

ANTONIO FUSTER and BRIANNA  
DEVINE,

Plaintiffs-Petitioners,

v.

TOWNSHIP OF CHATHAM and  
GREGORY LaCONTE, in his  
official capacity as records custodian,

Defendants-Respondents.

SUPREME COURT OF NEW JERSEY  
DOCKET NO.: 089030

Civil Action

On Petition for Certification from a Final  
Judgment of the Appellate Division,  
Docket No. A-1673-22

Sat Below:

Hon. Lisa Rose, J.S.C.

Hon. Morris G. Smith, J.S.C.

Hon. Lisa Perez Friscia, J.S.C. (t/a)

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**AMENDED BRIEF OF *AMICUS CURIAE* PARTNERS**

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## PRELIMINARY STATEMENT

This case involves a question of law that is of significant importance because its outcome has the potential to limit the rights of crime victims to obtain bodycam footage and other police records of reports made to police where the perpetrator is not ultimately charged or arrested. *Amicus Curiae* Partners for Women and Justice, Inc. (“Partners”) submits that, on balance, a victim’s interests in obtaining such footage for use as potential evidence in a future proceeding far outweigh an uncharged individual’s interests in confidentiality and, thus, require disclosure of the footage to the victim. This conclusion is supported by both new and preexisting statutory authority, as well as sound public policy.

At issue here is an order denying plaintiffs access to body worn camera (“BWC”) footage of plaintiff Antonio Fuster’s interview with a police officer in which Fuster reported allegations of the sexual abuse of his juvenile son by a relative. Fuster’s statement to law enforcement on behalf of the minor victim was recorded pursuant to the Body Worn Camera Law (“BWCL”), N.J.S.A. 40A:14-118.3 to 118.5 and, following an investigation, the relative was not charged nor arrested. This case directly implicates the rights of victims of domestic and sexual violence who are seeking police records to aid in their applications for protections under the Prevention of Domestic Violence Act (“PDVA”) or the Victims Assistance and Survivors Protection Act (“VASPA”). Indeed, the allegations that Fuster reported to

police would suffice to support the entry of a Temporary Protective Order (“TPO”) under VASPA.

Partners submits that the process by which both the trial court and the Appellate Division denied Fuster the recording fell far short of what the decision’s gravity required. If left to stand, the judgment of the Appellate Division would deny a victim of a crime, particularly survivors of domestic and sexual violence, access to BWC footage containing a victim’s statement to police where the accused is neither charged nor arrested. Regardless of whether or not a victim has applied for civil protections, Partners submits they should be entitled to request and obtain *all* forms of records documenting reported violence to law enforcement, even under circumstances where the accused is neither charged nor arrested.

Notably, a recent amendment to the PDVA, N.J.S.A. 2C:25-17 to 35, which was passed shortly **after** the Appellate Division’s decision below, will intersect with this Court’s decision here to impact future victims’ access to police records, including bodycam footage. That amendment clarifies that a domestic violence victim has a right to be provided copies of certain law enforcement records at the victim’s request, regardless of the stage of the investigation and whether or not the accused is charged or arrested. See N.J.S.A. 2C:25-23.1, eff. May 1, 2024. Similarly, pursuant to N.J.S.A. 2C:14-2.1, victims of sexual assault have a right to certain law enforcement information, including “the initial victim statement provided by the

victim to the law enforcement agency,” regardless of whether or not the accused is charged or arrested. Partners, therefore, takes the position that victims of domestic and sexual violence currently have a right to receive certain police records in their cases and both statutes are evidence of the strong public policy and legislative intent in favor of disclosure of police materials to said victims. Partners also submits that even if the Court finds that plaintiffs here were not entitled to the footage they requested when they requested it, this Court should nevertheless preserve the integrity of N.J.S.A. 2C:25-23.1 and not otherwise abrogate or limit a victim’s right to access to such records thereunder.

Partners also urges this Court to clarify that a victim may appropriately access BWC footage in order to challenge the veracity of a report generated from an investigation involving allegations of a crime. This should be the result even where law enforcement determines that there is insufficient probable cause to file charges, declines to prosecute, and where no arrest is made. The rights of victims who seek to access BWC footage of their own statements to law enforcement should not be stifled because of the possibility, however remote, of “irremediable public condemnation” that an individual may face from disclosure of uncharged accusations to the victim who made those very allegations.

Partners takes the position that victims of domestic and sexual violence, including the plaintiffs herein, are entitled to receive certain police records,

including BWC footage of their complaints. Accordingly, and for the reasons set forth below, Partners urges this Court to reverse the judgment of the Appellate Division. To the extent this Court disagrees and affirms the decision below, Partners respectfully requests that the Court's opinion not otherwise abrogate or limit a victim's right to access such records under N.J.S.A. 2C:25-23.1 and 2C:14-2.1.

