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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2658-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAJAN D. MINDINGALL,

Defendant-Appellant.

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Argued January 10, 2023 – Decided March 13, 2023

Before Judges Gilson and Rose.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 20-10-0689.

Scott M. Welfel, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Scott M. Welfel, of counsel and on the briefs).

William P. Miller, Assistant Prosecutor, argued the cause for respondent (Mark Musella, Bergen County Prosecutor, attorney; William P. Miller, of counsel and on the brief).

## PER CURIAM

On leave granted, defendant Dajan Mindingall appeals from a March 10, 2022 order denying his motion to compel discovery. A grand jury charged defendant with thirty-four offenses related to eight armed robberies. Defendant thereafter moved to suppress his post-arrest statement to detectives, arguing his initial invocation of his right to counsel had not been honored because – contrary to what the State claimed – detectives, not defendant, reinitiated the communications that led to his further interrogation and admissions. In connection with the motion to suppress, defendant sought (1) "the policies and procedures for taking statements from suspects and witnesses and/or policies on suspects in custody for the Bergen County Prosecutor's Office (BCPO);" and (2) access, with an investigator, "to view the location where the interview took place and where the recordings [were] made." The trial court denied those requests, finding that neither would lead to relevant evidence of whether defendant reinitiated the communications with the detectives. We affirm because we cannot say that the trial court abused its discretion. We, therefore, remand this matter and lift the stay that we had entered pending this appeal.

## I.

The discovery requests were made after the first day of an evidentiary hearing on defendant's suppression motion. Consequently, we take the facts from the limited record, recognizing that more facts will be developed as the evidentiary hearing continues. We also recognize that the ruling on the discovery motion hinged on an evaluation of the relevancy of the request at the time that those requests were made.

The charges against defendant relate to a string of eight armed robberies committed between December 2019 and February 2020. On February 6, 2020, detectives from the BCPO arrested defendant. He was then taken to the BCPO's Paramus office where he was interrogated and ultimately made incriminating admissions.

In October 2020, a grand jury charged defendant and a co-defendant with thirty-four offenses: eight counts of first-degree armed robbery, N.J.S.A. 2C:15-1; eight counts of second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1; eight counts of second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b); eight counts of second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a); and two counts of first-degree kidnapping, N.J.S.A. 2C:13-1(b).

Defendant moved to suppress the statement he gave on February 6, 2020. He contends that he had invoked his right to counsel and the interrogation had stopped. He also alleges that thereafter detectives initiated further communications with him or "otherwise improperly enticed" him to speak with them without an attorney. He, therefore, asserts that his statement was taken in violation of his rights under the Fifth and Sixth Amendments to the Constitution.

On January 26, 2020, the trial court began the evidentiary hearing on defendant's suppression motion. On that day, BCPO Detective Walter Kumka testified. Kumka explained that he and Detective Jakub Glebocki of the BCPO arrested defendant on February 6, 2020. They took defendant to the BCPO's Paramus office and placed him in an interrogation room. Kumka and Detective Dale Price of the Edgewater Police Department then began to question defendant.

The interrogation was video recorded, and a copy of the video recording was entered into evidence. The recording began at approximately 2:40 p.m. The video shows that when Kumka entered the interrogation room, he appeared to flip a switch on the wall of the room. Kumka testified that the switch is the mechanism to turn on the room's audio and video recording. He also stated that he believed the switch was the only way to activate the recording device.

At the start of the questioning, Kumka read defendant his Miranda<sup>1</sup> rights from a form. After defendant was advised of all his rights, he invoked his right to have counsel present during questioning. The detectives then ended the interrogation and walked out of the room. Several minutes later, at approximately 2:50 p.m., Glebocki entered the room and appeared to flip the switch on the wall. The audio on the video immediately ended, but the video recording continued for approximately another thirty seconds. On cross-examination, Kumka stated that he believed that the video records for a set timeframe after the switch is turned off.

Kumka also explained that after the initial questioning ended, defendant was left in the interrogation room with two officers posted outside the door. At approximately 6:20 p.m., defendant was taken across the hall where he was processed and booked. During the processing, Glebocki read defendant the charges against him. Approximately forty-five minutes later, defendant was returned to the interrogation room. Kumka testified that neither he nor Glebocki made any promises or representations to defendant during the booking process and that they did not engage defendant in a conversation to entice him to give a statement.

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

According to the State, at approximately 8:20 p.m., defendant asked to speak with the detectives and informed them that he wanted to talk with them without an attorney. The State maintains that there is no audio or video recording of defendant initiating that communication. Instead, the State produced a written report memorializing that defendant initiated the communications that led to his continued interrogation.

The video recording in the interrogation room was turned back on and began recording at approximately 8:25 p.m. Shortly after the video started recording, Glebocki and Detective Sean Kennedy of the Hudson County Prosecutor's Office entered the room. Glebocki then appeared to flip a switch on the wall. The transcript of the interrogation includes the following exchange between Glebocki and defendant:

DET. GLEBOCKI: You're good? Uh, so before we start we're back on record, okay, so I just want to clear some things up. You came to us to ask to speak to us, correct?

