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APPROVAL OF THE APPELLATE DIVISION**

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-0423-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CHRISTOPHER H. BLANK,

Defendant-Appellant.

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Submitted December 20, 2022 – Decided April 10, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey,  
Law Division, Atlantic County, Indictment No. 06-08-  
1914.

Christopher Blank, appellant pro se.

William E. Reynolds, Atlantic County Prosecutor,  
attorney for respondent (John J. Santoliquido,  
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals the denial of his second PCR motion, wherein he 1) sought to have Judge Jeffrey J. Waldman recuse himself from hearing a remand, 2) sought assignment of counsel, 3) made discovery claims against the State relating to a toxicology report, and 4) sought a new trial based on the alleged newly discovered toxicology report. Defendant also alleged ineffective assistance of counsel for failing to obtain the toxicology report.

Because we agree with the PCR court there was no discovery violation and the toxicology report is not newly discovered evidence that would have changed the jury verdict we affirm, substantially for the reasons set forth in Judge Waldman's well-reasoned, fifteen-page opinion. We also affirm the PCR court's finding defendant was not entitled to have counsel assigned because his PCR claims lack merit. We add the following comments.

Defendant was convicted by a jury of three counts of attempted murder and related offenses and was initially sentenced to eighty-five years in prison, pursuant to the No Early Release Act N.J.S.A. 2C:43-7.2, following a jury trial. The conviction was affirmed on appeal and the Supreme Court denied certification. State v. Blank, 208 N.J. 339 (2011).

On February 2, 2012, defendant filed his first petition for post-conviction relief (PCR), which was denied. Defendant appealed the denial of

his first PCR petition, and we affirmed the trial court. State v. Blank, No. A-4717-12 (App. Div. Nov. 20, 2014).

On October 4, 2019, defendant submitted his second motion for post-conviction relief and requested a new trial based on alleged newly discovered evidence. After considering the application on the papers, the trial court denied defendant's motion for a new trial and denied defendant's PCR petition. Defendant appealed and we remanded because defendant was not afforded oral argument. We ordered oral argument be held within 60 days.

Defendant then filed a motion requesting the assignment of counsel for his second PCR petition hearing. He also submitted an amendment to the second PCR petition, raising additional arguments alleging ineffective assistance of trial counsel. Defendant again requested counsel be appointed, which the court denied. Defendant then requested an adjournment to hire private counsel. The court granted an adjournment to May 28, 2021, indicating that private counsel was required to file an appearance by May 28, 2021.

Defendant then filed motions to recuse the PCR judge, renewed his request for assignment of counsel, compel discovery, and for an evidentiary hearing. As of May 28, 2021, private counsel had not entered an appearance.

The court heard oral argument on May 28, 2021, on the PCR petitions and the various motions before it and denied defendant's motions and petition. This appeal followed.

Defendant argues the State committed Brady<sup>1</sup> violations by failing to produce a toxicology report in discovery, claiming if the report had been available at trial, he could have mounted a successful diminished capacity defense. Defendant also argues the toxicology report constitutes newly discovered evidence and he is entitled to a new trial pursuant to State v. Carter, 85 N.J. 300, 314 (1981).

Defendant's claim is belied by the record and lacks merit in both fact and law. As noted by the PCR court after the hearing, defendant was aware of the report's existence at the time of trial, as evidenced by his recollection of the test being performed after he was arrested, and his awareness of his own prior history of drug use. The court correctly found defendant made a conscious trial strategy decision to abandon a diminished capacity defense in favor of arguing self-defense, despite other evidence of his drug use during the commission of the crime. Furthermore, the report was in the possession of the hospital, not the prosecutor.

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<sup>1</sup> Brady v. Maryland, 373 U.S. 83 (1963).

Rule 3:13-3(b)(1) requires "automatic disclosure of evidence that is exculpatory or otherwise relevant." State v. Desir, 245 N.J. 179, 204 (2021). Our jurisprudence has extended the automatic disclosure requirements to discoverable material actually known to the prosecutor or within its possession. Id. at 205-06 (holding lab report analyzing substance sold by defendant outside of automatic disclosure requirement of Rule 3:13-3(b)(1), but otherwise discoverable because it informed the "evidentiary pillar" for search relevant search warrant); see also State v. Blake, 234 N.J. Super. 166, 168-69 (App. Div. 1989) (prosecutor withholding admissions made by defendant violated Rule 3:13-3(a) discovery obligations and deprived defendant of fair trial). The rule does not compel the automatic disclosure of items possessed by a third party. See generally Pressler and Verniero, Current N.J. Court Rules, cmt. 3.3. to R. 3:13-3 (2023).

Defendant urges us to adopt a broader interpretation of the disclosure requirements in Rule 3:13-3 than contemplated by the rule or our jurisprudence. We decline to do so, particularly because defendant was aware of the toxicology report, specifically knew it was in the hospital's possession, and opted to not use it, not pursuing a diminished capacity defense in favor of

arguing self-defense. The toxicology report does not constitute newly discovered evidence, pursuant to Carter.

To the extent we have not addressed them here, the rest of defendant's arguments are without sufficient merit to warrant written discussion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION