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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-1982-17T3

STATE OF NEW JERSEY,

Plaintiff-Appellant/
Cross-Respondent,

v.

NICOLE DUFAULT,

Defendant-Respondent/
Cross-Appellant.

Argued February 27, 2018 – Decided March 15, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 15-
02-0319.

Kayla Elizabeth Rowe, Special Deputy Attorney
General/Acting Assistant Prosecutor, argued
the cause for appellant/cross-respondent
(Robert D. Laurino, Acting Essex County
Prosecutor, attorney; Kayla Elizabeth Rowe, of
counsel and on the briefs).

Paul W. Tyshchenko argued the cause for
respondent/cross-appellant (Caruso Smith
Picini, P.C., attorneys; Timothy R. Smith, of
counsel; Steven J. Kaflowitz, on the briefs).

PER CURIAM

The State appeals a November 13, 2017 order partly granting defendant's motion for disclosure of juvenile records, subject to a proposed protective order. Defendant cross-appeals seeking dismissal of the State's appeal. We remand the matter to the trial court for further review.

A grand jury indicted defendant on twenty-three counts of first-degree aggravated sexual assault of a person at least thirteen years old but less than sixteen years old, N.J.S.A. 2C:14-2(a)(2)(b); and seventeen counts of second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). The State alleges defendant engaged in oral and vaginal sex with six male students from summer 2013 to summer 2014. Defendant asserts several affirmative defenses, including duress.

The State provided defendant with all adjudications against the alleged juvenile victims, including their charges and probation statuses. Defendant filed a motion seeking disclosure of the alleged victims' full juvenile records and criminal case history, which was beyond what the State previously provided.

The judge denied defendant's motion pending an in camera review of the juvenile records. The State provided the records to the judge and moved for a protective order staying the disclosure of the juvenile records pending the State's appeal of that

disclosure, should the judge decide to disclose any records after the in camera review.

On November 13, 2017, the judge completed the in camera review and issued a list of records to be disclosed. The judge ordered disclosure, subject to a proposed protective order, with limitations as to who may have access to the records and use the information. The judge further ordered that if the parties appeal the proposed protective order, the disclosure of the juvenile records would be stayed.

We "defer to a trial judge's discovery rulings absent an abuse of discretion or a judge's misunderstanding or misapplication of the law." Capital Health Sys. v. Horizon Healthcare Servs., 230 N.J. 73, 79-80 (2017).

The State contends that the judge erred in ordering disclosure of the alleged victims' juvenile records in anticipation of defendant's duress defense. Specifically, the State submits that the disclosure of such records violates N.J.S.A. 2A:4A-60 and the alleged victims' right to confidentiality. Defendant argues that failing to disclose the information violates her right under the Sixth Amendment of the United States Constitution.

The State is required to provide discovery, post-indictment, to a defendant. R. 3:13-3(b)(1). "A defendant is entitled to know the State's case against [her] within reasonable time to

permit the preparation of a defense." State v. Bellamy, 329 N.J. Super. 371, 376 (App. Div. 2000). However, a defendant's right to discovery is not without limits and may be curtailed.

Our Supreme Court has recognized the importance of a defendant's right to discovery that may not ultimately be deemed admissible at trial. State v. Hernandez, 225 N.J. 451, 461-63 (2016). "[D]iscovery in a criminal case 'is appropriate if it will lead to relevant' information." Id. at 462 (emphasis omitted) (quoting State v. Ballard, 331 N.J. Super. 529, 538 (App. Div. 2000)). Thus, discovery requested by a defendant need not be admissible for it to be recognized as discoverable pursuant to Rule 3:13-3(b)(1).

Defendant asserts that disclosure of the alleged victims' juvenile records is vital to her constitutional right of confrontation. The federal and State constitutions afford the accused the right "to be confronted with the witnesses against [her]." U.S. Const. amend. VI; N.J. Const. art. I, ¶ 10. "This right, however, is not absolute, and may, in appropriate circumstances, bow to competing interests." State v. Budis, 125 N.J. 519, 531 (1991).

"The State's discovery obligation also extends to providing 'material evidence affecting [the] credibility' of a State's witness whose testimony may be determinative of guilt or

innocence." Hernandez, 225 N.J. at 462 (alteration in original) (quoting State v. Carter, 69 N.J. 420, 433 (1976)). This includes "any promise of favorable treatment or leniency offered to a witness, including any plea or cooperation agreement setting forth the benefits to the witness." Id. at 463.

The United States Supreme Court has considered the delicate balance of a defendant's right to confrontation with a state's interest in preserving the confidentiality of juvenile records. Davis v. Alaska, 415 U.S. 308, 319-20 (1974). The Supreme Court held that the right to confrontation cannot yield to a state's interest in protecting all juvenile records. Id. at 320. This court interpreted the holding in Davis and explained that use of disclosed juvenile records can only be used to evidence a juvenile's potential bias or prejudice, rather than a general attack on credibility. State v. Brown, 132 N.J. Super. 584, 586-87 (1975). Information indicating a juvenile's probation status or whether any complaints are currently pending are to be disclosed. Id. at 588. Here, the State previously provided such information to defendant, as is also permitted under N.J.S.A. 2A:4A-60(f).

N.J.S.A. 2A:4A-60 provides the framework for when juvenile records may be disclosed, and permits the release of records in limited circumstances. For matters that do not meet the

requirements of the statute, juvenile records "shall be strictly safeguarded from public inspection." N.J.S.A. 2A:4A-60(a). Those seeking disclosure of juvenile records must fall within one of the thirteen statutory categories. Ibid. "However, a juvenile's records should be available to third persons with a sufficient legitimate interest or when the interests of justice require." State v. Van Dyke, 361 N.J. Super. 403, 412 (App. Div. 2003). A defendant must evidence a "particularized need" for the disclosure rather than some general request. Ibid. That includes "some factual predicate which would make it reasonably likely that the file will bear such fruit and that the quest for its contents is not merely a desperate grasping at a straw." Ibid. (quoting State v. Harris, 316 N.J. Super. 384, 398 (App. Div. 1998)).

Defendant sought, and the judge, in his November 13, 2017 order, granted limited disclosure of the alleged victims' juvenile records, subject to a protective order. Defendant requested the juvenile records to assist in her duress defense. Specifically, defendant requested the incident reports and all other documents for each alleged victim.

Duress is "an affirmative defense that the actor engaged in the conduct charged to constitute an offense because [she] was coerced to do so by the use of, or a threat to use, unlawful force against [her] person . . . , which a person of reasonable firmness

in [her] situation would have been unable to resist." N.J.S.A. 2C:2-9(a). To succeed in asserting a duress defense, a defendant must demonstrate the sincerity of his or her alleged belief of imminent harm. State v. B.H., 183 N.J. 171, 192 (2005).

In his December 8, 2017 amplification, the judge explained that defendant had not put forth an adequate factual predicate that the records sought were relevant to her state of mind at the time of the alleged offenses. However, the judge stated defendant "advanced some factual predicate that the records are reasonably likely to be relevant to her duress defense." The judge failed to elaborate or further explain what facts defendant pled to advance how the disclosure of the juvenile records would assist in her duress defense.

Notably, defendant only provided notice of her duress defense. Both the judge's November 13, 2017 opinion and December 8, 2017 amplification failed to specify any particularized facts relating to the defense. Without such facts, defendant's request is a general one for disclosure, which is not permitted.

To balance the interests of providing discovery to defendant and the State's interests in protecting the confidentiality of the alleged victims' juvenile records, further review is required. The record lacks sufficient evidence for a determination as to whether defendant's requests are discoverable. Defendant failed


to support her request for the additional juvenile information relating to her duress defense.

The judge's November 13, 2017 order disclosing the alleged victims' juvenile records with the incident reports and supporting documents was an abuse of discretion absent specific and particularized facts relating to a defense. On remand, defendant shall provide specific facts as to her duress defense, including whether she had any previous knowledge of the alleged victims' juvenile history that would evidence a belief of imminent harm and the time frame in which she discovered that information.

In her cross-appeal, defendant asserts that the State's appeal should be dismissed because the order on appeal is not final or interlocutory. We conclude that defendant's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Remanded for further review 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