### **STATEMENT OF INTEREST**

Partners has been dedicated to assisting survivors of domestic and sexual violence escape abuse since its founding in 2002. As a provider of free, direct legal services to low-income individual victims of domestic and sexual violence, Partners has expertise in litigating cases and seeking protection under both the PDVA and VASPA. Partners provides these services through in-house staff attorneys, as well as working with private attorneys who agree to represent or advise individuals on a *pro bono* basis. Partners serves clients statewide and provides legal representation in Essex, Hudson, Middlesex, Passaic, and Union County courts. Through these direct services, Partners frequently seeks discovery of police records to be used as evidence in Final Restraining Order ("FRO") hearings pursuant to the PDVA and Final Protective Order ("FPO") hearings pursuant to VASPA.

In addition to direct legal services, Partners also engages in advocacy, seeking systemic changes in the court system that would benefit survivors of domestic and



sexual violence. Partners has offered comments to the New Jersey Supreme Court on proposed rule changes and served as *amicus curiae* in many cases, including C.R. v. M.T I., 248 N.J. 428 (2021) and C.R. v. M.T. II, 257 N.J. 126 (2024) (addressing the legal standard for FPO cases); In re Attorney General Law Enforcement Directive Nos. 2020-5 & 2020-6, 246 N.J. 462 (2021) (affirming directives requiring disclosure of misconduct by police officers); State v. McCray, 243 N.J. 196 (2020) (finding violation of a no-contact order can serve as a basis for a criminal contempt charge under the Criminal Justice Reform Act); and Shah v. Shah, 184 N.J. 125 (2005) (affirming jurisdiction of court to enter restraining order against defendant without contact to state).

### **PROCEDURAL HISTORY AND STATEMENT OF FACTS**

Partners relies upon and incorporates the statement of facts and procedural history set forth in the Appellate Division's opinion at Fuster v. Twp. Of Chatham, 477 N.J. Super. 477 (App. Div. 2023), adding only the following:

The Appellate Division in Fuster held that the plaintiffs were properly denied the release of a body worn camera ("BWC") video-recorded statement that a police officer had provided to a municipal police department regarding allegations of sexual misconduct against plaintiffs' special needs son finding that the BWC recording was exempt from disclosure under the Open Public Records Act, N.J.S.A.

47:1A-9(b), because information received by law enforcement regarding an individual who was not arrested nor charged is confidential and not subject to disclosure. Fuster, 477 N.J. Super. at 483 (citing N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Off., 477 N.J. Super. 182, 204 (App. Div. 2016)). The Appellate Division also held that plaintiffs did not have a right to disclosure of the BWC video pursuant to the common law right of access to public records because, under the balancing of interests factors established in Loigman v. Kimmelman, 102 N.J. 98, 113 (1986), law enforcement's and the uncharged individual's interests in confidentiality outweigh the public's and plaintiffs' interests in disclosure. Fuster, 477 N.J. Super. at 484.

On April 5, 2024, the Court granted plaintiffs' Petition for Certification in Fuster v. Twp. of Chatham, 257 N.J. 18 (Apr. 5, 2024).

On May 1, 2024, an amendment to the PDVA became effective which clarified the right of domestic violence victims to access records under the provisions of N.J.S.A. 2C:25-23.1. The statute requires copies of certain law enforcement records to be provided, upon request, to victims of domestic violence. Specifically, under N.J.S.A. 2C:25-23.1, a domestic violence victim or the victim's legal representative may request copies of certain records, including but not limited to BWC footage, from the law enforcement agency with the primary responsibility for investigating a domestic violence complaint. Such other records include

photographs taken by a law enforcement officer, dashboard camera footage, 9-1-1 transcript or recording, and contents of the police report. If the release of the records would jeopardize an ongoing criminal investigation or the safety of any person, the records are required to either be redacted so that release to the victim does not jeopardize an ongoing criminal investigation or the safety of any person or released pursuant to a protective order. See N.J.S.A. 2C:25-23.1(a). A person who disseminates a copy of a law enforcement record in violation of a protective order issued under N.J.S.A. 2C:25-23.1 may be subject to criminal prosecution, further protecting the confidentiality of the information.

## LEGAL ARGUMENT

### POINT I

#### **THE NATURE OF RIGHTS AND INTERESTS AT STAKE FAVOR DISCLOSURE OF BWC FOOTAGE TO A VICTIM REPORTING A CRIME OF VIOLENCE EVEN IF THE SUSPECT WAS NOT ARRESTED AND CHARGES WERE NOT BROUGHT.**

The balance of equities and the public interest favor disclosure of BWC footage to victims of domestic and sexual violence reporting a related crime, even where law enforcement declines to arrest or bring charges against the perpetrator. Under such circumstances, an accused's interest in avoiding the possibility of public disclosure is far outweighed by the interests of victims in seeking emergent safety and protection from abuse through civil remedies.

