NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-1900-22
A-2279-22

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ANGELO MAURO,

Defendant-Respondent.

APPROVED FOR PUBLICATION

June 20, 2023

APPELLATE DIVISION

Argued April 18, 2023 – Decided May 10, 2023

Before Judges Messano, Rose and Perez-Friscia.

On appeal from interlocutory orders of the Superior Court of New Jersey, Law Division, Middlesex County, Indictment No. 19-10-1682.

Erin M. Campbell, Assistant Prosecutor, argued the cause for appellant (Yolanda Ciccone, Middlesex County Prosecutor, attorney; Erin M. Campbell, of counsel and on the briefs).

Amy Luria argued the cause for respondent in A-1900-22, and Armando B. Suarez argued the cause for respondent in A-2279-22 (Critchley, Kinum & Luria, LLC, attorneys; Michael Critchley, Amy Luria and Armando B. Suarez, of counsel and on the briefs).

The opinion of the court was delivered by

ROSE, J.A.D.

By leave granted, the State appeals from a January 19, 2023 Law Division pretrial decision, barring the admission of location data from the alleged victim's cell phone and a voice mail purportedly sent from defendant Angelo Mauro to co-defendant, Aventino Rodrigues.[1] The court barred the evidence because it was provided by the State after the trial court's December 9, 2021 decision, mandating the production of any outstanding discovery by January 6, 2022.[2] While that appeal was pending, we also granted the State leave to appeal from a February 21, 2023 order, denying the State's motion for reconsideration of an October 7, 2022 order, which barred the admission of two text messages allegedly sent by defendant as cumulative to other stipulated N.J.R.E. 404(b) evidence and fraught with impermissible hearsay. Calendared back-to-back, we consolidated these appeals for purposes of our opinion. Having reviewed the record in view of the governing legal principles, and because on this record we cannot conclude the trial court abused its discretion in either appeal, we affirm.

[1] Rodrigues's name also is spelled in the record as Rodriguez. We use the more frequently cited reference.

[2] The December 9, 2021 and January 19, 2023 decisions were issued from the bench; neither was accompanied by a memorializing order.

I.

We summarize the underlying facts and set forth the tortured procedural history in some detail to lend context to the trial court's decisions. In January 2019, defendant Angelo Mauro, Rodrigues, Leandro DaSilva, and Abner Mendonca, were charged in a multiple-count Middlesex County indictment, with conspiracy to commit kidnapping, kidnapping, and related weapons offenses. In October 2019, the State obtained a superseding indictment, charging similar crimes against defendant, DaSilva, and Mendonca. Rodrigues, who had pled guilty and agreed to cooperate against defendant, was not named in the second indictment.[3]

The State alleges defendant targeted the victim, L.P., a friend and business associate of defendant's sister, Rosalie Bennett. The siblings were allegedly involved in a longstanding dispute regarding the business affairs of their mother's estate. Defendant filed a civil lawsuit against Bennett, asserting she misappropriated funds from the family's car dealership business.[4] According to

[3] DaSilva, Mendonca, and Rodrigues are not parties to this appeal.

[4] The civil complaint was not provided on appeal; we glean the allegations from the record.

the State, the family feud provided proof of defendant's motive for the August 14, 2018 kidnapping.

The details underlying the alleged kidnapping are disputed and not pertinent to this appeal. It suffices to say the State claims defendant requested Rodrigues's assistance in kidnapping L.P. to elicit her knowledge about the misappropriated funds. Rodrigues, in turn, purportedly engaged DaSilva and Mendonca to commit the kidnapping. During the ordeal, defendant's cohorts allegedly taped L.P.'s face and limbs with duct tape provided by defendant; took L.P.'s cell phone; and demanded "the money" and L.P.'s bank account numbers. At some point, the men left L.P. alone and she freed herself. Realizing she had been "held in the barn directly across the private road from Bennett's house[,] L.P. ran to Bennett's house and the police were called."

