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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2699-22**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

DANDEL M. GRIMSLEY and  
MATEEN MALIK,

Defendants-Respondents.

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Argued September 13, 2023 – Decided September 20, 2023

Before Judges Haas and Natali.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 19-06-1661.

Frank J. Ducoat, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for appellant (Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney; Frank J. Ducoat, of counsel and on the brief).

Michelle Treiber argued the cause for respondent Dandel Grimsley.

Morgan A. Birck, Assistant Deputy Public Defender, argued the cause for respondent Mateen Malik (Joseph E. Krakora, Public Defender, attorney; Morgan A. Birck, of counsel and on the brief).

PER CURIAM

By leave granted, the State appeals from the Law Division's May 1, 2023 order granting defendants Dandel Grimsley and Mateen Malik's motion for severance of their scheduled joint trial. We affirm.

The relevant procedural history and facts of this matter are not disputed. The State alleges that on July 20, 2018, defendants engaged in a conspiracy to commit three robberies while armed with two handguns and hollow-nosed bullets. The State also asserts that Grimsley, while operating a stolen van, eluded law enforcement officers until he crashed into a bus, causing bodily injury to eight individuals.

An Essex County grand jury charged both defendants in a multi-count indictment with second-degree conspiracy, three counts of first-degree robbery, two counts of third-degree receiving stolen property, two counts of second-degree unlawful possession of a weapon, fourth-degree possession of prohibited ammunition, fourth-degree possession of a defaced firearm, and two counts of second-degree possession of a weapon for an unlawful purpose. The grand jury

also charged Grimsley with eight counts of second-degree aggravated assault, and with second-degree eluding.

The police arrested defendants on July 20, 2018 and they remained in pretrial detention through May 2023. During that period, the State provided discovery to defendants and represented that all body-worn-camera and dash-cam recordings had been turned over to them.

The trial court commenced jury selection for the joint trial in March 2023. The court completed jury selection on April 6, 2023, but did not swear in the jury. The court scheduled the trial to begin on April 26, 2023.

However, on April 21, 2023, the State informed defense counsel that it possessed eight body-worn-camera recordings that it had not previously provided defendants in discovery. The court conferenced the new production with the attorneys and determined that the trial would continue as scheduled on April 26, but the State would be barred from using any of the newly-produced recordings at trial. The State has not challenged this decision on appeal.

Later that day, the State advised defense counsel that it had become aware of six motor vehicle dash-cam recordings that it had not turned over in discovery. The State asserted it was not yet in possession of the recordings, but

expected to receive them shortly. Three days later, on April 24, 2023, the State provided the dash-cam recordings to defense counsel.

The next day, the court held another conference with the attorneys. The court adjourned the trial for one week to allow counsel an opportunity to review the recordings. The court further determined that, depending on the availability of the jurors, the trial would continue with opening statements on May 2, 2023.

After reviewing the recordings, Malik's attorney determined he wanted to use one of the body-worn-camera recordings in support of his client's defense. Malik's attorney advised Grimsley's counsel of his intention to use the recording. Grimsley's counsel objected and would not consent to Malik's planned use of the recording at trial.

On April 26, 2023, Malik's attorney filed a motion for severance of defendants' trials. In the certification supporting his motion, the attorney stated:

If Mateen Malik and Dandel Grimsley remain co-defendants within the above captioned indictment, then both defendants will be prejudiced. Mr. Grimsley is prejudiced by having the relevant body-worn-camera [recording] introduced. Mr. Malik is prejudiced by having the relevant body-worn-camera [recording] barred. The appropriate remedy is to grant a severance of the defendants.

Grimsley's attorney immediately joined in Malik's motion for severance.

On May 1, 2023, the trial court heard oral argument, and granted defendants' motion. The court primarily relied on our decision in State v. Morant, where we opined that "evidence based on unlawful conduct of police officers cannot be admitted against a criminal defendant in New Jersey even at the request of a codefendant private citizen." 241 N.J. Super. 121, 137 (App. Div. 1990). The court further noted our observation in Morant that the goal of severance is to "preclude prejudice before it arises," ibid. (quoting State v. Haskell, 100 N.J. 469, 478-79 (1985)), and the court concluded that severance of defendants' trials was required to accomplish that goal.

