RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2299-16T7
A-2302-16T7

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

WENDELL PITTMAN,

Defendant-Respondent.

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

MICHAEL PRATHER,

Defendant-Respondent.

Submitted January 19, 2017 – Decided February 15, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Complaint-Warrant Nos. W-2017-000024-0901, W-2017-000026-1901 and W-2017-000022-0907.

Esther Suarez, Hudson County Prosecutor, attorney for appellant (Tracey McQuaide, Assistant Prosecutor, on the brief).

Joseph E. Krakora, Public Defender, attorney for respondents (Elizabeth C. Jarit, Assistant Deputy Public Defender, on the brief; Lynda Benzenhoefer, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

These two cases, which arise under the Bail Reform Act, N.J.S.A. 2A:162-15 to -26, were consolidated by the trial court, and we likewise consolidate them for purposes of this decision.[1] In both cases, the State moved for leave to appeal from trial court orders dated January 13, 2017. Those orders require the State to comply with Rule 3:4-2(c)(1)(B), by providing the defense with "any discovery in its possession referenced by the Affidavit of Probable Cause and PLEIR [preliminary law enforcement incident report] pursuant to [Rule] 3:4-2(c)(1)(B) and relating to the pretrial detention application[.]" However, the trial court stayed the discovery orders pending appeal, in anticipation of our decision in the then-pending appeal in State v. Robinson, __ N.J. Super. __ (App. Div. 2017). By the terms of the January 13 orders, both defendants remained detained as well. We grant leave to

[1] Our decision was originally issued on February 8, 2017, in the form of an order, to expedite the disposition of the appeals. We are now issuing the same decision in opinion form.

appeal in both cases and, for the reasons that follow, we summarily affirm the orders on appeal.

The State charged defendant Wendell Pittman with third-degree burglary and third-degree theft, alleging that he unlawfully entered a home and stole a laptop and a cell phone. The State also charged defendant with possession of heroin, methadone and oxycodone. According to the Complaint-Warrant, the Affidavit of Probable Cause, and the PLEIR, the homeowner fled during the burglary and later gave the police a statement identifying Pittman as the burglar.

The State charged defendant Michael Prather with two counts of first-degree armed robbery, possession of a handgun for an unlawful purpose, unlawful handgun possession, and possession of a firearm by a convicted felon. The probable cause affidavit concerning one robbery attested that the victim identified defendant as the robber and identified the firearm used in the robbery. The other probable cause affidavit stated that the robbery was captured on video from a security camera, and that Prather's fingerprints were recovered from objects at the scene of the robbery.

The State filed motions for pretrial detention of Pittman and Prather, but in each case refused to provide the defense with police reports, witness statements, surveillance videos or any

other discovery materials. The State contended that its "discovery" obligation was limited to providing defendants with the probable cause affidavit and the PLEIR. At the motion argument, defense counsel contended that she could not meaningfully defend against the detention motions without access to the foundational documents supporting the State's applications. Defense counsel also pointed out that, for years, the Hudson County Prosecutor's Office had routinely provided the defense with initial police reports at a defendant's first appearance in Central Judicial Processing (CJP) Court; however, shortly after the Bail Reform Act took effect, the State suddenly stopped providing discovery and claimed it was not required to do so.

In a cogent oral opinion, Judge Paul M. DePascale rejected the State's narrow interpretation of Rule 3:4-2(c)(1)(B), and ordered the State to produce the discovery set forth in the January 13 orders. The judge was not persuaded by the State's arguments about the purported difficulty of producing discovery, pointing out the availability of electronic communication and stating his expectation that counsel on both sides would behave reasonably and cooperate with each other. His oral opinion presaged our opinion in Robinson, in keying the State's discovery obligation to the factual basis for its detention application.

On this appeal, the State repeats the same meritless arguments it raised in the trial court and which we rejected in Robinson. Based on Robinson, as well as for the reasons stated by Judge DePascale, we summarily affirm both January 13, 2017 orders. We vacate the stay of discovery previously entered by the trial court. We remand both cases to the trial court to complete discovery and proceed with the detention hearings forthwith.

Affirmed.