

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GABRIEL T. MATOS,

Defendant-Petitioner.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 091106

CRIMINAL ACTION

On Certification Granted from a Final
Judgment of the Superior Court of
New Jersey, Appellate Division

Sat Below:

Hon Robert J. Gilson, P.J.A.D.
Hon. Avis Bishop-Thompson, J.A.D.
Hon. Lorraine M. Augostini, J.A.D.

BRIEF OF AMICUS CURIAE
AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
INTERESTS OF <i>AMICUS CURIAE</i>	3
STATEMENT OF FACTS AND PROCEDURAL HISTORY	4
ARGUMENT	5
I. WHEN PROPERLY ADMITTED, FRESH COMPLAINT EVIDENCE ENHANCES TRUTHSEEKING AT TRIAL BY PREVENTING JURORS FROM ACTING ON IMPROPER STEREOTYPES.	5
II. THE LIMITATIONS ON FRESH COMPLAINT EVIDENCE REQUIRE CAREFUL CONSIDERATION AND MANAGEMENT FROM TRIAL COURTS TO ENSURE THAT JURORS DO NOT USE FRESH COMPLAINT TESTIMONY FOR IMPROPER PURPOSES.	9
III. THE TRIAL COURT’S ERROR IN FAILING TO GIVE THE CORRECT FRESH COMPLAINT INSTRUCTION DEMONSTRATES UNDERLYING ISSUES WITH THE MODEL CHARGES THAT THIS COURT SHOULD CONSIDER AND ADDRESS.	13
CONCLUSION	17

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Ambroise</i> , 258 N.J. 180 (2024)	4
<i>C.V. ex rel. C.V. v. Waterford Twp. Bd. of Educ.</i> , 255 N.J. 289 (2023)	4
<i>Commonwealth v. Cruz</i> , 154 N.E.3d 958 (Mass. App. 2020)	15
<i>Commonwealth v. King</i> , 834 N.E.2d 1175 (Mass. 2005)	11
<i>Neno v. Clinton</i> , 167 N.J. 573 (2001)	7
<i>People v. McDaniel</i> , 611 N.E.2d 265 (N.Y. 1993)	7, 12
<i>State v. Adam P.</i> , 330 A.3d 73 (Conn. 2025)	11
<i>State v. B.A.</i> , 458 N.J. Super. 391 (App. Div. 2019)	7
<i>State v. Balles</i> , 47 N.J. 331 (1966)	10
<i>State v. Bethune</i> , 121 N.J. 137 (1990)	9, 10, 11, 13
<i>State v. Cooper</i> , 256 N.J. 593 (2024)	11, 15
<i>State v. G.E.P.</i> , 243 N.J. 362 (2020)	4
<i>State v. Hill</i> , 121 N.J. 150 (1990)	passim

<i>State v. J.L.G.,</i> 234 N.J. 265 (2018)	4
<i>State v. Kendricks,</i> 891 S.W.2d 597 (Tenn. 1994)	7, 9
<i>State v. Martin,</i> 119 N.J. 2 (1990)	11
<i>State v. Martinez,</i> 476 P.3d 189 (Wash. 2020)	7, 8
<i>State v. Mauti,</i> 448 N.J. Super. 275 (App. Div. 2017)	13
<i>State v. McKinney,</i> 233 N.J. 475 (2015)	11
<i>State v. O'Donnell,</i> 255 N.J. 60 (2023)	16
<i>State v. P.H.,</i> 178 N.J. 378 (2004)	<i>passim</i>
<i>State v. R.B.,</i> 183 N.J. 308 (2005)	16
<i>State v. R.E.B.,</i> 385 N.J. Super. 72 (App. Div. 2006)	11, 15
<i>State v. R.K.,</i> 220 N.J. 444 (2015)	<i>passim</i>
<i>State v. R.Y.,</i> 242 N.J. 48 (2020)	4
<i>State v. Rose,</i> 206 N.J. 141 (2011)	12
<i>State v. W.B.,</i> 205 N.J. 588 (2011)	10

Rules

N.J.R.E. 401	8
N.J.R.E. 403	10
N.J.R.E. 607(b)	12
N.J.R.E. 613	12
N.J.R.E. 803(a).....	12, 16
N.J.R.E. 803(a)(1)	12
N.J.R.E. 803(a)(2)	12
N.J.R.E. 803(c)(2)	12, 16

