

Paul R. D'Amato, Esquire – ID #006901974

D'Amato Law Firm

2900 Fire Road, Suite 200

Egg Harbor Township, New Jersey 08234

609-926-3300

Attorney for Plaintiffs

STEPHEN VALIANTE and
DIANNE VALIANTE,
Co-Administrators of the Estate of
Tiffany Valiente,

Plaintiffs

-VS-

STATE OF NEW JERSEY, NEW JERSEY
TRANSIT CORPORATION, NEW JERSEY
TRANSIT RAIL OPERATIONS, INC., A
SUBSIDIARY OF NEW JERSEY TRANSIT, NEW
JERSEY TRANSIT POLICE DEPARTMENT, AN
AGENCY OF NEW JERSEY TRANSIT, THE NEW
JERSEY OFFICE OF THE CHIEF STATE
MEDICAL EXAMINER, JOHN DOES (1-5) AND
JANE DOES (1-5),

Defendants

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY: LAW DIVISION

No. ATL-L-2116-25

Motion Date: November 7, 2025

**NOTICE OF PLAINTIFFS' CROSS-
MOTION**

TO: Via CM/ECF

Atlantic County Superior Court
Attn: Clerk of the Court
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Timothy P. Malone, Esq.

Angela E. Juneau, Esq.

Pashman Stein Walder Hayden, P.C.

Court Plaza South

21 Main Street, Ste

200 Hackensack, NJ 07601

Attorney for Defendants NJ Transit Corp; NJ Transit Rail Operations, Inc; and NJ Transit
Police Department

Jacob N. Stockton Deputy Attorney General

Richard J. Hughes Justice Complex

25 Market Street

P.O. Box 112

Trenton, New Jersey 08625-0112

Attorney for Defendants State of New Jersey and New Jersey Office of the Chief Medical
Examiner

PLEASE TAKE NOTICE that the undersigned attorney for Plaintiffs has filed a Cross-Motion seeking the following:

(a.) A certified statement from each Defendant listing all property/evidence still in their possession.

(b.) The opportunity for Plaintiffs, through their lawyers and forensic consultants, to inspect, examine, and photograph the condition of all property/evidence where the Defendants are currently maintaining it.

(c.) Defendants to produce a designated representative for a deposition to testify about the manner, means, and methods used to collect and maintain all the property/evidence from the date of collection to the present;

(d.) ALL property/evidence be transferred to the Plaintiffs' representatives; and

(e) any other legal and equitable relief the Court may consider appropriate and just.

PLEASE TAKE FURTHER NOTICE that, in support of its application, the undersigned shall rely upon the attached brief and certification.

PLEASE TAKE FURTHER NOTICE that, in accordance with R. 1:6-2(d), a proposed form of Order is attached hereto.

Respectfully submitted,

s/Paul R. D'Amato
Paul R. D'Amato, Esquire
Attorney for Plaintiffs

Date: October 24, 2025

Paul R. D'Amato, Esquire - ID #006901974

D'Amato Law Firm

2900 Fire Road, Suite 200

Egg Harbor Township, New Jersey 08234

609-926-3300

Attorney for Plaintiffs

**STEPHEN VALIANTE and
DIANNE VALIANTE,
Co-Administrators of the Estate of
Tiffany Valiante,
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-vs-

**STATE OF NEW JERSEY, NEW
JERSEY TRANSIT CORPORATION,
NEW JERSEY TRANSIT RAIL
OPERATIONS, INC., A
SUBSIDIARY OF NEW JERSEY
TRANSIT, NEW JERSEY TRANSIT
POLICE DEPARTMENT, AN
AGENCY OF NEW JERSEY
TRANSIT, THE NEW JERSEY
OFFICE OF THE CHIEF STATE
MEDICAL EXAMINER, JOHN DOES
(1-5), and JANE DOES (1-5)**

Defendants

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY - LAW DIVISION**

DOCKET NUMBER: ATL-L-002116-25

CIVIL ACTION

ORDER

THIS MATTER having been brought before the Court by counsel for Defendants and by Plaintiffs' Cross-Motion, and the Court having considered the submissions and argument of parties and for the reasons set forth on the record and good cause having been shown:

It is on this ____ day of _____, 2025, ORDERED that

1. Defendants' Motions to Dismiss are **DENIED**; and
2. The following actions shall occur within thirty (30) days of this Order:
 - (a.) Each Defendant shall provide a certified statement listing all property/evidence still in their possession.

(b.) Plaintiffs shall, through their lawyers and forensic consultants, inspect, examine, and photograph the condition of all property/evidence where the Defendants are currently maintaining it.

(c.) Defendants shall produce a designated representative for a deposition to testify about the manner, means, and methods used to collect and maintain all the property/evidence from the date of collection to the present;

(d.) ALL property/evidence be transferred to the Plaintiffs' representatives.

The Honorable Danielle J. Walcott, J.S.C.

Motion Opposed ()
Motion Unopposed ()

Paul R. D'Amato, Esquire – ID #006901974

D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
609-926-3300
Attorney for Plaintiffs

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MEDICAL EXAMINER, JOHN DOES (1-5) AND
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Defendants

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY: LAW DIVISION

No. ATL-L-2116-25

Motion Date: November 7, 2025

**COUNSEL'S CERTIFICATION IN
OPPOSITION TO DEFENDANTS'
MOTIONS TO DISMISS AND IN
SUPPORT OF PLAINTIFFS' CROSS-
MOTION**

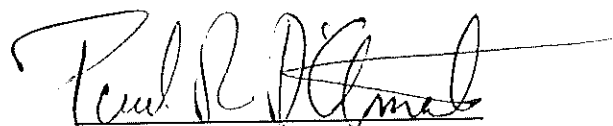
Paul R. D'Amato, Esquire, hereby certifies as follows:

1. I am an attorney at law in the State of New Jersey and represent the plaintiff in the above matter.
2. I make this certification in support of Plaintiff's opposition to Defendants' Motions to Dismiss and in support of Plaintiffs' Cross-Motion for relief.
3. Exhibit A is a true and correct copy of communications between the undersigned and Defendants and their representatives over the last 10 years.
4. Exhibit B is a true and correct copy of Defendant NJTPD's Answer filed on January 15, 2020, in a prior litigation.
5. Exhibit C is a true and correct copy of Defendant NJTPD's opposition brief filed on January 14, 2021, in prior litigation.

6. Exhibit D is a true and correct copy of the unpublished opinion, State v. J.M., 2023 N.J. Super. Unpub., LEXIS 753.

7. Exhibit E is a true and correct copy of the unpublished decision in Doe v. Burke, Dkt. No. A-4920-18, WL 3625397 (App. Div. Aug. 17, 2021)

8. I hereby certify that the statements made herein and in the accompanying brief are true. I certify that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read "Paul R. D'Amato", with a long horizontal flourish extending to the right.

Paul R. D'Amato, Esquire
Attorney for Plaintiffs

Date: 10/27/25

Paul R. D'Amato, Esquire – ID #006901974

D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
609-926-3300
Attorney for Plaintiffs

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MEDICAL EXAMINER, JOHN DOES (1-5) AND
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Defendants

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY: LAW DIVISION

No. ATL-L-2116-25

Motion Date: November 7, 2025

**PLAINTIFFS' BRIEF IN OPPOSITION
TO DEFENDANTS' MOTIONS TO
DISMISS AND IN SUPPORT OF
PLAINTIFFS' CROSS-MOTION**

Kindly accept this letter brief in lieu of a more formal brief in support of Plaintiffs' opposition to Defendant New Jersey Transit Police Department ("Defendant NJTPD") and Defendants the State of New Jersey and the New Jersey Office of the Chief Medical Examiner's (collectively, "Defendant OME") Motions to Dismiss, as well as in support of Plaintiffs' cross-motion for the following relief:

(a.) A certified statement from each Defendant listing all property/evidence still in their possession.

(b.) The opportunity for Plaintiffs, through their lawyers and forensic consultants, to inspect, examine, and photograph the condition of all property/evidence where the Defendants are currently maintaining it.

(c.) Defendants to produce a designated representative for a deposition to testify about the manner, means, and methods used to collect and maintain all the property/evidence from the date of collection to the present;

(d.) ALL property/evidence be transferred to the Plaintiffs' representatives; and

(e) Any other legal and equitable relief the Court may consider appropriate and just.

PRELIMINARY STATEMENT

Plaintiffs Stephen and Dianne Valiante, the parents of Tiffany Valiante, have been victims of an unquestionably flawed and incompetent investigation conducted by Defendant NJTPD into their daughter's death on July 12, 2015. More than 10 years after Tiffany's tragic and violent passing, it is clear that Defendant NJTPD, the lead investigative agency, rushed to conclusions immediately after the incident, violating established protocols for investigating suspicious deaths along American railroad rights of way. They publicly declared within just hours of the incident that Tiffany's death was a suicide. This unsupported conclusion, reached without a thorough investigation by trained officials, including Defendant OME, urges Plaintiffs—who are New Jersey residents and victims—to exercise their rights to help establish that Tiffany did not take her own life. Furthermore, the Plaintiffs have the right, through proper investigative procedures, to identify the responsible parties so they can be held accountable.

