

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2031-16T7

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

R.N.,¹

Defendant-Respondent.

Submitted March 8, 2017 – Decided March 9,
2017²

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, Docket
Nos. W-2016-025111-0714, W-2016-025190-0714.

Carolyn A. Murray, Acting Essex County
Prosecutor, attorney for appellant (Frank J.
Ducoat, Special Deputy Attorney General/
Acting Assistant Prosecutor, and Kayla E.
Rowe, Special Deputy Attorney General/Acting

¹ We use initials because this case concerns alleged domestic violence.

² Our decision was originally issued on March 9, 2017, in the form of an order, to expedite the disposition of the appeal. We are now issuing the same decision in opinion form.

Assistant Prosecutor, of counsel and on the brief).

Dell'Italia & Santola, attorneys for respondent (John P. Dell'Italia, on the brief).

PER CURIAM

By leave granted, the State appeals from a January 12, 2017 order, denying the State's application for pretrial detention of defendant R.N. and ordering his release with conditions.

Having reviewed the record presented to us, we summarily remand this matter for rehearing in light of State v. Robinson, __ N.J. __ (App. Div. 2017), leave to appeal granted, __ N.J. __ (2017), which establishes the State's discovery obligations in connection with a pretrial detention hearing. See R. 3:4-2(c)(1)(B). We acknowledge that the Supreme Court will hear Robinson shortly, but the Court has specifically declined to stay our decision and that decision is therefore binding on the Prosecutor's Office in this case.

The Prosecutor's Office shall provide defense counsel with the discovery required by Robinson, and the trial judge shall promptly hold a new detention hearing. As noted below, the trial judge previously drew a negative inference against the State due to its failure to produce discovery, and relied on that negative inference in deciding that the State failed to present a prima

facie case in support of its detention application. On remand, if the State produces the discovery, the judge shall render a decision which does not rely on drawing a negative inference due to the State's earlier failure to produce it. If the State again fails to produce discovery, despite having now been ordered to do so, the judge may impose sanctions in his discretion, which may include dismissal of the State's application.

We decline to address the additional issues the State seeks to present on this appeal, deeming them premature. However, we observe that because pretrial detention motions implicate public safety issues as well as a defendant's civil liberties, the trial court's response to discovery issues should seek to accommodate both interests. See N.J.S.A. 2A:162-15. Hence, we would not endorse a routine practice of drawing a negative inference as the trial court's first response to the State's failure to produce discovery - as opposed to ordering the State to immediately produce the missing material. Producing discovery pursuant to Rule 3:4-2(c)(1)(B) is not optional for the State. As addressed at length in Robinson, supra, a defendant has a right to the discovery. The State does not have the right to decline to produce discovery and assert that its pretrial detention motion can survive a negative inference as to the weight of its evidence.

In this case, the State charged defendant with attempted murder, aggravated assault and other offenses, claiming that he choked his former girlfriend into unconsciousness in an act of domestic violence. The pretrial services program scored defendant as a 6/6 based on the risk assessment tool, added a notation as to a current violent offense, and recommended pretrial detention. At the pretrial detention hearing, defendant proffered alibi statements from two witnesses, to support his claim that he was at a party in the Bronx at the time the victim claimed he was assaulting her. The State provided defendant with the probable cause affidavit and the Preliminary Law Enforcement Information Report, and staunchly refused to produce anything else.

The trial judge offered the State more time to produce additional discovery, including the victim's statement and copies of text messages between her and defendant. The judge also offered the State time to interview defendant's proffered alibi witnesses. The State refused both offers and insisted on proceeding with the pretrial detention hearing. In those circumstances, and in the absence of the guidance provided by Robinson, we cannot find that the judge abused his discretion in drawing the negative inference as to the weight of the State's evidence. Our reason for ordering a remand is that the judge's decision focused almost entirely on the weight of the evidence issue and did not address the other

pertinent issues relevant to defendant's 6/6 score. Those include his prior history of failing to appear for court events and the fact that, at the time of this alleged assault, he had a pending charge for violating a restraining order.

In the circumstances, we conclude that a new hearing is the most appropriate procedure. We imply no view as to what the judge should decide on remand, only that the judge's decision should address all of the relevant issues.

We commend the judge for providing a written explanation for his decision in this case, as required when a trial court departs from the recommendation of the pretrial services program. See N.J.S.A. 2A:162-23(a)(2). The trial judge stayed the January 12, 2017 release order pending appeal, and the stay shall continue in effect pending the judge's decision on remand.

Remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION