SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interest of brevity, portions of any opinion may not have been summarized.)

State v. Isaac A. Young (A-61-16) (078862)

(NOTE: The Court did not write a plenary opinion in this case. Instead, the Court affirms the judgment of the Appellate Division substantially for the reasons expressed in Judge Rothstadt's written opinion, which is published at 448 N.J. Super. 206 (App. Div. 2017).)

Argued April 24, 2018 -- Decided May 24, 2018

PER CURIAM

An Appellate Division panel vacated defendant's conviction of permitting or encouraging the release of a confidential child abuse record in violation of N.J.S.A. 9:6-8.10b. The Court considers the panel's conclusion that defendant's conduct is beyond the statute's reach.

During the 2012 mayoral election in the City of Salem, defendant Isaac A. Young was the executive director of the city's housing authority. Defendant's friend and political ally, the incumbent-mayor Robert Davis, was defeated by then-councilman Charles Washington, who was eventually elected mayor. Defendant came into possession of documents sent by the Division of Youth and Family Services, now designated the Division of Child Protection and Permanency (Division), to the City's police chief. The documents advised the chief that the Division had substantiated allegations of child abuse against Washington. The allegations were later deemed to be unsubstantiated. Defendant showed the documents to others in his office and gave copies to a police officer, Sergeant Leon Daniels, so that Daniels could distribute the documents to others for political purposes.

Washington found out about the letter's distribution and called the police chief to his home and showed him the documents that had been mailed out. The chief "recognized the handwriting on the[ ] envelopes" as being Daniels's, and reported the incident to the Salem County Prosecutor's Office (SCPO). The SCPO initiated an investigation into the release of the confidential documents. Eventually the SCPO determined that Terri Gross, a civilian clerk with the police department, had obtained the documents from the department and given them to Mayor Davis, and that defendant "had nothing to do with" Gross's release of the documents to Davis.

Defendant was charged with permitting or encouraging the release of a confidential child abuse record, a fourth-degree offense, N.J.S.A. 9:6-8.10b; hindering his own apprehension or prosecution by giving a false statement to law enforcement, a disorderly persons offense; and fourth-degree false swearing by inconsistent statements. Defendant filed a motion to dismiss the charge relating to the unlawful release of the confidential documents, arguing that N.J.S.A. 9:6-8.10b did not apply to his conduct. The court denied that motion. After a mistrial and retrial, defendant was convicted of the three offenses.

Defendant appealed. An Appellate Division panel affirmed defendant's convictions for hindering and false swearing. 448 N.J. Super. 206, 228 (App. Div. 2017). For the reasons that follow, the panel vacated defendant's conviction for violating N.J.S.A. 9:6-8.10b and dismissed the indictment for that charge. Ibid.

The panel stressed that, where it is not clear whether something is permitted under a criminal statute, the benefit of this lack of clarity should accrue to the defendant. If an ambiguity in a criminal statute is not resolved by reviewing the text and extrinsic sources, the rule of lenity dictates that the ambiguities must be interpreted in favor of the defendant. (448 N.J. Super. at 217-19.)

Reports of abuse made to the Division and "all information obtained by [the Division] in investigating such reports" must be kept confidential. N.J.S.A. 9:6-8.10a(a). That information, however, "may be disclosed[, but] only under the circumstances expressly authorized" by the statute. Ibid. The statute specifies various entities and people to whom disclosure can be made under various conditions. N.J.S.A. 9:6-8.10a(b) to (g). Among them is "[a] police

or other law enforcement agency investigating a report of child abuse or neglect." N.J.S.A. 9:6-8.10a(b)(2). The statute imposes a duty upon authorized recipients to maintain the confidentiality of the information disclosed to them by the Division. The prohibition against disclosure states: "Any individual, agency, board, court, grand jury, legislative committee, or other entity which receives from the department the records and reports referred to in subsection a., shall keep the records and reports, or parts thereof, confidential and shall not disclose the records and reports or parts thereof except as authorized by law." N.J.S.A. 9:6-8.10a(b) (emphasis added). The statute, therefore, prohibits the Division or anyone who receives confidential documents in accordance with the statutes from failing to maintain the documents' confidentiality. (448 N.J. Super. at 219-20.)