Justice has been denied and delayed for the Valiante family from July 14, 2015, to the present. Neither Defendant NJTPD nor Defendant OME has wavered from their position that Tiffany's death was self-inflicted. However, crucially for this lawsuit, over the last 10 years, Defendants have refused to inform Plaintiffs whether the investigation was open or closed and, even more egregiously, have repeatedly violated Plaintiffs' rights under the Crime Victim Bill of Rights ("CVBR") concerning the property involved in this case.

Plaintiffs, first and foremost, are entitled to know whether the investigation is ongoing or closed. They filed this complaint to compel Defendants to answer this question. If it is closed, under the CVBR, Defendants have a constitutional obligation to treat Plaintiffs, as victims, with

fairness, compassion, and respect. Additionally, they must promptly return all property/evidence related to this matter to Plaintiffs. Providing Plaintiffs with a certified statement from each Defendant indicating all property/evidence remaining in their possession, allowing Plaintiffs' lawyers and forensic consultants to inspect, examine, and photograph the property/evidence in its current condition, producing a designated representative for a deposition to testify regarding how the property/evidence was collected and maintained, and transferring all relevant property/evidence to Plaintiffs' representatives are necessary steps to ensure that Plaintiffs' rights under the CVBR are respected.

PLAINTIFFS' RESPONSE TO DEFENDANT NJTPD STATEMENT OF FACTS

- A. Admitted.
- B. Admitted.
- C. Admitted.
- D. Admitted
- E. Admitted.
- F.
 - i. Admitted;
 - ii. Denied; Plaintiffs' complaint does not allege any claims under the New Jersey Civil Rights Act; all of Plaintiffs' claims are based on violations of the New Jersey Crime Victim Bill of Rights and the New Jersey Constitution.

PLAINTIFFS' RESPONSE TO DEFENDANT OME STATEMENT OF FACTS

Defendant OME's Statement of Facts is not pleaded with particularity, and Plaintiffs are therefore unable to respond properly. The documents underpinning the previous lawsuits speak for themselves.

PLAINTIFFS' COUNTER-STATEMENT OF MATERIAL FACTS

In its brief, Defendant NJTPD makes a critical assertion:

Ms. Valiante's death occurred in 2015, the State Medical Examiner issued its report in October 2015, and **NJTPD closed the investigation at that time.**

See Defendant NJTPD brief, p. 14. {Emphasis added.}

In its brief, Defendant OME also writes:

To the extent Plaintiffs raise any new factual allegations in support of their claims arising out of **an investigation that concluded years ago**, they have not adequately explained why they were not brought in the original action.

See Defendant OME brief, p. 15.

Over many years of correspondence and communication, and despite filing several lawsuits, Defendants have never informed or confirmed to Plaintiffs or their counsel that the investigation into their daughter's tragic death has been closed. See **Exhibit A**, attached to Counsel's certification, which includes copies of letters, emails, and communications to and from Defendants and their representatives, where Plaintiffs' counsel repeatedly inquired about the preservation of property/evidence, whether the criminal investigation is still ongoing, or if the matter has been closed. Defendants never provided a direct response to these inquiries. Specifically, see the following:

- October 2, 2015 – Plaintiffs' counsel sent a letter to Defendant NJTPD requesting that all evidence be preserved and provided to Plaintiffs if there is no criminal prosecution.
- June 20, 2016 – Plaintiffs' counsel's letter to Defendant NJTPD requesting a copy of the conductor's statement.
- July 6, 2016 – Defendant NJTPD letter denying the request for the conductor's statement.
- February 23, 2017 – Plaintiffs' counsel's OPRA request for the complete file of the Defendant NJTPD's investigation into Tiffany's death.
- March 9, 2017 – Defendant NJTPD's response to the February 23, 2017 OPRA request.
- July 11, 2017 - Plaintiffs' counsel wrote to Defendant NJTPD, requesting that all items entered into evidence not be discarded and, when appropriate, be turned over to Plaintiffs by Defendant NJTPD.
- July 11, 2017 to August 10, 2017 – Various letters and an email from Plaintiffs' counsel to Defendant NJTPD requesting to have the DNA swabs tested at their expense.
- June 6, 2019 - Plaintiffs' counsel submits a letter to Defendant NJTPD again requesting DNA swab testing and seeking an itemized list of the evidence retained.
- June 21, 2019 – Plaintiffs' counsel's letter to Defendant NJTPD, labeled as "second request," referencing the June 6, 2019 letter.

- October 30, 2019 – Deputy Chief of Police for Defendant NJTPD wrote to Plaintiffs' counsel to state that Defendant NJTPD maintained the items listed in paragraph 112 of the August 113, 2019, filed Amended Complaint.
- December 24, 2019 – Email from the Deputy Attorney General (“DAG”) to Plaintiffs' counsel stating that Defendant NJTPD stored evidence in paper bags or envelopes.
- February 25, 2020 - Plaintiffs' counsel's letter to the DAG requesting to take the deposition of a representative of Defendant NJTPD regarding evidence collection and storage.
- February 14, 2025 - Plaintiffs' counsel emailed the DAG, referencing Defendant NJPD's delay in responding to the inquiry about what property/evidence it still possessed, and asked whether the evidence was destroyed. The DAG responded that the evidence listed in paragraph 112 of the Amended Complaint still exists.

See **Exhibit A**.

Most importantly, regarding the issues discussed here, by letter dated March 25, 2024, Plaintiffs' counsel asked Defendant NJTPD, “If the Tiffany Valiante file is still considered an open investigation and that is the basis of why you will not provide us with the two SD cards and the USB that was given to you by the Valiante family, please advise me of the same. If the file is, in fact, closed, why can we not have the items returned to the Valiante family?” See **Exhibit A**. The DAG did not provide a formal response to this question.

Even more egregiously, over the past 10 years, Plaintiffs have been forced to repeatedly file lawsuits to learn the status of the criminal investigation and to seek the return of the property/evidence held by Defendant NJPTD. The first time Plaintiffs had to file suit was to obtain a copy of Defendant OME's file. Plaintiffs filed a second lawsuit seeking to compel Defendant NJTPD to release its file. The third lawsuit asked Defendant OME to amend its death certificate. In each of these cases, Defendants did not file an Answer to the Complaint; instead, the parties negotiated and reached amicable settlements, resulting in the cases being dismissed. See Certification of Counsel.

Plaintiffs had to file a fourth lawsuit to obtain evidentiary items for testing by a private forensic firm. In that suit, Defendants filed an Answer, but it did not include any statement

indicating whether the investigation was open or closed. See Exhibit B to Counsel's Certification, a copy of Defendant NJTPD's January 15, 2020 filed Answer. Additionally, in an opposition brief filed in that matter, Defendant NJTPD asked if the DNA testing requested by Plaintiffs would "destroy or permanently alter the evidence so that testing cannot be performed again at some point in the future?" See Exhibit C to Counsel's Certification, a copy of Defendant NJTPD's January 14, 2021 filed brief in opposition. {Emphasis added.} It was a reasonable assumption by Plaintiffs that the question posed by Defendant NJTPD in its brief implied that the investigation was ongoing. In resolving the 2019 lawsuit, Defendant NJTPD provided certain evidentiary items to Plaintiffs for DNA testing. However, Defendant NJTPD did not indicate the investigation's status or why ALL of the property/evidence was not being returned to Plaintiffs as required by the CVBR. See Certification of Counsel.

In each of these lawsuits seeking incident-related information, the matters were dismissed by agreement only after the Defendants provided the requested information. At no point during any of the previous lawsuits did any of the Defendants inform Plaintiffs that Defendant NJTPD had closed the investigation or that it had concluded years earlier. If Plaintiffs had received this information, they would have promptly requested the return of ALL property/evidence. See Certification of Counsel.

LEGAL ARGUMENT

I. THE APPLICABLE STANDARD

A complaint should be dismissed for failure to state a claim pursuant to R. 4:6-2(e) only if "the factual allegations are palpably insufficient to support a claim upon which relief can be granted." Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). This standard requires that "the pleading be searched in depth and with liberality to determine whether a cause of action can be gleaned even from an obscure statement." Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002) (citing Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). The pleader is entitled to "the most favorable inferences which

may be reasonably drawn from” the pleading’s allegations, Rappaport v. Nichols, 31 N.J. 188, 190 (1959); see also, Donato v. Moldow, 374 N.J. Super. 475, 483 (App. Div. 2005).

II. THE CRIME VICTIM’S BILL OF RIGHTS EMPOWERS VICTIMS WITH THE RIGHT TO APPEAR FOR A PROCEEDING IMPLICATING THEIR RIGHTS AND HAVE STANDING TO FILE A MOTION AND RECEIVE AN ADJUDICATED DECISION BY THE COURT.

A crime victim’s rights are of constitutional dimension in New Jersey. N.J. Const. art. I, §22. Since enacting the Crime Victim’s Bill of Rights (“CVBR”) in 1985, the legislature found “[t]hese rights are among the most fundamental and important in assuring public confidence in the criminal justice system.” N.J.S.A. 52:4B-35. In 1991, the New Jersey voters passed the Victim’s Rights Amendment (“VRA”) to the New Jersey Constitution, reaffirming that a “victim of crime shall be treated with fairness, compassion, and respect by the criminal justice system.” In 2012, the legislature enacted “Alex DeCroce’s Law,” which amended and supplemented the rights of crime victims and added paragraph (r) to N.J.S.A. 52:4B-36, which affords crime victims the right:

To appear in any court before which a proceeding implicating the rights of the victim is being held, with standing to file a motion or present argument on a motion filed to enforce any right conferred herein or by [the VRA], and to receive an adjudicative decision by the court on any such motion.

N.J.S.A. 52:4B-36(r).

As the Court wrote in State v. Lavrik, 472 N.J. Super. 192, 207 (App. Div. 2022), “According to the Assembly Committee Statement, the 2012 “bill g[ave] victims standing to enforce the rights afforded by the ‘[CVBR].’” A. Appropriations Comm. Statement to A. 2380, at 2 (May 21, 2012).” Id. “In essence, N.J.S.A. 52:4B-36(r) confers standing to enforce the procedural rights granted under the VRA and the remaining seventeen paragraphs of N.J.S.A. 52:4B-36.” Lavrik, *supra*, 472 N.J. Super. at 207. In Lavrik, the victim did not attempt to intrude on the prosecutor’s “exclusive jurisdiction” over the “criminal business” of the state, as outlined in N.J.S.A. 2A:158-4. Instead, the victim challenged a Court order that directly affected her interest in a related civil proceeding. Similarly, herein, Plaintiffs do not seek to intrude on law

enforcement's exclusive control over a criminal investigation, but instead seek a Court order related to a civil proceeding solely to uphold their rights under subsection (l) of the CVBR, which gives victims the right "to the prompt return of property when no longer needed as evidence." N.J.S.A. 52:4B-36(l).

The New Jersey Supreme Court also wrote that the CVBR "grants victims standing to file a motion to enforce those rights." State v. Tedesco, 214 N.J. 177, 184 (2013). In Tedesco, the Court acknowledged the history of the CVBR and the "series of changes in the law," which "steadily strengthened the rights of victims." Tedesco, *supra*, 214 N.J. at 195. In that case, the Supreme Court determined that the victim had standing to bring an action under the CVBR to uphold the VRA's mandate that crime victims be treated with "fairness, compassion, and respect." Id. at 184-185.

In an unpublished opinion, State v. J.M., 2023 N.J. Super. Unpub., LEXIS 753, a copy of which is attached to Counsel's Certification as **Exhibit D**, the Appellate Division recently upheld the right of a crime victim to bring a claim to enforce her right under the CVBR and VRA. In J.M., the victim asserted that the prosecutor and judge had failed to treat her with dignity, fairness, compassion, and respect owed to her under the CVBR and VRA. Id. at *9. The Appellate Court, citing Lavrik, concluded that N.J.S.A. 52:4B-36(r) "expressly confers standing on victims to enforce the rights enumerated in the CVBR and VRA." The Court wrote,

Based on our de novo review, we are satisfied that Little had standing to appeal the dismissal of the complaint to enforce her rights under the CVBR and VRA based on the prosecutor's alleged affirmative acts and the municipal court judge's alleged omissions. There can be no doubt that victims "are to be treated with fairness, compassion, respect, and dignity" by the criminal justice system. Tedesco, 214 N.J. at 196. If Little's allegations are true, that did not occur here. According to Little, the municipal prosecutor was dismissive of her claims, blamed her for provoking the alleged assault, and flatly refused to view the evidence she offered to prove her account. The municipal court judge compounded the error by failing to advise Little of her available remedies before dismissing the complaint on the prosecutor's motion.

If her allegations are accepted, Little **has plausibly set forth a violation of her rights under N.J.S.A. 52:4B-36(a) and Article 1, Paragraph 22 of the State Constitution.** In that regard, we disagree with the dicta in the judge's

opinion that Little's rights "were properly vindicated" by the opportunity to oppose the prosecutor's decision in open court. The record suggests that the opportunity to be heard was "little more than a potentially cathartic but hollow exercise." State v. A.M., 252 N.J. 432, 453, 286 A.3d 660 (2023). **The CVBR and VRA require more than a perfunctory observation of a victim's rights.**

Id. at *13.

Critically, the J.M. Court acknowledged that "[i]f the prosecutor arbitrarily or corruptly fails or refuses to act, the Courts must then intervene to correct the administrative abuse." Id. at *17. Similarly, here, Plaintiffs' complaint seeks the Court's intervention to correct Defendants' actions, which have violated the CVBR's mandate to promptly return all property if it is no longer needed as evidence. Like the facts in Lavrik, Tedesco, and J.M., here, law enforcement has refused, despite repeated requests and inquiries, to tell Plaintiffs whether the criminal investigation involving the death of their daughter, Tiffany, is open or closed. This unreasonable behavior has violated the Plaintiffs' rights under the CVBR and VRA, which require the prompt return of all property when it is no longer needed as evidence. N.J.S.A. 52:4B-36(l).

Thus, this case law directly contradicts Defendants' claim that Plaintiffs lack a right to a private cause of action under the CVBR. Additionally, Defendants misinterpret the Appellate Court's unpublished decision in Doe v. Burke, Dkt. No. A-4920-18, WL 3625397 (App. Div. Aug. 17, 2021), a copy of which is attached to Counsel's Certification as **Exhibit E**. In Doe, the Court stated that the CVBR declares that crime victims' rights "should be given full recognition and protection." Doe at *17. Contrary to the Defendants' assertions, the Court noted that both a county and a prosecutor's office "may be subject to suit under . . . the CRA." Id. at *13. {Emphasis added.} It dismissed the counts in Doe not because the plaintiff was unable to bring suit under the CVBR, but because the complaint did not allege actions consistent with the requirements of Monell v. Dep't of Social Servs., 436 U.S. 658, 690 (1978). Furthermore, the Doe Court reversed the trial Court's dismissal of count one against the prosecutor in his individual capacity. The statement, "there is nothing in the CVBOR, however, that authorized a free-standing civil cause of action for damages," pertained to the plaintiff's attempt to allege a violation of the CVBR for "physical and

mental anguish, emotional distress, anxiety, fear, and embarrassment.” *Id.* at *22. It was not a broad statement opposing all suits filed to enforce the victim’s rights under the CVBR.

Therefore, Defendants’ claim that Plaintiffs fail to state a claim due to the absence of a private right of action is unfounded. Furthermore, Defendants’ argument that Plaintiffs’ claims should be brought under the New Jersey Civil Rights Act is also without merit.

III. PLAINTIFFS’ CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS.

In its brief, Defendant NJTPD makes a critical assertion:

Ms. Valiante’s death occurred in 2015, the State Medical Examiner issued its report in October 2015, and **NJTPD closed the investigation at that time.**

See Defendant NJTPD brief, p. 14. {Emphasis added.}

In its brief, Defendant OME also writes:

To the extent Plaintiffs raise any new factual allegations in support of their claims arising out of **an investigation that concluded years ago**, they have not adequately explained why they were not brought in the original action.

See Defendant OME brief, p. 15.

The first question to ask is, if the investigation was “closed” or “concluded years ago,” why have Defendants allowed Plaintiffs to send repetitive and extensive correspondence and communications to Defendants and their representatives for over 10 years in an effort to preserve and obtain the property/evidence from Defendants? See **Exhibit A**. Even more troubling, why have Defendants forced Plaintiffs to file multiple lawsuits? If the case was closed years ago, as Defendants now conveniently assert for the first time in any litigation between these parties, why haven’t they complied with the mandates of the CVBR and **promptly** returned ALL property/evidence to Plaintiffs?

The first time Plaintiffs had to file suit was to obtain a copy of the Defendant OME’s file. Plaintiffs then filed a second lawsuit seeking to compel Defendant NJTPD to release its file. The third lawsuit requested that Defendant OME amend its death certificate. In each case, Defendants

did not file an Answer to the Complaint; instead, the parties engaged in negotiations and reached amicable settlements, resulting in the cases being dismissed.