According to the trial prosecutor's February 8, 2023 certification in lieu of transcripts and in support of the State's initial motion for leave to appeal (February 8, 2023 certification), the State undertook various investigative steps after L.P. reported the crime on August 14, 2018. The State obtained: exigent authorization to access defendant's phone records; cooperating statements from Rodrigues and his consent to search his Apple iPhone 7 cell phone; L.P.'s consent to search her iPhone; exigent authorization to access L.P.'s phone data;

and approval for communications data warrants (CDW) "to obtain historical data on both phone numbers Rodrigues was using during the time of the crime and the phone number L.P. was using during th[at] time." According to the February 8, 2023 certification[5]:

> A search of Rodrigues's cell phone revealed a voicemail from defendant in the days preceding the crime during the course of the conspiracy. On the voicemail, defendant tells Rodrigues, "You're starting to worry me." The State intended to introduce this statement against defendant as consciousness of guilt, proof of the conspiracy, and corroboration for Rodrigues's version of events.

The prosecutor further asserted:

> L.P.'s cell phone contained location data during the commission of the crime. The location data contained therein shows a path from L.P.'s home to the Mauro family [car] dealership in Woodbridge to defendant's property in Colts Neck. The State intended to use this data to corroborate the version of events given by L.P. and Rodrigues.

On January 28, 2019, defendant was arraigned on the initial indictment with the assistance of retained counsel, who no longer is employed by the law firm engaged by defendant (first attorney). The arraignment order indicates

[5] For the reader's ease, we omit the certification's paragraph numbers.

"Post Indictment Discovery" was "to be provided," but the date by which to do so was left blank.

According to the State's March 13, 2019 "Discovery Index," a "Supplemental Transmittal" of forty-four items was provided to the first attorney. Relevant here, those items included, without detail, "Photos of Text Messages," and a hard drive containing, among other things, "Phone Records from Search Warrants."

Defendant was represented by the first attorney at the November 1, 2019 arraignment on the superseding indictment. The accompanying order neither indicates whether all discovery by the State had been provided nor was outstanding. Stated another way, the form of order provides a box for either option; neither was checked.

Following the December 9, 2019 conference, the court issued a pretrial memorandum, reflecting a May 4, 2020 trial date. According to the memorandum, outstanding pretrial discovery only included unspecified "CDW discovery" and "[a]dditional cooperation discovery of co[-]defendant."[6]

[6] The parties did not provide the transcripts of the arraignment hearings or the December 9 pretrial conference. Only defendant appeared at the conference; DaSilva and Mendonca were fugitives; Rodrigues previously entered his guilty plea.

According to the February 8, 2023 certification:

> In early March 2020 a meeting was h[el]d at the Middlesex County Prosecutor's Office [(MCPO)] with [Michael] Critchley and [the first attorney] to review the physical evidence, and additional items the defense was not in possession of were provided.
>
> The COVID-19 pandemic began shortly thereafter. Due to courts operating on an entirely remote basis, the original trial date of May 4, 2020 was adjourned.
>
> In order to minimize potential exposure to COVID-19, employees at the [MCPO] reported on a mostly remote schedule. This made it difficult for the undersigned to meet with case detectives and ensure that the undersigned's file was complete.
>
> A Blu-ray disc of a "Mauro iPhone extraction" was turned over on or about July 6, 2020. That extraction was for Rodrigues'[s] phone.

In April 2021, the first attorney withdrew as defendant's counsel of record. Thereafter, Critchley, Amy Luria, and Armando B. Suarez, of the same firm, substituted as counsel. Two months later, defense counsel requested a meeting prior to the scheduled June 9, 2021 pretrial conference "to review and inspect the State's file," and "an inventory of all discovery that the State had previously tendered to [defendant], to ensure that the defense had all discovery." According to the trial prosecutor, the first attorney left the file in "shambles."

Although the prosecutor was amenable to the meeting, it is unclear from the record whether the meeting or the June 9 conference occurred. The record instead reveals the trial prosecutor sent defense counsel discovery indices, reflecting various materials that were previously provided to the first attorney. Suarez responded that the firm could not locate the "hard drive" and requested a duplicate copy.

In August 2021, the State filed an N.J.R.E. 404(b) motion to admit certain information relative to the estate litigation; defendant's 2017 reporting to the MCPO that Bennett and L.P. allegedly stole money from him and the family's estate; and Mauro's private investigation of L.P. conducted in 2016, concerning the removal of funds from the estate. The following day, defense counsel requested all discovery related to the motion.