The next statute, N.J.S.A. 9:6-8.10b, imposes a penalty upon "[a]ny person who willfully permits or encourages the release of the contents of any record or report in contravention of this act." (emphasis added). That statute makes a release "a misdemeanor . . . subject[ing a violator] to a fine of not more than $1,000.00, or to imprisonment for not more than 3 years, or both." Ibid. (448 N.J. Super. at 220-21.)

Because the Legislature specifically limited culpability under the statute to authorized individuals or entities that receive confidential documents from the Division but then fail to maintain their confidentiality or anyone who encourages their improper release, there was no evidence adduced at defendant's trial that he violated the plain language of N.J.S.A. 9:6-8.10b. It was undisputed that he did not receive any documents from the Division or from Gross, or encourage Gross to release the documents to him or anyone else. Defendant claimed he received the documents in an anonymous mailing sent to him and there was no evidence to the contrary. Therefore, applying the statute's clear language, the trial court erred by not dismissing the charge that defendant violated N.J.S.A. 9:6-8.10a(b), and defendant's conviction for that offense must be vacated. (448 N.J. Super. at 221-22.)

The Court granted the State's petition for certification challenging that determination, 230 N.J. 355 (2017), but denied defendant's cross-petition challenging the convictions affirmed by the panel, 230 N.J. 373 (2017).

HELD: The judgment of the Appellate Division is affirmed substantially for the reasons expressed in Judge Rothstadt's well-reasoned opinion.

1. The Appellate Division panel held that N.J.S.A. 9:6-8.10b applies only to the Division and to persons and entities authorized by N.J.S.A. 9:6-8.10a(b) to receive confidential records from the Division. The Appellate Division's construction of N.J.S.A. 9:6-8.10a and -8.10b does not constitute the only reasonable interpretation of the statutory language. Indeed, the State construes N.J.S.A. 9:6-8.10a(a) to generally impose a confidentiality requirement on all persons and entities who receive child abuse records governed by the statute. To the State, N.J.S.A. 9:6-8.10a(b) should be viewed to merely clarify that when a confidential child abuse record is disclosed as authorized by that subsection, anyone given access to it must treat it as confidential. The State's construction of the statute is reasonable. That determination, however, does not resolve the statutory construction issue presented by this appeal. Given that the statutory language is subject to more than one reasonable interpretation, and that extrinsic sources do not resolve the parties' dispute, the Court finds an ambiguity that cannot inure to the benefit of the State. Applying the rule of lenity, the Court adopts the Appellate Division panel's construction of N.J.S.A. 9:6-8.10a and -8.10b, and concurs with the panel that defendant's conduct is beyond the reach of N.J.S.A. 9:6-8.10b. The Court stresses that its holding should not be viewed to minimize the gravity of the acts that led to defendant's prosecution. (pp. 2-4)

2. It is in the domain of the Legislature to determine whether an individual who is unauthorized to view records deemed confidential under the statute, but who nonetheless knowingly gains access to such confidential records and disseminates them to others, is subject to the criminal penalties set forth in N.J.S.A. 9:6-8.10b. If the Legislature concludes that the State's position represents the better public policy, it has the power to amend N.J.S.A. 9:6-8.10a and -8.10b. (p. 4)

The judgment of the Appellate Division is **AFFIRMED**.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.

SUPREME COURT OF NEW JERSEY
A-61 September Term 2016
078862

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ISAAC A. YOUNG,

Defendant-Respondent.

Argued April 24, 2018 – Decided May 24, 2018

On certification to the Superior Court, Appellate Division, whose opinion is reported at 448 N.J. Super. 206 (App. Div. 2017).

Carol M. Henderson, Assistant Attorney General, argued the cause for appellant (Gurbir S. Grewal, Attorney General, attorney; Carol M. Henderson, of counsel and on the briefs, and Joseph A. Glyn, Deputy Attorney General, on the briefs).

Justin T. Loughry argued the cause for respondent (Loughry and Lindsay, attorneys; Justin T. Loughry, on the briefs).

