8, 2025, and set a briefing schedule, with the State's brief due on or before June 23, 2025. (Pma4). This brief follows.

STATEMENT OF FACTS[2]

On June 4, 2019, at approximately 3:44 p.m., defendant was driving in the right eastbound lane on Morris Avenue, traveling at or exceeding forty miles per hour. (Pa317 to 326). He drifted across four lanes of traffic, entered the right westbound lane, and crashed head-on into a vehicle occupied by Maria Murray, Michelina Mele, and Ana Vasquez Briones. Id.

At the crash scene, defendant stated he fell asleep and did not know what happened. Id. At the hospital, defendant claimed he lost control of his vehicle. (Pa327). In subsequent statements, defendant again admitted he fell asleep. (Pa317 to 326). Approximately one hour after the crash, his hospital blood draw revealed cocaine metabolites and Clonazepam, an anti-anxiety muscle relaxer, in an amount far exceeding any therapeutic dosage. (Id.;

[2] Because this is an appeal from a pretrial motion and the trial has not occurred, the "Statement of Facts" are derived from police reports and investigative reports and are the facts that the State intends to prove at trial.

Pa328 to 335).

Ms. Mele arrived at the hospital around 4:47 p.m. (Pa342). Nursing staff noted her airways were clear, and she appeared to be breathing normally, but she complained of severe "midsternal chest pain" and was "disorientated." (Pa342 to 344). Ms. Mele was "quivering," "uneasy," "tense," "squirming," "crying steadily" with "screams or sobs," and "frequent[ly] complain[ing]" of severe pain. (Pa343 to 344). She received four milligrams of Morphine "immediately" and underwent a "[h]ead to [t]oe [a]ssessment." (Pa346 to 347). After Morphine administration, Ms. Mele "calm[ed]," became "orientated to person, place and time," and her breathing appeared "spontaneous and unlabored." Id.

Despite increased orientation, Ms. Mele's complaints of "localized, non-radiating chest pain" persisted, and bruising appeared in the area. Id. Staff administered a non-rebreather mask (NRB) to increase her oxygen levels. (Pa347). When it proved insufficient, high-flow oxygen was administered "to maintain satisfactory oxygenation." (Pa348; Pa357). Ms. Mele did not complain when it was administered. (Pa349). Still, she continued to report "severe chest wall pain [and] shortness of breath" and "appear[ed] to be in severe pain." (Pa354).

Comparing CT scans revealed "scattered areas of ground glass opacity anteriorly," indicating "multiple areas of pulmonary contusion with multiple rib fractures." (Pa364; Pa357). In addition, X-rays showed a "comminuted patellar fracture with suprapatellar joint effusion." (Pa364; Pa387). Ms. Mele "require[ed] high-flow oxygen via nasal cannula," was "critically ill with a high probability of imminent or life[-]threatening deterioration" due to "Multi trauma, multiorgan injury." (Pa357). Doctors observed Ms. Mele's "worsening lung condition" with "[i]ncreased density [in] both lower lungs consistent with pulmonary contusions" and anticipated she eventually would require a ventilator/intubation. (5T35-17 to 36-22; Pa390).

Ms. Mele was admitted to the Intensive Care Unit (ICU) with diagnoses including "[h]ypoxia," "[p]ulmonary contusion," "[p]atella fracture," "[m]ultiple rib fractures," and "motor vehicle accident." (Pa357 to 358; Pa364; Pa368; Pa384; Pa387; Pa396). Her family history was "non-contributory," and the "multitrauma [was] secondary to [the] M[otor] V[ehicle] A[ccident]." (Pa365; Pa366; Pa387; Pa396).

Doctors noted Ms. Mele's family was at her bedside and consulted regarding administering high-flow oxygen to stave off imminent/life-threatening deterioration. (Pa357; Pa364). The family requested Ms. Mele's advance directive be respected, and she was subsequently ordered "DNR/DNI"

(Do Not Resuscitate/Do Not Intubate), which was "reviewed/validated by [the] patient, [Ms. Mele]." (Pa357; Pa364; Pa367; Pa369; 6T29-19 to 30-9).

Ms. Mele's advance directive, created on December 27, 2007, indicated she did not want "all life support measures be provided to sustain [her] life, regardless of [her] physical or mental condition." (Pa336 to 337). Instead, she requested that "[i]f [she was] experience[ing] 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," including "respiratory support (ventilator)." Id. Ms. Mele also requested "appropriate medical care to alleviate pain and keep [her] comfortable" and "trust[ed] [her sons'] judgment on [her] behalf." Id.

Ms. Mele was transferred from the Emergency Room to the Intensive Care Unit and received pain control/comfort care. (Pa364; Pa368; Pa375 to 379; Pa381; Pa382; Pa384; Pa392; Pa394). Nearing midnight on June 4, 2019, nursing staff noted Ms. Mele was responding to medication, sleeping, and her sons were at her bedside. (Pa361; Pa379 to 382). She was ordered nil per os ("NPO") or "nothing by mouth" until her "respiratory status improved," meaning oral medication, though ordered, was never administered. (Pa382). Ms. Mele continued to receive a low dose of intravenous morphine, with "[n]o

max dose for palliative care." (Pa379). Shortly after midnight, Ms. Mele awoke and continued to complain of chest pain, "difficulty breathing," and "[s]hortness of breath." (Pa380). She continued to receive "high flow nasal cannula" and "pain control." Id. On the morning of June 5, 2019, the Chaplin provided Ms. Mele the Sacrament of the Sick and counseled her family. (Pa393).

Dr. Carlos Remolina noted Ms. Mele sustained significant trauma, was in severe pain, and her comorbidities[3] further impeded recovery. (Pa403). He recommended hospice for comfort. Id. In concert with all treating physicians, Ms. Mele's son and health proxy, Joseph P. Mele, M.D., an internist, requested his mother be discharged to an inpatient hospice facility, and the hospital began planning accordingly. (Pa398; Pa402 to Pa408). Dr. Ricardo Cedeno correctly noted there is no maximum dose for comfort care pain medication for a patient receiving palliative care. (Pa379; see further, Pa268 to 269).

Ms. Mele was "completely disabled," "immobile," "unresponsive," and "without capacity." (Pa400 to 401; Pa405). Dr. Khan continued medication to address Ms. Mele's "tremendous," "excessive" pain. (Pa398; Pa414). Around

[3] "Alzheimer's dementia, HTN. HLD, OM, microscopic colitis." (Pa405).

3:30 p.m. on June 5, 2019, the Chaplin again prayed with Ms. Mele and counseled her family. (Pa409). At 5:45 p.m., Ms. Mele's pain subsided, and she succumbed to her injuries, with her sons at her bedside. (Pa412; Pa414).

Relevant Pre-Trial Testimony:

On April 26, 2023, Dr. Beverly Leffers, a board-certified forensic pathologist with over forty years of experience, testified in a N.J.R.E. 104 hearing in response to defense's Motion to Preclude the State's medical examiner. (2T7-24 to 8-2; 2T8-12 to 16; 2T8-17 to 22).

Dr. Leffers testified that pathology is "the study of the effect of injury and illness on the body." (2T7-24 to 8-2; 2T8-12 to 16). She explained that "[f]orensic pathology is a subspecialty in which the cases that are studied are the ones that have legal importance." (2T7-25 to 8-2). Forensic pathologists perform autopsies to determine both the cause and manner of death. (2T8-5 to 11).

Dr. Leffers testified that she determined Ms. Mele's death to be the result of blunt impact injuries and identified numerous fractured ribs and sternum. (2T25-15 to 20; 2T37-13 to 25). Dr. Leffers explained how she made her expert forensic pathological medical examiner findings, relying on national standards. (2T37-13 to 25; 2T40-16 to 41-3; 2T42-1 to 19).

On May 1, 2023, Dr. Leffers testified she did not observe chronic lung

disease or contusions. (3T15-10 to 16). She stated that the decision for end-of-life care considered Ms. Mele's injuries and comorbidities, and that her injuries were life-threatening. (3T19-15 to 23; 3T21-22 to 22-2). According to the Autopsy Report, Ms. Mele sustained more than twelve fractured ribs. (Pa260). Dr. Leffers explained that Ms. Mele had "a number of rib fractures and fracture of her sternum, which would make breathing difficult and painful for her and she had preexisting medical problems that also would make her more susceptible to death in a situation such as this." (3T22-3 to 8). Dr. Leffers testified that Ms. Mele died due to her injuries and their consequences. (3T29-17 to 30-20; 3T33-21 to 35-16).