The court also determined it could not "say assuredly that . . . Grimsley would not be unduly prejudiced by the introduction of that suppressed evidence" — the newly produced recording — "through the codefendant" Malik.<sup>1</sup> In addition, the court explained that although "joint trials do foster efficiency . . . ,

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<sup>1</sup> The court's finding appears based at least in part on what the parties have described as an in camera proffer by Malik's counsel to the court describing the recordings he intended to introduce at trial and his purpose in doing so. It does not appear that this proffer was recorded in any manner or that the State objected to this proceeding. However, as a result of the lack of any record as to what occurred during the proffer, we are unable to address the court's later reference to it in its decision on defendants' severance motion.

the interest in judicial economy cannot override a defendant's right to a fair trial."

The following day, May 2, 2023, we granted the State's application for permission to file an emergent application for leave to appeal from the trial court's May 1, 2023 order granting defendants' severance motion. We also stayed the trial pending our consideration of the motion.

However, later that day, the trial court, with the consent of counsel, ended the trial by discharging the unsworn jury due to anticipated scheduling issues. The trial court later granted defendants' motions for pretrial release pursuant to N.J.S.A. 2A:162-22(a)(2)(a) because two years had passed since the issuance of their respective pretrial detention orders, excluding any delays attributable to defendants, and the State had not been able to proceed to jury voir dire or opening arguments due to its failure to timely produce the recordings in discovery. We then granted the State's emergent motion for leave to appeal from the release order, and we stayed defendants' releases pending further order of this court.

On May 9, 2023, we granted the State's motion for leave to appeal the order granting defendants' release, and summarily affirmed it. That same day, we granted the State's motion for leave to appeal the severance order, and

determined that the matter did not need to be resolved on an emergent basis due to the trial court's discharge of the jury. However, we accelerated the case and ordered oral argument.

On appeal, the State contends that "the trial court abused its discretion in granting a severance of defendants." We disagree.

The law governing a severance motion is clear. "Two or more defendants may be tried jointly 'if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.'" State v. Brown, 170 N.J. 138, 159-60 (2001) (quoting R. 3:7-7). There is a "general preference to try co-defendants jointly," State v. Robinson, 253 N.J. Super. 346, 364 (App. Div. 1992), particularly when "much of the same evidence is needed to prosecute each defendant." Brown, 170 N.J. at 160. "That preference is guided by a need for judicial efficiency, to accommodate witnesses and victims, to avoid inconsistent verdicts, and to facilitate a more accurate assessment of relative culpability." Ibid.

"Nevertheless, a single joint trial, however desirable from the point of view of efficient and expeditious criminal adjudication, may not be had at the expense of a defendant's right to a fundamentally fair trial." State v. Sanchez,

143 N.J. 273, 290 (1996). Therefore, Rule 3:15-2 provides an avenue for separate trials where defendants may be prejudiced by being tried jointly:

If for any other reason it appears that a defendant or the State is prejudiced by a permissible or mandatory joinder of offenses or of defendants in an indictment or accusation the court may order an election or separate trials of counts, grant a severance of defendants, or direct other appropriate relief.

[R. 3:15-2(b).]

Trial courts apply a rigorous test for granting severance. Brown, 170 N.J. at 160. A mere claim of prejudice is insufficient to support a motion to sever. State v. Moore, 113 N.J. 239, 274 (1988). A defendant does not have the right to severance simply because he or she believes a separate trial "would offer defendant a better chance of acquittal." State v. Johnson, 274 N.J. Super. 137, 151 (App. Div. 1994) (quoting State v. Morales, 138 N.J. Super. 225, 231 (App. Div. 1975)).

"The decision whether to grant severance rests within the trial court's sound discretion and is entitled to great deference on appeal." Brown, 118 N.J. 595, 603 (1990). We defer to the trial court's decision on a severance motion unless it constitutes an abuse of discretion. State v. Weaver, 219 N.J. 131, 149 (2014).



Applying these standards, we detect no abuse of discretion on the trial court's part. Here, the court barred the State from presenting the body-worn-camera and dash-cam recordings at trial. However, Malik determined he wanted to use at least one of the recordings as part of his defense. Grimsley objected because he believed his defense would benefit from the continued exclusion of all of the suppressed recordings. Under these circumstances, Malik could not present the recording without prejudicing Grimsley, and Grimsley's continued objection would prejudice Malik by preventing him from using this evidence in an attempt to aid his defense.