Plaintiffs had to file a fourth lawsuit to obtain evidentiary items for testing by a private forensic firm. In that suit, Defendants filed an Answer, but it did not include any statement indicating whether the investigation was open or closed. See Exhibit B to Counsel's Certification, a copy of Defendant NJTPD January 15, 2020 filed Answer. Even more noteworthy, in an opposition brief filed in that matter, Defendant NJTPD asked if the DNA testing requested by Plaintiffs would "destroy or permanently alter the evidence so that testing cannot be performed again at some point in the future?" See Exhibit C to Counsel's Certification, a copy of Defendant NJTPD January 14, 2021 filed brief in opposition. {Emphasis added.} It was reasonable for Plaintiffs to assume, based on the question posed by Defendant NJTPD in its brief, that the investigation was ongoing. The matter was never fully litigated; instead, Defendant NJTPD provided certain evidentiary items to Plaintiffs for DNA testing. However, Defendant NJTPD did not indicate the status of the investigation or why ALL property/evidence was not returned to Plaintiffs, as required by the CVBR.

At no point in any of the previous lawsuits did any of Defendants inform Plaintiffs that Defendant NJTPD had closed the investigation or that it had concluded years earlier. If Plaintiffs had received this information, they would have promptly requested the return of all property/evidence.

Therefore, Defendants' claim that the statute of limitations bars Plaintiffs' lawsuit is unfounded because Defendants wrongly contend that Plaintiffs' claim started around the time of their daughter's death or the medical examiner's report. In fact, Plaintiffs' claim is ongoing. The concept of a continuing violation has been described as a "pattern or series of acts connected for liability purposes by the fact that an act contributing to the claim occurs within the filing period." Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1, 24 (2002), quoting Amtrak v. Morgan, 536 U.S. 101, 116 (2002). As explained by *Prosser and Keeton on Torts*, § 13, at 83, "[T]he

principle upon which one is charged as a continuing wrongdoer is that he has a legal right, and is under a legal duty, to terminate the cause of the injury. In such a case, there is a continuing wrong so long as the offending object remains.” *Id.* “When an individual is subject to a continual, cumulative pattern of tortious conduct, the statute of limitations does not begin to run until the wrongful action ceases.” *Wilson v. Wal-Mart Stores*, 158 N.J. 263, 272 (1997).

Here, Defendants had an ongoing legal duty to inform Plaintiffs when the criminal investigation was closed so they could assert their rights under the CVBR, including the right to be treated with fairness and respect and to have property ***promptly*** returned. Defendants not only repeatedly failed to do so in response to multiple letters and email inquiries, but they also failed to do so in any response to the four prior lawsuits. Now, suddenly, when it benefits their defense, Defendants NJTPD and OME, for the first time in over 10 years, claim to Plaintiffs and this Court that the matter closed in 2015. This Court should not tolerate such dilatory tactics. Defendants should not profit from neglecting their legal duties. It has been the actions — or lack thereof — of Defendants that caused these multiple lawsuits. Plaintiffs’ injury has persisted.

If, in fact, Defendant NJTPD’s statement is true that the investigation was closed in 2015, then Defendants’ ongoing failure over the last 10 years to inform Plaintiffs of that fact and to provide for the ***prompt*** return of all property is unacceptable and violates their rights under the CVBR. If that statement is true, Defendants should not have filed a motion to dismiss this case but should have immediately and ***promptly*** returned ALL property/evidence and apologized to Plaintiffs for failing to do so earlier.

Defendants’ claim that the statute of limitations bars this complaint is without merit.

IV. DEFENDANTS ARE SUBJECT TO COMPLAINTS BROUGHT UNDER THE CVBR.

As indicated above, in the Appellate Court’s unpublished decision in *Doe v. Burke*, Docket No. A-4920-18, WL 3625397 (App. Div. Aug. 17, 2021), the Court stated that the CVBR declares that crime victims’ rights “should be given full recognition and protection.” *Doe* at *17. Contrary

to the Defendants' assertions, the Court wrote that both a county and a prosecutor's office "may be subject to suit under . . . the CRA." *Id.* at *13. {Emphasis added.} It dismissed the counts in *Doe* not based on the plaintiff's inability to bring suit under the CVBR, but because the complaint did not allege an action consistent with the requirements of *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978). Defendants' briefs wrongly assert that Plaintiffs' claims must be governed by the New Jersey Civil Rights Act ("NJCR"). Here, Plaintiffs bring a claim to enforce their rights under the CVBR as permitted by *N.J.S.A. 52:4B-36(r)*. Therefore, Defendants' analysis regarding who is a person subject to the NJCR is irrelevant, inapplicable, and without merit.

V. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE ENTIRE CONTROVERSY DOCTRINE.

The Entire Controversy Doctrine ("ECD") is an equitable doctrine "that rests upon the twin pillars of fairness to the parties and fairness to the system of judicial administration." *Joel v. Morrocco*, 147 N.J. 546, 555 (1997). While the ECD requires mandatory joinder of claims by incorporating the concept of claim preclusion (see *R. 4:30(a)*), the guiding principle underpinning the ECD is judicial fairness. *K-Land Corp. No. 28 v Landis Sewerage Auth.*, 173 N.J. 59, 74 (2002). "Preclusion should be a remedy of last resort." *Olds v. Donnelly*, 150 N.J. 424, 446-47 (1997). "In considering whether application of the doctrine is fair, courts should consider fairness to the court system as a whole, as well as to all parties." *Wadeer v. N.J. Mfrs. Ins. Co.*, 220 N.J. 591, 605 (2015). Accordingly, "[i]n considering fairness to the party whose claim is sought to be barred, a Court must consider whether the claimant has 'had a fair and reasonable opportunity to have fully litigated that claim in the original action.'" *Gelber v. Zito Partnership*, 147 N.J. 561, 565 (1997), quoting *Cafferata v. Peyser*, 251 N.J. Super. 256, 261 (App. Div. 1991). In relation to a defendant, "fairness is a protective concept that focuses primarily on whether defendants would be in a better position to defend themselves if he claims against them had been raised and asserted in the first litigation." *Ditrollo v. Antiles*, 142 N.J. 253, 273 (1995). Where claims are "separate and discrete" from those in the initial proceeding, the mandatory joinder of claims does not bar the subsequent

action. Hillsborough Twp. Bd. of Educ. v. Faridy Thorne Frayta, P.C., 321 N.J. Super. 275, 285 (App. Div. 1999). Nor does the doctrine “apply to bar component claims either unknown, unarisen, or unaccrued at the time of the original action.” K-Land Corp., *supra*, 173 N.J. at 70. Finally, the ECD “remains an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases.” Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 114 (2019), quoting Highland Lakes Country Club & Cmty. Ass'n v. Nicastro, 201 N.J. 123, 125 (2009). “[A] court should not preclude a claim under the entire controversy doctrine if such a remedy would be unfair in the totality of the circumstances and would not promote the doctrine 's objectives of conclusive determinations, party fairness, and judicial economy and efficiency.” Bank Leumi USA v. Kloss, 243 N.J. 218, 227 (2019).

Here, the policies underlying the application of the ECD will not be enforced by preventing claims under these circumstances. When assessing whether applying the doctrine is fair, the Court should recognize that Plaintiffs did not have a fair and reasonable opportunity to litigate their claim in the prior litigation. Specifically, the claims in the 2019 lawsuit were never decided on their merits. Instead, Defendant NJTPD provided Plaintiffs with the specific evidence they requested for DNA testing only after a Court Order compelled them to do so. More importantly, as noted above, Defendant NJTPD's brief in the 2019 litigation, which referred to “testing to be performed again at some point in the future,” reasonably led Plaintiffs to believe that the matter was NOT closed.

Additionally, Defendants have not shown that they would be better able to defend themselves if the claims had been raised and asserted in the initial lawsuit. The main issue in this case is this: if the investigation was closed in 2015, as Defendants now conveniently claim in their brief, then why didn't Defendant NJTPD follow the requirements of the CVBR 10 years ago and promptly return ALL property to the Plaintiffs? If, as they now state, the matter was 'closed' in 2015, why were Plaintiffs forced to send extensive correspondence and communications over over

10 years to seek the preservation and return of the property? Most importantly, if the matter truly was “closed” so long ago, why were Plaintiffs compelled to file multiple lawsuits? If Defendant NJTPD had informed Plaintiffs in the very first lawsuit that the investigation was closed, and if Defendant NJTPD had complied with the CVBR, Plaintiffs could have obtained ALL of the property/evidence they sought 10 years ago and would not have had to endure this extended fight.