At some point, DaSilva was arrested on a bench warrant and held in ICE custody.[7] On November 1, 2021, the court granted DaSilva's motion for severance, and the State indicated it would move his trial before defendant's. The State acknowledged it had not yet provided the discovery underlying its N.J.R.E. 404(b) motion, or the criminal case history for Rodrigues and DaSilva. The court scheduled a pretrial conference for December 9, 2021, stating:

[7] DaSilva has since been removed from the United States.

> one week before December 9, I need all discovery completed; everything turned over. Scratch that . . . no, by the end of the month. Yeah. Okay. And I say that because . . . I can't believe that there's anything to turn over. We've been dealing with his case now for . . . almost two years now.

On November 12, 2021, the State provided the defense a CD labeled "Civil Litigation" in support of its N.J.R.E. 404(b) motion. According to Suarez's November 18, 2021 responding letter: "The CD contains multiple folders, each comprised of multiple subfolders, each containing numerous files – which are untitled and unidentifiable – totaling nearly 14,000 pages of documents." Accordingly, the defense asked the State to identify the documents that it sought to admit in support of its N.J.R.E. 404(b) motion.

On December 2, 2021, the State filed a motion to admit defendant's statements. In its brief supporting the motion, the State "reference[d] pictures of text messages provided by Rosalie Bennett to Colts Neck Detective Steven DeCesare." Copies of the text messages were not annexed to its submission.

During the December 9, 2021 pretrial conference, the prosecutor acknowledged he had reviewed about one-third of the civil-litigation documents and, as such, could not disclose which documents were relevant to the State's N.J.R.E. 404(b) motion. The prosecutor further indicated one additional piece of discovery remained outstanding, i.e., "supporting paperwork for the trip

[defendant] had planned to Costa Rica." The court ordered "everything to be turned over in this case by January 6th, all of it. Whatever's outstanding after January 6th is left out in the cold. It's not a part of this case . . . because it was never a part of the case." Noting defendant was first arraigned in January 2019, the court reasoned that the January 6, 2022 discovery deadline was not "unfair." According to the court, "three years [wa]s sufficient to . . . have collected all discovery in a particular case." The court made clear the deadline applied to reciprocal discovery.

The court also suggested the parties meet and confer before the February 3, 2022 return date to ensure defendant had received all discovery. Referencing Rule 3:13-3(b)(1),[8] the court indicated "the State is supposed to provide an itemized list of what's contained in th[e] discovery packet . . . to avoid a discovery dump of 14,000 pages without identifying what . . . the packet [is] all about." One day later, on December 10, 2022, the State produced unspecified Elizabeth police reports.

On the February 3, 2022 return date, Suarez advised that the parties had not met and the defense had not "gotten anything from the State." The

[8] Rule 3:13-3(b)(1) provides, in pertinent part: "The prosecutor shall also provide defense counsel with a listing of the materials that have been supplied in discovery."

prosecutor replied he was unable to schedule the meeting because he had been "sick for a month and a half"; "there were COVID cutbacks in the departments"; and he "couldn't get part of the evidence . . . from Elizabeth." He acknowledged he was still in the process of reviewing the 14,000-page estate-litigation discovery.

On February 9, 2022, the parties met at the MCPO. On March 8, 2022, Suarez sent a follow-up letter to the trial prosecutor requesting, among other documents, copies of text messages referenced in the State's brief supporting its N.J.R.E. 404(b) motion.

At some point, defendant moved to suppress evidence seized during the warrantless search of his barn, but the July 21, 2022 testimonial hearing was postponed due to defendant's "emergent" hip replacement. During the conference held that day, Luria asserted the State had not identified which of the 14,000 pages of documents supported its N.J.R.E. 404(b) motion, or produced the text messages that underpinned its motion to admit defendant's statement. The prosecutor countered that the text messages had been turned over. During the ensuing August 18, 2022 conference, however, the prosecutor clarified: "The text messages were listed in the initial discovery, and I had them, but misplaced them. They weren't turned over."

Meanwhile, following the August 11, 2022 suppression hearing, the court again addressed the State's failure to identify the documents from the 14,000-page estate-litigation discovery underlying its N.J.R.E. 404(b) motion and the outstanding text messages. The court afforded the State until the following Tuesday, i.e., August 16, 2022, to produce the text messages and the inventory pertaining to the 14,000-page civil-litigation documents.

On August 15, 2022, the State identified the civil-litigation documents pertinent to its motion and produced screen shots of text messages purportedly sent on September 28, 2016 from defendant to his brother, Michael Mauro. The State claimed the texts pertained to money L.P. allegedly brought to Bennett. The State neither produced a report nor statement describing the circumstances under which the text messages were provided to the MCPO.

During the September 23, 2022 hearing, Suarez advised defendant did not oppose the State's N.J.R.E. 404(b) motion pertaining to the civil-litigation documents identified in the prosecutor's August 15, 2022 correspondence. However, defendant objected to the admission of the text messages, essentially contending the messages were not authenticated, and characterizing their content as "pure[] hearsay." The State argued the text messages were admissible as "motive and statements of a defendant." Noting defendant's trial would not

start until February 2023, the prosecutor acknowledged he had not yet disclosed who would testify about the messages.

Following a lengthy discourse between the court and the prosecutor concerning the State's obligations under the discovery rules, the court denied the State's request for an N.J.R.E. 104 hearing. But the court carried the motion, affording the State until the following Monday, i.e., September 26, 2022, to provide an investigative report to clarify how the State obtained the text messages. The State did not meet the deadline.

According to defendant's brief in opposition to the State's second appeal, the investigator's September 30, 2022 report concerning the messages was not provided until October 7, 2022. According to the report, Bennett "mailed [the investigator] an envelope containing copies of text message conversations . . . referencing conflict between the family members pertaining to money." One of the numbers set forth in the text messages was attributed to a phone subscribed by defendant, the other number "yielded no results for subscriber information."

After considering argument on October 7, 2022, the trial court excluded the text messages, finding they were cumulative to the stipulated-to civil-litigation documents. The court further found the messages subject matter "questionable, . . . undecipherable . . . [and] full of hearsay." The memorializing

order did specifically reference the text messages. The court scheduled a June 12, 2023 trial date.

On January 19, 2023, following the denial of an unrelated motion that is not challenged on appeal, Suarez advised the State had not provided "L.P.'s historical cell phone data until last week," and "L.P.'s cell phone extraction until yesterday." Suarez noted this data was "obtained [by the State] in August of 2018," and referenced in the December 9, 2019 pretrial memorandum as outstanding "CDW discovery."

Suarez further stated that on December 23, 2022, the State provided an "expert disclosure and proffer letter" concerning historical data for phone numbers subscribed by defendant and L.P., and "tower dumps" from three locations. According to the letter, the State intended to call an MCPO representative, who had not yet been identified, "as an expert in the area of mobile telecommunications data analysis." The State provided a general synopsis of the proposed expert's testimony and further indicated the expert would "testify about the location of cellular towers reflected or derived from the [enclosed] records as a visual aid similar to pages one to ten of the attached presentation."[9]

[9] The presentation was not provided in the appendices on appeal.

The court granted defendant's application to bar any discovery produced after the January 6, 2022 deadline, previously ordered by the court on December 9, 2021. Addressing the defense, the court elaborated:

> My order from last year still stands. Everything that . . . you received after that order [is] . . . not part of the State's case. Everything that you get now that is dated before that order [is] not part of the State's case. You could use it if it's exculpatory. The only thing that I will have to allow now, given my order and given the way this case has developed, is information that they develop now, that they could only have developed now, that I would have to take a look at before I decide to either make it part of that order or allow it in now. Because, they still have the continuing obligation to engage in discovery.

The judge excluded the CDW discovery and any forthcoming expert report pertaining to the data. Following another animated exchange with the prosecutor concerning the discovery rules, the court stated:

> Listen, if you're going to use an expert, you've got to turn over the report. It can't be thirty days before trial, because they need an opportunity to look at the expert report and decide whether they're going to . . . get an expert to refute that.
>
> . . . .
>
> Okay. That discovery has no meaning attached to it and you can't wait in year six, thirty days before the trial, to say now is when I'm going to get off my ass and have an expert review this discovery that I had in 2018 when I should have done it then.

