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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-3515-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILBERT HANNAH, a/k/a RABE,

Defendant-Appellant.

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Submitted March 9, 2017 — Decided May 12, 2017

Before Judges Hoffman, O'Connor and Whipple.

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Indictment No.  
93-08-1826.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Thomas G. Hand, Designated  
Counsel, on the briefs).

Esther Suarez, Hudson County Prosecutor,  
attorney for respondent (Eric P. Knowles,  
Assistant Prosecutor, on the brief).

PER CURIAM

Defendant appeals from an August 27, 2014 order denying his  
petition for post-conviction relief (PCR) following an evidentiary  
hearing. We affirm in part, and remand in part.

We have outlined the relevant facts in our prior opinion affirming defendant's conviction on direct appeal. State v. Hannah, No. A-5022-94 (App. Div. Dec. 11, 1997), certif. denied, 153 N.J. 217 (1998). We need not repeat them here.

Defendant's first petition for post-conviction relief was denied by the trial court, but we remanded for an evidentiary hearing. State v. Hannah, No. A-6424-99 (App. Div. Jan. 31, 2002). After the evidentiary hearing, the trial court denied defendant's first petition for PCR, and we affirmed. State v. Hannah, No. A-6379-01 (App. Div. Nov. 7, 2003). The Court denied certification. State v. Hannah, 178 N.J. 453 (2004).

Defendant then brought a second petition, this time arguing he was entitled to a new trial because the State withheld evidence, specifically a report by Investigator Charles Lee Redd (hereinafter Redd Report), which discussed a pager found at the crime scene. Defendant's petition was denied. We remanded the matter for an evidentiary hearing for the court to determine "whether a Brady<sup>[1]</sup> violation occurred and the pager [was] newly discovered evidence." State v. Hannah, No. A-3788-07 (App. Div. June 19, 2009). The PCR judge conducted an evidentiary hearing and denied defendant's petition; however, defendant argued the

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<sup>1</sup> Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 213 (1963).

judge should have recused himself due to a conflict. We reversed the denial of defendant's petition and remanded the matter for a hearing before a different judge. State v. Hannah, No. A-5099-09 (App. Div. July 16, 2012).

The matter was ultimately heard by a different judge, and following a three-day evidentiary hearing, that judge denied defendant's petition on August 27, 2014. This appeal followed.

On appeal defendant argues,

POINT I: THE TRIAL COURT ERRED IN NOT FINDING A BRADY VIOLATION BECAUSE THE STATE VIOLATED THE REQUIREMENTS OF R. 3:13-3(B)(1) AND DUE PROCESS WHEN IT FAILED TO PROVIDE THE DEFENSE WITH THE REDD REPORT.

1. The Redd Report Was Not Provided In Discovery.
2. The Redd Report Was Exculpatory.
3. The Redd Report Was Material.

POINT II: IF THE STATE DID PROVIDE THE REPORT OF DETECTIVE REDD TO THE DEFENSE, THEN DEFENSE COUNSEL WAS CLEARLY INEFFECTIVE IN FAILING TO UTILIZE IT TO ADMIT THE TESTIMONY OF MARY JONES AT TRIAL AND TO REBUT THE CLOSING ARGUMENT OF THE PROSECUTOR.

POINT III: THE TRIAL COURT FAILED TO FOLLOW THE INITIAL REMAND INSTRUCTIONS ISSUED BY THE APPELLATE DIVISION AND ADDRESS WHETHER THE PAGER WAS NEWLY DISCOVERED MATERIAL.

We have considered these arguments in light of the record and the applicable legal standards and conclude defendant's first two arguments are without sufficient merit to warrant discussion in a

written opinion. See R. 2:11-3(e)(2). As to these arguments, we affirm substantially for the reasons expressed in the judge's written opinion. As to defendant's third argument, we remand for an evidentiary hearing to address whether the pager is newly discovered evidence pursuant to our initial remand instructions.

Newly discovered evidence warrants a new trial if it "places in doubt the integrity of [the] conviction." State v. Ways, 180 N.J. 171, 187 (2004). To meet this standard, the newly discovered evidence must meet the following three prongs: (1) it must be "material, and not 'merely' cumulative, impeaching, or contradictory;" (2) it must have been discovered after the trial and "not discoverable by reasonable diligence beforehand;" and (3) it must be evidence that "would probably change the jury's verdict if a new trial were granted." Ibid. (quoting State v. Carter, 85 N.J. 300, 314 (1981)). If any of these elements are missing, the motion must be denied. State v. Allen, 398 N.J. Super. 247, 258 (App. Div. 2008).

In our 2009 opinion, we reversed and remanded defendant's PCR petition and ordered the court to conduct an evidentiary hearing as to whether a Brady violation occurred and if the pager was newly discovered evidence. After a hearing on this issue, the first PCR judge found the Redd Report did not confirm there was an additional pager found at the crime scene despite defendant's


arguments to the contrary. However, that judge's order was reversed and remanded to a different judge.

The second judge presided over an evidentiary hearing following the remand. PCR counsel argued there were two pagers. The first was found at the scene of the crime and listed on the Redd Report. The second, he argues, was found after the police discovered a piece of paper containing a pager number. PCR counsel argued the police called that number, and therefore, the pager belonging to that number was a second pager. The second pager, defendant argues, is the newly discovered evidence. In defendant's opinion, the second judge determined the Redd Report was not newly discovered evidence, but did not address whether the pager was newly discovered evidence. We agree. As such, although we affirm the PCR judge's determination there were no Brady violations, we are constrained to remand solely to address whether the pager was newly discovered evidence.

Remanded for further findings consistent with this opinion.

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