

Supreme Court of New Jersey
DOCKET NO. 090380

CRIMINAL ACTION

STATE OF NEW JERSEY,	:	
	:	On Appeal from an Interlocutory Order
Plaintiff-Appellant,	:	of the Superior Court of New Jersey,
	:	Appellate Division.
v.	:	
	:	Sat Below:
NIRAV PATEL,	:	Hon. Jessica R. Mayer, P.J.A.D.
	:	Lisa A. Puglisi, J.A.D.
Defendant-Respondent.	:	

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY IN RESPONSE TO
AMICUS CURIAE THE AMERICAN CIVIL LIBERTIES UNION

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September 17, 2025

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8T – motion transcript, Oct. 12, 2023;
Ab – brief of Amicus Curiae ACLU;
Sb – the State’s supplemental brief filed in this Court;
Sa – appendix to the State’s supplemental brief.

PRELIMINARY STATEMENT

This Court’s precedent is clear that, to justify a new trial based on “newly discovered evidence,” a defendant must establish three things: that the evidence is (1) “material, and not ‘merely’ cumulative, impeaching, or contradictory”; (2) “was discovered after completion of the trial and was ‘not discoverable by reasonable diligence beforehand’”; and (3) “would probably change the jury’s verdict if a new trial were granted.” State v. Ways, 180 N.J. 171, 187 (2004) (quoting State v. Carter, 85 N.J. 300, 314 (1981)). The Court has repeatedly instructed that “all three prongs of that test must be satisfied before a defendant will gain the relief of a new trial.” Ibid. Not even defendant disputes that he must satisfy each prong of the test in order to obtain a new trial.

This Court should reject the principal request that amicus—the American Civil Liberties Union of New Jersey (ACLU)—advances here: for this Court to abandon its established three-part test for new trials based on newly-discovered evidence in favor of a balancing test that would allow a defendant to obtain a new trial without satisfying the reasonable-diligence prong, so long as he can fulfill the remaining two prongs. Initially, not even defendant has requested such a sweeping change to our law, so this Court should reject the ACLU’s attempt to interject issues not raised by the parties. But even if this Court does entertain the demand, it should reject it: the ACLU’s approach would require

this Court to depart from long-settled precedent and absolve defendants of their obligation to exercise reasonable diligence before trial to determine whether they possess exculpatory evidence. The ACLU identifies no New Jersey case law—or case law in any jurisdiction—to support such a test. And there are good reasons why courts have uniformly rejected it: allowing a defendant to obtain a new trial based on evidence that he knew or should have known he possessed even before trial would reward negligence and undermine the finality of jury verdicts.

Nor do the other prongs help defendant. The ACLU notably agrees with the State that trial courts must act as gatekeepers in evaluating the credibility of newly-discovered evidence before granting a new trial. While the ACLU goes on to claim that the State goes too far in turning the trial court into the ultimate decisionmaker as to the truthfulness of such evidence, that is wrong: the State has consistently agreed throughout this case that the trial court does not make the ultimate finding on truthfulness of newly-discovered evidence, a question left to the jury. That said, a trial court fulfilling its responsibility as gatekeeper does need to consider the credibility of newly-discovered evidence to determine whether it should be presented to a new jury in a new trial in the first place, and that requires some assessment of the new evidence's veracity and/or sketchiness. Declining to assess the evidence at all and deferring it all to the future jury, as

the trial court did here, is improper, as even the ACLU agrees, because it ensures a new trial would be granted on highly suspect evidence. For these reasons, and those in the State's supplemental brief, this Court should reverse.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The State relies on the procedural history and facts in its supplemental brief.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD NOT ACCEPT THE ACLU'S NEWLY-DISCOVERED EVIDENCE STANDARD ELIMINATING THE REASONABLE DILIGENCE REQUIREMENT.

The ACLU errs in urging this Court to hold that, so long as the first two prongs of Carter are met, "a new trial should ordinarily be ordered," (Ab9), and "the importance of the diligence factor must fade in the court's analysis," (Ab10). Initially, because defendant does not ask this Court to jettison its well-established Carter test, this Court can simply repeat its oft-cited admonition that amici "must accept the case as the parties have presented it to the Court and may not raise new issues the parties have not," and stop there. State v. Harris, 209 N.J. 431, 445 (2012); see also State v. O'Driscoll, 215 N.J. 461, 479-80 (2013). But if this court does consider amicus's request, it should reject it. For one, the ACLU's argument would require this Court to reformulate the three-prong

Carter test to a non-exhaustive balancing test where the reasonable diligence-prong can be outweighed by the other prongs and would thus violate clear and longstanding precedent of this Court—without any attempt to satisfy the stare decisis factors. For another, the ACLU’s approach lacks support from case law across the country, and for good reason: its approach would undermine the finality of jury verdicts, risk gamesmanship or at least negligence, and carry other attendant risks to the criminal justice system.

Begin with the precedent. In Carter, this Court reaffirmed that, “to qualify as newly discovered evidence entitling a party to a new trial, the new evidence must” meet a three-prong test, one of which is that the evidence was “discovered since the trial and not discoverable by reasonable diligence beforehand.” 85 N.J. at 314 (collecting cases). This Court has repeatedly made clear that all three prongs “must be met before the evidence can be said to justify a new trial.” Ibid.; see also Ways, 180 N.J. at 187 (instructing that “all three prongs of that test must be satisfied before a defendant will gain the relief of a new trial”). Far from suggesting that “the importance of the diligence factor must fade in the court’s analysis” when the other factors are met, (Ab10), this Court has stressed repeatedly that a defendant cannot obtain a new trial by failing or declining “to act with reasonable dispatch in searching for evidence before the start of the trial.” Ways, 180 N.J. at 192; see also State v. Szemple, 247 N.J. 82, 100 (2021)

(holding that, where no “external obstacle” impedes a defendant’s access to evidence before or during trial, defendants usually cannot present such evidence as a basis for a new trial). In short, all three prongs must be satisfied.

The ACLU’s approach is thus contrary to this Court’s clear and repeated precedents. Indeed, the ACLU’s claim that the “reasonable diligence” prong should be “subordinate” to the other two prongs any time the defendant “unintentionally neglected” to find evidence unknowingly in his possession and was not otherwise intentionally withholding it for tactical reasons, (Ab9, 13-14), would write the reasonable-diligence prong out of the standard. The reason is simple: neglect, whether unintentional or not, cannot be reasonable diligence. See Diligence, Thesaurus.com, <https://www.thesaurus.com/browse/diligence> (last visited Sept. 15, 2025) (listing negligence as an antonym of diligence). To allow “unintentional neglect” to suffice would turn the Carter test on its head and reward a defendant’s failure to make even the most basic effort to locate evidence in his possession. While a defendant’s “strategic decision to withhold evidence” is one example of a failure to show reasonable diligence, Ways, 180 N.J. at 192, no case law supports the ACLU’s view that it is the only example. Amicus’s effort to transform Carter is thus contrary to precedent, which requires the ACLU to satisfy the stare decisis factors—which it does not try to do.

In any event, even were this Court to consider the test afresh, the Carter test is the right one. A requirement that the defendant show reasonable diligence is consistent with the standard in other jurisdictions, and the ACLU does not cite (and the State is not aware of) a single other jurisdiction that uses its alternative test. See Wayne R. LaFave et al., 6 Criminal Procedure § 24.11(d) (4th ed. updated 2024) (discussing newly-discovered evidence across jurisdictions and noting that, “[w]hatever the standard for determining the requisite impact on the trial, the defense must establish that due diligence would not have uncovered the new evidence until after trial.”); see also Sb19-20 (collecting cases).