The court declined the prosecutor's request to issue a memorializing order barring an expert report regarding defendant's cell phone data. Instead, the court "reaffirm[ed]" its January 6, 2022 "order." The trial prosecutor noted the January 6 decision was not accompanied by an order; the court responded: "Don't play around."

On February 8, 2023, the State moved for leave to appeal from the court's January 19, 2023 decision. Five days later, the State moved for reconsideration of the trial court's October 7, 2022 order. During oral argument on February 21, 2023, the State maintained the messages corroborated defendant's "belief . . . that L.P. was complicit in Rosalie Bennett's misappropriat[ion] of funds from the estate." The State sought to introduce the messages through Bennett and Michael Mauro but did not provide a statement from either potential witness or a report memorializing their proposed testimony. In addition, Suarez asserted that the week prior, the State provided "approximately 650 pages of CDW results" regarding Rodrigues's cell phone, including "9,000 data location points for July and August 2018 and thousands of phone calls."

Immediately following argument, the trial court denied the State's reconsideration motion, reasoning:

> I thought I was going to listen to arguments, go in the back, reread the law, look at the stuff again,

> refresh myself, but . . . this is Groundhog's Day for me. . . . I'm doing this all over again.
>
> And it's not inappropriate at all for me to say my January 6th order that indicates that anything that was not turned over to defense counsel that was in the State's possession prior to January 6th is not part of the . . . State's case-in-chief.
>
> Let me be clear about that. Appellate Division, listen. What I'm saying is that the State cannot use it as part of their case-in-chief because they did not comply with the discovery obligation to turn it over after several conferences over several months where I implored the State to go over and through their file alone and with defense counsel, to research every scrap of paper in that file, to turn over what needs to be turned over.
>
> That's why I came to the – I'll even say it, strange, extraordinary, not often-ordered order that says, "Whatever you have that you haven't turned over, after . . . January 6th doesn't come in . . . [except] anything brand new that was discovered by the State."

The court issued a memorializing order on February 21, 2023, denying reconsideration. The State then moved for leave to appeal from that order on March 17, 2023.

Thereafter, we granted defendant's motion to supplement the record before us on the State's initial motion for leave to appeal. Defendant contends the State's discovery violations are ongoing.

According to defendant's supplemental brief, on February 21, 2023, the court also issued a scheduling order, mandating the production of "all discovery in the State's possession" by February 22, 2023; all discovery referenced in the February 8, 2023 certification; and "expert reports regarding the data analysis of all cellular records and information," including the phone extractions pertaining to Rodrigues's phone and L.P.'s phone, and the "tower dumps" regarding certain locations in Colts Neck, Fords, and Elizabeth by March 23, 2023.

The following day, the trial prosecutor sent correspondence to the court, objecting "to the proposed form of order." The prosecutor declined to "produce expert reports for data which (1) the State is barred from using in their case-in-chief or (2) that which the State does not intend to use in either its case-in-chief or (if the [c]ourt is reversing its order) in rebuttal." The court did not respond to the prosecutor's request to clarify the order. The State did not move for leave to appeal from the February 21, 2023 scheduling order.

II.

Against that protracted procedural backdrop, we consider the State's contentions in view of seminal principles that underscore a prosecutor's duties and responsibilities. "Prosecutors are required to turn square corners because

their overriding duty is to do justice." State v. Garcia, 245 N.J. 412, 418 (2021). In view "of the overwhelming power vested in his office, [a prosecutor's] obligation to play fair is every bit as compelling as his responsibility to protect the public." State v. Torres, 328 N.J. Super. 77, 94 (App. Div. 2000); see also R.P.C. 3.8 (setting forth a prosecutor's "special responsibilities"). "The heightened responsibilities of prosecutors include faithful adherence to all . . . protections accorded defendants." State v. Harvey, 176 N.J. 522, 529 (2003) (alteration in original) (quoting State v. Carreker, 172 N.J. 100, 115 (2002)). Among those protections is the defendant's right to discovery.

