STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

DEXTER HUBBARD
GUSTAVO ARENAS
KYANAZIA DOBSON

KAHDAR HOLMES

MARCUS MORALES

JAMARSCU RUSSELL

JOSEPH PEREZ

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET No. A-000223-25

Criminal Action

On interlocutory appeal from:
Superior Court of New Jersey,
Law Division, Passaic County
Sat Below:
Honorable Sohail Mohammed, P.J.Cr.

Indictment Nos.:
25-02-0111-I
24-12-0898-I
24-02-0071-I
23-04-0311-I
25-01-0065-I
24-12-0864-I
24-09-0678-I

PARTICIPATION IN ORAL ARGUMENT REQUESTED

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

Date Submitted: December 26, 2025

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STATEMENT OF INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of New Jersey ("ACLU-NJ") has defended liberty and justice for over 60 years, guided by the vision of a fair and equitable New Jersey for all. Its mission is to preserve, advance, and extend the individual rights and liberties guaranteed to every New Jerseyan by the state and federal constitutions in courts, in the legislature, and in our communities. ACLU-NJ is a non-partisan organization that operates on several fronts—political, legal, cultural—to bring about systemic change and build a more equitable society.

PRELIMINARY STATEMENT

The State's position in this case both infringes on the due process rights of criminal defendants, and seeks to hamper the Office of the Public Defender's ("OPD") ability to zealously and efficiently represent their clients. Both positions fail to comport with the law and the Superior Court's decision in this matter should be affirmed in full.

The State's position that materials it deems confidential may somehow bypass the requirements of due process is fatally flawed. The United States Supreme Court's decisions in Brady and Giglio, and their progeny, amplified by decisions of this Court, create an automatic obligation for the government to turn over any and all exculpatory and impeachment materials to a criminal defendant. That obligation does not depend on the government's assessment of confidentiality. While the New

Jersey Supreme Court's decision in Higgs set forth a discovery process for police internal affairs files, that Court did not—indeed, could not—hold that rights enshrined in the federal Constitution and established by the United States Supreme Court are subject to additional hurdles and restrictions for defendants in New Jersey.

The State's attempt to skirt its obligations by providing "Giglio letters" is constitutionally insufficient. The letters do not provide Defendants with any meaningful detail or essential facts as required by both the federal Constitution and New Jersey law.

The State also attempts to impose unreasonable restrictions on OPD's internal communications through an overbroad protective order. OPD is essentially a law firm and is treated as such for conflicts of interest and other purposes. Generally, no private law firm would be prohibited from having attorneys speak and collaborate internally about cases or evidence, and the State should not be able to impose such restrictions on OPD either.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

ACLU-NJ incorporates by reference the Statement of Facts and Procedural History recited in the brief of Defendants-Respondents.

LEGAL ARGUMENT

I. THE RIGHTS ESTABLISHED IN BRADY AND GIGLIO PROVIDE A CONSTITUTIONAL FLOOR, WHICH CANNOT BE LOWERED OR RESTRICTED BY STATE LAW.

The Supreme Court, through its decisions in Brady and Giglio, set a constitutional floor for material that must be provided by prosecutors to criminal defendants. Because that right flows from the federal Constitution, it cannot be restricted by state law, nor can a state require a defendant to overcome additional hurdles before that right is effective. "In *every* criminal case the prosecution *must* disclose to the defendant *all* evidence that is material either to guilt or to punishment." State v. Nelson, 155 N.J. 487, 497 (1998) (emphases added) (citing Brady v. Maryland, 373 U.S. 83 (1963)). That rule applies to "evidence that can be used to impeach government witnesses" as well. State v. Higgs, 253 N.J. 333, 355 (2023) (citing Giglio v. United States, 405 U.S. 150, 153–54 (1972)); State v. Carter, 91 N.J. 86, 111 (1982) ("Evidence impeaching the testimony of a government witness falls within the Brady rule when the reliability of the witness may be determinative of a criminal defendant's guilt or innocence."); State v. Carter, 69 N.J. 420, 433 (1976) ("[W]hen the credibility of a State's witness may well be determinative of guilt or innocence, the jury is entitled to know, and the State has the obligation to disclose, material evidence affecting such credibility."). Indeed,

the State has an obligation to turn over Brady/Giglio material "even absent inquiry" by the defense. Id. at 434.