There are good reasons for the widespread adoption of a firm reasonable-diligence requirement: it serves to “encourage defendants and attorneys to act with reasonable dispatch in searching for evidence” before trial and is rooted in the idea “that judgments must be accorded a degree of finality.” Ways, 180 N.J. at 192. Finality of verdicts is not an abstract concept. Procedural rules that encourage finality prevent endless litigation that wastes the limited resources of attorneys and the courts. State v. Mitchell, 126 N.J. 565, 584 (1992). Both the State and the defense may face a “substantial, perhaps herculean” challenge in presenting their cases years after the events giving rise to the charges. State v. Nash, 212 N.J. 518, 555 (2013). Witnesses may no longer be alive or may be otherwise unavailable, and memories fade. Ibid. And victims should not be put

through new trials unnecessarily. Ibid.; see also State v. Canfield, 470 N.J. Super. 234, 300 (App. Div. 2022) (noting toll retrying cases has on victims and their interest in finality of verdicts), aff'd as modified, 252 N.J. 497 (2023).

It also avoids negligence and even gamesmanship. The ACLU misreads Ways in arguing “it is highly unlikely that a defendant would knowingly fail to produce exculpatory evidence.” (Ab5). In requiring a defendant to show that new evidence discovered after trial was not discoverable before trial “through the exercise of reasonable diligence,” Ways stressed that a “defendant is not entitled to benefit from a strategic decision to withhold evidence.” 180 N.J. at 192. And contrary to ACLU’s claim, such strategic withholding does unfortunately occur: Ways cited State v. Drisco, 355 N.J. Super. 283, 290-91 (App. Div. 2002), where a defendant and his counsel “made a strategic decision” not to present an alibi as evidence. Ways, 180 N.J. at 192; see also United States v. Garcia-Alvarez, 541 F.3d 8, 18 (1st Cir. 2008) (denying new-trial motion where defense counsel was “so certain of [defendant’s] innocence that they made the tactical decision to rely solely on the strength of their other alibi evidence” rather than admit certain call records). Rather than adopt a test that requires trial courts to probe into whether a defendant’s failure to produce the evidence before trial was in fact intentional or merely negligent, the traditional reasonable-diligence analysis appropriately avoids that subjective enterprise and

calls on defendants to be reasonable in identifying the evidence that allegedly exculpates them before they have been convicted.

Nor does requiring a defendant to establish all three prongs of the newly-discovered evidence test—including reasonable diligence—risk that innocent persons will be convicted of crimes, as the ACLU suggests. (Ab9-10.) Indeed, this Court has noted that it “would not require a person who is probably innocent to languish in prison because the exculpatory evidence was discoverable and overlooked by a less than reasonably diligent attorney.” Ways, 180 N.J. at 192. Accordingly, “evidence clearly capable of altering the outcome of a verdict that could have been discovered by reasonable diligence at the time of trial would almost certainly point to ineffective assistance of counsel in violation of the Federal and State Constitutions.” Ibid. And if a defendant was procedurally barred from raising such a claim in a post-conviction petition in state court, he could overcome that bar in a habeas proceeding with a “convincing showing of actual innocence.” McQuiggin v. Perkins, 569 U.S. 383, 386 (2013). Thus, the ACLU’s concern about the risk of manifest injustice when a defendant fails to produce evidence in his control is misplaced. And no such concern is present in this case, where defendant has not raised a claim of actual innocence.

The ACLU’s proposed standard as applied to the facts of this case would effectively negate the reasonable diligence requirement. The new evidence here

consists of franchise agreements that purport to show Bhagu, not Tapmasters, was the sole franchisee for Hoboken WOB. Defendant alleged that he signed both agreements before he was charged with a crime. (Sa217-22; Sa321-24). He emailed at least one of the agreements to himself in May 2015—again, before he was indicted. (8T77-1 to 79-1). Then, about a week after trial, his sister found hard copies of several pages of one or both of these agreements in boxes in the family garage. (8T13-13 to 19; 8T24-23 to 25). Once she showed him those pages, defendant found a digital copy of at least the one emailed agreement in his email account in about an hour's time.¹ (8T40-24 to 41-6).