A. [INAUDIBLE]

DET. GLEBOCKI: Voluntarily you came you asked to speak to us without the presence of an attorney, correct?

A. Uh, huh.

. . .

[DET. GLEBOCKI]: Okay, and so you chose at this point to come to us, to speak to us without the presence of an attorney, okay?

A. Uh, huh.

Q: Right?

A. Yes.

Q. Okay, yes or no I just want to make sure because again if you, during this entire ... conversation if you want an attorney at any point, or stop answering questions at any point that's completely your right, you have the right to do that if you so choose to, okay? Just want to clear that up, okay?

A. Uh, huh.

Q. So, again, you came to us, are you willing to talk to us without an attorney right now?

A. Yes.

Over the course of the following three hours, defendant made numerous incriminating admissions in response to questions from the detectives.

Kumka testified that he believed the video system at the BCPO's Paramus facilities had been "upgraded" within the last couple of months. Kumka did not know whether the booking room had been equipped with a video camera in February 2020, but believed one might have been installed recently. Kumka

also testified that he believes there is a written protocol for detaining suspects but was not "100 percent" certain.

After Kumka finished testifying, the hearing was adjourned with the plan that Glebocki would testify on February 11, 2022. Before the hearing resumed, defense counsel requested, and then formally moved, to compel "any written policies and procedures of the BCPO for conducting non-custodial and custodial interviews/interrogations" and to allow defense counsel with an investigator to "visit and inspect the scene of the interrogation room and surrounding areas."

On March 10, 2022, after hearing arguments on defendant's motion to compel discovery, the trial court issued a written opinion and order denying the motion. The court reasoned that any BCPO policies and procedures would not "directly prove" any fact relevant to the analysis of whether defendant properly waived his constitutional rights before giving his continued statement. In denying the motion to inspect the interrogation room and surrounding areas, the court reasoned that the request would not lead to relevant evidence and was instead a "fishing expedition." The court pointed out that the video recording provided defendant an adequate view of the interrogation room and that defendant had been in the interrogation room. The court also noted that defendant would have the right to cross-examine the State's witnesses on the



contested issue of whether defendant voluntarily reinitiated communications with the detectives or whether the detectives failed to scrupulously respect defendant's initial invocation of his right to have an attorney present during questioning.

On March 11, 2022, the trial court entered an order denying defendant's request for a stay pending an anticipated interlocutory appeal. Defendant then moved before us for leave to appeal and a stay pending appeal. On May 3, 2022, we granted both requests.

## II.

On appeal, defendant argues:

BECAUSE BOTH ACCESS TO THE INTERROGATION ROOM AND SURROUNDING AREAS AND THE PROSECUTOR'S OFFICE'S POLICIES REGARDING THE CUSTODY AND INTERROGATION OF SUSPECTS ARE RELEVANT TO THE QUESTION OF WHETHER DEFENDANT'S ALLEGED WAIVER OF HIS MIRANDA RIGHTS WAS KNOWING, INTELLIGENT, AND VOLUNTARY, BOTH ITEMS ARE DISCOVERABLE UNDER RULE 3:13-3([b])(1)(E) AND THE MOTION COURT THUS ERRED IN DENYING DEFENDANT'S MOTION TO COMPEL DISCOVERY.

A. Our Standard of Review.

"A trial court's resolution of a discovery issue is entitled to substantial deference and will not be overturned absent an abuse of discretion." State v. Stein, 225 N.J. 582, 593 (2016). Under that standard, an appellate court is required to "generally defer to a trial court's disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011) (quoting Rivers v. LSC P'ship, 378 N.J. Super. 68, 80 (App. Div. 2005)). A discovery order that is based on a mistaken understanding of the applicable law, is not entitled to any deference. Ibid.

B. Defendant's Rights.

Suspects subject to a custodial interrogation must be advised of certain rights, including the right to counsel. See Miranda, 384 U.S. at 479. Those rights, including the right to counsel, can be waived, provided that the suspect's waiver is made voluntarily, knowingly, and intelligently. Id. at 444.

"When a suspect invokes the right to counsel during a custodial interrogation, questioning must cease unless the accused initiates further communication or conversation, counsel is made available, or a sufficient break in custody occurs." State v. Rivas, 251 N.J. 132, 136 (2022); accord Maryland

v. Shatzer, 559 U.S. 98, 104-09 (2010); see also Edwards v. Arizona, 451 U.S. 477, 484-85 (1980). The State has the burden of proving defendant's reinitiation constituted a "knowing, intelligent, and voluntary waiver beyond a reasonable doubt." State v. Chew, 150 N.J. 30, 61 (1997).

"In New Jersey, an accused has the right to broad discovery after the return of an indictment in a criminal case." State v. Desir, 245 N.J. 179, 192 (2021) (quoting State v. Hernandez, 225 N.J. 451, 461 (2016)). Rule 3:13-3(b)(1) explains that right and "obligates the State to provide full discovery . . . when an indictment is returned." State v. Robinson, 229 N.J. 44, 72 (2017). Under Rule 3:13-3(b)(1), the State must turn over relevant materials including:

[B]ooks, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into readable useable form[.]