Against this backdrop, the State argues that Internal Affairs files somehow bypass these due process rights and require defendants to meet additional standards before disclosure is required. There is no case that holds as much, nor could a New Jersey state court or state law curtail or restrict a right enshrined in the federal Constitution and recognized by the United States Supreme Court. U.S. Const., Art. VI (Supremacy Clause). That the government views the material as sensitive or "confidential" does not justify any diminution of the defendant's rights. The State must "disclose to defense counsel information it possesses or materials in its file" that "affirmatively tends to establish a defendant's innocence" as well as evidence that "concerns only the credibility of a State's witness." Carter, 69 N.J. at 433 (citation omitted). The Internal Affairs files here fall within Brady and Giglio, and thus, consistent with the precedent of both this Court and the United States Supreme Court, must be turned over without the additional hurdles urged by the State.

The State argues that Higgs places a greater burden on defendants before they can access internal affairs materials that are also Brady or Giglio material. (Plaintiff-Appellant's Brief ("P. Br.") at 39–42.) Not so. Of course, a state court cannot restrict rights provided by the federal Constitution. And the Court in Higgs did not do so. As Judge Mohammed put it, "[t]he Higgs court did not lessen the State's

obligations. Rather, it created a supplemental, not substitute, means for obtaining IA materials. It is clear it did not replace the automatic Brady/Giglio disclosure obligation." (Plaintiff-Appellant's Appendix ("Pa") at Pa0100 (case underlining added).)

The Court in Higgs was focused on the burden that would apply where a defendant is, through the ordinary discovery process, seeking IA materials that do not otherwise fall within Brady or Giglio. Higgs, 253 N.J. at 357–58 ("[A] defendant *who seeks discovery* of information from an internal affairs file must first file a motion with the trial court requesting an in camera review of that file." (emphasis added)).[1] Whether material must be automatically turned over by the prosecution consistent with Brady and Giglio is a separate inquiry from whether the material is otherwise discoverable under New Jersey law. See State v. Marshall, 123 N.J. 1, 182 (1991) (noting that discovery rules "operate[] independently of the prosecution's absolute obligation to reveal exculpatory material, documentary or otherwise, to the defense." (citations omitted)); see also Pressler & Verniero, Current N.J. Court Rules, Rule 3:13-3, Cmt. 3.3.1 (2026) ("[I]rrespective of any rule of court, the prosecutor has an absolute obligation to reveal [Brady material] both to the defendant and to the court."). The Constitutional obligations imposed by Brady and

[1] The State agrees that Higgs "did not address the necessity of a Giglio based disclosure." (P. Br. at 19–20.)

Giglio cannot be reduced or encumbered by a state court's interpretation of discovery rules and Higgs did not attempt to do so. Indeed, had the Higgs Court attempted to make such an impactful change in constitutional law, one would expect it to have done so explicitly.

Applying the Higgs framework to Brady or Giglio material is also inconsistent with the automatic nature of those obligations. Strickler v. Green, 527 U.S. 263, 280 (1999) ("[T]he duty to disclose such evidence is applicable even though there has been no request by the accused." (citation omitted)); Carter, 69 N.J. at 434 (the State has an obligation to turn over Brady/Giglio material "even absent inquiry" by the defense); State v. Desir, 245 N.J. 179, 193 (2021) (Rule 3:13-3 "explicitly renders automatic the turnover of exculpatory evidence mandated by the United States Supreme Court's holding in Brady v. Maryland"). Given the mandatory, automatic nature of Brady and Giglio disclosures under both federal law and the New Jersey Court Rules, the procedure outlined in Higgs, which requires defendants to file a motion specifically identifying the category of information sought and the relevance of that information, and then requires an in camera review by the trial court,[2] cannot

[2] The U.S. District Court, District of New Jersey has held that a prior policy of "submit[ting] items to the trial judge for in camera inspection on the question of whether they constituted Brady material" was improper and "should be discontinued" in part because "if the trial judge decides ex parte that a given item need not be disclosed, that ruling will not protect the government against a claim of denial of due process at trial." United States v. Five Persons, 472 F. Supp. 64, 69 (D.N.J. 1979). The State's argument here calls for the same policy. But the Supreme

apply. Higgs, 253 N.J. at 359; see also Banks v. Dretke, 540 U.S. 668, 696 (2004) ("A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process.").