Therefore, the claims here are separate and distinct from those in the 2019 case because, at no point during any communication or settlement of that lawsuit, did Defendant NJTPD inform Plaintiffs that its criminal investigation into the death of Plaintiffs’ daughter, Tiffany, was closed. Before or during the 2019 complaint, Plaintiffs were unaware that they could seek the return of ALL their property under the CVBR. Since the claim for ALL property to be returned is separate and because Defendants refused to provide any information about the investigation's status, the ECD does not apply, as Plaintiffs’ rights under the CVBR were not yet ripe—being unknown, not arisen, and unaccrued—at the time of the 2019 litigation. Accordingly, this Court should exercise its discretion and find that, given the facts of this case, equity requires that the ECD not apply. Caselaw shows that preclusion should be a last resort. Precluding Plaintiffs’ claims under the ECD would be unfair under the totality of circumstances and would not serve the goals of conclusive determinations, fairness among parties, or judicial economy and efficiency.

Defendants’ argument that the ECD doctrine justifies their motion to dismiss lacks merit.

PLAINTIFFS’ CROSS-MOTION FOR RELIEF

Plaintiffs’ cross-motion seeks the following relief:

(a.) A certified statement from each Defendant listing all property/evidence still in their possession.

(b.) The opportunity for Plaintiffs, through their lawyers and forensic consultants, to inspect, examine, and photograph the condition of all property/evidence where the Defendants are currently maintaining it.

(c.) Defendants to produce a designated representative for a deposition to testify about the manner, means, and methods used to collect and maintain all the property/evidence from the date of collection to the present;

(d.) ALL property/evidence be transferred to the Plaintiffs' representatives; and

(e) Any other legal and equitable relief the Court may consider appropriate and just.

As noted above, Defendants argue that the investigation was closed in 2015. If the Court accepts these statements as credible, despite numerous conflicting communications over the past 10 years, then it is undisputed that Defendants have no defense against the relief sought by the Plaintiffs herein. Put simply, if the investigation has indeed been closed for over 10 years, then under the CVBR, Plaintiffs are entitled to the relief they seek.

CONCLUSION

Defendants, through their representatives, repeatedly misled or failed to inform Plaintiffs that the investigation was closed at the time of their daughter's death or "years ago." The New Jersey CVBR requires that New Jersey crime victims be treated fairly, compassionately, and with respect by the criminal justice system. Therefore, it is reasonable for this Court to order the relief Plaintiffs are seeking here. Only after these actions occur can Plaintiffs fully and hopefully finally seek and obtain the full measure of justice for the senseless and horrific death of their daughter over 10 years ago.

Respectfully submitted,

s/Paul R. D'Amato
Paul R. D'Amato, Esquire
Attorney for Plaintiffs

Date: October 27, 2025

Paul R. D'Amato, Esquire – ID #006901974

D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
609-926-3300
Attorney for Plaintiff

**STEPHEN VALIANTE and DIANNE
F. VALIANTE, Co-Administrators
of the Estate of their late daughter
Tiffany Valiante,**

Plaintiff,

-vs-

**STATE OF NEW JERSEY, NEW
JERSEY TRANSIT CORPORATION,
NEW JERSEY TRANSIT RAIL
OPERATIONS, INC., A
SUBSIDIARY OF NEW JERSEY
TRANSIT, NEW JERSEY TRANSIT
POLICE DEPARTMENT, AN
AGENCY OF NEW JERSEY
TRANSIT, THE NEW JERSEY
OFFICE OF THE CHIEF STATE
MEDICAL EXAMINER, JOHN DOE,
MARY DOE, ABC PARTNERSHIPS
and XYZ CORPORATIONS,**

Defendants

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY - LAW DIVISION

DOCKET NUMBER: ATL-L-002116-25

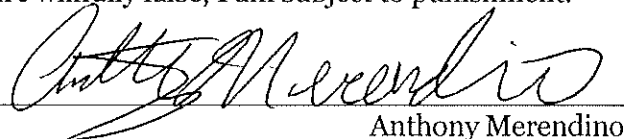
CIVIL ACTION

PROOF OF MAILING

I, the undersigned, am a Law Clerk employed by Paul R. D'Amato, Esq., the attorney of record for Plaintiffs.

The original of the within Motion has been filed electronically with the Atlantic County Superior Court, 1201 Bacharach Boulevard, Atlantic City, NJ 08401.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Anthony Merendino
Law Clerk to Paul R. D'Amato, Esquire

Dated: October 28, 2025

EXHIBIT A

D'AMATO LAW FIRM^{PC}

Paul R. D'Amato
CERTIFIED BY THE SUPREME
COURT OF NEW JERSEY
AS A CIVIL TRIAL ATTORNEY
paul@damatolawfirm.com

Rose L. Scogno
PARALEGAL

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Stephen M. Van Natten
MEMBER NJ & PA BAR
stephen@damatolawfirm.com

October 02, 2015

Detective Ozzie Acevedo
NJ Transit Police Department
Walter Rand Transportation Center
100 South Broadway
Camden, New Jersey 08103

RE: THE ESTATE OF TIFFANY VALIANTE
OUR FILE NUMBER : 3408-P

Dear Mr. Acevedo:

Please be advised this office represents The Estate of Tiffany Valiante. Attached hereto is a short Certificate from the Atlantic County Surrogates Court appointing them as Administrators of the Estate of their late daughter, Tiffany.

I understand that certain evidence has been accumulated. I would ask that this evidence be retained in the event that there is not a criminal prosecution.

I then would request that the evidence be turned over to this office.

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/lrp

Enclosures

cc: Mr. and Mrs. Stephen Valiante

D'AMATO LAW FIRM

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Stephen M. Van Natten
MEMBER NJ & PA BAR
stephen@damatolawfirm.com

June 20, 2016

Attn: Records Department
NJ Transit Police Department
1 Penn Plaza
Newark, New Jersey 07105

RE: OUR CLIENT : ESTATE OF TIFFANY VALIENTE
DATE OF ACCIDENT : JULY 12, 2015
COMPLAINT NUMBER: 15-5939
LOCATION : GALLOWAY TOWNSHIP, NEW JERSEY
OUR FILE NUMBER : 3408-P

Dear Sir or Madam:

We are in receipt of your Investigation Report. Can you please forward to our office Conductor Bill Gindhart's statement along with Stephen V. Adamczyk's Statement?

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/rls

cc: Diane and Stephen Valiente-via email

//07/2016 08:11 97349184

NJTPDRECORDS

PAGE 03/03

NJ TRANSIT
POLICE DEPARTMENT



One Penn Plaza East
Newark NJ 07105
973-491-8458 P
973-491-8482 F

July 6, 2016

D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Twp. NJ 08234

Dear Sir/Madam:

The NJ TRANSIT Police Department is in receipt of your request; regarding additional statements. Be advised we can only release the Investigation and Supplemental Reports. Therefore, we are unable to forward any documents regarding your request.

Sincerely,

D. Scott
Records Clerk

D'AMATO LAW FIRM^{P.C.}

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Susan Eisenlohr
PARALEGAL

February 23, 2017

Joyce Zuczek, Board Secretary
New Jersey Transit
One Penn Plaza East
Newark, New Jersey 07105

RE: ESTATE OF TIFFANY VALIANTE

Dear Ms. Zuczek:

Please be advised that I represent Stephen and Dianne Valiante in their capacity as Administrators of the Estate of their late daughter Tiffany Valiante. An investigation was conducted by the New Jersey Transit Police Department.

Pursuant to the New Jersey OPEN PUBLIC RECORDS ACT and the common law RIGHT TO KNOW I am requesting the following documents:

(A) A complete copy of the entire file of the New Jersey Transit Police Department relative to its investigation regarding the death of Tiffany Valiante which occurred on July 12, 2015;

(B) Any and all documents relative to the examination of the clothes of Tiffany Valiante that were found on or around the New Jersey Transit Railroad Tracks as a result of the investigation conducted by the New Jersey Transit Police Department;

(C) Transcripts of any and all recorded statements of any New Jersey Transit Employees that were on the subject train at the time of Tiffany's death. Included but not limited to Conductor Wayne Gindart and Stephen V. Adamczyk;

(D) A complete copy of any and all photographs contained in the file of the New Jersey Transit Police Department relative to its investigation of the death of Tiffany Valiante;

(E) A copy of any and all DVDs, CDs, and/or videos that are contained in the file of the New Jersey Transit Police Department relative to its investigation of the death of Tiffany Valiante;

(F) A copy of any and all computer printouts contained in the file of the New Jersey Police Department as a result of its investigation of the death of Tiffany Valiante;

(G) A complete copy of any and all New Jersey Transit Police Department investigative reports (Department Complaint Number: 15-5939) relative to its investigation of the death of Tiffany Valiante;

(H) Any and all DVDs, CDs, and/or videos relative to any cameras in the interior of the engine of the subject train or any exterior cameras affixed to the engine of the subject train;