Other Authorities

Biunno, Weissbard & Zegas, <i>N.J. Evidence Rules</i> , cmt. 2 on N.J.R.E. 803(c)(2) (2026)	12, 16
Dawn M. DuBois, <i>A Matter of Time: Evidence of a Victim's Prompt Complaint in New York</i> , 53 <i>Brooklyn L. Rev.</i> 1087 (1988)	5
4 John Henry Wigmore, <i>Evidence</i> § 1135 (James H. Chadbourn Revision 1972).....	6
Kathryn M. Stanchi, <i>The Paradox of the Fresh Complaint Rule</i> , 37 <i>B.C. L. Rev.</i> 441 (1996)	<i>passim</i>
<i>Model Jury Charges (Criminal)</i> , “Fresh Complaint” (rev. Feb. 5, 2007).....	5, 14, 16
<i>Model Jury Charges (Criminal)</i> , “Fresh Complaint: Silence or Failure to Complain” (rev. Apr. 15, 2013).....	5, 14, 16

PRELIMINARY STATEMENT

A criminal trial is in many ways a search for the truth. Accurate determinations in criminal cases are important to both criminal defendants and crime victims. Our criminal justice system endeavors to avoid both false convictions of the innocent and improper acquittals of the guilty. No system is perfect. The law places a heavy burden of proof on the State, recognizing that it is better for the guilty to go free than for the innocent to be punished. But generally, our system works best when it is both fair and accurate, and provides results that the public finds legitimate.

The truthseeking function is assigned to a jury of one's peers. But the courts play a crucial role in ensuring that the jurors' decisions are based on facts and reason, not bias and stereotypes. The fresh complaint doctrine at issue here is designed to achieve that goal. It helps guide jurors towards decisions that view the evidence for what it is, and not as the jurors—for improper reasons—think it should be.

The doctrine is explicitly based on jurors' perceived tendency to believe a false stereotype that a victim of sexual assault is not truthfully reporting the offense if the victim does not immediately report the conduct. Historically, this stereotype was so engrained that prosecutors could not even bring charges in the absence of a "hue and cry." That rule has long been rejected. Today, the law

properly recognizes that the existence or absence of a fresh complaint is not probative of the truthfulness of a sexual assault allegation.

But this Court’s jurisprudence reflects concern that jurors will nonetheless expect a sexual assault victim to have made a fresh complaint and will be (wrongly) disinclined to credit the victim in the absence of a fresh complaint. Thus, the Court permits evidence of fresh complaint testimony, notwithstanding its irrelevance—and its conflict with the rules against hearsay and witness bolstering—to rebut the jurors’ improper inference. But because the evidence is admissible for this very limited purpose, the Court also requires a limiting instruction to prevent the jurors from improper use of the testimony.

As *amicus*, the American Civil Liberties Union of New Jersey (ACLU-NJ) submits that the Court should use this case to clarify the nature of the fresh complaint doctrine, the scope of fresh complaint testimony, and the proper jury instructions to constrain the use of the testimony. The ACLU-NJ is not opposed to admission of fresh complaint testimony in appropriate circumstances. The organization recognizes the value of legal rules that empower victims of sexual assault—who have long been silenced or ignored—to judicial vindication of their stories. But particularly in the criminal context, the ACLU-NJ also recognizes the rights of those facing prosecution to fair trials decided based on legally admissible evidence. The trial judge presiding over a criminal case plays

an important role in evaluating the testimony, admitting it only for legally recognized purposes, and explaining the valid use of the evidence to jurors.

Below, the ACLU-NJ identifies the interests at stake and proposes a framework for judicial oversight of fresh complaint testimony, including accurate jury instructions, so that victims and defendants alike have their interests vindicated in New Jersey courtrooms.

INTERESTS OF AMICUS CURIAE

Amicus curiae the ACLU-NJ is a private, non-profit, non-partisan membership organization. For over 60 years, the ACLU-NJ has defended liberty and justice guided by the vision of a fair and equitable New Jersey for all. The ACLU-NJ's mission is to preserve, advance, and extend the individual rights and liberties guaranteed to every New Jerseyan by the State and Federal Constitutions in courts, in legislative bodies, and in our communities. Founded in 1960 and based in Newark, the ACLU-NJ operates on several fronts—legal, political, cultural—to bring about systemic change. The ACLU-NJ is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of over one million members nationwide. The ACLU-NJ has a long history of, among many other issues, defending the rights of criminal defendants and advocating for procedures that will make for fairer trials, and to assure the vindication of criminal defendants' constitutional rights. The ACLU-NJ has

thus long been a strong protector of the constitutional rights of those who come into contact with New Jersey's system of criminal justice, including those accused of sexual misconduct. *See, e.g., State v. G.E.P.*, 243 N.J. 362 (2020); *State v. R.Y.*, 242 N.J. 48 (2020); *State v. J.L.G.*, 234 N.J. 265 (2018). At the same time, the ACLU-NJ has also filed amicus briefs in this Court in support of victims of sexual misconduct. *See, e.g., In re Ambroise*, 258 N.J. 180 (2024); *C.V. ex rel. C.V. v. Waterford Twp. Bd. of Educ.*, 255 N.J. 289 (2023).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The ACLU-NJ generally adopts the parties' statements of the factual and procedural history. As relevant to this brief, the trial court admitted "fresh complaint" testimony from two witnesses. One was victim G.L.V.'s boyfriend, K.M.; the other was G.L.V.'s eighth-grade teacher, B.P. K.M. testified to the jury that G.L.V. told him that Mr. Matos "molested her" by "touching her inappropriate[ly]" and engaging in "oral sex." 5T116-9 to -24. B.P. testified that G.L.V. told him that she was sexually and verbally assaulted by her stepfather. 5T131-7 to -7; 5T133-25 to 134-6. B.P. alerted school officials, who in turn notified law enforcement. 5T131-24 to 32-7.

The trial judge instructed the jury as follows:

The law recognizes that stereotypes about sexual assault complaints may lead some of you to question [G.L.V.]'s credibility based solely on the fact that she did not complain about the alleged abuse sooner. You

may not automatically conclude [G.L.V.]’s testimony is untruthful based only on her silence or delayed disclosure. Rather, you may consider the silence or delayed disclosure along with all of the other evidence, including [G.L.V.]’s explanation for her silence or . . . delayed disclosure, when you determine how much weight to afford to [G.L.V.]’s testimony.

[7T13-19 to 14-6.]

This instruction tracks *Model Jury Charges (Criminal)*, “Fresh Complaint: Silence or Failure to Complain” (rev. Apr. 15, 2013). The court did not give the instruction for *Model Jury Charges (Criminal)*, “Fresh Complaint” (rev. Feb. 5, 2007).

ARGUMENT

I. WHEN PROPERLY ADMITTED, FRESH COMPLAINT EVIDENCE ENHANCES TRUTHSEEKING AT TRIAL BY PREVENTING JURORS FROM ACTING ON IMPROPER STEREOTYPES.

The fresh complaint rule derives from “the common-law requirement of ‘hue and cry.’” *State v. Hill*, 121 N.J. 150, 157 (1990). Historically, a contemporaneous complaint was “a necessary element of the prosecution’s case” for violent crime. *Ibid.* The “hue and cry” rule eventually eroded because it was “ineffective.” *Ibid.* But the abandonment of the requirement for violent crimes did not extend to sexual assault cases. There, “courts continued to refuse to hear a female victim’s rape complaint unless she had raised hue and cry immediately after the offense.” Dawn M. DuBois, *A Matter of Time: Evidence*

of a Victim's Prompt Complaint in New York, 53 *Brooklyn L. Rev.* 1087, 1089 (1988).

The reason for the differential treatment of sexual assault cases is laced with anachronistic sexism. “[T]hirteenth-century notions of feminine behavior” result in “the mistaken perception that a victim will report a sexual assault immediately.” *State v. P.H.*, 178 N.J. 378, 392 (2004) (citing Kathryn M. Stanchi, *The Paradox of the Fresh Complaint Rule*, 37 *B.C. L. Rev.* 441, 446–47 (1996)). The absence of an immediate report was thus “presumed to be equivalent to a prior inconsistent statement that impeaches the credibility of the complainant.” Stanchi, 37 *B.C. L. Rev.* at 446. On the other hand, because courts believed that evidence of a fresh complaint was probative evidence of the offense, “testimony concerning hue and cry was substantive evidence against the accused.” *Hill*, 121 N.J. at 159.

