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**On The Letter-Brief**

**September 5, 2025**

**LETTER IN LIEU OF BRIEF ON  
BEHALF OF THE STATE OF NEW JERSEY**

**Honorable Judges of the Superior Court of New Jersey**

**Appellate Division**

**Richard J. Hughes Justice Complex**

**Trenton, New Jersey 08625**

**Re: State of New Jersey (Plaintiff-Appellant) v.  
Joshua Simmons, (Defendant-Respondent)  
Ind. Nos.: 24-01-0099-I; 24-05-0675-I; 24-07-0886-I  
App. Docket No. A-003980-24 (AM-000609-24)  
State's Letter-Brief  
Superior Court of New Jersey  
Law Division, Hudson County  
Sat Below: Hon. Mitchell L. Pascual, J.S.C.**

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Honorable Judges:

Pursuant to Rule 2:6-2(b), this letter in lieu of formal brief is submitted on behalf of the State.

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\* The briefs are included in the appendix in accordance with Rule 2:6-1(a)(2).

## PROCEDURAL HISTORY

On January 24, 2024, a Hudson County grand jury returned Indictment 24-01-0099, charging defendant Joshua Simmons (“defendant”) with the following: (1) first-degree attempted murder, N.J.S.A. 2C:11-3(a)(1) and 2C:5-1(a)(1); (2) second-degree aggravated assault serious bodily injury, N.J.S.A. 2C:12-1(b)(1); (3) third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d); and (4) fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d). (Pa10-11).<sup>1</sup>

On May 22, 2024, a Hudson County grand jury returned Indictment 24-05-0675, charging defendant with the following: (1) second-degree unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1); (2) second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); (3) second-degree robbery, N.J.S.A. 2C:15-1(a)(1); (4) third-degree aggravated assault with a deadly weapon, N.J.S.A. 2C:12-1(b)(2); and (5) fourth-degree contempt, N.J.S.A. 2C:29-9(b)(1). (Pa12-13).

On July 2, 2024, a Hudson County grand jury returned Indictment 24-07-0886, charging defendant with the following: (1) third-degree criminal mischief,

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<sup>1</sup> The State designates the following abbreviations:

Pa – State’s appendix

T – June 26, 2025 transcript of motion to compel oral argument

N.J.S.A. 2C:17-3(a)(1); (2) third-degree theft, N.J.S.A. 2C:20-3(a); and (3) fourth-degree contempt, N.J.S.A. 2C:29-9(b)(1). (Pa14-15).

On April 28, 2025, defendant moved to compel the State to turn over the mental health/psychiatric records of the victim, Aaron Lee. (Pa16). On May 13, 2025, defendant filed a brief in support. (Pa17-24).

On June 19, 2025, the State filed a brief in opposition. (Pa25-28).

On June 26, 2025, the trial court heard oral argument. (1T).

On July 9, 2025, the court ordered the State to submit the victim's mental health/psychiatric records to the court for an in camera review. (Pa1-9).

On July 24, 2025, the State moved for leave to appeal and filed a brief and appendix in support. (Pa29-30).

On August 4, 2025, defendant filed a brief in opposition.

On August 8, 2025, the trial court filed an amplification in accordance with Rule 2:5-1(d) and Rule 2:5-6(c). (Pa33-39).

On August 14, 2025, this court granted the State's motion for leave to appeal. (Pa31-32).

This supplemental brief follows.

**STATEMENT OF FACTS**<sup>2</sup>

On January 6, 2023, Jersey City Police Department (“JCPD”) police officers responded to the Bramhall Avenue apartment and spoke to the victim, who advised that defendant had used a black handgun to assault her but fled before police arrived. (Pa12-13; Pa19).

On March 20, 2023, JCPD police officers responded to the Bramhall Avenue apartment and spoke to the victim, who advised that when she left for work the previous morning, defendant was in her apartment. (Pa14-15; Pa19). She further advised that when she returned home, her apartment had been ransacked, there was damage to her property, and approximately \$5,000 worth of clothing and sneakers had been stolen. (Pa14-15; Pa19-20).

At approximately 6:14 a.m. on June 23, 2023, Ms. Zanaysia Monroe called 911 and reported that her friend, the victim, had been stabbed by defendant, the victim’s ex-boyfriend and the father of her child. (Pa26). Monroe further reported she observed defendant thrusting a knife into the victim’s midsection with his right hand while the victim was on the kitchen floor. (Pa26). Approximately fifteen minutes later, JCPD police officers responded to the

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<sup>2</sup> The State relies on the indictments and the facts as set forth in its June 19, 2025 brief in opposition to defendant’s motion to compel. The State will also partially rely on the facts as set forth in defendant’s May 13, 2025 brief solely for the purposes of this motion for leave to appeal.

Bramhall Avenue apartment and observed the victim bleeding and in critical condition. (Pa26). They further observed blood spatter on the kitchen floor. (Pa26).

The victim was transported to Jersey City Medical Center and was treated for her injuries. (Pa26). While at the hospital, officers showed the victim a photograph of defendant, and she identified him as Joshua Simmons. (Pa26).

Defendant moved to compel the victim's mental health/psychiatric records, arguing the disclosure of these records are crucial to his right to a fair trial. (Pa20-24). In support, defendant relied solely on a 2018 report where the victim told officers that she "suffers from problems coping with her anger along other mental illnesses" and that she was in therapy but had not attended a session or received treatment for some period of time. (Pa19; Pa22; T 4:17 to 5:2).

In response, the State argued defendant did not establish a basis to pierce the privilege, as he is relying on a 2018 report where the victim did not indicate what mental illness she has or whether she had a specific treatment plan or diagnosis. (Pa27-28; T 9:16-22). The State further noted there is no indication that any mental health struggles the victim may have are connected to the present case, and the hospital records relating to the stabbing do not indicate that the victim has a psychiatrist or was taking any medication at that time. (Pa28; T 9:23 to 10:7). The State also explained to the court that it was not in possession

of any such mental health/psychiatric records of the victim or even knew if they existed. (Pa26-27; T 8:18-22; T 11:5-7; T 12:5-10).