Relevant Testimony from First Trial:

On May 11, 2023, defendant's coworker, Julio Ortiz, testified about his interactions with defendant on the date of the crash. According to Mr. Ortiz, around noon, less than four hours prior to the crash, he went to lunch with defendant at a pizzeria. (4T4-18 to 6-7). Defendant drove, as he usually did. (4T5-19 to 25). During their lunch break, Mr. Ortiz observed defendant driving "erratical[ly]," and "swerving" to and from the pizzeria; Mr. Ortiz noted that defendant "almost got into an accident." (4T7-8 to 8-9; 4T9-9 to 11; 4T10-17 to 22). Specifically, defendant almost struck a parked vehicle while exiting the pizzeria parking lot. (4T9-9 to 10-8). When Mr. Ortiz

inquired about his condition, defendant admitted to taking "muscle relaxers" in an amount "more than prescribed." (4T8-7 to 21; 4T9-12 to 22; 4T10-17 to 22). Defendant also stated "he wasn't feeling well" and was "leaving early that day." (4T10-17 to 22). Upon returning to work around 1:00 p.m., less than three hours prior to the crash, Mr. Ortiz "advise[d] [defendant] that he should not be driving in the condition [he] observed." (4T10-23 to 11-5). Mr. Ortiz "told [defendant] that he should call an Uber. Call someone to come pick him up." Id. Obviously, defendant paid no heed and chose to drive anyway.

Mr. Ortiz further testified that a few weeks after the crash, defendant approached him and said, "if [the police] come interviewing people, don't say anything." (4T12-5 to 7; 4T63-12 to 21). After Mr. Ortiz spoke to police and learned of Ms. Mele's death, he confronted defendant. (4T12-17 to 13-10). Mr. Ortiz asked defendant why he had omitted Ms. Mele's death when asking him not to speak to police. (4T12-25 to 13-10). Defendant responded: "the lady was an old lady anyway. So she was gonna die anyway." Id.

Ms. Mele's treating physician, Dr. Sabeen Khan, testified at the first trial on May 11, 2023. (5T). Dr. Khan stated Ms. Mele was brought to the emergency room by EMS with chest wall trauma. (5T16-6 to 12; 5T17-11 to 18). Dr. Khan noted Ms. Mele's pulse oximetry was normal upon admission,

but decreased as she breathed less due to her injuries. (5T20-3 to 24). Dr. Khan testified that the integrity of Ms. Mele's chest wall was compromised by her crash injuries, that the inability to breathe causes death, and that Ms. Mele's inability to breathe caused her death. (5T20-25 to 22-21; 5T23-7 to 24-8; 5T30-12 to 14; 5T34-24 to 37-23). Dr. Khan testified that, but for the crash, Ms. Mele would not have died when she did. (5T41-1 to 42-6).

Furthermore, Dr. Khan testified regarding Ms. Mele's level of "non-functioning," a medical term. (5T49-7 to 24). Dr. Khan explained that "[n]onfunctioning can be multiple levels" and depends on the person. (5T49-7 to 24). Dr. Khan clarified that Ms. Mele's functioning level being less than one hundred percent did not compel her death, but would have inhibited her treatment and reduced her recovery possibility. (5T52-14 to 53-5). Dr. Khan further explained, "[i]f a younger, fully functional individual would have rib fractures, they would be able to follow […] commands" and that "a patient with dementia, given her functional status and age, may not be fully able to follow […] treatments to help her heal." (5T53-6 to 18). Dr. Khan recalled that Ms. Mele "was not well enough to follow anything," "she was in extreme pain," and unable to take deep breaths. (5T55-1 to 5).

Dr. Khan explained that Ms. Mele was without the possibility of recovery within the bounds of her advance health directive and that her

condition was not going to improve. (5T52-1 to 4; 5T54-20 to 55-5; 5T23-7 to 24-8; 5T57-13 to 58-22; Pa336 to 337). Dr. Khan observed Ms. Mele's condition was deteriorating despite oxygenation treatment, and knew she would have to be intubated, which was expressly forbidden by Ms. Mele's advance directive. (6T46-11 to 48-10; 52-11 to 53-10). Dr. Khan maintained that palliative care was implemented because the injuries Ms. Mele sustained in the crash were a death sentence, with a calculable mortality rate of 100%, and no reasonable expectation of her recovery or regaining a meaningful quality of life. (6T93-15 to 95-5; 6T104-23 to 105-6; 6T117-2 to 118-1; 6T121-8 to 122-4; 6T123-21 to 125-12; 6T162-7 to 163-17). Dr. Khan testified Ms. Mele's injuries compromised her ability to breathe, reducing her oxygen levels, increasing her carbon-dioxide levels, and causing her death. (6T121-8 to 128-3).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING THE STATE'S MOTION TO PRECLUDE DEFENDANT FROM INTRODUCING IRRELEVANT EVIDENCE, AND THE APPELLATE DIVISION COMPOUNDED THAT ERROR BY ORDERING AN N.J.R.E. 104 HEARING TO ADDRESS IRRELEVANT EVIDENCE. (Pa316; 11T70-22 to 71-3; 11T72-16 to 18).