Under these circumstances, the trial court's decision to sever the two defendants was fully in line with our decision over thirty years ago in Morant. In that case, three defendants were tried together on a charge of possession of controlled dangerous substances. 241 N.J. Super. at 128. Prior to the trial, the judge suppressed cocaine that was found in a duffel bag belonging to defendant Morant in the trunk of the car the three defendants were using when the police apprehended them. Ibid. Thereafter, the two other defendants, the Barrett brothers, decided to use the cocaine at trial to argue that because there was cocaine in Morant's bag, he was likely also the owner of the other drugs found in the car. Ibid.

The Barretts moved for a severance, but the judge denied their motion. Id. at 128-30. However, the judge permitted the Barretts to use the suppressed evidence at the trial, subject to a limiting instruction. Id. at 131-32. The jury convicted Morant and the Barretts. Id. at 124.

On appeal, we held that the judge erred by permitting the Barretts to introduce suppressed evidence against Morant, a non-consenting codefendant. We explained our ruling as follows:

[W]e are satisfied that Morant's conviction must be reversed because we conclude from the record that he was prejudiced by the admission of suppressed evidence; and we are of the view that evidence based on unlawful conduct of police officers cannot be admitted against a criminal defendant in New Jersey even at the request of a codefendant private citizen. . . . Thus, had Morant moved for severance in a timely fashion, its denial under these circumstances would have constituted an abuse of discretion.

[Id. at 137 (citations omitted) (emphasis added).]

We also noted that "the goal" of Rule 3:15-2(a) is to "'preclude prejudice before it arises' by severing" because "'not only does that practice preclude the possibility of prejudice to the defendant, but it saves appellate courts from having to speculate whether juries were prejudiced by the presentation of otherwise inadmissible evidence.'" Morant, 241 N.J. Super. at 137 (quoting Haskell, 100 N.J. at 478-79).

Here, the trial court suppressed the body-worn-camera recordings and barred the State from introducing them at trial because the State failed to turn this evidence over to the defense in a timely manner. Clearly, the admission of any of these recordings, over Grimsley's objection, would prejudice his right to a fair trial. At the same time, Malik had the right to use the recordings in his own defense. Barring him from taken advantage of the recordings because of Grimsley's objection would likewise prejudice his own right to a fair trial. Under these circumstances, we are satisfied that the trial court properly exercised its discretion by granting defendants' severance motion and ordering separate trials.

The State's arguments to the contrary are unavailing. The State contends that in order to demonstrate the type of prejudice that would warrant a severance, defendants had to provide an on-the-record proffer of the specific recordings Malik planned to use at trial and how they would be admitted into evidence. However, this argument ignores our clear holding in Morant that evidence based on unlawful conduct by the State "cannot be admitted against a criminal defendant in New Jersey even at the request of a codefendant private citizen." 241 N.J. Super. at 137. Because the recordings could not be admitted over Grimsley's objection in any trial involving him, the trial court was required to

sever the defendants as soon as Malik insisted on making use of the recordings at trial.

The State also argues that the trial court improperly "punished" it twice for its discovery violation: first by suppressing the recordings and then by ordering a severance of defendants. This argument lacks merit.

To be sure, the chain of events leading to the severance order began when the State failed to meet its discovery obligations during the years leading up to the trial. Had the State turned over the recordings in a timely manner, the matter may have continued as a joint trial. But that did not occur. Once the trial court barred the State's use of the recordings at the joint trial, Morant required a severance once one of the defendants decided to rely upon them over the other defendant's objection. Thus, the court's severance decision was based squarely on our decision in Morant and there is no evidence in this record that the court considered its decision as an additional means of sanctioning the State for its discovery failures.

The State argues that the trial court should have considered some action short of a severance such as a jury instruction on the use by Malik of the suppressed recordings. However, we cannot conclude that any instruction could be given that would neutralize the undue prejudice that would result if the jury

was allowed to consider suppressed evidence against Grimsley in a joint trial. See Morant, 241 N.J. Super. at 138 (where we rejected the trial court's approach of dealing with the problem of using suppressed evidence at a joint trial with a limiting instruction because "we [could not] say with any degree of assuredness that [the defendant] was not unduly prejudiced by the introduction of the suppressed evidence.").

Finally, the State asserts that the trial court's order will not foster judicial efficiency because there will now have to be two trials. However, "the interest in judicial economy cannot override a defendant's right to a fair trial." Sanchez, 143 N.J. at 282. The court's May 1, 2023 order protected both defendants' right to a fair trial and, therefore, was not an abuse of discretion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION