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STATE OF NEW JERSEY,

Plaintiff,

-v-

TERRELL CHAMBERS

Defendant.

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY - CRIMINAL PART

Indictment No. 19-02-00338-I

Criminal Action

ORDER

THIS MATTER having been opened to the Court by Fusco & Macaluso Partners, L.L.C., attorneys for Defendant, Terrell Chambers, Alexandra E. Macaluso, Esq. appearing, good cause having been shown;

IT IS on this 6th day of MAY, 2020,

ORDERED that the Medical Records of the victim in the above entitled action be released for in camera review, in accordance to the Letter Opinion dated May 6, 2021, attached hereto, and it is further

ORDERED that a copy of the within Order be served on all parties not served on eCourts electronically, within 7 days hereof.

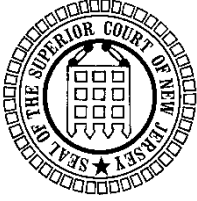
/s/ *Sheila A. Venable*
Sheila A. Venable, A.J.S.C

CC:
Nicole Buermann, Esq.
Terrell Chambers - Defendant

See Attached for Letter Opinion.

SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE

SHEILA VENABLE
ASSIGNMENT JUDGE



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ESSEX COUNTY COURTS BUILDING
NEWARK, NJ 07102
(973) 776-9280

May 6, 2021

Alexandra E. Macaluso, Esq.
P.O. Box 838
150 Passaic Avenue
Passaic, New Jersey

Re: State v. Terrell Chambers
Ind. No. 19-02-0338-I
Motion – Compel Discovery

Dear Ms. Macaluso:

This Letter Opinion is confirmation that this Court has received your Motion to Compel Discovery by the State. After reviewing your motion and corresponding case file, your motion is Granted in Part for the below reasons.

FACTS

On or about October 20, 2018, thirty one year old [REDACTED] (hereinafter “M.G.”) responded to the Newark Police Department to report that she was a victim of an alleged sexual assault committed by her cousin, Terrell Chambers. M.G. gave her voluntary statement to Detective Posada and Sergeant Mathis on October 20, 2018. The incident is alleged to have occurred the weekend of Saturday October 13, 2018 while she was spending the night at her best friend and cousin’s home, Teresa Chambers. Teresa Chambers is also the sister of Defendant Terrell Chambers.

M.G. told police that at some point in the early morning hours of October 14, 2018, around midnight or 1:00 a.m., she was intoxicated and fell asleep on the couch in the living room of Ms. Chambers’ home. (3T14:14-17). Mr. Chambers was also resting on the same couch, but a different part. (2T6:14-20). At some point after falling asleep, M.G. alleges that she woke up to Mr. Chambers performing oral sex on her. (3T4:1-10). M.G. indicated that she was too drunk to do anything, she blacked out a few times and that every time she regained consciousness, Mr. Chambers was attempting to perform, or performing, oral sex on her. (3T4:7-25). M.G. stated she tried to get herself up but could not because “the alcohol completely took over [her] body...” (3T4:10-13). M.G. stated she remembered calling out for Teresa a few times. (3T19:18-22; 41:18-21). Ms. Chambers, who remained awake the entire night, indicated she never heard M.G.

and that she “didn’t move” all night. (2T28:9-15). The only one awake with her all night was Mr. Chambers after sleeping for about 1.5 hours. (2T:4-8). Ms. Chambers heard and observed Mr. Chambers awake or on the phone for hours. (2T24:22-15; 2T25: 1-20; 2T46:8-11). M.G. stayed the entire night on the couch, until morning when she woke up, chatted with Ms. Chambers about her day, and then left to take her daughter to cheerleading. (3T34:15-24).

The Morning after the incident, M.G. and Mr. Chambers spoke on the phone, but did not mention the incident.

On October 21, 2018, M.G. responded to the Essex County Prosecutor’s Office Special Victims Unit to participate in a consensual intercept. The intercept on this occasion was between M.G. and Mr. Chambers. According to Detective Posada, Mr. Chambers made admissions during the call regarding the allegation. However, throughout the duration of the twenty-two minute call, Mr. Chambers denied the accusations multiple times and also stated multiple times that he was confused by the conversation.