Discovery rules are intended to achieve fairness. State v. Bellamy, 329 N.J. Super. 371, 376 (App. Div. 2000). In accordance with Rule 3:13-3, "[a] defendant is entitled to know the State's case against him within reasonable time to permit the preparation of a defense." Ibid. "The principal purpose of our discovery rules is to assure the parties every legitimate avenue of inquiry prior to trial to enhance the search for the truth." State v. Burnett, 198 N.J. Super. 53, 58 (App. Div. 1984).

Rule 3:13-3(b)(1) codifies the criminal defendant's "right to automatic and broad discovery of the evidence the State has gathered in support of its charges." State v. Desir, 245 N.J. 179, 193 (2021) (quoting State v. Stein, 225 N.J. 582,

594 (2016)); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 3.1 on R. 3:13-3 (2023). The State's duty to provide the requisite discovery commences "upon the return or unsealing of the indictment," R. 3:13-3(b)(1),[10] and continues during the course of a criminal proceeding, R. 3:13-3(f). "[T]he rule creates a presumption of access to the file and to copies of the evidence, which results either in the complete turnover of the material or in restricted access when necessary . . . ." State v. Scoles, 214 N.J. 236, 257 (2013). If the trial court determines that the State has failed to comply with its discovery obligations under the rule, the court "may order such party to permit the discovery of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate." R. 3:13-3(f).

The rule thus provides the trial court various sanctions for discovery violations. See State v. Clark, 347 N.J. Super. 497, 508 (App. Div. 2002). However, "the sanction of preclusion is a drastic remedy and should be applied only after other alternatives are fully explored." State v. Scher, 278 N.J. Super. 249, 272 (App. Div. 1994); see also State v. Washington, 453 N.J. Super. 164,

[10] See also R. 3:9-1(a) (providing "all available discovery . . . shall be provided by the prosecutor's office" when an indictment is returned or unsealed).

190 (App. Div. 2018). We have nonetheless recognized "repeated and flagrant derelictions" of the discovery rules, even by the defense, "may require application of the sanction of preclusion." Burnett, 198 N.J. Super. at 61.

"A trial court's resolution of a discovery issue is entitled to substantial deference and will not be overturned absent an abuse of discretion." Stein, 225 N.J. at 593. However, we will not defer to discovery orders that are "well 'wide of the mark' or 'based on a mistaken understanding of the applicable law.'" State v. Hernandez, 225 N.J. 451, 461 (2016) (first quoting State in the Int. of A.B., 219 N.J. 542, 554 (2014); and then quoting Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011)). We review de novo a court's rule's meaning or scope. State v. Tier, 228 N.J. 555, 561 (2017). Unless persuaded by a trial court's reasoning, appellate courts do not defer to the court's interpretation of a court rule. Ibid.

A. The January 19, 2023 decision barring the exigent ping of L.P.'s phone and the extraction of Rodrigues's phone.

During oral argument before us on the first appeal, the State clarified its application was limited to that part of the court's January 19, 2023 decision barring the exigent ping of L.P.'s phone and the extraction of Rodrigues's phone so that the State could provide expert reports pertaining to that data. The State indicated the trial prosecutor only had provided defendant the December 23,

2022 proffer letter; Luria acknowledged the firm had received an expert report in March 2023 but that report only pertained to the exigent ping regarding L.P.'s phone.

The State maintains, however that the court abused its discretion by imposing the January 6, 2022 deadline because no trial date had been scheduled and motions were still pending on December 20, 2021, when the deadline was imposed. In its merits brief, the State argues: the court "erred in foreclosing the possibility that the State could retain an expert to testify to the phone extractions six months prior to trial"; "[t]he phone extractions were discovered to defendant several months in advance of trial and well outside the thirty-day window contemplated by Rule 3:13[(b)]"; "[t]he State gained no advantage from the late discovery"; "defendant is not prejudiced by the [late] disclosure"; and the court could continue the matter to afford defendant "more time to review the extractions and possibly retain an expert." We are not persuaded.