[R. 3:13-3(b)(1)(E).]

Criminal discovery "is appropriate if it will lead to relevant information." Stein, 225 N.J. at 596. "Relevant evidence is 'evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the

action.'" Rodriguez v. Wal-Mart Stores, Inc., 237 N.J. 36, 57-58 (2019) (quoting N.J.R.E. 401). "Relevance is measured in terms of the opportunity of the defendant to present a complete defense." Desir, 245 N.J. at 193 (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 3.2 on R. 3:13-3 (2023)).

Discovery is also appropriate for "'material evidence affecting [the] credibility' of a state's witness whose testimony may be determinative of guilt or innocence." Hernandez, 225 N.J. at 463 (quoting State v. Carter, 69 N.J. 420, 433 (1976)). Moreover, our courts have "the inherent power to order discovery when justice so requires." State in the Int. of A.B., 219 N.J. 542, 555 (2014).

All that said, a defendant should not be permitted to "transform the discovery process into an unfocused, haphazard search for evidence." State v. D.R.H., 127 N.J. 249, 256 (1992). "[A]llowing a defendant to forage for evidence without a reasonable basis is not an ingredient of either due process or fundamental fairness in the administration of the criminal laws." State v. R.W., 104 N.J. 14, 28 (1986). In other words, the focus must always be on relevance. "The discovery process [should not be] 'a fishing expedition.'" Desir, 245 N.J. at 194 (quoting State v. Broom-Smith, 406 N.J. Super. 228, 239 (App. Div. 2009)).

C. Defendant's Discovery Requests.

Defendant first seeks production of any BCPO policies and procedures for conducting non-custodial and custodial interrogations of suspects. Defendant seeks the requested policies contending that a violation of any policy requiring a recording of a defendant seeking to reinitiate an interview could justify an adverse inference. Defendant also argues that a violation of a policy could undercut the credibility of the testifying detectives.

The trial court found that the policies were not relevant. The court mistakenly believed that there was a dispute over whether defendant was left in the interview room for five hours. The State and defendant agree that there is no dispute on that issue.

The central fact at issue on the pending motion to suppress defendant's statement is whether he reinitiated communications with the detectives or whether they enticed defendant to speak to them without an attorney. Defendant does not need a policy to make that constitutional argument. The law is well-established that the State must scrupulously honor the invocation of a right to counsel and cannot reinitiate communication with the defendant. Only the defendant can reinitiate communications. State v. Fuller, 118 N.J. 75, 81-82 (1990) (citing Edwards, 451 U.S. at 484-85). Thus, whether there is a policy or

not, the State bears the burden of showing that defendant reinitiated communications after he had invoked his right to counsel. In short, any policy would not change what the State must prove. The question of whether a defendant's constitutional right to counsel was honored focuses on "objective police conduct." State v. Reed, 133 N.J. 237, 267 (1993).

In addition, an alleged violation of a BCPO policy would not affect the credibility of the testifying detectives. Their credibility will depend on their direct and cross-examinations and defense counsel has the right to question them about policies but there has been no showing that there is a relevant policy. Again, the relevant inquiry is whether the detectives complied with defendant's constitutional rights.

Second, defendant requests access to the BCPO Paramus office to inspect the interrogation room and where defendant was booked, as well as to inspect recording devices in those areas. The trial court found that that request was not relevant, reasoning that an inspection would be no more useful than the video evidence, which has already been provided to defendant. The trial court also found that the discrepancies concerning Kumka's testimony of how the video recorder was activated versus what was viewed on the recording itself were of "a minimal and technical nature that they required no further elaboration."

The State argues that granting defendant's request "would open the floodgates to obtain access and raise significant security concerns"; the camera system has changed; and defendant has not shown how an inspection will lead to relevant evidence. We are not persuaded by the State's unsupported contentions regarding opening of floodgates and security concerns, but we do not see any abuse of discretion in the trial court's decision to deny this discovery.

The relevant inquiry on the motion to suppress is whether defendant knowingly, voluntarily, and intelligently waived his rights. That determination will depend on the trial court's factual findings after a full evidentiary hearing. The manner by which the recording device in the interrogation room is turned on and off is not relevant information. The question is whether defendant initiated the communication, and that question will turn on the credibility findings concerning the detectives who testify.

We also reject defendant's blanket argument that Rule 3:13-3(b)(1) automatically gives him the right to conduct an inspection because the interrogation took place in a "building" controlled by the prosecutor's office. There must still be a showing of relevancy before discovery involving an inspection of a prosecutor's office is permitted. See State v. Carrero, 428 N.J. Super. 495, 511-12 (App. Div. 2012).

In summary, we cannot say that the trial court abused its discretion in denying these two discovery requests. We are mindful that these issues are close calls. Another trial judge might have granted these discovery requests with appropriate limitations, including protective orders. We are also mindful that defendant, if convicted of all charges, will face a lengthy sentence. The determinative issue presented on this appeal, however, is whether the trial court abused its discretion in denying the discovery requests. As we have explained, because we discern no abuse of discretion, we affirm. The matter is therefore remanded for further proceedings and the stay that we entered is vacated.

Affirmed and remanded. 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