In a July 9, 2025 order,<sup>3</sup> the court, without making any factual findings or conducting any legal analysis, held, “(1) that access to information within [the victim’s] mental health/psychiatric records may be necessary for determination of issues before the Court; and (2) that it is not possible for this court to decide the Defendant’s motion without the benefit of review of the records in order to determine relevance.” (Pa1; Pa4; Pa7). The court thus ordered the State to provide the victim’s mental health/psychiatric records to the court for an in camera review and further ordered the State to notify defense counsel if the State determines her mental health/psychiatric records do not exist or cannot be located. (Pa1-9).

The State moved for leave to appeal, and following the State’s motion, the trial court issued an amplification. (Pa33-39). In its amplification, the court found defendant met his burden of piercing the victim’s privilege because in 2018, the victim made a report to police against defendant and later recanted her report, explaining that “the false report was made because of her inability to

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<sup>3</sup> Defendant filed the motion to compel on all three pending cases involving the victim, Lee, and the court uploaded the same July 9, 2025 order on all three case jackets on eCourts. Because each order is exactly the same, just filed under different case jackets, the State will refer to the documents as one order for the purposes of this appeal.

cope and ‘mental illnesses.’” (Pa37-38). The court found that this information, along with the victim’s indication in 2018 that she had received some form of psychiatric care in the past, was sufficient to pierce the victim’s privilege. (Pa38).

After the trial court issued its amplification, this court granted the State’s motion for leave to appeal.

This supplemental brief follows.

## **LEGAL ARGUMENT**

### **POINT I**

**THE MOTION COURT ERRED BY ORDERING AN IN CAMERA REVIEW OF THE VICTIM’S MENTAL HEALTH/PSYCHIATRIC RECORDS WITHOUT CONDUCTING ANY MEANINGFUL LEGAL ANALYSIS TO DETERMINE WHETHER DEFENDANT MET HIS BURDEN TO PIERCE THE PRIVILEGE.** (Pa33-39).

Rule 1:7-4(a) requires a trial court to, “by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law.” “Naked conclusions do not satisfy the purpose of [Rule] 1:7-4.” Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 304 (App. Div. 2021) (alteration in original) (quoting Giarusso v. Giarusso, 455 N.J. Super. 42, 54 (App. Div. 2018), superseded by rule on other grounds as recognized in Kopec v. Moers, 470 N.J. Super. 133, 154-55 (App. Div. 2022)). “Failure to make explicit findings and clear statements of reasoning ‘constitutes a disservice to the

litigants, the attorneys, and the appellate court.” Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)). Moreover, “[m]eaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion.” Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)). Thus, “[t]he absence of adequate findings . . . necessitates a reversal.” Ibid. (second alteration in original) (quoting Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996)).

Preliminarily, the trial court failed to make any factual findings or conduct any legal analysis in its initial order and opinion. Instead, it held, in a conclusory statement, “(1) that access to information within [the victim’s] mental health/psychiatric records may be necessary for determination of issues before the Court; and (2) that it is not possible for this court to decide the Defendant’s motion without the benefit of review of the records in order to determine relevance.” (Pa1; Pa4; Pa7).

Moreover, the trial court failed to conduct any meaningful legal analysis in its amplification order and opinion. For example, the court held that “there is no less intrusive means by which to obtain the medical information sought.” (Pa38). However, the court provided no explanation for how it came to this

determination. Such a naked conclusion does not satisfy the requirements of Rule 1:7-4.

Additionally, the court held that the victim’s “psychological condition, if true, is also relevant and material to this matter.” (Pa38). In so holding, the court failed to explain why a report mentioning the victim’s unspecified “mental illness” in 2018 is relevant to her ability to perceive or recall incidents occurring in 2023. The court’s failure to address this issue shows the court did not make adequate findings.

Accordingly, reversal of the court’s order is required.

**POINT II**

**THE MOTION COURT ABUSED ITS DISCRETION BY FINDING DEFENDANT MET HIS BURDEN TO JUSTIFY PIERCING THE PRIVILEGE.** (Pa1-9; Pa33-39).

“[A]lthough defendants are entitled to broad discovery under Rule 3:13-3, they are not entitled to turn the discovery process into a fishing expedition.” State v. Broom-Smith, 406 N.J. Super. 228, 239 (App. Div. 2009), aff’d, 201 N.J. 229 (2010). Nor may a defendant “transform the discovery process into an unfocused, haphazard search for evidence.” State v. Gilchrist, 381 N.J. Super. 138, 146 (App. Div. 2005) (quoting State v. D.R.H., 127 N.J. 249, 256 (1992)). Relatedly, “[o]ur criminal discovery rules do not oblige the State to produce reports of mental examinations or experiments unless they are within its

‘possession, custody, or control,’” State v. Kane, 449 N.J. Super. 119, 132 (quoting R. 3:13-3(b)(1)(C)), and “evidence in the control of a crime victim . . . is not within the prosecutor’s ‘possession, custody[,] or control’ for discovery purposes, State v. Robertson, 438 N.J. Super. 47, 69 (App. Div. 2014) (quoting State ex rel. A.B., 219 N.J. 542, 544 (2014)).

Thus, while “[a] court may exercise its inherent power to order discovery outside the court rule,” “the defendant bears the burden of establishing need.” Kane, 449 N.J. Super. at 133. Where, as here, a defendant seeks discovery that is protected by a privilege, such a privilege may be pierced only upon a showing that “(1) the party has ‘a legitimate need . . . to reach the evidence sought to be shielded’; (2) the evidence is relevant and material to an issue before the court; and (3) the evidence could not be secured from a less intrusive source.” Id. at 135-36 (quoting In re Kozlov, 79 N.J. 232, 243-44 (1979)). Unless a defendant makes the necessary showing under this three-part test, “the court should not order disclosure of therapy records, even for in camera review by the court.” Kinsella v. Kinsella, 150 N.J. 276, 306-07 (1997).

The purpose of such records being privileged is clear. “Effective psychotherapy . . . depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears.” Id. at 296 (alteration in original) (quoting Jaffee v.

Redmond, 518 U.S. 1, 10 (1996)). It follows that “the mere possibility of disclosure [of confidential communications] may impede the development of the confidential relationship necessary for successful treatment.” Ibid. (quoting Jaffee, 518 U.S. at 10). Thus, making such confidential communications privileged “serve[s] the public interest ‘by facilitating the provision of appropriate treatment for individuals suffering the effects of a mental or emotional problem.’” Ibid. (quoting Jaffee, 518 U.S. at 11).