The State misapprehends the "thirty-day" timeframe of the discovery rule. Pursuant to Rule 3:13-3(b)(1)(I), "[e]xcept for good cause shown," the State's obligation to provide discovery to the defendant "upon the return or unsealing of the indictment," includes:

> names and addresses of each person whom the prosecutor expects to call to trial as an expert witness,

> the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Except as otherwise provided in R. 3:10-3, if this information is not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

The rule is clear. The "thirty-day window" advanced by the State pertains to the latest date on which the expert information must be provided by the State. Ibid. The rule does not apply to the underlying data supporting the expert's opinion. Stated another way, the underlying data is due when the indictment is returned or unsealed, unless the State can demonstrate good cause for delayed disclosure.

Moreover, the rule does not prohibit a trial court from enforcing the State's discovery obligations, regardless of the trial date. Noting the data at issue "has no meaning attached to it" without an expert report, the court implicitly recognized defendant was entitled to that evidence "within reasonable time to permit the preparation of a defense." See Bellamy, 329 N.J. Super. at 376.

The January 6, 2022 deadline was not arbitrary. The deadline was imposed two years after defendant's initial arraignment. The court did not

"immediately impose[] the draconian remedy of preclusion" of evidence disclosed after the deadline as the State contends.

The court barred the evidence following multiple conferences during which the court repeatedly suggested the parties meet and confer to review discovery, and the prosecutor's repeated failures to disclose evidence or itemize the discovery that had been disclosed in violation of R. 3:13-3(b)(1). Indeed, the State did not provide the cellular data for L.P.'s phone until January 2023 and the cellular data for Rodrigues's phone until February 2023. When viewed through the prism of the State's various discovery violations, we therefore cannot conclude the court abused its discretion by barring this forensic evidence. See Clark, 347 N.J. Super. at 508; Burnett, 198 N.J. Super. at 61.

We nonetheless recognize the court's February 21, 2023 scheduling order – which is not the subject of this appeal – seemingly extended previously-imposed deadlines. Accordingly, our decision does not restrict the trial court from modifying any of its discovery deadlines.

B. The February 21, 2023 order denying reconsideration of the October 7, 2022 order.

Defendant noted the State's reconsideration motion was filed five months after the court barred admission of the text messages. The trial court did not address the timeliness argument, deciding the motion on the merits. See

Lombardi v. Masso, 207 N.J. 517, 534 (2011) (reiterating "the trial court has the inherent power to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders at any time prior to the entry of final judgment" (quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987))); see also R. 4:42-2(b) (providing interlocutory orders "shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice"); State v. Timmendequas, 161 N.J. 515, 554 (1999) (applying the principle to criminal cases).

Turning to the merits, the court denied the State's reconsideration motion, citing its January 6, 2022 discovery deadline. However, that deadline did not govern the text messages at issue. The record reveals the court afforded the State until August 16, 2022 to produce the text messages and the State met that deadline. Instead, its October 7, 2022 order barred admission of the text messages because they were cumulative to the stipulated-to civil-litigation evidence, contained hearsay, and were not authenticated. We nonetheless discern no reason to disturb the court's decision denying reconsideration.

The State first disclosed Bennett and Michael Mauro would testify about the text messages at issue in its trial brief supporting the reconsideration motion.

The State has not provided a statement of either witness. Nor does the record reveal a proffer from the State explaining how Bennett received the messages purportedly sent from defendant to Michael Mauro, or a summary of his testimony – even though the record reflects the prosecutor had the text messages since the inception of the case "but misplaced them." However, as the State acknowledged during oral argument before us, the January 6, 2022 discovery deadline barred the forensic data that identifies the phone number captured in the photograph of the text messages. Because the underlying data was excluded under the January 6 deadline, we cannot conclude the court abused its discretion in refusing to reconsider its October 7, 2022 order.

* * * *

In summary, we recognize the delays in this lengthy pretrial litigation are not solely attributable to the State. The case was indicted prior to the pandemic; defendant's first attorney apparently left the file in disarray when he left the firm; and defendant was granted an adjournment of his suppression motion. Nor does the record reflect the trial prosecutor willfully withheld discovery. We further recognize the court's frustration with the delays at times resulted in exchanges with the trial prosecutor that lacked decorum. Nonetheless, the prosecutor's failure to provide discovery timely, or itemize the discovery that was disclosed,

fell short of his obligation to protect defendant's right to that information. See Harvey, 176 N.J. at 529; Bellamy, 329 N.J. Super. at 376.

Affirmed.