Erin O'Leary, Assistant Attorney General, argued the cause for amicus curiae Department of Children and Families (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel, and Erin O'Leary, on the brief).

PER CURIAM

The judgment of the Superior Court, Appellate Division is affirmed, substantially for the reasons expressed in Judge

Rothstadt's well-reasoned opinion, reported at 448 N.J. Super. 206 (App. Div. 2017). We add the following comments.

The Appellate Division panel vacated defendant's conviction of permitting or encouraging the release of a confidential child abuse record in violation of N.J.S.A. 9:6-8.10b. Id. at 228. The panel held that N.J.S.A. 9:6-8.10b applies only to the Division of Youth and Family Services, now designated the Division of Child Protection and Permanency (Division), and to persons and entities authorized by N.J.S.A. 9:6-8.10a(b) to receive confidential records from the Division. Id. at 218-22. The panel concluded that "the Legislature specifically limited culpability under the statute to authorized individuals or entities that receive confidential documents from the Division but then fail to maintain their confidentiality or anyone who encourages their improper release." Id. at 221. Noting that there was no evidence that defendant received the records at issue from the Division or was a person or entity authorized by N.J.S.A. 9:6-8.10a(b) to have such records, or that defendant encouraged such a person or entity to release the documents to him or anyone else, the panel concluded that defendant's conduct is beyond the statute's reach. Id. at 221-22.

We acknowledge that the Appellate Division's construction of N.J.S.A. 9:6-8.10a and -8.10b does not constitute the only reasonable interpretation of the statutory language. Indeed,

the State presents an alternative view. It relies on N.J.S.A. 9:6-8.10a(a), which provides in part that records of child abuse made pursuant to N.J.S.A. 9:6-8.10 and reports of findings forwarded to the central registry pursuant to N.J.S.A. 9:6-8.11 "shall be kept confidential and may be disclosed only under the circumstances expressly authorized under" N.J.S.A. 9:6-8.10a(b) to (f). N.J.S.A. 9:6-8.10a(a).

The State construes N.J.S.A. 9:6-8.10a(a) to generally impose a confidentiality requirement on all persons and entities who receive child abuse records governed by the statute. It acknowledges that N.J.S.A. 9:6-8.10a(b) expressly requires individuals and entities authorized to receive child abuse records under N.J.S.A. 9:6-8.10a(b) to "keep the records and reports, or parts thereof, confidential," and prohibits the disclosure of such materials "except as authorized by law." N.J.S.A. 9:6-8.10a(b). To the State, that specific provision should not abrogate N.J.S.A. 9:6-8.10a(a)'s broad confidentiality mandate. It argues that N.J.S.A. 9:6-8.10a(b) should be viewed to merely clarify that when a confidential child abuse record is disclosed as authorized by that subsection, anyone given access to it must treat it as confidential.

We view the State's construction of the statute to be reasonable. That determination, however, does not resolve the

statutory construction issue presented by this appeal. Given that the statutory language is subject to more than one reasonable interpretation, and that extrinsic sources do not resolve the parties' dispute, we find an ambiguity that "cannot inure to the benefit of the State." State v. Alexander, 136 N.J. 563, 573 (1994); see also State v. Sumulikoski, 221 N.J. 93, 110 (2015) ("To the extent that there is an unresolved ambiguity in the language of the endangering statute, the rule of lenity also cautions against reading the law against a defendant."). Applying the rule of lenity, we adopt the Appellate Division panel's construction of N.J.S.A. 9:6-8.10a and -8.10b, and concur with the panel that defendant's conduct is beyond the reach of N.J.S.A. 9:6-8.10b. Our holding, however, should not be viewed to minimize the gravity of the acts that led to defendant's prosecution.

It is in the domain of the Legislature to determine whether an individual who is unauthorized to view records deemed confidential under the statute, but who nonetheless knowingly gains access to such confidential records and disseminates them to others, is subject to the criminal penalties set forth in N.J.S.A. 9:6-8.10b. If the Legislature concludes that the State's position represents the better public policy, it has the power to amend N.J.S.A. 9:6-8.10a and -8.10b.

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this opinion.