Accordingly, “if the purpose of the privilege is to be served, the participants in the confidential conversation ‘must be able to predict with some degree of certainty whether particular discussions will be protected.’” Id. at 297 (quoting Jaffee, 518 U.S. at 18). “An uncertain privilege, or one which purports to be certain but results in widely varying application by the courts, is little better than no privilege at all.” Ibid. (quoting Jaffee, 518 U.S. at 18).

The protections provided by a privilege apply with equal – if not, greater – force when it is a crime victim who holds the privilege. The Crime Victim’s Bill of Rights provides that “crime victims and witnesses are entitled to” several important rights. N.J.S.A. 52:4B-36. Those rights include:

being “treated with dignity and compassion by the criminal justice system”; remaining “free from intimidation, harassment or abuse by any person including the defendant” or someone acting on the defendant’s behalf; “hav[ing] inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible”; receiving information “about the criminal justice

process” in general, the progress of the case in which the victim is involved, and available medical assistance and remedies; and having the opportunity to be present at and participate in proceedings as permitted by the State Constitution.

[State v. Chambers, 252 N.J. 561, 584 (2023) (internal citations omitted) (alteration in original) (quoting N.J.S.A. 52:4B-36).]

Moreover, the New Jersey Constitution provides that a “victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system.” N.J. Const., art. I, ¶ 22. Indeed, “one ‘significant limitation on defendants’ discovery rights is the chilling and inhibiting effect that discovery can have on material witnesses who are subjected to intimidation, harassment, or embarrassment.’” State v. Desir, 245 N.J. 179, 194 (2021) (quoting D.R.H., 127 N.J. at 256).

Thus, “only in the most narrow of circumstances, such as where a privilege is in conflict with a defendant’s right to a constitutionally guaranteed fair trial, would the need prong be satisfied.” Kane, 449 N.J. Super. at 136 (quoting State v. Mauti, 208 N.J. 519, 538 (2012)).

In this case, defendant has failed to make the necessary showing to even warrant an in camera review by the court. Defendant relies upon a 2018 report, which he did not even provide to the court,<sup>4</sup> in support of this so-called need to

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<sup>4</sup> In reviewing the submissions on eCourts and reviewing the oral argument transcript, there is nothing in the record indicating defendant provided the 2018 report to the trial court. At most, there is a point during oral argument where defense counsel indicates he is in possession of that report, (T 11:12-18), and the report is also referenced in his brief.

obtain mental health/psychiatric records from the victim. But the report dates back to nearly five years before any of defendant's pending charges involving the victim, and nothing stated in the report suggests any mental health illness she may have had five years ago would affect her ability to perceive, recall, or recount the incidents that occurred in 2023. Nor has defendant demonstrated this alleged mental illness likely caused the victim to fabricate or even imagine the incident altogether. See Chambers, 252 N.J. at 590 (observing, in the context of demonstrating a substantial, particularized need for access to mental health records of a sexual assault victim, a defendant must make an "evidential showing that connects the alleged mental illness to the victim's inability to perceive, recall, or recount the events of the alleged assault, or a proclivity to imagine or fabricate them"). Indeed, it would be nearly impossible for defendant to demonstrate the victim fabricated or imagined the incident altogether when a third-party witnessed the stabbing and identified defendant as the actor, and the victim was brought to the hospital to receive treatment for her injuries.

This case is similar to Kane. There, the trial court denied the defendant's motions to compel the State to produce records of the victim's mental health treatment and related records, finding in part that the defendant failed to demonstrate the need or relevance of the records. 449 N.J. Super. at 129-30. This court agreed, noting that the defendant sought to impeach the victim's

observation that she was dragged out of the house by her hair, but “[n]o showing ha[d] been made that additional evidence of substance abuse or mental health disorders would impeach her ability to perceive and recall such an event.” Id. at 137.

Like in Kane, defendant’s allegation that the victim had an unspecified mental health illness in 2018 is not sufficient to make the necessary showing that additional evidence of the victim’s alleged mental health illness would impeach her ability to perceive and recall events that occurred in 2023. See also Chambers, 252 N.J. at 596 (observing that the defendant’s assertion “that ‘something happened to [the victim]’ and that ‘[the victim] went crazy before’” was not sufficient to preliminarily satisfy the discovery standard required to pierce a sexual assault victim’s mental health service provider-patient privilege). Accordingly, this court should reverse the trial court’s order to compel the State to produce the victim’s mental health/psychiatric records for an in camera review.

State v. Henries, 306 N.J. Super. 512 (App. Div. 1997), does not support a contrary conclusion. There, this court held the defendant was entitled to a new trial because the main identification witness against him was an eleven-year-old boy with a history of psychiatric problems. Id. at 516, 536. In reaching this conclusion, this court observed that expert testimony established the child’s

“substantial psychiatric disorders” affected his perception, caused memory gaps, and tended to cause a person to repeatedly lie and to treat false beliefs or delusions as though they were reality. Id. at 535-36. Whether or not the child’s medical records should have been turned over to defense was not at issue. See id. at 516.

By contrast, here, the only proffer made by defendant is that the victim claimed to have had an unspecified mental illness in 2018. This bald assertion is not enough to establish a legitimate need to have the victim’s mental health/psychiatric records, and ordering an in camera review on this scant record only serves to eviscerate the privilege and unnecessarily subject the victim to intimidation, harassment, or embarrassment. The trial court’s determination constitutes a clear error in judgment that necessitates reversal of its order.

Indeed, the contradictory findings between the court’s initial order and its amplification order show that its decision to order an in camera review was made without a rational explanation. As noted above, the court initially held “(1) that access to information within [the victim’s] mental health/psychiatric records may be necessary for determination of issues before the Court; and (2) that it is not possible for this court to decide the Defendant’s motion without the benefit of review of the records in order to determine relevance.” (Pa1; Pa4; Pa7).

The fact that the court held it needed to review the victim’s mental health/psychiatric records to determine their relevance demonstrates it misunderstood the law because a defendant needs to make an initial showing that the privilege should be pierced before it should order disclosure of mental health/psychiatric records, even for an in camera review. Kinsella, 150 N.J. at 306-07. And to make that showing, the defendant needs to demonstrate the evidence is relevant and material. Ibid. By holding that it needs to review the victim’s mental health/psychiatric records to determine their relevance, the court implicitly found defendant had not met his burden of proving such records are relevant and material.

This holding directly contradicts the court’s later determination in its amplification that the records are relevant and material to this matter. (Pa38). Given these contradictory findings, the court clearly abused its discretion, and its order must be reversed.