The State's position that it need not turn over pending internal affairs files is not only unlawful, but also unworkable and unjust. As a hypothetical, consider a defendant on trial where the State's main witness is a police officer with a pending internal affairs investigation accusing him of falsifying reports. Surely, an official complaint that the officer falsified reports bears on his credibility and must be turned over under Giglio. The State's position is that the defendant is not entitled to know that information, simply because the internal affairs investigation is pending. If the internal affairs investigation is never disclosed, the defendant is convicted based on that officer's testimony, and the claim against the officer is then substantiated, what is to be done?[3] Conversely, a rule which requires disclosure and leaves the admissibility of related evidence to the rules of evidence, and the weight to be

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Court has held that, rather than in camera inspection, "a prosecutor anxious about tacking too close to the wind" should "disclose a favorable piece of evidence." Kyles v. Whitley, 514 U.S. 419, 439 (1995); United States v. Agurs, 427 U.S. 97, 108 (1976) ("[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure.").

[3] Note also the gamesmanship that could accompany such a rule. If the State were aware of an internal affairs investigation of an officer who was soon to testify as a witness at trial, it could simply slow-walk the investigation until after the verdict. Even without such intentional delay, conditioning a defendant's rights on the timeliness of internal affairs investigations over which they have no insight or control is haphazard and improper.

provided to a pending investigation to the jury, properly protects the defendant's right to a fair trial. That approach is both mandated by the Constitution, by New Jersey law, and comports with common sense.

Even if the internal affairs investigation does not substantiate the complaint, that should not change the analysis on what qualifies as Giglio material (and thus what must be disclosed). If the complaint itself bears on a testifying officer's credibility, it must be disclosed regardless of the eventual finding. A defendant is still entitled to probe the allegations made in the complaint through an independent investigation and / or through cross-examination. See United States v. Bethea, 787 F. Supp. 75, 77 (D.N.J. 1992) ("To adequately prepare themselves for the government's witnesses, defense counsel must have, among other things, a reasonable opportunity to investigate the accuracy of any Brady-Giglio-Agurs material regarding those witnesses"); California v. Green, 399 U.S. 149, 158 (1970) ("[C]ross-examination [is] the greatest legal engine ever invented for the discovery of truth[.]" (internal quotation marks omitted)).

The lower court's decision with respect to the consolidated motion to compel disclosure should be affirmed.

II. THE STATE'S GIGLIO LETTER IS CONSTITUTIONALLY INSUFFICIENT.

Brady and Giglio also require the State to provide substantive evidence, not a cursory statement that vague, undefined evidence exists. Here, the State's letter,

disclosing only that "an allegation of misconduct that bears upon [the officer's] truthfulness, bias, or integrity [] is the subject of a pending investigation" is woefully insufficient. (Pa 0091.) That does not apprise defense counsel of the nature of the allegation, does not allow for proper investigation or cross-examination, and is not a substitute for providing the actual substantive information as required by Brady and Giglio. While in federal court, summaries of Brady or Giglio material may *sometimes* satisfy the State's obligations, such summaries must at a minimum provide "[a]ll the relevant information" and the "essential facts that would enable Defendants to call witnesses and take advantage of any exculpatory testimony." See United States v. Henderson, 250 F. App'x 34, 39 (5th Cir. 2007); United States v. Parnas, 19-CR-725 (JPO), 2021 WL 2981567, at *6 (S.D.N.Y. 2021); see also United States v. Collins, 409 F. Supp. 3d 228, 244–45 (S.D.N.Y. 2019) (government must disclose "the essential facts which would enable [the defendant] to call the witness[es] and thus take advantage of any exculpatory testimony that [they] might furnish" (citation omitted)). Of course, defendants in New Jersey courts are "generally 'entitled to broad discovery.'" State in Interest of A.B., 219 N.J. 542, 555 (2014) (quoting State v. D.R.H., 127 N.J. 249, 256 (1992)). New Jersey's "open-file approach is intended to ensure fair and just trials." State v. Hernandez, 225 N.J. 451, 453 (2016); see also State v. Scoles, 214 N.J. 236, 252 (2013) (holding

that "[t]o advance the goal of providing fair and just criminal trials, we have adopted an open-file approach to pretrial discovery in criminal matters post-indictment").