BWC footage creates audio and video evidence that may aid both *pro se* and represented victims in seeking redress through civil protective and restraining orders, even where the perpetrator has not been arrested nor charged. Notably, for a victim to seek relief under the PDVA or VASPA, there is no requirement that charges must be brought, pending, or warranted in a companion criminal matter. Moreover, the time requirements set forth in these two statutes – under both, a final hearing is to be scheduled within ten days – are far shorter than the timelines typical in criminal cases, so much so that arrests and charges may not yet have even been contemplated. If left to stand, the Appellate Division's decision applying the “well-

established confidentiality exemption protecting an uncharged person's law enforcement records from disclosure" to shield access to the release of police records from the victim would create a new "chilling effect" that specifically disadvantages victims applying for civil protection. Denying disclosure of potential evidence for use in hearings under the PDVA and VASPA will curtail efforts to aid such victims in their pursuit thereof.

Partners works directly with survivors of domestic and sexual violence in seeking legal protection in the form of Final Restraining Orders and Final Protective Orders against their abusers in family court. Although these matters are heard in family court, they are "quasi-criminal" in nature. Plaintiffs are often in need of access to their related police records in order to properly prepare for hearings, regardless of the status of criminal charges. Access to BWC footage containing a victim's own statements to law enforcement officers and other police records regarding an incident alleging abuse and/or violence – even in cases where the police have not (or not yet) made an arrest or brought charges – is therefore significant in several respects.

Compare this pressing need for protection to the opposing interest of an alleged perpetrator's privacy. The Appellate Division was concerned that the perpetrator could potentially suffer some amorphous possible public denunciation, despite the fact that Fuster did not seek public disclosure, only his own access to the

recording. See Fuster v. Twp. of Chatham, 477 N.J. Super. at 492 (quoting Bergen Cnty Prosecutor's Off., 447 N.J. Super. 182, 204 (App. Div. 2016)).

**A. A Victim's Right of Access Must Take Precedence Over Potential Privacy Concerns.**

Advocates, including Partners, as well as *pro se* litigants, routinely seek evidence from law enforcement pertinent to civil FRO and FPO hearings in instances where a perpetrator is neither charged nor arrested. This could include a victim, much like the plaintiffs-appellants, requesting BWC footage of the victim recounting an incident of violence by a perpetrator who was not ultimately charged with a crime nor arrested. BWC footage can be incredibly powerful evidence as it is inherently a more accurate and reliable accounting of a victim's statement than a police report prepared by a third-party officer merely recounting a victim's statement. At FRO and FPO hearings, victims are routinely cross-examined and repeatedly questioned on the veracity of statements made to police while in crisis, making the BWC of their statements to police, in conjunction with all other police records of the underlying matter, of clear importance.

Under circumstances where the victim has not yet applied for protections or reached out to advocates such as Partners, the victim should nevertheless be entitled to request and obtain records documenting reported violence to law enforcement, regardless of whether the perpetrator has been charged or arrested. Under the rationale of the Appellate Division, however, access to the BWC footage would not

be made available “because information received by law enforcement regarding ‘a person who has not been arrested or charged’ is confidential and not subject to disclosure.” Fuster, 477 N.J. Super. at 492 (quoting Bergen Cnty Prosecutor’s Off., 447 N.J. Super. 182, 204 (App. Div. 2016)). The Appellate Division found that disclosure is not appropriate “because of the potential harm to the uncharged third party if the BWC footage were released.” Fuster, 477 N.J. Super. at 492. The Court went on to explain that,

We note that Fuster seeks release of his own statement, which he undoubtedly recollects. Conversely, the accused has not had an opportunity to object or challenge the recorded allegations in court. The accused here, as in many uncharged investigations, may not know the video exists.

Id. This rationale undercuts well-established public policy that seeks to protect the rights and interests of victims of violence and abuse. As an initial matter, the concern regarding confidentiality of the accused is an illusory one because the party seeking the footage is the reporting victim and not a third party nor a member of the general public. Additionally, there is no justifiable basis to deny a party access to footage of their own statement to police when that same party has been provided the written police report, which presumably documents what is on the very BWC footage.

In any event, the accused’s privacy interest can adequately be protected by simply limiting the disclosure instead of precluding it wholesale. For example, any materials could be produced to the victim either in redacted form or with a protective

order limiting public disclosure. See e.g., N.J.S.A. 2C:25-23.1(a). With this simple precaution, the footage can be provided to the victim without endangering the accused's privacy.