### **POINT III**

**EVEN IF AN IN CAMERA REVIEW WERE APPROPRIATE, THE MOTION COURT’S ORDER FOR THE STATE TO PRODUCE ANY AND ALL OF THE VICTIM’S MENTAL HEALTH/PSYCHIATRIC RECORDS, ASSUMING THEY EVEN EXIST, IS UNDULY BROAD AND BURDENSOME.**  
(Pa1-9; Pa33-39).

As set forth above, “[o]ur criminal discovery rules do not oblige the State to produce reports of mental examinations or experiments unless they are within

its ‘possession, custody, or control,’” Kane, 449 N.J. Super. at 132 (quoting R. 3:13-3(b)(1)(C)), and “evidence in the control of a crime victim . . . is not within the prosecutor’s ‘possession, custody[, ] or control” for discovery purposes, Robertson, 438 N.J. Super. at 69 (quoting A.B., 219 N.J. at 544). Thus, while “[a] court may exercise its inherent power to order discovery outside the court rule,” “the defendant bears the burden of establishing need.” Kane, 449 N.J. Super. at 133.

Here, it is not even clear if the records defendant is seeking exist, and if they do, they are certainly not in the State’s possession, custody, or control. Yet the court is essentially telling the State to go on a search for any and all mental health/psychiatric records the victim may or may not have, regardless of whether those records are from ten years ago or from today. And it is not even completely clear what would qualify as “mental health/psychiatric records” that the State is being ordered to produce. Such an order is unduly broad and burdensome, especially when there has not been any showing by defendant that any of these alleged records would be relevant or material.

The trial court appeared to partially acknowledge this issue in its amplification order and tried to backtrack, stating it “neglected to specifically address the issue of the existence of such records prior to ordering production of the records,” and that it would “address the identification and existence of the

victim’s mental health care provider at the next scheduled conference.” (Pa38-39). But this still does not resolve the issue of what the State is actually being asked to produce—that being what appears to be any and all of the victim’s mental health/psychiatric records, even if such records date back to a time period from well-before these pending charges arose.

Accordingly, should this court determine it was appropriate for the trial court to order an in camera review, the trial court’s unduly broad and burdensome order should, at the minimum, be limited in scope to relevant time frames.

### **CONCLUSION**

Based on the foregoing, the State submits that the trial court’s order for the State to produce the victim’s mental health/psychiatric records for an in camera review should be **REVERSED**, and the matter should be **REMANDED** for further proceedings.

**Respectfully submitted,**

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3980-24T1

STATE OF NEW JERSEY, : CRIMINAL ACTION  
 :  
 Plaintiff-Appellant, : On Appeal from An Interlocutory  
 : Order of the Superior Court of  
 v. : New Jersey, Law Division, Hud-  
 : son County.  
 JOSHUA SIMMONS, :  
 : Indictment Nos. 24-01-99,  
 Defendant-Respondent. : 24-05-675, 24-07-886  
 :  
 Sat Below:  
 Hon. Mitchell L. Pascual, J.S.C.

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BRIEF FOR DEFENDANT-RESPONDENT

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October 14, 2025

DEFENDANT IS CONFINED

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    AND ORDERING THE IN CAMERA REVIEW OF  
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## PROCEDURAL HISTORY

This is a State’s appeal stemming from three pending Hudson County indictments; all three charge defendant Joshua Simmons with offenses involving complainant Aaron Lee. Number 24-05-0675 charges that the following offenses occurred on January 6, 2023: (1) second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1); (2) second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); (3) second-degree robbery, N.J.S.A. 2C:15-1(a)(1); (4) third-degree aggravated assault, N.J.S.A. 2C:12-1(b)(2); and (5) fourth-degree contempt, N.J.S.A. 2C:29-9(b)(1). (Pa 12 to 13).<sup>1</sup>

Number 24-07-0886 charges that the following offenses occurred on March 20, 2023: (1) third-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1); (2) third-degree theft, N.J.S.A. 2C:20-3(a); and (3) fourth-degree contempt, N.J.S.A. 2C:29-9(b)(1). (Pa 14 to 15).

Number 24-01-99 charges that the following offenses occurred on June 23, 2023: (1) first-degree attempted murder, N.J.S.A. 2C:11-3(a)(1) and 2C:5-1(a)(1); (2) second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1); (3) third-degree possession of a knife for an unlawful purpose, N.J.S.A. 2C:39-4(d); and

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<sup>1</sup> As in appellant’s brief, “Pa” refers to appellant’s appendix of September 5, 2025, and “T” will refer to the transcript of June 26, 2025. In addition, “Pb” will refer to appellant’s brief of September 5, 2025.

(4) fourth-degree unlawful possession of a knife, N.J.S.A. 2C:39-5(d). (Pa 10 to 11).

The defense moved under all three indictments to compel discovery of Lee's mental health records. (Pa 16). On May 13, 2025, the defense filed a brief under all three indictments. (Pa17 to 24). On June 19, 2025, the prosecutor filed a responding brief, but only under indictment 24-01-99. (Pa 25 to 28). On June 26, 2025, the Honorable Mitchell L. Pascual, J.S.C., heard oral argument. (T). On July 9, 2025, Judge Pascual granted the defense motion to the extent of ordering that Lee's available mental health records should be produced for in camera review. (Pa 1 to 9).

On July 24, 2025, the prosecutor moved the Appellate Division for leave to appeal, and the defense opposed the motion. On August 8, 2025, Judge Pascual filed a decision amplifying and clarifying his order. (Pa 33 to 39)

On August 14, 2025, a panel of the Appellate Division consisting of the Honorable Jessica R. Mayer, P.J.A.D., and the Honorable Lisa A. Puglisi, J.A.D., granted the prosecutor's motion for leave to appeal. (Pa 31 to 32). On September 5, 2025, the prosecutor filed a brief and appendix.

This is Simmons's responding brief.