The State chooses how to prosecute a defendant, not the defense. In this case, the State intends to prosecute defendant pursuant to the first prong of reckless causation under N.J.S.A. 2C:2-3(c). Accordingly, evidence only will be relevant to causation if it supports or negates a finding that defendant's conduct was (1) an antecedent but for which the result in question would not have occurred; and (2) the victim's death was within the risk of which defendant was aware. Defendant's experts' opinions fail to address either consideration and, thus, their opinions are irrelevant and should have been precluded. Therefore, the trial court abused its discretion by denying the State's Motion to preclude defense's experts and the Appellate Division erred in remanding for an N.J.R.E. 104 hearing to take testimony from those experts.

The Appellate Division further erred by remanding the case for an N.J.R.E. 104 hearing to enable defense to elicit testimony from these experts. In reaching its decision, the Appellate Division usurped the prosecutor's decision-making authority and determination that this was a "prong one" case. Inexplicably, the Appellate Division considered the relevance of the proffered evidence under a "prong two" theory of reckless causation. The Appellate Division then compounded that error by finding the defense experts' opinions might be relevant to a "prong two" theory, despite also finding a victim's decision to forego life sustaining treatment cannot be considered an intervening cause. In this case sub judice, defendant's experts attribute the victim's death to her choice of treatment and do not allege medical malpractice, let alone gross malpractice, it is beyond cavil that defendant's experts' opinions are not relevant to establishing an intervening cause. Even, assuming arguendo this were a "prong two" case, the experts' opinions should still be barred and, therefore, the Appellate Division's ruling cannot be permitted to stand. The State respectfully requests this Court reverse the Appellate Division's Order and hold that defendant's experts' net opinions are irrelevant and, thus, barred.

"The admission or exclusion of expert testimony is committed to the sound discretion of the trial court." State v. Cotto, 471 N.J. Super. 489, 531

(App. Div. 2022) (quoting Townsend v. Pierre, 221 N.J. 36, 52 (2015)). Absent a clear abuse of discretion, an appellate court will not interfere with the exercise of that discretion." Nicholas v. Hackensack Univ. Med. Ctr., 456 N.J. Super. 110, 117 (App. Div. 2018) (quoting Carey v. Lovett, 132 N.J. 44, 64 (1993)). "Under that standard, an appellate court should not substitute its own judgment for that of the trial court, unless 'the trial court's ruling was so wide of the mark that a manifest denial of justice resulted.'" State v. Kuropchak, 221 N.J. 368, 385-86 (2015) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)).

"N.J.R.E. 702 governs the admissibility of expert testimony." State v. Olenowski, 253 N.J. 133, 143 (2023). That rule "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.'" State v. Derry, 250 N.J. 611, 632 (2022) (alteration in original) (quoting N.J.R.E. 702). "[T]he trial court must act as a gatekeeper to determine 'whether there exists a reasonable need for an expert's testimony.'" State v. Covil, 240 N.J. 448, 465 (2020) (quoting State v. Nesbitt, 185 N.J. 504, 514 (2006)).

In order to assist the trier of fact and thereby be admissible, expert testimony, like any other evidence proffered at trial, must be relevant to the issues to be determined by the fact finder. Olenowski, 253 N.J. at 148 (finding "an expert's testimony" should be based "on a reliable foundation and [be] relevant . . . .") (quoting In re Accutane Litig., 234 N.J. 340, 384 (2018)).

N.J.R.E. 401 defines "relevant evidence" as "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." "Relevant evidence 'need not be dispositive or even strongly probative in order to clear the relevancy bar.'" State v. Santamaria, 236 N.J. 390, 405 (2019) (quoting State v. Cole, 229 N.J. 430, 447 (2017)). Rather, "the relevancy threshold is met '[o]nce a logical relevancy can be found to bridge the evidence offered and a consequential issue in the case.'" Ibid. (alteration in original) (quoting Cole, 220 N.J. at 448). "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)).

"Relevant evidence may still 'be excluded if its probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury . . . .'" Santamaria, 236 N.J. at 406 (quoting N.J.R.E. 403). N.J.R.E. 403 bars the admission of evidence "if 'the probative

value of the evidence is so significantly outweighed by [its] inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation of the issues.'" Ibid. (alteration in original) (internal quotation marks omitted) (quoting Cole, 229 N.J. at 448).