Courts and commentators have heavily criticized this “timing myth,” or “the erroneous assumption that sexual assault is a ‘circumstance compelling speech’ and that it is natural for those truly sexually assaulted to complain immediately.” Stanchi, 37 *B.C. L. Rev.* at 447 (quoting 4 John Henry Wigmore, *Evidence* § 1135 (James H. Chadbourn Revision 1972)). The “empirical evidence . . . contradicts” this timing myth. *Id.* at 459. This Court has therefore called it “utterly false,” *P.H.*, 178 N.J. at 392, and imbued with “intuitive,

pseudo-Freudian analysis of the ways a ‘normal’ woman would react to sex and to rape,” *Hill*, 121 N.J. at 162.¹ Yet the myth perpetuated through “centuries of legal history,” including the publication of the Model Penal Code in 1980. *Ibid.*

Today, courts recognize that fresh complaint testimony is not admissible for the truth of the assertions. In general, a prior consistent statement of a victim-witness, absent an express charge of recent fabrication, cannot be admitted at trial. Such statements constitute improper witness bolstering. *E.g.*, *Neno v. Clinton*, 167 N.J. 573, 581 (2001). And, if admitted for their truth, they constitute improper hearsay. *E.g.*, *State v. B.A.*, 458 N.J. Super. 391, 414 (App. Div. 2019). This Court has applied those principles to fresh complaint testimony. *See State v. R.K.*, 220 N.J. 444, 456 (2015) (recognizing that fresh complaint evidence is “otherwise inadmissible as hearsay”); *id.* at 456 (recognizing that fresh complaint evidence “is not to be considered as . . . bolstering the credibility of the victim”). Additionally, because the admissibility of fresh complaints is based on an acknowledged myth, they are not

¹ *See also People v. McDaniel*, 611 N.E.2d 265, 269 (N.Y. 1993) (“[R]ecent studies have suggested that it may not be unusual for a rape victim to withhold complaint[.]”); *State v. Kendricks*, 891 S.W.2d 597, 604 (Tenn. 1994) (“[P]sychologists have proved that victims respond to sexual attacks in no prescribed way.”); *State v. Martinez*, 476 P.3d 189, 192 (Wash. 2020) (“[S]ociety has arguably developed a greater understanding that sexual assault victims often do not report their experience[.]”).

probative as “substantive evidence of guilt.” *Ibid.*; *see also* N.J.R.E. 401 (evidence is relevant only if it “ha[s] a tendency in reason to prove or disprove any fact of consequence to the determination of the action”).

Fresh complaint evidence is, however, admissible for other, more limited reasons. Although courts are properly skeptical of the timing myth, “belief in the timing myth continues to be prevalent and affects society’s view of the credibility of sexual assault complainants.” Stanchi, 37 *B.C. L. Rev.* at 463. Courts therefore seek “[t]o counteract the prejudice caused by the ‘timing myth’” by “allow[ing] the State to introduce evidence that the victim did indeed make a complaint within a reasonable time after the alleged assault.” *P.H.*, 178 N.J. at 392. The result is a “paradox” because it “add[s] credence to the testimony of victims who promptly report an assault,” even though that inference is objectively false. *Ibid.* But the doctrine survives because it helps jurors achieve an outcome that is not based on prejudice. *See, e.g., Martinez*, 476 P.3d at 192 (“Despite the doctrine’s problematic roots, it still plays an important function because many jurors still subscribe to the myth that ‘real’ victims report promptly.”)

“[O]ur judicial process cannot remove from every juror all subtle biases or illogical views of the world.” *Hill*, 121 N.J. at 164. The absence of fresh complaint evidence therefore creates the risk that “jurors will assume that no

complaint was made and will conclude that the complainant is lying.” Stanchi, 37 B.C. L. Rev. at 465. As a result, “rape victims would suffer whenever members of the jury held prejudices that women who do not complain have not really been raped.” *Hill*, 121 N.J. at 165. Courts therefore permit juries to hear fresh complaint evidence “to neutralize the sexist expectations of some jurors that the woman should have complained after having been raped.” *Id.* at 164.

II. THE LIMITATIONS ON FRESH COMPLAINT EVIDENCE REQUIRE CAREFUL CONSIDERATION AND MANAGEMENT FROM TRIAL COURTS TO ENSURE THAT JURORS DO NOT USE FRESH COMPLAINT TESTIMONY FOR IMPROPER PURPOSES.