## STATEMENT OF FACTS

### **A. The Defense's Factual Allegations**

The defense filed a brief in support of the motion for discovery of complainant Aaron Lee's mental health records. (Pa 17 to 24) Defense counsel summarized Lee's allegations that led to the three current indictments. (Pa 19 to 20) Counsel stated that he was relying on the discovery provided by the prosecutor to summarize the allegations. (Pa 18 n.1)

On January 6, 2023, Jersey City police officers responded to a call at 617 Bramhall Avenue. There Lee claimed that defendant Joshua Simmons had assaulted her using a black handgun. Simmons was not present, and no gun was recovered. (Pa 19)

On March 20, 2023, officers again responded to a call at 617 Bramhall Avenue. Lee claimed that Simmons had remained in her apartment when she left for work. When Lee returned from work, the door was unlocked, the apartment had been ransacked, and \$5000 worth of clothing and sneakers had been stolen. Simmons was not present, and none of the stolen items were found in his possession. (Pa 19 to 20)

On June 23, 2023, officers again responded to a call at 617 Bramhall Avenue. Lee claimed that Simmons had stabbed her with a knife. When officers

arrived, a different man was present, but was not interviewed. Simmons was not present. (Pa 20)

In addition to the discovery about the three current incidents, the prosecutor had provided the defense with police reports regarding events on September 29 and November 5, 2018. (Pa 18 n.2, 19 n.3) Defense counsel described the police report regarding September 29, 2018:

Back on September 29, 2018, Jersey City Police Officers responded to 38 Bartholdi Avenue following allegations made by Ms. Aaron Lee. On that date, Ms. Lee accused Mr. Simmons of assaulting her with a handgun. Specifically, Ms. Lee told responding officers that Mr. Simmons struck her in the face with a handgun, even describing the handgun as a “black revolver with a brown handle.” Later in the same day, Ms. Lee gave a video statement where she told Detective Ona, amongst numerous other allegations, that Mr. Simmons removed a handgun from his waistband and described the weapon as a “silver revolver with a brown handle.” She told the detective that she saw him waving the gun around wildly and that he screamed, “just because I can’t see you doesn’t mean I can’t shoot you!” Mr. Simmons was arrested and detained in jail.

(Pa 18 to 19) (footnote omitted)

Defense counsel also described the police report regarding Lee’s recantation and explanation on November 5, 2018:

On November 5, 2018, Ms. Aaron Lee responded to the Hudson County Prosecutors Office to inform them that she had provided false information to the police during this investigation. According to the report

authored by Officer Megan Connell, Ms. Lee told the prosecutors that, “she lied to the police officers on scene by saying Simmons hit her with a gun.” She apparently went on to admit that there was no gun involved at all in the incident. In an attempt to explain her false statement, Ms. Lee told officers that she “suffers from problems coping with her anger along [with] other mental illnesses.” She admitted that she was currently in therapy but had not attended a session or received treatment for some period of time. Following Ms. Lee’s recantation, all the indictable offenses alleged against Mr. Simmons were dismissed and Mr. Simmons was released from jail.

(Pa 19) (footnote omitted) Lee also told Officer Connell that her false allegation was “brought on by her inability to cope” and that Simmons was in trouble because of “something she did.” (Pa 20)

### **B. The Prosecutor’s Factual Allegations**

The prosecutor filed a responding brief under indictment 24-01-99, but filed no brief under the other two indictments. (Pa 25 to 28) The prosecutor’s brief made additional factual allegations regarding the final incident of June 23, 2023, which was the basis for indictment 24-01-99. The prosecutor stated that a friend of Lee’s had called 911 on June 23, 2023. The friend stated that Simmons and Lee shared a child; the friend claimed to observe Simmons stabbing Lee. Officers arrived to find Lee bleeding and brought her to the hospital. (Pa 26)

While supplementing the allegations about the final incident, the prosecutor did not dispute any of the defense's factual statements. Indeed, the prosecutor wrote nothing about the incidents of January 6 and March 20, 2023. Nor did the prosecutor write anything that disputed the defense's description of the police reports from 2018 that the prosecutor had turned over. (Pa 26 to 28)

### **C. Arguments and Decision**

In his brief, defense counsel argued that the circumstances demonstrated the defense's need for Lee's mental health records, that the records were relevant and material, and that the information could not be obtained by less intrusive means. Counsel emphasized that Lee was the primary witness in all three current cases. By Lee's own admission, she suffered from a mental illness that had previously caused her to fabricate false allegations against Simmons. Thus, Lee seemed to have a mental illness that could bear on her ability to accurately perceive and relate the current incidents. The defense had a critical need for Lee's mental health records to explore her illness. (Pa 22 to 23) Counsel noted that he was following the proper procedure set forth by the New Jersey Supreme Court: a motion on notice to the prosecutor, with the prosecutor required to inform the victim that her mental health records were sought by the defense. (Pa 24)

The prosecutor's brief opposed the release or examination of any mental health records. In a single paragraph, the prosecutor essentially questioned the connection between Lee's mental health struggles and the present "case." (Recall, again, that a responding brief was only filed in number 24-01-99). While opposing the disclosure of any records, the prosecutor provided no indication whether or not she had informed Lee of the defense request. (Pa 27 to 28)

Defense counsel's oral argument was similar to his brief. (T 3-18 to 8-6) Counsel added that Lee's allegation in 2018 -- which Lee admitted was fabricated because of a mental illness -- and Lee's allegation from January 2023 were almost identical: both involved Simmons supposedly pistol-whipping Lee. (T 4-2 to 5-11)

The prosecutor began her oral argument by stating that no mental health records were in the State's possession. Therefore, the prosecutor contended, the State had no discovery obligation. The prosecutor still provided no indication whether or not she had communicated with Lee about the defense request for records. (T 8-18 to 22) Moreover, the prosecutor took the position that no "nexus" existed between Lee's 2018 statements about her mental health and her present allegations; according to the prosecutor, the defense's theory of relevance was "speculative." (T 9-9 to 11-10)

On July 9, 2025, the court filed an identical written order in all three cases. (Pa 1 to 9) The court ordered “that the records concerning the victim’s mental health/psychiatric records may be necessary for determination of an issue before the Court and, therefore, shall be submitted to the Court for in camera review and determination regarding release to counsel.” (Pa 1-2, 4-5, 7-8) The order also provided that the prosecutor should inform defense counsel if the records “do not exist or cannot be located” and that the parties should inform the court of any dispute about the records’ availability. (Pa 2-3, 5-6, 8-9)

On August 8, 2025, the court filed a decision amplifying and clarifying its reasoning. (Pa 33 to 39) In stating the facts, the court summarized the defense’s undisputed description of Lee’s 2018 allegation and recantation. (Pa 34 to 35) The court emphasized Lee’s statements that the 2018 false report was due to her “mental illnesses,” that she had received treatment, and that the false report was during a lapse in treatment. (Pa 35) As to the law, the court set forth the three-part test requiring the defense to show: (1) a need for Lee’s mental health records, (2) the relevance and materiality of the records, and (3) the information could not be obtained from any less intrusive source. (Pa 36)

The court then explained how the defense here had satisfied the first two parts:

In 2018, the victim made a report to the police and later recanted her report, at which time she indicated that the information she provided was false. The false report was made against the same defendant in this case. Significantly, the victim explained that the false report was made because of her inability to cope and “mental illnesses”. The victim’s statement connecting her “mental illnesses” to the false report supports the Defendant’s legitimate need for the information. Such a psychological condition, if true, is also relevant and material to this matter, thus satisfying the second prong. It specifically calls into question the victim’s ability to recall the incident and the victim’s veracity. The victim further indicated, in recanting her report to the police, that she had received some form of psychiatric care in the past.