Criminal homicide constitutes reckless vehicular homicide when "caused by driving a vehicle… recklessly." N.J.S.A. 2C:11-5(a). The State must prove beyond a reasonable doubt: (1) that "defendant was driving a vehicle"; (2) that "defendant caused the death"; and (3) that the death was caused by driving recklessly. State v. Eldridge, 388 N.J. Super. 485, 494 (App. Div. 2006), certif. denied, 189 N.J. 650 (2007). The first element is undisputed.

The third element, what it means to act recklessly under the vehicular homicide statute, is clearly defined in the Criminal Code. State v. Buckley, 216 N.J. 249, 262 (2013).

> A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard

> of conduct that a reasonable person would observe in the actor's situation.
>
> [N.J.S.A. 2C:2-2(b)(3).]

Although this element will be relevant at trial, the focus of this appeal is the second element: causation.

"Causation" is a term of art, the meaning of which varies with the mental state of the actor. State v. Martin, 119 N.J. 2, 11 (1990). It means one thing when an offense is committed knowingly or purposely, N.J.S.A. 2C:2-3b, something else for strict or absolute liability, N.J.S.A. 2C:2-3e, and something else again when an offense is committed recklessly, N.J.S.A. 2C:2-3c. "Thus, 'causation' assumes a different meaning from its use in ordinary discourse." Martin, 119 N.J. at 11 (citing State v. Smith, 210 N.J. Super. 43, 55 (App. Div. 1986), certif. denied, 105 N.J. 582 (1986)).

Under N.J.S.A. 2C:2-3, the issue of causation is determined by a multi-step analysis:

> a. 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.
>
> [. . . .]
>
> c. When the offense requires that the defendant

> recklessly . . . cause a particular result, the actual result must be within the risk of which the actor is 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.
>
> [N.J.S.A. 2C:2-3.]

Although "[c]ausation is a factual determination for the jury to consider . . . the jury may consider only that which the law permits it to consider." State v. Pelham, 176 N.J. 448, 466, cert. denied, 540 U.S. 909 (2003).

First, the State must establish that a defendant's conduct was "an antecedent but for which the result in question would not have occurred." N.J.S.A. 2C:2-3(a)(1). In other words, the State need prove "the 'result' would not have occurred without the 'conduct.'" Buckley, 216 N.J. at 267; see also State v. Jamerson, 153 N.J. 318, 336 (1998).

In addition, the State must prove "[t]he 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. In a case based on reckless behavior, the State must prove one of two forms of causation: (1) "the actual result must be within the risk of which the actor is aware"; or (2) "if not, the actual result must involve the same kind of injury or harm as the probable

result." N.J.S.A. 2C:2-3(c) (emphasis added). Only in the latter case, one in which the actual harm exceeds the risked harm, the State must show that "the actual result . . . 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." N.J.S.A. 2C:2-3(c) (emphasis added).

In vehicular homicide, the "actual result" is the victim's death. Buckley, 216 N.J. at 264. If the actual result occurs in the same manner and character as the risked result, causation is satisfied under "prong one." Martin, 119 N.J. at 12. Intervening causes are considered only under "prong two," when the actual harm exceeds the risked harm. Id. at 13; see also State v. Pelham, 176 N.J. 448, 461 (2003). Prongs one and two are alternate theories. Buckley at 264. If the State proved that a "defendant understood that the manner in which he or she drove created a risk of a traffic fatality," causation is established under the first prong and the second prong is irrelevant. Id.

Applying the law to the facts of this case, it is clear that the trial court abused its discretion by denying the State's Motion to Preclude defendant's experts' opinions. This undoubtedly is a "prong one" reckless causation case. Defendant recklessly drove his vehicle, ignoring the risk of death associated with doing so, and caused an accident that resulted in Ms. Mele's death.

Therefore, defendant's experts' opinions, which do not challenge the "but for" cause of Ms. Mele's death and, instead, are offered to support defendant's attempt at introducing an intervening cause under "prong two," are irrelevant.

Moreover, assuming arguendo this were a "prong two" case, defendant's experts' opinions nevertheless are inadmissible because they do not establish an intervening cause. Defendant's experts do not allege malpractice occurred, but rather challenge the victim's decision to receive palliative care. However, such a challenge does not as a matter of law, amount to an intervening cause. Therefore, defense experts' opinions are irrelevant even if this were a "prong two" case. Accordingly, the Appellate Division's ruling must be reversed.