Fresh complaint testimony empowers victims who otherwise might be disbelieved based on rank stereotypes. But trial courts must strictly enforce the limitations on fresh complaint testimony. If not limited to its purpose, such testimony can improperly deprive those accused of sexual assaults their right to a fair trial. *See Kendrick*s, 891 S.W.2d at 603 (permitting fresh complaint testimony while recognizing that it “entails a substantial and unnecessary risk of prejudice to the defendant”).

“[T]he purpose of the [fresh complaint] rule is to prove only that the alleged victim complained, not to corroborate the specifics of the victim’s allegations.” *P.H.*, 178 N.J. at 393 (citing *State v. Bethune*, 121 N.J. 137, 146 (1990)). So “fresh-complaint testimony is not to be considered as substantive evidence of guilt, or as bolstering the credibility of the victim.” *R.K.*, 220 N.J.

at 465. Courts therefore must enforce both substantive and procedural limitations on fresh complaint evidence. These safeguards are essential: they “minimize the risk that the jury will rely on the evidence for an improper purpose.” *Stanchi*, 37 *B.C. L. Rev.* at 476.

Substantively, the admitted evidence must not be “excessive.” *Id.* at 459. Courts cannot permit testimony “more than [to] rebut a charge of fabrication based on silence.” *Id.* at 460. The witness relaying the fresh complaint to the jury “may testify only to the general nature of the complaint, and unnecessary details of what happened should not be repeated.” *State v. W.B.*, 205 N.J. 588, 617 (2011) (citing *Hill*, 121 N.J. at 163). This rule permits “witnesses to provide basic information that the jury will have a sense of the complaint’s context,” *R.K.*, 220 N.J. at 459 (citing *State v. Balles*, 47 N.J. 331, 339 (1966)), but prohibits “excessive details,” *ibid.* (quoting *Bethune*, 121 N.J. at 147). Courts also must limit the quantity of fresh complaint evidence, because “duplicative” testimony may “leave the jury with the impression that the State has gathered a greater number of witnesses than the defense.” *Hill*, 121 N.J. at 169–70. Overly detailed or duplicative fresh complaint testimony risks unfair prejudice that outweighs the probative value of the evidence. *Id.* at 170; *see also R.K.*, 220 N.J. at 460 (reversing conviction where improper details in fresh complaint testimony were “prejudicial”); N.J.R.E. 403 (“relevant evidence may be

excluded if its probative value is substantially outweighed by the risk of,” among other factors, “[u]ndue prejudice” or “needlessly presenting cumulative evidence”).

Procedurally, a trial judge must guide the jury’s discretion through careful limiting instructions. As the Court has explained on numerous occasions, “appropriate and proper jury instructions are essential for a fair trial.” *State v. Cooper*, 256 N.J. 593, 608 (2024) (citation modified) (citing cases). “[W]ithout an appropriate charge, a jury can take a wrong turn in its deliberations.” *State v. McKinney*, 233 N.J. 475, 495 (2015) (quoting *State v. Martin*, 119 N.J. 2, 15 (1990)). That blackletter principle applies with full force to fresh complaint testimony given its limited nature. The jury must not accept fresh complaint testimony for its truth, so “the trial court is required to charge the jury” as much. *R.K.*, 220 N.J. at 456; *accord P.H.*, 178 N.J. at 393 (“[W]e required the trial court to instruct the jury on the limited use to which fresh complaint evidence may be put[.]” (citing *Bethune*, 121 N.J. at 148)). Those instructions are so “crucial” that their absence constitutes plain error. *State v. R.E.B.*, 385 N.J. Super. 72, 89 (App. Div. 2006).²

² Other states similarly mandate the use of such jury instructions. See, e.g., *State v. Adam P.*, 330 A.3d 73, 84 (Conn. 2025) (proper instruction states that fresh complaint testimony “should not be considered substantively— that is, jurors are not permitted to use, and should not use, the testimony to help determine whether the accusation is true”); *Commonwealth v. King*, 834 N.E.2d

We can thus distill from the caselaw three steps that trial judges must take when confronted with fresh complaint evidence in a sexual assault case.