(Pa 37 to 38) As to the third part, the court stated that the defense had “no less intrusive means by which to obtain the medical information.” (Pa 38)

Therefore, the court held that Lee’s mental health records should be produced for in camera review; the court would review the records and decide what should be released to the parties. (Pa 38)

Finally, the court noted that, although Lee had stated that she had received mental health treatment, the existence of records was uncertain and their location unknown. (Pa 38) Therefore, the court concluded the opinion by stating: “The court shall address the identification and existence of the victim’s mental health care provider at the next scheduled conference.” (Pa 39)

**LEGAL ARGUMENT**

**THE MOTION COURT DID NOT ABUSE ITS DISCRETION IN UPHOLDING THE DEFENDANT'S RIGHT TO PRESENT A DEFENSE AND ORDERING THE IN CAMERA REVIEW OF COMPLAINANT'S MENTAL HEALTH RECORDS. U.S. CONST. AMEND. VI, XIV; N.J. CONST. ART. I, PARA. 1, 10**

The Court did not abuse its discretion in ordering the disclosure of complainant Lee's available mental health records for in camera review. The defense made an ample showing: Lee herself had cited her treatment for mental illness to explain her recantation of a prior allegation against defendant Simmons. Moreover, the defense followed the prescribed procedure by making a motion for discovery of Lee's mental health records on notice to the prosecutor. The prosecutor, on the other hand, provided no indication that she invited Lee to give her input, as required by law. If the prosecutor indeed failed in her duty, Lee has been deprived of the opportunity to decide whether or not to assert her privilege. The prosecutor's seeming failure has also contributed to the present uncertainty about the existence of records and their location. Under the circumstances, while holding that Lee's available mental health records should be produced for in camera review, the court necessarily left the details to be worked out at a future conference. Everything that the court has done up to this point has been a sound exercise of discretion.

The leading New Jersey precedent sets forth the basic principles. A defendant seeking the complainant's mental health records should direct the discovery motion to the prosecutor. The prosecutor is then required to inform the complainant of the motion so that she may give her input. State v. Chambers, 252 N.J. 561, 589-90 (2023)

If the complainant opposes release of her mental health records, the defense may trigger an in camera review by preliminarily showing: (1) a substantial, particularized need for access, (2) the relevance and materiality of the information sought, and (3) the unavailability of the information through less intrusive means. Id. at 590. The defense motion will satisfy the first two parts of the test through an "evidential showing" that the complainant has a mental illness hindering her ability to "perceive, recall, or recount" the alleged offense or manifesting in "a proclivity to imagine or fabricate" such an offense. See id. at 590-91, 596. The third part will be satisfied if the defense does not appear to have adequate means besides complainant's mental health records to explore her mental illness. See id. at 591, 596.

Once the mental health records are produced for in camera review, the court will examine them to see if they actually contain information relevant to the complainant's ability to perceive, recall, or recount the offense or to whether

the complainant fabricated the offense. Id. at 592-93. Only this relevant information will be released to the parties, and the rest of the records will be redacted. Id. at 593.

On appeal, the court’s decision, like all discovery decisions, is reviewed for abuse of discretion. Id. at 594. “An abuse of discretion occurs by making decisions ‘without a rational explanation, [that] inexplicably departed from established policies, or [that] rested on an impermissible basis.’” Id. at 594-95. (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

The leading precedent further explains and illustrates these principles. The complainant alleged that defendant Chambers had sexually assaulted her. Chambers, 252 N.J. at 572-73. Chambers said in his statement to the police that the complainant had fabricated the incident, that she had gone “crazy before,” and that she had been in a “psychiatric home.” Id. at 575. The complainant’s sister said in a statement that the complainant was “suicidal”; the sister had also heard that the complainant had failed to become a police officer because of something in her “background.” Id. at 577. The sister’s boyfriend said that “everybody knows” that the complainant is suicidal; he confirmed that the complainant had failed to become a police officer because of “some suicidal things she had on her record.” Id. at 578.

Based mainly on this information, the defense moved to have the prosecutor obtain and produce the complainant's mental health records. Id. at 578-79. The State opposed the motion because the records were not in its possession and it had no knowledge of their existence. Yet the State did not inform the complainant of the motion and invite her input. Id. at 578, 579-80. The trial court granted the defense motion and ordered the prosecutor to obtain and produce the complainant's mental health records for an in camera examination. Id. at 578-79.

The New Jersey Supreme Court began its review by observing that the defendant had a constitutional right to present a defense, derived from the rights to counsel, confrontation, compulsory process and due process. See id. at 581-82; see also U.S. Const. Amend. VI, XIV; N.J. Const. Art. I, Para. 1, 10. Even though the court rules do not authorize discovery of items outside of the State's possession, a trial court has the inherent power to order discovery of such items to protect the defendant's right to present a defense. See Chambers, 252 N.J. at 582-83. Moreover, the right to present a defense encompasses "discovery that is relevant and material to a victim's ability to perceive, recall, or recount an alleged sexual assault, or a proclivity to imagine or fabricate it." Id. at 582.

On the other side of the scale, mental health records are privileged by law. Id. at 592; see N.J.R.E. 534. Moreover, the Victim's Rights Amendment and

Crime Victim’s Bill of Rights entitle a complainant to be treated with dignity and fairness, to be free from harassment, to be informed about the progress of the case and about any remedies, to participate in the case, and to confer with the prosecutor. Chambers, 252 N.J. at 584, 589; see N.J. Const. art. I, para. 22; N.J.S.A. 52:4B-36.