A. The State Will Prosecute Defendant Utilizing A "Prong One" Reckless Causation Theory And, Therefore, Defendant's Experts' Opinions, Which Are Offered To Support An Intervening Cause Argument, Are Irrelevant.

As this Court clearly set forth State v. Buckley, 216 N.J. 249, 266 (2013), the State has the exclusive right to choose whether to prosecute under "prong one" or "prong two." See Buckley, 216 N.J. at 266; accord State v. Parkhill, 461 N.J. Super. 494, 501 (App. Div. 2019). If the State chooses to proceed under only "prong one," as it does here, admissible evidence must be relevant to that theory of the case. As previously stated, relevant evidence is evidence that has "a tendency in reason to prove or disprove any fact of

consequence to the determination of the action." See N.J.R.E. 401. Thus, under a "prong one" case, causation evidence must relate to whether defendant's conduct was the "but for" cause of the injury, or "whether 'the actual result' was 'within the risk of which the actor is aware.'" Buckley, 216 N.J. at 267. (relying on Pelham, 176 N.J. at 466 and quoting N.J.S.A. 2C:2-3(c)). Stated differently, where the State intends to prosecute using only "prong one," evidence of alleged intervening causes under "prong two" are irrelevant. Buckley, 216 N.J. at 267.

In this case, the State will prosecute defendant using only a "prong one" theory of causation. The State intends to prove defendant recklessly drove his vehicle while overmedicated, fell asleep while driving, and caused a head-on collision that was the "but for" cause of Ms. Mele's death. The State further intends to prove defendant was warned not to drive by his friend, ignored this warning, and chose to drive his vehicle, thereby risking his death and the death of others. If the jury finds the State has proven these facts beyond a reasonable doubt, the State will have proven reckless causation under "prong one." The jury does not then also consider "prong two." Indeed, if the jury finds that the State failed to prove the "prong one" facts beyond a reasonable doubt, the jury will return a not guilty verdict. Under either scenario, "prong two" is irrelevant. Thus, because the State intends to limit its theory of

prosecution, defendant's experts' opinions must address a fact of consequence under "prong one" to be relevant. See Buckley, supra.

Defendant's experts' opinions fail to address any such fact. None of the experts offer an opinion related to whether death was within the risk that defendant contemplated by driving recklessly. Thus, their opinions only would address a fact of consequence if they challenged whether defendant's conduct and the crash was a "but for" cause of the victim's death. However, notably, none of the experts actually dispute whether defendant's conduct was the "but for" cause of the car crash that led to the victim's injuries and her hospitalization, where she ultimately died. Therefore, their opinions are irrelevant to a "prong one" prosecution and the trial court abused its discretion in denying the State's motion.

Although Dr. Polimeni may be willing to offer the outlandish position that Ms. Mele "did not die of orthopedic injuries, blunt trauma force, blood loss, from the impact of the motor vehicle, or complication related to same, but rather from very potent narcotics, which were administered under the auspices of palliative hospice care" related to Alzheimer's, (Pa11 to 12; Pa306), Dr. Polimeni does not actually allege the victim would have received such treatment if the car crash did not occur on that day. Dr. Pandina's opinion similarly does not challenge whether defendant's conduct was the "but for"

cause of the victim's death. In fact, he opines that defendant's "erratic driving behavior was the major contributing factor." (Pa21 to 39). Dr. Pandina's report merely addresses the effect the narcotics had on Ms. Mele's physiological processes and functionality. (Pa299). Dr. Velez's opinion likewise is irrelevant to a "prong one" analysis because he asserts that the motor vehicle accident was not the "proximate cause" of the victim's death, but fails to offer an opinion about whether the motor vehicle was a "but for" cause of the victim's death. (Pa312).

Even though each of these experts point to the treatment Ms. Mele received in the hospital and assert it is the cause of Ms. Mele's death, there is no proof, or argument from the experts, that she would have received that treatment on June 4 and 5, 2019, without defendant's actions. Indeed, Ms. Mele was not on palliative care prior to the car crash and she was not on morphine or other pain medicine, prior to her hospitalization. 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. Pelham, 176 N.J. at 467 (citing State v. Hofford, 169 N.J. Super. 377 (App. Div. 1979)). Even assuming Ms. Mele's choice of treatment contributed to her death, that is not a challenge to whether defendant's conduct was a "but for" cause of the victim's death. Because defendant's experts do

not address a fact of consequence under "prong one," their opinions are irrelevant to a "prong one" prosecution. Accordingly, the trial court abused its discretion by denying the State's Motion to Preclude their testimony.