(I) A printout of any and all communications received by or generated by CCC of the New Jersey Transit Police Department relative to the death of Tiffany Valiante;

(J) A copy of any and all reports relative to any interviews of any witnesses relative to the death of Tiffany Valiante;

(K) A copy of any and all papers, documents, photographs, etc. received by the New Jersey Transit Police Department from the State Medical Examiner's Office relative to the death of Tiffany Valiante;

(L) A copy of any and all reports, documents or papers generated by Nurse Practitioner Michelle Anendolia relative to the pronouncement of the death of Tiffany Valiante at 2400 hours;

(M) A copy of any and all reports relative to the interviews of any relatives of Tiffany Valiante including her parents and sisters as well as a copy of any DVDs, CDs or audio tape recordings of the aforesaid;

(N) A copy of any and all written communications to and from the Atlantic County Prosecutors Office relative to the death of Tiffany Valiante;

(O) A copy of any and all telephone/cell phone records in the possession of the New Jersey Transit Police Department relative to its investigation of the death of Tiffany Valiante including calls made, calls received, text messages and e-mails;

(P) A copy of any and all laboratory reports and requests for laboratory reports relative to the death of Tiffany Valiante;

(Q) A copy of any and all written communications, reports, etc. from any law enforcement agency including the Atlantic County Prosecutor's Office, the Galloway Township Police Department, and the Hamilton Township Police Department relative to the death of Tiffany Valiante;

(R) A copy of any and all reports authored or generated by Sergeant Keith DeLuca, Sergeant Valez, Officer Dan Carroll, Detective Ozzie Acevedo, Lieutenant Castellano, Police Officer Vince Parker, Police Officer Martin, Engineer Wayne Daniels, Trainee Marvin Olivares, Conductor Stephen V. Adamczyk, Sergeant Capriglione, Office Len Kowski, Atlantic County Sherriff's Officer K-9 Joseph Kleinow, Detective Sweeney, Chief Trucillo, Police Officer Packer;

(S) A copy of any and all narrative reports, supplemental reports, the report of the investigation of the Medical Examiner referred to as RIME, scene narratives, a psychological autopsy of the decedent Tiffany Valiante, and general inventory forms;

(T) A copy of any and all photographs taken of the subject train at the scene of the accident by any and all employees of New Jersey Transit;

(U) A copy of any and all external examination photographs taken by employees of New Jersey Transit, New Jersey Transit Police Department and the New Jersey State Medical Examiner's Office;

(V) A copy of any and all e-mails that are a part of the investigation of the New Jersey Transit Police Department regarding the death of Tiffany Valiante;

(W) A copy of any and all communications from New Jersey Transit, its Police Department and its Department of Public Affairs and Media Relations to the members of the news media as well as any news releases prepared and distributed by the aforesaid. Please note that within 24 hours of the incident involving Tiffany Valiante a press release was issued by New Jersey Transit, its Police Department or its Public Affairs and Media Relations Department. We are requesting the identity of the employee that wrote the news release and what person or persons which authorized its issuance;

(X) A copy of the written Preliminary Incident Report given to the New Jersey Transit Police Department by Apprentice Engineer Marvin Olivares;

(Y) A copy of any and all surveillance videos procured from the Hindu Temple and adjacent storage facility as part of the investigation conducted by the New Jersey Transit Police Department;

(Z) The 2 SD cards given by the Valiante family to the Prosecutor along with 1 USB drive;

(AA) The decedent's shoes, headband and anklet that were found subsequent to the death of Tiffany Valiante;

(BB) A copy of the telephone records relative to Tiffany Valiante's cell phone.

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/lrp

cc: Mr. & Mrs. Stephen Valiante-via email

[REDACTED]

Chris Christie, Governor
Kim Guadagno, Lieutenant Governor
Richard T. Hammer, Commissioner
Steven H. Santoro, Executive Director

NJ TRANSIT
One Penn Plaza East
Newark, NJ 07105-2246
973-491-7000

VIA U.S. FIRST CLASS MAIL

March 9, 2017

Paul D'Amato
D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234

RE: OPRA #170228-98866

Dear Mr. D'Amato:

Enclosed are all releasable records responsive to your Open Public Records Act ("OPRA") request, received February 28, 2017, namely records responsive to items G, K, P, R, S, and X of your request. Certain home addresses, personal phone numbers, and dates of birth have been redacted in accordance with the expectation of privacy recognized under OPRA. See N.J.S.A. 47:1A-1.

With regards to items A, B, C, D, E, H, I, J, M, N, Q, T, U, W, and Y of your request, please be advised that NJ TRANSIT is in possession of responsive records that are considered criminal investigatory records or are considered advisory, consultative, or deliberative. Pursuant to N.J.S.A. § 47:1A-1.1, these documents are not government records subject to disclosure.

With regards to items F, O, and V, please be advised that this portion of your request must be denied as it is invalid under OPRA. OPRA only requires a response to a request for specific records, not for information. Pursuant to case law, a request is invalid where it requires a custodian to conduct research and correlate data from various records. See, e.g. MAG Entertainment v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005).

With regards to items L, Z, AA, and BB of your request, please be advised that NJ TRANSIT has no records responsive to your request.

At this time your request shall be deemed closed. If you have any further concerns, please contact me at (973) 491-7178.

Sincerely,

A handwritten signature in black ink, appearing to read "Whitman J. Portillo", written over a horizontal line.

Whitman J. Portillo
Assistant OPRA Specialist
Board Office
NJ Transit

Enclosure(s)

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Susan Eisenohr
PARALEGAL

July 11, 2017

Chief Christopher Trucillo
Chief of Police
NJ Transit Police Department
1 Penn Plaza
Newark, NJ 07105

RE: OUR CLIENT : ESTATE OF TIFFANY VALIENTE
DATE OF ACCIDENT : JULY 12, 2015
LOCATION : GALLOWAY TOWNSHIP, NEW JERSEY
OUR FILE NUMBER : 3408-P
CASE # : 1-15-0410

Dear Chief Trucillo:

Please be advised our office represents Dianne and Stephen Valiante as co-administrators of their daughter, Tiffany Valiante's Estate. A train in Galloway Township struck Ms. Vallante's body on July 12, 2015. As a result, your office conducted an investigation and certain items were retained in your office's evidence locker.

I would ask that you please retain all items entered into evidence by your office in the above referenced case. Please do not discard these items, as they may be relevant for the purposes of civil litigation.

Additionally, I would ask that when you deem it appropriate the items be turned over to my office for the purposes of the pending civil litigation.

Thank you for your attention to this matter.

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato
PRD/kmg
Cc: Diane and Stephen Valiante-via email

Paul R. D'Amato

From: Kasi M. Gifford
Sent: Tuesday, July 11, 2017 12:44 PM
To: Lisa Puglisi
Cc: Paul R. D'Amato; Laura Pastore; Rose Scogno; Tim Mooney
Subject: Tiffany Valiante
Attachments: NJT DNA Card.pdf

Ms. Puglisi:

I hope this e-mail finds you well. I just had a quick follow up question in the Tiffany Valiante case, are you aware or is there a way to find out whether or not the testing of the referenced DNA Card requested by Det. Acevedo in the attached letter was ever conducted?

Very truly yours,

Kasi M. Gifford, Esq.

Kasi M. Gifford, Esquire
D'Amato Law Firm, P.C.
2900 Fire Road, Suite 200
Egg Harbor Township, New Jersey 08234
(609) 926-3300
(609) 926-3883 fax
kasi@damatolawfirm.com

Visit our website at www.damatolawfirm.com

Note: The contents of this electronic message are intended for general information purposes only and should not be construed as legal advice or opinion in any specific facts or circumstances. Confidentiality Note: This electronic message transmission contains information from D'Amato Law Firm, P.C., which may be confidential, privileged, or otherwise protected from disclosure. The information is intended only for the use of the individual(s) listed above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is strictly prohibited

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Susan Eisenlohr
PARALEGAL

July 18, 2017

VIA EMAIL & REGULAR MAIL

Lisa Puglisi, Esquire, Assistant Attorney General
Appellant Practice Group
Attorney General's Office of New Jersey
Hughes Justice Complex
P.O. Box 080
Trenton, New Jersey 08625

RE: ESTATE OF TIFFANY VALIANTE
DOCKET NUMBER : ATL-L-1411-17

Dear Ms. Puglisi:

It is my understanding that you advised Kasi Gifford of our office that the DNA card had not been tested and would not be tested without a Court Order. Could you please advise me why a Court Order is necessary? Is it because it has been more than two years since the DNA sample was obtained? Furthermore, do you need a Court Order from the Criminal or Civil Division of the Superior Court of New Jersey?

Thank you for your attention to this matter.