First, the court must identify the valid purpose for which the testimony is admitted. At times, the testimony may be admissible for its truth under hearsay exceptions. For example, “spontaneous or excited utterances” made “very shortly after the crime” would be admissible. *Hill*, 121 N.J. at 165; *see* N.J.R.E. 803(c)(2).³ The testimony could also be used as a prior statement by either party under N.J.R.E. 803(a). The defense can introduce a fresh complaint as a prior inconsistent statement. *See* N.J.R.E. 803(a)(1); *see also* N.J.R.E. 613 (establishing guidelines for use of prior statement for impeachment). And if the defense seeks to impeach witness based on “recent fabrication” or “improper influence or motive,” the prosecution can offer the prior consistent statement “to rebut [the] express or implied charge.” N.J.R.E. 803(a)(2); *see also* N.J.R.E. 607(b); *Hill*, 121 N.J. at 165 (citing former Evidence Rule 20).

1175, 1201 (Mass. 2005) (proper instruction states: “You may not consider this testimony as evidence that the assault in fact occurred”); *McDaniel*, 611 N.E.2d at 267 (describing how “the court gave the jury a limiting instruction on prompt outcry testimony, explaining that it was admitted only to show that a complaint was made, not for its truth”).

³ *Hill* also refers to “the *res gestae* exception to the hearsay rule.” 121 N.J. at 165. The Court abolished that exception in *State v. Rose*, 206 N.J. 141 (2011). *See* Biunno, Weissbard & Zegas, *N.J. Evidence Rules*, cmt. 2 on N.J.R.E. 803(c)(2) (2026) (explaining that fresh complaint cases that “relied on the amorphous concept of *res gestae* . . . are no longer good law”).

If the testimony is not admissible for those purposes, however, then it cannot be considered for the truth of the matter asserted. This requires the trial court to move to the **second** step: imposing the substantive limitations on fresh complaint testimony. The court must evaluate the fresh complaint testimony and exclude evidence that is excessive or duplicative, in violation of this Court’s established limitations. Failure to abide by these rules requires reversal. *See R.K.*, 220 N.J. at 460 (excessive); *State v. Mauti*, 448 N.J. Super. 275, 315–16 (App. Div. 2017) (duplicative).

Third, the trial judge must properly instruct the jury about its proper use of the fresh complaint testimony. The court plays a critical role in ensuring that jurors do not misuse fresh complaint evidence as improper bolstering of witness credibility or substantive evidence. Instead, jurors must be told “that fresh complaint evidence serves the sole purpose of neutralizing the inference that might otherwise be drawn that the alleged victim’s behavior was inconsistent with a claim of sexual abuse.” *Bethune*, 121 N.J. at 147–48 (citation modified).

III. THE TRIAL COURT’S ERROR IN FAILING TO GIVE THE CORRECT FRESH COMPLAINT INSTRUCTION DEMONSTRATES UNDERLYING ISSUES WITH THE MODEL CHARGES THAT THIS COURT SHOULD CONSIDER AND ADDRESS.

The trial judge’s jury instructions here did not accomplish the goals listed above. To be fair, the judge may have been confused by the presence of two separate charges labeled “fresh complaint” in the model jury charges. The court

provided the charge for “Fresh Complaint: Silence of Failure to Complain.” The title of that charge is an oxymoron—if the victim was silent or failed to complain, then there is no fresh complaint testimony. And the charge, understandably, does not address the limited purpose of any testimony admitted at trial. Instead, it instructs jurors to appropriately weigh the absence of fresh complaint evidence, for similar reasons as they should not accept fresh complaint evidence for the truth of the complaints. The model charge accordingly tells jurors that “stereotypes about sexual assault complainants” could lead to disbelieving a witness “solely based on the fact that [he or she] did not complaint about the alleged abuse sooner.” *Model Jury Charges (Criminal)*, “Fresh Complaint: Silence or Failure to Complain,” at 1.

That is not what the model charge about admitted fresh complaint testimony says. That charge instead instructs jurors that fresh complaint testimony is admissible “only . . . to negate the inference that [the victim] failed to confide in anyone about the sexual offense.” *Model Jury Charges (Criminal)*, “Fresh Complaint,” at 1. It also conforms to the caselaw by stressing that “[a] fresh-complaint is not evidence that the sexual offense actually occurred, or that [the victim] is credible.” *Id.* at 2; *see also id.* at 3 (“Proof that a complaint was made is neither proof that the sexual offense occurred nor proof that [the victim] was truthful.”). In this way, the instruction enforces the limitation that fresh

complaint evidence “is not to be considered as substantive evidence of guilt, or as bolstering the credibility of the victim.” *R.K.*, 220 N.J. at 465.