On or about Monday, January 28, 2019, Mr. Chambers’ matter was presented to an Essex County Grand Jury. The Grand Jury returned Indictment No. 19-02-00338-I, charging Mr. Chambers with one count of Second Degree Sexual Assault, in violation of N.J.S.A. 2C:14-2c(1). Presently before this Court is Defendant’s Motion to Compel M.G.’s medical records.

DEFENSE ARGUMENT (MOVING PARTY)

Defendant argues there is a compelling need for the victims Mental Health Information because it relates to her credibility and her mental fitness to recall the alleged incident.

In criminal cases, the accused is entitled to broad discovery. *State v. D.R.H.*, 127 N.J. 249, 256 (1992). Pursuant to New Jersey Court Rule 3:13-3(b)(1), discovery is to include exculpatory information or material, as well as (c) “results or reports of physical or mental examinations of scientific tests or experiences made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor.” Under both the Federal and New Jersey Constitutions, criminal defendants have a “meaningful opportunity to present a complete defense.” *State v. Garron*, 177 N.J. 147, 168 (2003). In order to ensure that opportunity, each criminal defendant has the right “to be confronted by witnesses against him.” *State v. Gilchrist*, 381 N.J. Super. 138, 144 (App. Div. 2005).

Applying this standard, Defendant argues that the mental health information is crucial to its ability to have a meaningful opportunity to present a complete defense. M.G.’s ability to recall information as it relates to her credibility is under legitimate consideration by Defendant.

In this case, the incident rests on M.G.’s statement and her recollection of events alone. There was no physical conducted, no injuries observed, and the police did not response to the scene, instead the victim reported it the following day. M.G. alertness is presumed compromised because she admits, after her consumption of marijuana and alcohol, that she was unable to get up because “the alcohol completely took over my body, . . .” Further, M.G.’s witness Ms. Chambers claims she was up all night taking care of a newborn, in a very small apartment. Defendant argues that it would be highly unlikely that Ms. Chambers would have missed alleged assaults three separate times, or fail to hear the victim yell out for help.

“It is common knowledge among that M.G. has some sort of mental illness and instability.” Several sources indicate that M.G. has suicidal ideations, has attempted suicide, has been admitted into a psychiatric home, has mental illness, and acts out when under the influence.

Defendant introduces that M.G. had previously applied to the New Jersey State Police Academy, but was denied ability to do so after failing the psychological portion of the exam.

A mental illness could have distorted her perception of the alleged incident or it could have motivated an untrue or incomplete complaint of the alleged incident. This could present an explanation for the DNA. A mental illness could have motivated an intentional placement of the DNA by M.G. or distorted M.G.'s recollection of how it got there, for instance it could have transferred when Mr. Chambers was crying on M.G.'s shoulder. "Mixing alcohol with antipsychotics makes the prescription medicine less effective, so hallucinations and delusions may return. Antipsychotics can lead to sedation, sleepiness, or excessive fatigue, and drinking too much can enhance these effects." American Addiction Center Editorial Staff, Mixing Alcohol and Prescription Drugs, www.Alcohol.org, <https://www.alcohol.org/mixing-with/prescription-drugs/> (Last Updated: Dec, 18, 2019). If M.G. does have an illness and is prescribed medications for her mental health, her taking those prescriptions under the influence or her failure to take them that night could have distorted how she remembered, perceived, and recalled the event.

M.G.'s mental health is relevant as it could affect how she perceives, recalls, or relates an incident. M.G.'s neurological state is directly relevant to her credibility. If she was unable to clearly perceive the event, she could have falsified the complaint, been mistaken, misremembered, or dreamt it. The possibility of mistaken perception or recollection of an incident presents a legitimate need for the information which outweighs any possible prejudice.

If your Honor's inclined to deny Defendant's Motion to Compel M.G.'s medical records, the defense respectfully requests you first consider an in-camera review of the medical records to determine whether such prejudice actually exists, or if it does exist, if it is outweighed by the necessity.

STATE ARGUMENT

The State argues that Rule 3:13-3(b)(1)(C) requires the State to turn over to defense any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter...which are within the possession, custody or control of the prosecutor. The State argues it "is not in possession, custody or control of any victim's medical/mental health records.