But even if more restrictive federal discovery rules governed, the State's letters could not satisfy constitutional requirements as they provided no essential facts. See A.B., 219 N.J. at 556 ("A criminal trial where the defendant does not have 'access to the raw materials integral to the building of an effective defense' is fundamentally unfair." (quoting Ake v. Oklahoma, 470 U.S. 68, 77 (1985)). The State cannot satisfy its obligations by merely informing a defendant that Brady or Giglio material exists without providing substantive underlying information.

III. THE PROTECTIVE ORDER'S PROHIBITION ON SHARING INFORMATION WITHIN OPD IS OVERBROAD AND IMPROPERLY TREATS OPD DIFFERENTLY THAN PRIVATE LAW FIRMS.

The State's Protective Order is plainly overbroad insofar as it prevents OPD attorneys from sharing information about their cases with other OPD attorneys. (Pa0101 (the protective order is "excessively broad" and "prevents the defense from routine intra-office sharing for coverage or counsel collaboration").) By comparison, a private law firm generally has no restrictions on its ability to share information internally, and the State would not be able to restrict their ability to do so.[4] Indeed, law firms routinely share information among attorneys to foster

[4] The only exception would be where there is a case-specific or lawyer-specific conflict of interest requiring screening of an individual lawyer(s), see, e.g., R.P.C.

collaboration and create efficiencies. Even when discovery is designated as "Attorneys' Eyes Only," the Court Rules contemplate that it can be viewed by "any attorney in the parties' outside law firms," not just a select few. See N.J. Court Rules Appx. XXX ¶ 5(a) (Form Discovery Confidentiality Order for CBLP Cases). OPD should be treated no differently.

OPD is essentially a law firm, and should be (and already is) treated as such. For instance, Rule of Professional Conduct 1.0(c) defines "Firm" or "law firm" to mean "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law, or lawyers employed in a legal services organization or the legal department of a corporation or other organization." OPD certainly constitutes an association of lawyers authorized to practice law and thus, is treated as any other law firm for conflicts and other purposes. See R.P.C. 1.10.

Absent a specific conflict where an ethical wall is appropriate, or a situation where a security clearance is necessary, there is no valid basis to limit OPD lawyers from discussing case specifics or facts with one another or from sharing evidence,

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1.10, but that is not relevant here. Similarly, some information relevant to a case may require a security clearance, meaning it could not be disseminated to those without the clearance. But again, that situation is not relevant here.

as private law firms and prosecutors' offices routinely do.[5] The trial court's decision as to the protective order should be affirmed.

CONCLUSION

For the reasons set forth herein, ACLU-NJ respectfully urges this Court to affirm the decision of the trial court.

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Dated: December 26, 2025

By: _____
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[5] OPD's contemplated creation of a database of information about officer misconduct is also lawful and proper. Brady and Giglio do not require a defendant to make a showing of how they will use material once it is turned over, nor do those cases or their progeny limit what a defendant can use the material for. And the New Jersey Supreme Court has previously recognized that nothing prevents organizations from publishing material concerning official misconduct. State v. T.J.M., 220 N.J. 220, 232 n.2 (2015) ("We likewise decline the ACLU's invitation to create a registry of prosecutors who have repeatedly been admonished for engaging in prosecutorial error, as the Attorney General would have it denominated. ***Nothing prevents others from publishing views on such issues*** as decided in published and unpublished opinions of the appellate courts of this state." (emphasis added)). Moreover, OPD attorneys are obligated to act as a zealous advocate for their clients, and to "act with reasonable diligence." R.P.C. 1.3. Collecting and organizing information about individuals who may testify in many of OPD's cases comports with those ethical obligations. (Pa0102 (the restrictions in the order "impair effective assistance and ethical obligations" and "hinders ethical duties and practical necessities").) Indeed, as Judge Mohammed recognized, OPD should not be hindered in their ability to "prepar[e] for other matters involving the same witnesses." (Ibid.) The State's concern about the creation of this database is perplexing, since its interest should be "not that it shall win a case, but that justice shall be done." Berger v. United States, 295 U.S. 78, 88 (1935).

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