In sum, in a case based on reckless behavior, the State has the exclusive right to select which form of causation it intends to prove at trial. The State has elected to prosecute this matter under "prong one," which requires the State to prove defendant's conduct was the "but for" cause of the injury, and whether the actual result was within the risk of which the actor is aware. By doing so, the State has narrowed the realm of admissible evidence to only those proofs that address those allegations. Defendant's experts' opinions fail to address those allegations. They are irrelevant. As such, the trial court abused its discretion by denying the State's Motion to Preclude their testimony. The Appellate Division compounded that error by usurping the State's discretionary authority to select its theory of prosecution, considering the potential relevance of the experts' presently deficient opinions under a "prong two" analysis, and failing to explain how the experts' opinions were relevant under "prong one." Neither ruling can stand and, therefore, the State requests this Court reverse the Appellate Division's Order and hold that the defendant's experts' opinions are irrelevant and inadmissible.

B. Assuming Arguendo This Were A "Prong Two" Case, Defense Experts' Opinions About The Victim's Decision To Receive Palliative Care Do Not Constitute An Intervening Cause Of Death As A Matter Of Law, And Therefore, Their Opinions Are Still Irrelevant.

Even assuming arguendo that the facts of this case supported a "prong two" prosecution, the Appellate Division's Order nevertheless was improper because the defense experts' opinions do not establish an intervening cause. When the State utilizes a "prong two" theory of causation, it must show that defendant's conduct was an antecedent "but for" which the result in question would not have occurred and that the actual result involves the same kind of injury or harm as the probable result and is 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. See N.J.S.A. 2C:2-3. As previously set forth, defendants' experts' opinions are not relevant to the "but for" analysis. Thus, they only would be relevant in a "prong two" prosecution if they addressed whether Ms. Mele's death was 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. Defendant's experts' opinions do not address that issue and, therefore, they are irrelevant even under a "prong two" prosecution.

An "intervening cause" is "[a]n event that comes between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury." Black's Law Dictionary (7th ed.1999). Generally, to avoid breaking the chain of causation for criminal liability, a variation between the result intended or risked and the actual result of defendant's conduct must not be so out of the ordinary that it is unfair to hold defendant responsible for that result. Wayne R. LaFave & Austin W. Scott, Jr., Handbook on Criminal Law § 35 (1972); see also Martin, 119 N.J. at 14. 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." State v. Pelham, 176 N.J. 448, 461-62 (2003)(quoting People v. Saavedra-Rodriguez, 971 P.2d 223, 225-26 (Colo. 1998) (explaining Wharton's rule on intervening cause).

> The 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. An ill or injured person has that personal right and is free to exercise it, at his or her discretion, directly or through a family

> member or guardian acting in accordance with the person's wishes.
>
> [State v. Pelham, 176 N.J. 448, 462 (2003)]

A person's choice to be removed from life support is neither unexpected nor extraordinary. Id. As the Appellate Division correctly found, and defendant has not challenged, same is true with "a family's decision not to place the victim on life support systems and that the causal link between a 'defendant's actions [that] set in motion the victim's need for life support . . . is not broken by an unforeseen, extraordinary act' when a victim or her family chooses not to place her on life support systems." State v. DiNapoli, Nos. A-1374-23, A-2164-23 (App. Div. January 28, 2025) (slip op. at 17-18) (quoting Pelham, 176 N.J. at 467). Thus, a victim's decision to receive medical treatment or forego same is not an intervening cause.

Despite correctly acknowledging the removal of life support is not an intervening act that breaks the chain of causation, and that there is "no legal basis to distinguish between a decision to take someone off a ventilator and a decision to not put someone on a ventilator,"[4] State v. DiNapoli, Nos. A-1374-23, A-2164-23 (App. Div. January 28, 2025) (slip op. at 17-18), the Appellate Division nevertheless held that defendant's experts' opinions might be relevant

[4] Defendant has not challenged that holding and has not filed a cross-appeal.

to support a conclusion an intervening cause broke the chain of causation from defendant's actions. That finding is erroneous. A victim's decision to receive palliative care is not an intervening cause and, thus, here, where defendant's experts opine that the victim's decision to receive palliative care was the cause of death, their opinions cannot establish an intervening cause as a matter of law. Accordingly, even if this were a "prong two" prosecution, their opinions are irrelevant and, therefore, the Appellate Division erred by failing to reverse the trial court's ruling and by remanding the case for an N.J.R.E. 104 hearing.