The State argues that seeking "all medical records" for the victim is outside the scope of Rule 3:13-3, and therefore to secure this discovery requires a heightened standard of substantial need to justify the intrusion into the victim's rights. See *State v. Kane*, 449 N.J. Super. 119 (App. Div. 2017) (stating victim's pre-existing mental health records deserve comparable protection to a victim being compelled to submit to a psychological exam); see also *State v. Gomez*, 430 N.J. Super. 175, 184, 62 A.3d 933 (App. Div. 2013) (stating discovery is only appropriate when the requestor's right "clearly outweighs the victim's ... rights with respect to the specific discovery sought and its purpose"); N.J.S.A. 52:4B-36© (crime victims shall be "free from intimidation, harassment or abuse" by the defendant).

The State argues that the victim's intoxication level will be cross-examined in trial. Further, the statements regarding the mental health of the victim are allegedly based on "complete speculation and hearsay."

The court in *Kane* further held that because mental health records are privileged and/or confidential and numerous privileges apply, the defendant is required to justify piercing those

privileges. These records of the victim are privileged, and the Defendant does not rely on an exception to justify piercing that privilege.

Further, the Defendant has not demonstrated that the privileges are in any conflict with his right to a fair trial. See *State v. Gilchrist*, 381 N.J. Super. 138, 144, 885 A.2d 29 (App. Div. 2005) (stating the right to confront one's accusers "does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony"). Therefore, the Defendant is not entitled to M.B.'s "medical records" in this case.

ANALYSIS

The issue here is whether the right to keep a victim's medical records private is outweighed by the right of the Defendant to seek privileged information in pursuit of its own Defense. M.G., the alleged victim of this sexual assault, has refused to add to Discovery her medical records concerning her mental health, which Defendant claims is inhibiting his ability to provide a complete Defense. Defendant is claiming they need access to the victim's mental health medical records because it relates directly to the victim's credibility and ability to recall the alleged incident.

In criminal cases, the accused is entitled to broad discovery. *State v. D.R.H.*, 127 N.J. 249, 256 (1992). Pursuant to New Jersey Court Rule 3:13-3(b)(1), discovery is to include exculpatory information or material, as well as (c) "results or reports of physical or mental examinations of scientific tests or experiences made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor." Additionally, courts may also order discovery when "justice so requires." *State ex rel. W.C.*, 85 N.J. 218, 221 (1981). The rules of Discovery are purposefully broad, so as to allow a Defendant to seek whatever necessary to provide themselves with a complete defense. This applies to discovery material that may not be admissible in trial because of some future exception, but nonetheless is still required to be presented to both sides.

Here, Defendant relies on New Jersey Court Rule 3:13-3(b)(1)(C) to argue that he has a right to reach these medical records through discovery, which is correct. However, there is a specific caveat in this language: "reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter . . . which are within the possession, custody, or control of the Prosecutor." The State interprets this text to simply say they do not have that material, therefore Defendant cannot request it from them. In other words, the State is arguing that Defendant's request is out of scope for this Rule of Discovery because it is not exculpatory to the case. The State goes on further to argue that because this request is out of scope, the standard needed to justify this Discovery is: a heightened standard of substantial need to justify the intrusion into the victim's rights." *State v. Kane*, 449 N.J. Super. 119 (App. Div. 2017). This leaves the Court with the decision of weighing the factors of prejudice to the Defendant over the private privilege of the victim's medical records.

The court in *Kane* held that because mental health records are privileged and/or confidential and numerous privileges apply, the defendant is required to justify those privileges. *Id.* at 621-622; See NJRE 505 (psychologist-patient privilege), NJRE 506 (physician-patient privilege).

In *Kane*, the incident that lead to the Complaint was a tumultuous one, involving witnesses and police on the scene. There was a lot of evidence there to depict the scene, and there were not

many gaps and inconsistencies in the victim's reported observations of the crime. The court held that the medical records of the victim were not necessary because the burden was not met to show that the victim's loss of credibility would alter the facts. In other words, the victim's being impeached would not change the outcome because of the amount of evidence already present.

The present case is fundamentally different because there is not abundant evidence to assess the credibility of the victim. The present case relied very heavily on the victim's testimony, which in fact contradicts the claims of the only other witness that is not the defendant. The court in *Kane* denied the medical records motion because there were no gaps in reporting of the incident, and therefore the credibility of the victim, and piercing her privilege, was unnecessary. Here, there are abundant gaps in the facts, and the main source of facts may have a credibility issue, and Defendant cannot put on a full defense without these crucial details. Therefore, the next issue is whether the victim has a right to preclude standing to oppose efforts to undermine the rights of the defendant.

A court is required to "give as much effect as possible to the legislative judgments embodied in the privileges within ever-present constitutional limitations." *State v. Mauti*, 208 N.J. 519, 537, 33 A.3d 1216 (2012) (internal quotation marks and citation omitted). The Court recognized that Kozlov created a three-prong test for piercing a privilege. *Id.* at 537, 33 A.3d 1216. *Kozlov* held that a privilege may be pierced upon a showing that: (1) the party has "a legitimate need ... to reach the evidence sought to be shielded"; (2) the evidence is relevant and material to an issue before the court; and (3) the evidence could not be secured from a less intrusive source. *Kozlov*, supra, 79 N.J. at 243–44, 398 A.2d 882.

The court in *Kane* discusses the importance of a defendant's due process rights and the right to achieve discovery when necessary. The court establishes that right, but states that burden can be very high when that discovery intrudes on privileged information. In *Kane*, it was not that privileged information cannot be pierced, but rather the defendant did not show the legitimate need. Here, the Defendant still may not meet such a heavy burden, but his claims are reasonably based on legitimate claims. Defendant has a legitimate need to obtain this privileged information because this evidence sought can shed crucial light into the credibility of the incident's sole witness. Further, Defendant has made good faith claims that the evidence vital to the conviction could be tainted due to the actions of the victim. Lastly, there are no other methods to obtain these private medical records.

The burden to pierce privileged medical information is very high because victim's rights and privacies are fundamental. The only reason these privileges should be pierced is in the interest of fairness to the Defendant, while still protecting the victim. This Court has weighed both party's arguments and has given credence to Defendant's claims, but not so far as to give the Defendant unfettered access to the victim's medical records. Therefore, in the interests of justice and prejudice to the victim, this Court will Grant an in camera review of the victim's medical records. The Court will view, by way of in camera, 6 months prior to the incident, and 6 months after the incident, for a total of 1 year worth of medical records. If upon review, the Court finds it necessary to expand the medical record inquiry beyond that year, this Court reserves that right. By doing so, the Court will determine the validity of Defendant's claims, while observing the victim's privacy rights.

/s/ Sheila A. Venable
Sheila A. Venable, A.J.S.C.

Cc:

Terrell Chambers - Defendant

Nicole Buermann, Esq.

It is therefore on this 19th day of AUGUST, 2021:

ORDERED this matter returned to the Trial Court of record to conduct an in camera review.

 /s/ Sheila Venable
HON. SHEILA VENABLE, A.J.S.C.

Motions for reconsideration of final orders are governed by N.J. Ct. R. 4:49-2. The rule provides, in relevant part, that “a motion for rehearing or reconsideration . . . shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred. . .” R. 4:49-2. As indicated by Rule 1:7-4(b), however, motions to reconsider interlocutory orders shall be determined pursuant to Rule 4:42-2. An interlocutory order is “any order . . . which adjudicates fewer than all the claims as to all the parties . . .” R. 4:42-2. An order that dictates

venue is an interlocutory order. This Court's May 2021 Order is an interlocutory order as it only determined fewer than all of the claims as to all of the parties in this matter.

Interlocutory orders are "subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice." *Ibid.* The strict limitations imposed on final judgments and orders under Rules 4:50-1 and 4:49-2 do not apply to interlocutory orders. See *Johnson v. Cyklop Strapping Corp.*, 220 N.J. Super. 250, 257-64, (tracing the history of Rule 4:50-1 and declaring its "strict and exacting standards" do not apply to interlocutory orders); see also R. 4:49-2 (requiring motions to reconsider final judgments or orders be filed within 20 days of entry).

Although the power to reconsider an interlocutory order is expansive, this power should be exercised "only for good cause shown and in the service of the ultimate goal of substantial justice." *Johnson*, 220 N.J. Super. at 263-264. If it is "just" to do so, a court "in the exceptional case" may consider evidence not presented the first time around. *Lombardi v. Masso*, 207 N.J. 517, 536-37 (2011) (affirming reconsideration of summary judgment where judge decided to grant it sua sponte after a proof hearing). "Reconsideration is a matter within the sound discretion of the Court." *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990); see also *Fusco v. Bd. of Educ. of Newark*, 349 N.J. Super. 455, 462 (App. Div. 2002) (explaining that reconsideration is appropriate only where a court's decision was palpably incorrect or the judge obviously failed to consider competent evidence).