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/kmg

cc: Mr. & Mrs. Stephen Valiante-via email

D'AMATO LAW FIRM^{P.C.}

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Stephen M. Van Natten
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stephen@damatolawfirm.com

Susan Eisenlohr
PARALEGAL

August 10, 2017

VIA EMAIL ONLY

Joseph C Fanaroff, Esquire, Assistant Attorney General
Attorney General's Office of New Jersey
Hughes Justice Complex
P.O. Box 080
Trenton, New Jersey 08625

RE: ESTATE OF TIFFANY VALIANTE
DOCKET NUMBER : ATL-L-1411-17

Dear Joe:

I want to confirm my understanding of what you were advised by the State Medical Examiner's Office:

- (A) That the family has to obtain a Court Order which would require the DNA Card to be tested;
- (B) That the family bears the cost of the testing;
- (C) That the family has to select the lab where the testing will be done;
- (D) That the results of the testing will be sent to the family and not to the State Medical Examiner's Office or the New Jersey Transit Police Department.

If this is correct please advise

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/lrp

cc: Mr. & Mrs. Stephen Valiante-via email
Jessica Valiante- Vallauri - via email
Krystal Valiante-Summerville - via email

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COUNSELORS AT LAW

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member NJ bar

Erika Lezama
member NJ & PA bar

ROSE L. SCOGNO
paralegal

ALEXA D'AMATO BARRERA
member NJ & PA bar

STEPHEN M. VAN NATTEN
member NJ & PA bar

SUSAN L. EISENLOHR
paralegal

June 6, 2019

CERTIFIED MAIL, R.R.R. & REGULAR MAIL
7016 1970 0000 1635 7102

Chief Christopher Trucillo
NJ Transit Police Department
1 Penn Plaza
Newark, New Jersey 07105

RE: OUR CLIENT : ESTATE OF TIFFANY VALIENTE
DATE OF ACCIDENT : JULY 12, 2015
LOCATION : GALLOWAY TOWNSHIP, NEW JERSEY
OUR FILE NUMBER : 3408-P
CASE # : 1-15-0410

Dear Chief Trucillo:

Attached hereto is my letter dated July 11, 2017 to you and my letter dated August 10, 2017 to Mr. Fanaroff.

I write to you for the following reasons:

(A) The family wishes to have the DNA swabs tested at their expense. As noted in my letter dated August 10, 2017 to Mr. Fanaroff, I will have to obtain a Court Order. So accordingly I will be filing suit along with a Motion seeking the relief necessary in order for the DNA swabs to be tested. In order that the Order is precise I need to know what pieces of evidence were swabbed for DNA and whether the items in question have been retained by your office. The family has selected DDC Forensics.

(B) We are also requesting an itemization of what pieces of evidence your office has retained relative to the investigation of the death of Tiffany Valiante.

I await your response.

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/lrp

Enclosures

cc w/encs: [REDACTED], DAG - via email
Mr. & Mrs. Stephen Valiante-via email



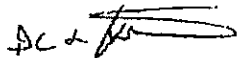
October 30, 2019

Paul R. D'Amato, Esquire
D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234

Dear Mr. D'Amato,

Re: Tiffany Valiante

Please accept this letter to confirm that the New Jersey Transit Police Department maintains the items listed in paragraph 112 of the Amended Complaint filed on August 13, 2019 in litigation captioned Stephen F. Valiante and Dianne F. Valiante v. New Jersey Transit Police Department and the State of New Jersey, Docket Number ATL-L-1840-19. The one exception is the iPhone that was reclassified from evidence to property and returned to the family.


Laura Hester
Deputy Chief of police

D'AMATO LAW FIRM

Paul R. D'Amato, Esquire-ID# 006901974

2900 Fire Road, Suite 200

Egg Harbor Township, New Jersey 08234

609-926-3300

Attorney for Plaintiffs

STEPHEN F. VALIANTE AND DIANNE F. VALIANTE, THE PARENTS OF TIFFANY VALIANTE AND THE CO-ADMINISTRATORS OF THE ESTATE OF TIFFANY VALIANTE

Plaintiffs,

v.

STATE OF NEW JERSEY and NEW JERSEY TRANSIT POLICE DEPARTMENT

Defendant.

**SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY: LAW DIVISION
DOCKET NUMBER: ATL-L-1840-19**

Civil Action

FIRST AMENDED COMPLAINT

Plaintiffs, Stephen F. Valiante and Diane F. Valiante, the parents of Tiffany Valiante and the co-administrators of the Estate of Tiffany Valiante (hereinafter referred to as Plaintiffs), residents of Atlantic County, New Jersey by way of Complaint against the above named Defendant say:

COMPLAINT

1. Tiffany Ida Mae Valiante was born in Atlantic County, New Jersey on March 3, 1997.
2. The parents of Tiffany are Plaintiffs Stephen F. Valiante and Dianne F. Valiante who reside in Atlantic County, New Jersey. On July 12, 2015 Tiffany, who had been a resident of Atlantic County her entire life, was tragically killed.
3. Tiffany Valiante graduated from Oakcrest High School, located in Atlantic County, New Jersey in June 2015.

110. An 18 month New Jersey Advanced Media investigation for NJ.com found serious failures at nearly every level of New Jersey's patchwork system for Medical Examiners' Offices.
111. The evidence obtained by the New Jersey Transit Police Department was stated in a New Jersey Transit Police Department Form entitled "Property/Evidence Report". Those reports are attached hereto and made a part hereof as Exhibit "H".
112. These pieces of evidence were documented individually as "Property/Evidence Reports" as follows:
 - a. (1) CD containing fatal accident investigation photographs.
 - b. (1) CD containing the sworn statement of the student engineer and (1) CD containing the sworn statement of the lead engineer.
 - c. (1) White I-Phone 5 with Black and White case.
 - d. (2) Memory cards from Valiante deer camera and (1) flash drive showing area on White Horse Pike in Galloway.
 - e. (1) Black Medium size T-shirt with "HUF" on pocket.
 - f. (1) "A" Iron-on symbol, (1) Pair "Sanuk" brand shoe, (1) Torn shirt/headband, and (1) Sweatshirt grey, Wilkes University.
 - g. (1) Blue, pink, and white women's ankle bracelet.
 - h. (1) DNA card.
 - i. (1) White Towel containing what appears to be bloodstains
 - j. (1) Ankle bracelet belonging to Tiffany Valiante.
 - k. (1) Folding knife with a white handle and broken blade and
 - l. (1) CD containing photos of area where knife was found.

Paul R. D'Amato

From: Jonathan Peitz <Jonathan.Peitz@law.njoag.gov>
Sent: Tuesday, December 24, 2019 1:49 PM
To: Laura Pastore
Cc: Paul R. D'Amato; Rose Scogno; Erika Lezama
Subject: RE: VALIANTE v. NJTPD

Hi Paul,

It looks like, with the exception of the flash drives, the evidence is kept in paper bags or envelopes.

Jon

CONFIDENTIAL AND PRIVILEGED

PLEASE NOTE NEW CONTACT INFORMATION BELOW.



Jonathan B. Peitz

Section Chief, Division of Law, Tax, Bankruptcy, Debt Recovery Section
 Deputy Attorney General | State of New Jersey
 25 Market St., PO Box 106 | Trenton, NJ 08625
 T: (609) 376-2892 | F: (609) 984-2523
 E: Jonathan.Peitz@law.njoag.gov

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From: Laura Pastore <laura@damatolawfirm.com>
Sent: Friday, December 13, 2019 2:12 PM
To: Jonathan Peitz <Jonathan.Peitz@law.njoag.gov>
Cc: Paul R. D'Amato <paul@damatolawfirm.com>; Rose Scogno <rose@damatolawfirm.com>; Erika Lezama <erika@damatolawfirm.com>
Subject: [EXTERNAL] VALIANTE v. NJTPD

Mr. Peitz:

Please see attached.

Very truly yours,

Laura R. Pastore

Legal Assistant to Paul R. D'Amato, Esquire

D'AMATO LAW FIRM

COUNSELORS AT LAW
2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234
P 609.926.3300
F 609.926.3883
www.damatolawfirm.com

PAUL R. D'AMATO
member NJ bar

ERIKA LEZAMA
member NJ bar

ROSE L. SCOCCO
paralegal

ALEXA D'AMATO BARRERA
member NJ & PA bar

STEPHEN M. VAN NATTEN
member NJ & PA bar

SUSAN L. EISENLOHR
paralegal

paul@damatolawfirm.com
rose@damatolawfirm.com

February 25, 2020

VIA EMAIL ONLY: Jonathan.Peitz@law.njoag.gov

Jonathan B. Peitz, DAG
Division of Law, Section
25 Market Street
P.O. Box 106
Trenton, NJ 08625

RE: VALIANTE v. NEW JERSEY TRANSIT POLICE DEPARTMENT
DOCKET NUMBER: ATL-L-1840-19
OUR FILE NUMBER: 3408-P

Dear Joanthan:

Pursuant to R. 4:14-2(c) I want to take the deposition of a Designated Corporate Representative that has the most relevant knowledge regarding the following items:

(A) The manner in which the New Jersey Transit Police Department through its employees collected evidence at the scene on the New Jersey Transit Railroad Tracks where Tiffany Valiante's body came in contact with the New Jersey Transit Train.

