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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-2970-21
A-2971-21
A-2972-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY KING,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MAURICE PARKER,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMAR RAY,

Defendant-Appellant.

Argued March 1, 2023 – Decided March 21, 2023

Before Judges Accurso, Vernoia and Natali.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Passaic County, Indictment Nos. 21-10-0686, 21-12-0853, and 22-01-0007.

John P. Flynn, Assistant Deputy Public Defender, argued the cause for appellants (Joseph E. Krakora, Public Defender, attorney; John P. Flynn, of counsel and on the briefs).

Timothy P. Kerrigan, Senior Assistant Prosecutor, argued the cause for respondent (Camelia M. Valdes, Passaic County Prosecutor, attorney; Timothy P. Kerrigan, of counsel and on the brief).

PER CURIAM

We granted defendants' motion for leave to appeal the court's interlocutory orders granting the State's applications to quash defendants' subpoenas duces tecum issued to the Paterson Police Department seeking body-worn camera and street surveillance footage related to their arrests. Defendants requested the police produce this information following their arrests and detention, despite

that at the time defendants issued the subpoenas they had neither been indicted, nor had the State extended any plea offers.

In support of its applications, the State contended the matter involved a narrow "proce[du]ral" issue" related to defendants' improper service of "civil subpoenas" in lieu of formal discovery requests. While the State conceded it routinely turned over similar discovery pre-indictment, it argued the proper course was for defendants to serve discovery requests consistent with our Rules. The State maintained that under Rule 3:13-3 it was not obligated to provide the requested information because it did not involve exculpatory evidence, the charges against defendants were pre-indictment, and no plea offers had been extended to any of the defendants. See R. 3:13-3(a)(1) to (2).

Defendants disagreed and argued the court should order the pre-indictment discovery as the State would not be prejudiced by its production, the information could facilitate prompt resolution of these and similar cases, and providing the subpoenaed information would address possible preservation issues and permit the discovery of exculpatory evidence. Defendants also disagreed with the State's argument that the service of the subpoenas was procedurally improper. Finally, defendants argued even if service of the subpoenas did not comply with our Rules, the court had the inherent power to

order discovery in the interests of justice to ensure defendants' constitutional right to effective assistance of counsel.

After considering the parties' submissions and oral arguments, the court granted the State's motions, detailed its reasoning in an oral opinion and issued three conforming orders. The court initially noted that since the serving of the subpoenas, all defendants had been indicted and the State had provided the requested video and body cam footage, but explained the matter remained justiciable as it was capable of repetition while evading review.

The court found pursuant to Rule 3:13-3 "at the pre-indictment stage, there is no general obligation on the part of the State to turn over discoverable material outside of what they deem is necessary or what is determined to be exculpatory to the defense." The court further determined because no plea offer had been made, Rule 3:13-3(a)(1) was inapplicable. It also found the State had provided all necessary discovery related to its previous detention motions under Rule 3:4-2(c)(1) to (2).

While it acknowledged the type of video evidence sought had been "routinely turned over" to defendants by local prosecutors and also recognized a general need for consistency across criminal cases, the court determined allowing the defense the ability through "subpoena power" to compel such

information pre-indictment created an "imbalance," as the State was limited to obtaining discovery by way of a grand jury subpoena. Finally, the court rejected defendants' argument that it possessed the inherent authority to compel production of the requested video footage, specifically stating "granting this motion is . . . outside the bounds of the jurisdiction of this [c]ourt."

As noted, we granted leave to appeal. We later consolidated the matters and heard oral argument. Before us, the parties reprise the arguments raised before the court. After considering those arguments, we conclude interlocutory review was improvidently granted and accordingly dismiss the appeal, as a justiciable dispute no longer exists requiring our review. State v. Abeskaron, 326 N.J. Super. 110, 122 (App. Div. 1999) (Coburn, J.A.D., dissenting) (recognizing "[a]n appellate court may vacate an order granting leave to appeal as improvidently granted"); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-6 (2023) (explaining "[t]he appellate court has the authority to vacate an order granting leave to appeal improvidently entered").

It is well settled that after arrest and referral of a case to the local prosecutor, as occurred here, "local law enforcement is part of the prosecutor's office for discovery purposes." State v. W.B., 205 N.J. 588, 608 (2011). Accordingly, the propriety of defendants' subpoenas is guided by our Rules

which obligate the State to produce the video evidence at issue here post-indictment. See R. 3:13-3(b)(1)(E); State v. Robinson, 229 N.J. 44, 69 n.1 (2017); State v. Richardson, 452 N.J. Super. 124, 132 (App. Div. 2017). A defendant is also entitled to discovery pre-indictment in the event the State has tendered a plea offer, see R. 3:13-3(a). In addition, a defendant has the right to limited pre-indictment discovery in accordance with pre-trial detention hearings as permitted by the Criminal Justice Reform Act, N.J.S.A. 2A:162-15 to -26. See also Robinson, 229 N.J. at 68-71.

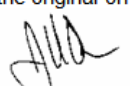
Further, and contrary to the court's reasoning, trial courts are not limited by Rule 3:13-3(b), and may order pre-trial discovery pursuant to its "inherent power[s] . . . when justice requires." State ex rel. A.B., 219 N.J. 542, 555 (2014) (quoting State ex rel. W.C., 85 N.J. 218, 221 (1981)). In A.B., the Supreme Court upheld an order which allowed the defense to inspect the victim's home where an alleged sexual offense took place, despite the property not "fall[ing] within the general scope of the automatic discovery rule because her home [was] not 'within the possession, custody or control of the prosecutor.'" Id. at 556 (quoting R. 3:13-3(b)(1)(E)). The Court allowed the discovery request despite the attendant intrusion on the victim's privacy rights, as defendant established his need to access the home and perform an inspection because it would lead to

relevant evidence and was necessary to protect his right to a fair trial. Id. at 556-62.

As noted, and after considering the applicable Rules and the principles set forth in A.B., we conclude leave to appeal was improvidently granted. First, all of the requested discovery has been produced by the State as all three defendants were indicted and received the body cam footage and video evidence in accordance with the Rules. Second, although courts, in the interests of justice, can clearly compel the State to produce pre-trial discovery not otherwise compelled by our Rules, see id., at 555, here, defendants made no showing before the court, or us, that it would have been appropriate for the court to invoke its inherent equitable powers and order the discovery prior to any indictment or plea offer.

The appeal is dismissed.

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


CLERK OF THE APPELLATE DIVISION