The Court is not persuaded that reconsideration of its May 2021 Order is appropriate. The State does not provide any additional or new information that was not previously considered by the Court. The Court already considered the privilege of the victim, individual privacy rights, and the method in which the records are to be requested. The Court already considered the burden placed on the Defendant in this case, as well as its relation to *State v. Kane*. Defendant will have his motion granted for an in camera review.

The Motion for Reconsideration is Denied. However, if it were granted, the Court would still come to the same conclusion as it did in the previous May Order, for the reasons set forth below:

The State is Compelled to Turn over the Requested Discovery

This Court confirms that the State is compelled to support the discovery request by the Defendant, despite the State's claims it is not in possession of the requested records. New Jersey Court Rule 3:13-3(b)(1)(C), requires the State to turn over to the defense any results or reports of physical or mental examinations which are in the possession, custody, or control of the prosecutor. Additionally, courts may also order discovery when "justice so requires," which includes exculpatory information or material. *N.J.State ex rel. W.C.*, 85 218, 221 (1981). When determining whether evidence is in the State's "possession, custody or control," courts have found that "a prosecutor is expected to act reasonably when responding to a discovery demand." *State v. Tull*, 234 N.J. Super. 486, 496 (Law Div. 1989) "The State cannot refuse production on

the ground that the requested information is not known by the prosecutor to be in existence when its existence is common knowledge or when the knowledge could be obtained by reasonable inquiry.” *Id.*

Here, the State insists it is unable to comply with the previous Order to Compel Discovery because “the State is not aware of any medical records, specifically mental health records, that exist.” The Court confirms its rejection of this argument because at this point in the discovery process, the State is aware that these records exist, through testimony of multiple witnesses, and as conceded to in their own version of the facts. Further, to merely obtain the records in response to the discovery request is not unreasonable, and not indicative of the record’s merits. Moreover, the State’s refusal to reasonably obtain the records, on the grounds of lack-of-knowledge or refusal to conduct a reasonable inquiry, renders a valid discovery request void.

The Court is not obliging the State to conduct an investigation as to whether such records exist. There is more than a preponderance of the evidence that these records do exist. Defendant is requesting a reasonable inquiry from the State, who is the main source of information toward the case, and also the main purveyor between the victim and the justice sought.

Significantly, whether it is the State or the victim, for who this request is made, the Court would come to the same conclusion i.e. that these records are discoverable for in camera purposes. Thus, when Defendant requested the medical records in good faith from the State, even if preferable to request directly from the victim, it is akin to a harmless error, and not enough to deny the Defendant’s request.

The in camera review process is appropriate for this matter, and will protect the individual rights of both Defendant and Victim. The United States Supreme Court recognized in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) that courts must weigh the conflicting constitutional rights of criminal defendants to a fair trial and the confrontation of the witnesses against the State’s compelling interest in protecting child abuse information and records. The Court in *Ritchie* warned, however, that a defendant’s confrontation rights do not include the power to require the pretrial disclosure of any information that might be useful for potential impeachment. *Id.* at 53. Such records may be disclosed by the court in whole or in part to the attorney or other appropriate person upon a finding that such further disclosure is necessary for determination of an issue before the court. In order to make the determination required, the court must undertake an *in camera* review of the documents in issue.

The Defendant, in order to be granted in camera review by this court, need only show that the records may contain information material to the defense of his charges; this includes information that may be necessary for determination of an issue before the court.

Here, the Defendant satisfies the minimal threshold of demonstrating that these records may contain exculpatory information as well as information related to the identification and credibility of witnesses. Although the State argues that even this prudent disclosure intrudes upon the victim’s rights and dilutes statutory privileges, the U.S. Supreme Court has found a fair trial can be fully ensured and protected by in camera review. *Ritchie*, 480 U.S. at 59-61.

In Conclusion, after weighing the arguments on both sides, this Court still believes an in camera review is the appropriate remedy. In the interests of justice, this Court will Grant an in camera review of the victim's medical records 6 months prior to the incident, and 6 months after the incident, for a total of 1 year worth of medical records.

The Motion for Reconsideration is DENIED.

This matter is returned to the Trial Court of record to conduct an in camera review.