The Appellate Division appears to have made this error by finding that defendant's experts' reports, "[t]hough inconsistent and all over the map" suggest the decision to place Ms. Mele on palliative care was "based on erroneous advice about her condition or that was not related to a condition cause by the crash." (Pa441). While gross malpractice can be an intervening cause, differing medical opinions are not. Pelham, 176 N.J. at 467. Notably, defendant's experts do not allege malpractice, let alone gross malpractice.

Contrary to the record, including medical records and the treating physician's testimony explaining the decision to implement palliative care, Dr. Polimeni states:

> None of her injuries, which were primarily orthopedic, were life threatening. Yet, her pain was significant enough to be administered analgesics and Morphine

> was chosen. However, ultimately, her treating physicians and family decided to place Ms. Mele on elective end of life and hospice care. She was treated appropriately for such care, but said care was not directly or proximately caused by the subject motor vehicle accident. It is common medical practice to provide palliative care for patients suffering from end stage dementia and Alzheimers.
>
> [Pa305 (emphasis added)].

Similarly, Dr. Velez states:

> At 11:10 hours, [Ms. Mele] was discharged to hospice care. Appropriately, doses of morphine were escalated as the goal and mission of hospice is to provide a peaceful and dignified death to enrollees. This was in accordance with the wishes of the family who had power of attorney
>
> [Pa310 (emphasis added)].

Dr. Pandina's report does not address the propriety of the treatment that was issued; however, as he is not a medical doctor, any opinion on that issue undoubtedly would be inappropriate.

None of defendant's experts allege that malpractice occurred, nor do they offer any alternative treatment plan that would have saved Ms. Mele. Moreover, none of them allege Ms. Mele would have died when she did if not for defendant's actions that sent her to the hospital. Rather, the defense experts disagree with the victim's foreseeable decision to receive palliative care, suggesting it was an "intervening act" and attributing that decision to a

comorbidity treating physicians considered relative to the victim's possible recovery from the injuries defendant inflicted. This mere disagreement, or contention that an unrelated condition existed, is insufficient to establish an intervening cause. Therefore, even if this was a "prong two" case in which the victim's injuries exceeded the risked harm, these opinions are irrelevant.

Defense cannot establish the existence of an intervening act by simply alleging the victim received "erroneous advice" or contending that another unrelated condition existed. (Pa11; Pa309; Pa310). The alleged "erroneous advice" needs to constitute gross malpractice, or the unrelated condition needs to be wholly independent from the injuries caused by the defendant and the sole reason for the palliative care. See Pelham, 176 N.J. at 467 (holding "[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 further, State v. Hofford, 169 N.J. Super. 377, 385 (App. Div. 1979) (holding, "mere sickness or weakness of the alleged victim causing succumbing [sic] to death which might not have occurred if that person had been in excellent health is not a legal defense or does not remove or lessen criminal responsibility for causing death); see also, State v. Loray, 41 N.J. 131, 140 (1963) (resoundingly rejecting the defendant's "corollary argument that had the victim not been subject to a pre-existing heart condition,

he would not have died as a result of the injuries here inflicted."). Indeed, a victim's vulnerability is routinely considered an aggravating factor, not a defense. N.J.S.A. 2C:44-1a(2). Thus, their opinions do not support a claim that there was an intervening cause to Ms. Mele's death and, therefore, they are irrelevant.

In sum, on June 4, 2019, defendant recklessly drove his vehicle and crashed head-on into a vehicle occupied by Ms. Mele. She was transported from the scene to the hospital, where she ultimately died the following day. Defendant's reckless conduct risked death and death was the result. Indeed, "but for" defendant's reckless driving, Ms. Mele would not have died on June 5, 2019. Accordingly, the State intends to prosecute this case under a "prong one" theory of causation.

Defendant's proffered experts' opinions are irrelevant to such a prosecution. They do not challenge whether defendant's conduct was the "but for" cause of Ms. Mele's death or whether death was within the risk of which defendant was aware. They do not even allege the medical treatment was malpractice. Instead, defendant's experts challenge Ms. Mele's decision to receive palliative care. Critically, such a challenge is irrelevant to a "prong one" prosecution. Fatally, it also does not support an assertion of an intervening act under "prong two." Therefore, their opinions are wholly

irrelevant to the case. As such, the trial court abused its discretion in denying the State's Motion to Preclude these experts from testifying and the Appellate Division erred by remanding the matter for an N.J.R.E. 104 hearing.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court reverse the Appellate Division's Order remanding for a N.J.R.E. 104 hearing and find defense's experts' opinions are irrelevant and, thus, precluded.

Respectfully submitted,

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