To balance the rights of a defendant and complainant, the Supreme Court formulated two possible courses of action for a defendant seeking the complainant’s mental health records. First a defendant may choose the informal route, sending a letter to the prosecutor seeking the records. Chambers, 252 N.J. at 593-94. The letter should (1) specify the mental health records sought with reasonable particularity, understanding that the defendant cannot be expected to identify the provider or institution; (2) explain the “substantial need tied directly to the victim's ability to perceive, recall, or recount the facts of the alleged incident, or to the victim's likelihood to fabricate or even imagine the incident altogether”; and (3) state that the complainant has a right not to participate in the informal process. Id. at 594 and n.6. The prosecutor is required to relay the request to the complainant. The complainant may then refuse to answer or explicitly decline the informal request. Or the complainant may choose to voluntarily make the records available to the defense and execute the appropriate releases. Id. at 594.

Second, a defendant may choose the formal route and move for discovery of the complainant's mental health records, providing notice of motion to the prosecutor. The prosecutor is required to inform the complainant of the motion: a "victim must receive notice of a defendant's motion from an assistant prosecutor or a victim witness coordinator, not a defendant or defense counsel." Id. at 589-90 (emphasis in original). The complainant must then have an opportunity to be heard on the motion, with or without independent counsel. Id.

The Supreme Court explained that defense counsel's motion must make the three-part "evidential showing" described above to obtain in camera review of the complainant's mental health records: (1) need, (2) relevance and materiality, and (3) lack of alternatives. Id. at 590. The Supreme Court stated that need, relevance, and materiality would be established by an "evidential showing that connects the alleged mental illness to the victim's inability to perceive, recall, or recount the events of the alleged assault, or a proclivity to imagine or fabricate them." Id. at 590. Indeed, this proposition -- which the Supreme Court derived from the defendant's constitutional right to present a defense -- was emphasized at various points and in various forms in the opinion. Id. at 571, 582, 590, 591, 592, 593, 594, 596; see also N.J.R.E. 607(a) (generally authorizing extrinsic evidence to attack credibility); Velazquez v. City of Camden, 447 N.J. Super. 224, 242-45 (App Div. 2016) (holding that a witness's mental health records

were admissible to show that his condition affected his perceptions); State v. Johnson, 216 N.J. Super. 588, 603 (App. Div. 1987) (explaining that extrinsic evidence of a mental abnormality affecting a witness's perceptions is a standard and accepted method of attacking credibility).

Because the Supreme Court in Chambers was establishing new standards and procedures, the Supreme Court refused to review the trial court's in-camera-review order for abuse of discretion; instead, the Supreme Court remanded for reconsideration of the motion. Chambers, 252 N.J. at 595. Nevertheless, the Supreme Court suggested that the defense's showing appeared insufficient: the vague comments in the record that the complainant was suicidal and had been institutionalized were unconnected "to her inability to perceive, recall, or recount the events of the alleged assault, or to a proclivity to imagine or fabricate the alleged assault." Id. at 595-96. The defense would be allowed on remand to investigate and present more evidence about the complainant's mental illness. Id. at 596.

The parties would also have the opportunity on remand to litigate the third prong, i.e., the lack of alternatives to examining the complainant's mental health records. Id. at 596. The Supreme Court seemed particularly intrigued by indications in the record that the complainant might have extensively discussed her

mental illness in texts and social media postings. It thus appeared possible, depending on what facts developed, that the defense might have alternatives to the records. See id. at 573, 577, 578, 596.

Application of the principles discussed in Chambers shows that the trial court in Simmons's case has soundly exercised its discretion.

**A. The Defense Made an Ample Showing of Need for the Records, Given that Complainant Herself Had Cited Her Treatment for Mental Illness to Explain Her Recantation of a Prior Allegation Against Defendant. (Responding to Appellant's Point II)**

The defense here has amply demonstrated the need for, the relevance, and the materiality of Lee's mental health records through an "evidential showing that connects the alleged mental illness to the victim's inability to perceive, recall, or recount the events of the alleged assault, or a proclivity to imagine or fabricate them." See id. at 590.

Lee is the complainant in all three pending indictments, alleging offenses committed by Simmons on three dates in 2023. The prosecutor provided the defense with police reports regarding Lee's allegation and recantation in 2018. In 2018, Lee alleged that Simmons had threatened her with a handgun -- an allegation that is remarkably similar to Lee's pending allegation against Simmons from January 2023. (Pa 18 to 19; T 4-2 to 5-11) Yet Lee recanted the 2018 allegation a little more than a month later. To explain her lies, "Lee told officers

that she ‘suffers from problems coping with her anger along [with] other mental illnesses.’ She admitted that she was currently in therapy but had not attended a session or received treatment for some period of time.” (Pa 19) Lee explained that her false allegation was “brought on by her inability to cope.” (Pa 20)<sup>2</sup>

Thus, by Lee’s own admission, she suffered from mental illnesses and anger issues that caused her to fabricate false allegations against Simmons. Lee admitted that she had received therapy, and she linked a lapse in therapy to her false allegations. In other words, Lee explicitly conceded that she had a mental illness bearing on her ability to perceive, recall, or recount incidents with Simmons, or bearing on a proclivity to imagine or fabricate those incidents. In addition, Lee tacitly conceded that mental health records should exist. The information in Lee’s records is liable to have a strong bearing on Lee’s continuing inability to accurately perceive or continuing proclivity to fabricate incidents with Simmons.<sup>3</sup>

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<sup>2</sup> Appellant briefly notes that the defense did not provide the 2018 police reports to the trial court. (Pb 11 and n.4) This quibble can hardly be taken seriously, given that the prosecutor provided the reports to the defense in the first place, given that defense counsel described the reports in detail in his motion brief, and given that the prosecutor never contended -- neither in her brief nor at oral argument -- that defense counsel’s description was inaccurate.

<sup>3</sup> In a single sentence, appellant criticizes the defense showing of a need for evidence bearing on Lee’s proclivity to fabricate because a third-party witness also asserted that Simmons had stabbed Lee. (Pb 12) Appellant, of course, is referring only to the last of the three current allegations; appellant is ignoring

Moreover, the information in Lee's records does not appear to be reasonably obtainable by less intrusive means. Without access to Lee's mental health records, we appear to have no way of determining Lee's exact mental illnesses, the extent of their effects, or her current mental and treatment status. Unlike Chambers, we have no inkling that Lee might have extensively and publicly discussed her mental illness, obviating the need for the records.