Contrary to the inchoate privacy interests of an uncharged party not subject to arrest, victims of domestic and sexual violence frequently have real and imminent concerns for the safety and well-being of not only themselves, but often their children, if they are denied permanent civil protection due to an inability to properly and thoroughly prepare for hearings. Such footage must be made available to victims who may (or may not) ultimately choose to present the footage as evidence, combined with other information, in support of an FPO or FRO. Further, it will not always be the case where a victim will “undoubtedly recollect[]” every detail of her “own statement,” which only strengthens the argument that such footage must be made accessible despite an accused not having been charged or arrested.

**B. BWC Footage is Highly Relevant to Challenging Police Reports That May Otherwise Conflict with what is Contemporaneously Reported by Victims.**

Access to BWC footage may also permit victims to challenge the veracity of a police report documenting an allegation of violence or abuse if they feel it is not accurate. Victims of sexual assault have a statutory right to “be provided with the option to review the initial incident report concerning that [crime] prior to filing by the law enforcement agency.” N.J.S.A. 2C:14-2.1(a). Without access to the footage,



the ability to exercise that right and to challenge a police report that otherwise omits or mischaracterizes a victim's testimony and version of events is inappropriately limited. BWC of a victim's own statement is inherently a more accurate and reliable accounting than a police report prepared by a third-party officer merely recounting what they heard, especially in consideration of inherent biases that often permeate through domestic and sexual violence matters. Should the Appellate Division's decision stand, the rights of victims who seek only to access police records of their own case would be forever supplanted because of the possibility, however remote, of "irremediable public condemnation" that an individual may face from the limited disclosure of uncharged accusations to their accuser. Fuster, 477 N.J. Super. at 497.

Victims should be treated with fairness, compassion, and respect by the criminal justice system. To that end, a victim who seeks access to a video recording of statements made to law enforcement should be entitled to that footage. This is particularly so when the victim's recollection of statements to officers differs from that which is ultimately reduced to a written complaint.

Society has a strong interest in a victim's ability to vindicate themselves in the pursuit of documenting abuse and/or violence, whether or not that involves the victim ultimately seeking civil restraints or protections, and regardless of whether or not the perpetrator is criminally charged or arrested. In furtherance of that public interest, victims must be allowed access to footage provided to police. In a case

where the victim is able to identify discrepancies between the written report and the recording, then an amended report may be made whereby law enforcement may note that the original report omitted significant details or allegations that are recounted in the BWC footage.

Accordingly, and for the reasons set forth herein, Partners urges this Court to reverse the judgment of the Appellate Division.

## POINT II

**SHOULD THE COURT FIND THAT THE PLAINTIFFS ARE NOT ENTITLED TO THE REQUESTED RELIEF, THE COURT'S OPINION SHOULD NOT ABROGATE OR LIMIT A VICTIM'S RIGHT TO ACCESS RECORDS THAT MAY BE REQUESTED AND OBTAIN UNDER N.J.S.A. 2C:25-23.1.**

The Amendment to the PDVA made after the Appellate Divisions below clarifies that a domestic violence victim has a right to be provided copies of certain law enforcement records at the victim's request, regardless of the stage of the investigation and regardless of whether or not the accused is charged or arrested. See N.J.S.A. 2C:25-23.1, eff. May 1, 2024. Similarly, pursuant to N.J.S.A. 2C:14-2.1, victims of sexual assault have a right to certain law enforcement information, including "the initial victim statement provided by the victim to the law enforcement agency," regardless of whether or not the accused is charged or arrested. The legislative intent clearly demonstrates that in such matters, the accused's

confidentiality and privacy interests are outweighed by the rights of victims who are the requesting party for such footage, regardless of historical case law considerations or necessitating the statute be read in conjunction with OPRA. The provision protects the integrity of an ongoing criminal investigation, the safety of persons involved, and confidentiality or privacy concerns by requiring the records to be redacted so that release to the victim does not jeopardize an ongoing criminal investigation or the safety of any person and permits release subject to a protective order. See N.J.S.A. 2C:25-23.1(a).

The amendment to N.J.S.A. 2C:25-23.1 is an example of the legislature's determination to further public policy which permits individuals with a particular and heightened interest to obtain access to records, a decision which favors disclosure to victims of crime and violence. The amendment also clarifies that the right to access records under this provision **is in addition to** the right of a victim to obtain records under current law pursuant to the Open Public Records Act or the Rules of Court.

To the extent this Court finds that the plaintiffs in Fuster are not entitled to the requested relief, Partners respectfully requests that the legal principles at issue not be interpreted to abrogate or limit the rights embodied in the provisions of N.J.S.A. 2C:25-23.1.

**CONCLUSION**

For the foregoing reasons, *Amicus Curiae* Partners urges this Court to reverse the judgment of the Appellate Division. To the extent this Court disagrees and affirms the decision below, Partners respectfully requests that the Court's opinion not otherwise abrogate or limit a victim's right to access such records under N.J.S.A. 2C:25-23.1.

Respectfully submitted,

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By: /s/ Diana C. Manning

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Dated: August 8, 2024