That the charge was not given in this case is significant. As noted above, accurate jury charges are critical to a fair trial. *Cooper*, 256 N.J. at 608. The absence of the jury charge creates the risk that the jury “may have improperly used the fact of the complaint as corroboration of [the victim’s] testimony.” *R.E.B.*, 385 N.J. Super. at 90; *see also Commonwealth v. Cruz*, 154 N.E.3d 958, 390 (Mass. App. 2020) (reversing conviction where absence of jury instruction “left the jury free to consider those four hearsay accounts of the assault as additional evidence that the assault occurred”). The absence of an accurate instruction inhibits the jury’s role as arbiter of the truth; the jurors may have convicted Mr. Matos because they believed the fresh complaint testimony provided substantive evidence of guilt, instead of solely to rebut jurors’ stereotypical views about the “timing myth.” *See Stanchi*, 37 *B.C. L. Rev.* at 476 (“courts . . . should give a limiting instruction that clearly explains the proper use of the evidence” in order to “minimize the risk that the jury will rely on the evidence for an improper purpose”).

As *Amicus*, the ACLU-NJ also respectfully submits that the Court should consider whether to suggest that the Supreme Court Committee on Model Criminal Jury Charges should propose amendments to the fresh complaint model

charges described above. “[M]odel charges are not binding statements of law,” but “[t]rial judges are strongly encouraged to follow the charges when they instruct a jury.” *State v. O’Donnell*, 255 N.J. 60, 79 (2023) (citing *State v. R.B.*, 183 N.J. 308, 325 (2005)). As noted above, the existence of two separate model jury charges, both titled “Fresh Complaint,” could cause unnecessary confusion. *See also* Biunno, Weissbard & Zegas, *N.J. Evidence Rules – Annotated*, cmt. 2 on N.J.R.E. 803(c)(2) (explaining that “[f]ailure to distinguish” different types of fresh complaint evidence “can lead to confused holdings”). The model charge committee could consider clarifying or consolidating these charges.

Amicus also notes that the model charge for delayed disclosure contains direct, specific language explaining to jurors that it is designed to combat “stereotypes about sexual assault complainants.” *Model Jury Charges (Criminal)*, “Fresh Complaint: Silence or Failure to Complain,” at 1. The model charge on fresh complaint testimony does not contain similar language. It states that jurors “might assume” that a sexual assault victim would make a fresh complaint. *Model Jury Charges (Criminal)*, “Fresh Complaint,” at 1. But it does not classify that assumption as a myth or a stereotype and does not otherwise inform jurors that the assumption is not grounded in truth. This Court’s cases, by contrast, properly recognize that fresh complaint testimony is

necessary only to counter a timing myth that is “utterly false.” *P.H.*, 178 N.J. at 392.

The ACLU-NJ encourages the Court both to recognize the falsity of this stereotypical view of sexual assault victims *and* to instruct trial courts to inform jurors of this falsity. Professor Stanchi proposes an instruction along these lines as follows:

[T]he law recognizes that stereotypes about sexual assault and sexual assault complainants may lead some of you to question or focus on whether the complainant made a prior complaint. To ensure that you do not unfairly judge the complainant’s credibility because you believe that he/she did not make a prior complaint, the State is permitted to offer evidence that the complainant did make a prior complaint.

[Stanchi, 37 *B.C. L. Rev.* at 475–76.]

This type of instruction “ensure[s] that jurors are educated about rape myths and shown that the law rejects rape myths.” *Id.* at 475. In so doing, it helps to fulfill the Judiciary’s responsibility to root out unwarranted stereotypes about sexual assault in the criminal legal system.

CONCLUSION

For the reasons stated above, the Court should hold that the trial court’s failure to give the proper fresh complaint instruction created a substantial risk that the jurors would use the fresh complaint testimony for improper purposes. The Court should also review the existing model charges on fresh complaint

testimony and consider referring them to the Supreme Court Committee on Model Criminal Jury Charges, particularly to ensure that the charges accurately explain the limited lawful purposes of fresh complaint testimony and the false stereotypes that undergird its admissibility.

Respectfully submitted,

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