In sum, the trial court was amply justified in deciding that the defense has made an adequate showing of need to trigger in camera review of Lee's mental health records. This decision was not an abuse of discretion and was indeed required by Simmons's constitutional right to present a defense.

**B. The Defense Followed the Prescribed Procedure in Moving for Discovery of the Records on Notice to the Prosecutor; the Prosecutor, on the Other Hand, May Have Failed to Follow the Prescribed Procedure of Inviting Complainant's Input. (Responding to Appellant's Point III)**

The defense here followed the formal procedure prescribed by the New Jersey Supreme Court in Chambers: the defense moved for discovery of the

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the other two current allegations, where this argument would not apply because Lee was apparently the only witness. (Pa 19 to 20) Putting that aside, the weight of the prosecution's evidence is not a proper basis to deprive the defendant of the opportunity to introduce exculpatory evidence. Weighing one party's evidence against the other's is a job for the jury, not the court. See Holmes v. South Carolina, 547 U.S. 319, 329-31 (2006).

complainant's mental health records, providing notice of motion to the prosecutor. Chambers, 252 N.J. at 589-90. Any suggestion that the defense should have followed another procedure is incorrect. (Pb 8-9, 15-16) And statements in a pre-Chambers Appellate Division case suggesting that the defense was required to directly subpoena the complainant have obviously been overruled. See State v. Kane, 449 N.J. Super. 119, 132-34 and n. 5 (App. Div. 2017).

Instead of a direct defense subpoena, the Supreme Court has substituted a procedure whereby the prosecutor is required to inform the complainant of the defense motion for her mental health records and invite the complainant's input. Chambers, 252 N.J. at 589-90. Complainant is then entitled to make her own decision to assert a privilege or voluntarily release the records, and she may be represented by her own counsel. See id. at 589-90, 594.

The Supreme Court logically believed that this procedure would best reconcile the interests of all involved. On the one hand, the defendant has a right to present a defense. Id. at 581-82. On the other hand, the complainant should not be harassed. Id. at 584. Yet, at the same time, the complainant is the holder of the mental health provider-patient privilege. It is complainant, not the prosecutor, who must ultimately decide whether to waive or assert the privilege. See N.J.R.E. 534(c). The complainant cannot make this decision and provide her input without an invitation from the prosecutor -- as contemplated by Chambers

and the victims' rights laws. See Chambers, 252 N.J. at 584, 589-90 (discussing N.J. Const. art. I, para. 22 and N.J.S.A. 52:4B-36).

In our case, the prosecutor below provided no indication -- neither in her brief nor at oral argument -- that she duly informed Lee of the defense motion for her mental health records and invited Lee's input. This silence is suspicious: if the prosecutor had communicated with Lee, one would expect that the prosecutor would have said something about Lee's response. If the prosecutor indeed failed in her duty, Lee was deprived of the opportunity to decide whether to assert her privilege or voluntarily turn over her mental health records; the prosecutor should not be making this decision for Lee.

Even if we assume that Lee would have asserted her privilege, an appropriate communication seeking Lee's input might have caused Lee to shed light on the existence and location of her mental health records and the timing of her treatment. Our continuing ignorance about these facts may be largely due to the prosecutor's failure to involve Lee, as contemplated by the law.

Under the circumstances, while holding that Lee's available mental health records should be produced for in camera review, the motion court necessarily left the details to be worked out at a future conference. (Pa 38 to 39) This decision was wise, given where the litigation stands. At a future conference, the parties will be able to make sure that Lee is personally involved and that she has

the opportunity to turn over records voluntarily or assert privilege (or entirely deny the records' existence). Even if Lee asserts privilege, her input may lead to more facts being developed so that her mental health records can be located and the exact records to be turned over can be specified.

In sum, the court's postponement to a future conference of the details of producing Lee's mental health records was a sound exercise of discretion.

**C. The Motion Court's Findings of Fact and Conclusions of Law were Sufficient. (Responding to Appellant's Point I)**

Nothing was insufficient about the motion court's findings of fact and conclusions of law. See R. 1:7-4. The court's decision amplifying its reasoning detailed the defense's description of Lee's 2018 allegation and recantation. (Pa 34 to 35) Thus, the key undisputed facts were set forth.

As to the law, the correctly court set forth the key three-part test requiring the defense to show: (1) a need for Lee's mental health records, (2) the relevance and materiality of the records, and (3) the information could not be obtained from any less intrusive source. (Pa 36)

The court then explained how the defense here had satisfied the first two parts:

In 2018, the victim made a report to the police and later recanted her report, at which time she indicated that the information she provided was false. The false report

was made against the same defendant in this case. Significantly, the victim explained that the false report was made because of her inability to cope and “mental illnesses”. The victim’s statement connecting her “mental illnesses” to the false report supports the Defendant’s legitimate need for the information. Such a psychological condition, if true, is also relevant and material to this matter, thus satisfying the second prong. It specifically calls into question the victim’s ability to recall the incident and the victim’s veracity. The victim further indicated, in recanting her report to the police, that she had received some form of psychiatric care in the past.

(Pa 37 to 38)

As to the third part, the court stated that the defense had “no less intrusive means by which to obtain the medical information.” (Pa 38) The reason for this conclusion was obvious from the emphasis that the court placed on Lee’s admissions about her mental illnesses, her therapy, and her lapse in therapy at the time of the false report. (Pa 34 to 35) That is, nothing in the record suggested any alternative source, besides Lee’s mental health records, for information about Lee’s mental illnesses, therapy, and any lapses in therapy.

Therefore, the court held that Lee’s mental health records should be produced for in camera review; the court would review the records and decide what should be released to the parties. (Pa 38)

Finally, the court noted that, although Lee had stated that she had received mental health treatment, the existence of records was uncertain and their location unknown. (Pa 38) Therefore, the court concluded the opinion by stating: “The court shall address the identification and existence of the victim’s mental health care provider at the next scheduled conference.” (Pa 39)

In short, the court adequately explained its reasons for holding that Lee’s available mental health records should be produced for in camera review and for leaving the details of the production to be worked out at a future conference.

### **CONCLUSION**

For the foregoing reasons, the order should be affirmed.

Respectfully submitted,  
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