Thus, not only had the agreements always been in defendant's possession, but defendant undisputedly signed the agreements, and so cannot deny his own personal knowledge of their existence in the years between indictment and trial. If those agreements are as clearly exculpatory as defendant claims they are, he should have known of their importance when he was indicted and begun looking for them long before trial. But defendant did not do so until a week after he was convicted, which was four years after the indictment was returned. Not only that, defendant was able to locate the emailed agreement in under an hour. (8T33-2). In other words, despite having signed and therefore being

¹ Defendant was unable to explain where he located the second agreement. (8T78-4 to 80-20).

indisputably aware of the agreements' existence, defendant failed to exercise reasonable diligence in looking for allegedly exculpatory evidence that he knew existed, had in his possession, and was able to find quickly when he looked for it. To find this was reasonable would be to write reasonable diligence out of the test.

Contrary to the ACLU's characterization, (Ab5), the State is not asking this Court to make the newly-discovered-evidence standard more stringent, but rather to apply this Court's well-established test and make clear that a defendant must take reasonable and timely steps to locate evidence in his own possession prior to trial. There is no reason for this Court to depart from its established case law by adopting the ACLU's unprecedented test.

POINT II

THE ACLU AGREES THAT THE TRIAL COURT
MUST DETERMINE THE CREDIBILITY OF
NEWLY-DISCOVERED EVIDENCE BEFORE
GRANTING A NEW TRIAL.

Nothing in the ACLU's amicus brief aids defendant on the other prongs either. The ACLU agrees with the State that the trial court, as gatekeeper, must initially evaluate the credibility of newly-discovered evidence in determining its authenticity and probable effect on the jury verdict before it actually grants the new trial. The ACLU states that it "senses" that the State is asking this Court to hold that the ultimate determination of the truthfulness of the evidence must be

made by the trial court rather than by the jury, (Ab11), but the ACLU is simply misunderstanding the State's position here. Instead, the State merely argues that the trial court abdicated its gatekeeping function by ignoring serious questions as to the authenticity of the newly-discovered evidence and failing entirely to assess its credibility—a fact the ACLU does not refute.

As this Court has explained, trial courts must review the credibility of newly-discovered evidence “with a certain degree of circumspection to ensure that it is not the product of fabrication,” Ways, 180 N.J. at 187-88, especially if the “sketchy” evidence comes from the defendant or those close to him, State v. Buonadonna, 122 N.J. 22, 50-51 (1991). Assessing the credibility of evidence necessarily requires some evaluation of truthfulness as distinct from its highly suspect nature. Indeed, Rule of Evidence 608(a) notes the connection between truthfulness and credibility clearly, explaining that “[a] witness’ credibility may be attacked or supported by evidence . . . that relates to the witness’ character for truthfulness or untruthfulness.” N.J.R.E. 608(a). This Court has thus upheld jury instructions directing that the credibility of witnesses should be assessed based on, among other things, the truthfulness of their testimony. See State v. Thompson, 59 N.J. 396, 411 (1971) (upholding jury instruction directing that credibility “must be decided on the basis of the quality, the worthiness and the truthfulness of their testimony”). A trial court’s gatekeeping function as to

the credibility of newly-discovered evidence thus requires some assessment of its truthfulness in order to determine whether it is credible.

So while the State agrees that the ultimate question of the truthfulness of newly-discovered evidence is properly left to a jury at trial, the trial court cannot properly discharge its duty to assess its credibility to determine whether it should be presented to a jury without also considering whether a reasonable juror could find this evidence truthful. Otherwise, courts would regularly have to grant new trials even when the new evidence appeared to be unreliable—thereby rewarding the very problem that should be fatal to a new-trial motion. See Ways, 180 N.J. at 187-88. The adoption of such a rule, which disregards the veracity of the new evidence, would render the trial court’s gatekeeping role meaningless.

CONCLUSION

This Court should reverse the trial court's order granting defendant a new trial, reinstate defendant's conviction, and remand for sentencing.

Respectfully submitted,

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DATED: September 17, 2025