(B) The manner in which the New Jersey Transit Police Department through its employees preserved the evidence that was taken from the scene of the incident in question.

(C) The location where the aforesaid evidence has been stored since that evidence was received by said depository.

(D) The names of any and all individuals who have examined the said evidence from the time it reached the depository to the present.

(E) The process as to how the DNA Card in the possession of the New Jersey Transit Police Department was created.

(F) From what body parts of the decedent was the DNA in question collected.

(G) Why the evidence in the possession of the New Jersey Transit Police Department were never tested against the contents of the DNA Card.

(H) Why the New Jersey Transit Police Department will not permit the Valiante family to have a private laboratory analyze the DNA Card and perform testing on the pieces of evidence in the possession of the New Jersey Transit Police Department.

I await your response.

Very truly yours,

Paul R. D'Amato

PAUL R. D'AMATO

PRD/lrp

D'AMATO LAW FIRM

P.C.

COUNSELORS AT LAW

2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234

P 609.926.3300

F 609.785.3723

PAUL R. D'AMATO
member NJ bar

ERIKA LEZAMA-
SIMONSON
member NJ bar

ROSE L. SCOGNO
paralegal

ALEXA D'AMATO BARRERA
member NJ & PA bar

STEPHEN M. VAN NATTEN
member NJ & PA bar

SUSAN L. EISENLOHR
paralegal

Paul@damatolawfirm.com
Rose@damatolawfirm.com

February 8, 2024

VIA EMAIL ONLY: policechief@njtransit.com
Chief Christopher Trucillo

RE: ESTATE OF TIFFANY VALIANTE
OUR FILE NUMBER: 3408-P

Dear Chief Trucillo:

This office represents the interests of Stephen and Dianne Valiante, the parents of Tiffany Valiante. As part of the investigation conducted by the New Jersey Transit Police Department, your office received 2 SD cards from the Valiante's deer cameras that were outside their home as well as a USB. These items were voluntarily turned over to your office to assist in the investigation.

Since the investigation is closed, we are requesting that the aforesaid items be turned over to Jason Silva of Cornerstone Discovery. Mr. Silva has indicated that he can make non-destructive copies of the SD cards and the USB and return same to you. Mr. Silva's contact information is:

Jason Silva/Managing Director
Cornerstone Discovery
4775 League Island Blvd. Philadelphia, PA 19112
Office: 267.639.6900 Cell: 484.574.0761
jsilva@cornerstonediscovery.com

We await your response.

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/ams

cc: Mr. and Mrs. Stephen Valiante
Jason Silva

D'AMATO LAW FIRM^{PC}

COUNSELORS AT LAW

2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234

P 609.926.3300
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PAUL R. D'AMATO
member NJ bar

ROSE L. SCOGNO
paralegal

ALEXA D'AMATO BARRERA
member NJ & PA bar

STEPHEN M. VAN NATTEN
member NJ & PA bar

SUSAN L. EISENLOHR
paralegal

Paul@damatolawfirm.com
rose@damatolawfirm.com

March 25, 2024

VIA EMAIL: policechief@njtransit.com AND VIA CERTIFIED MAIL (RRR)

Chief Christopher Trucillo
New Jersey Transit Police Department
One Penn Plaza
Newark, NJ 07105

RE: ESTATE OF TIFFANY VALIANTE
OUR FILE NUMBER : 4023-P

Dear Chief Trucillo:

Attached hereto for your convenience is my letter of February 8, 2024. I have confirmed with Mr. Silva of Cornerstone Discovery he has not received any communication from the New Jersey Transit Police Department pursuant to our request.

I was under the impression that the above matter was a closed file for the New Jersey Transit Police Department. If the Tiffany Valiante file is still considered an open investigation and that is the basis of why you will not provide us with the two SD cards and the USB that was given to you by the Valiante family, please advise me of the same. If the file is in fact closed, why can we not have the items returned to the Valiante family?

If you wish, Mr. Silva's company can make a copy of the two SD cards and the USB and return the items back to your Department.

I await your response.

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato

PRD/djm
Enclosure

cc w/enc.: Jason Silva - VIA EMAIL ONLY
Diane and Stephen Valiante - VIA EMAIL ONLY

Paul R. D'Amato

From: Paul R. D'Amato
Sent: Saturday, February 15, 2025 1:26 PM
To: Martin, Christopher E. (CGCOCEM)
Cc: Danielle Montanaro; Alexa D'Amato Barrera; Stephen M. Van Natten; Williamson, Ashley (CDAGAXW); Zaorski, Tammy M. (CGCOTMZ)
Subject: RE: TIFFANY VALIANTE

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato, Esquire

****Please copy Paralegal, Heather Wright, (heather@damatolaw.com) and Legal Assistant, Danielle Montanaro, (danielle@damatolaw.com) on ALL emails****

D'AMATO LAW

PERSONAL INJURY ATTORNEYS

2900 Fire Road, Suite 200
 Egg Harbor Township, New Jersey 08234
 (609) 926-3300
 (609) 785-3723 fax
 Email: paul@damatolaw.com
www.damatolaw.com

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From: Martin, Christopher E. (CGCOCEM) <CEMartin@njtransit.com>
Sent: Friday, February 14, 2025 3:50 PM
To: Paul R. D'Amato <paul@damatolawfirm.com>
Cc: Danielle Montanaro <danielle@damatolawfirm.com>; Alexa D'Amato Barrera <alexa@damatolawfirm.com>; Stephen M. Van Natten <stephen@damatolawfirm.com>; Williamson, Ashley (CDAGAXW) <AWilliamson@njtransit.com>; Zaorski, Tammy M. (CGCOTMZ) <TZaorski@njtransit.com>
Subject: RE: TIFFANY VALIANTE

Hello Paul,

You are incorrect, NJTPD has determined that evidence still exists which you advised was set forth in paragraph 112 of your Amended Complaint from a closed docket. No change from when we addressed this with you a year ago.

-Chris

Christopher E. Martin
Deputy General Counsel
NJ Transit Corp.
One Penn Plaza East
Newark, NJ 07105
973 491-7016 (ph)
862 240-6391 (cell)
cemartin@njtransit.com



Privileged and Confidential:

CONFIDENTIALITY NOTICE: This e-mail is Advisory, Consultative and Deliberative.

The information in this communication from NJ Transit Corp. is privileged and confidential, intended for the sole use of the persons or entities who are the addressees. If you are not an intended recipient of this email, the dissemination, distribution, copying or use of the information it contains is strictly prohibited.

From: Paul R. D'Amato <paul@damatolawfirm.com>
Sent: Friday, February 14, 2025 3:04 PM
To: Martin, Christopher E. (CGCOCEM) <CEMartin@njtransit.com>
Cc: Danielle Montanaro <danielle@damatolawfirm.com>; Alexa D'Amato Barrera <alexa@damatolawfirm.com>; Stephen M. Van Natten <stephen@damatolawfirm.com>
Subject: TIFFANY VALIANTE

CAUTION: This e-mail originated from outside of NJ TRANSIT. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chris, NJT's delay in responding to your inquiry as to what property/evidence it still has relative to the death of Tiffany is leading me to conclude that all or some of the evidence was destroyed. Please advise. Paul

Very truly yours,

Paul R. D'Amato

Paul R. D'Amato, Esquire

****Please copy Paralegal, Heather Wright, (heather@damatolaw.com) and Legal Assistant, Danielle Montanaro, (danielle@damatolaw.com) on ALL emails****

D'AMATO LAW

PERSONAL INJURY ATTORNEYS

2900 Fire Road, Suite 200
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(609) 926-3300
(609) 785-3723 fax
Email: paul@damatolaw.com
www.damatolaw.com

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EXHIBIT B

GURBIR S. GREWAL
 ATTORNEY GENERAL OF NEW JERSEY
 R.J. Hughes Justice Complex
 25 Market Street
 P.O. Box 106
 Trenton, New Jersey 08625
 Attorney for Defendants

By: Jonathan B. Peitz
 Deputy Attorney General
 (609) 376-2892
 N.J. BAR ID 04155-2010
 Jonathan.peitz@law.njoag.gov

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION - ATLANTIC COUNTY
 DOCKET NO. ATL-L-1840-19

STEPHEN F. VALIANTE and DIANNE:
 VALIANTE, the parents of
 Tiffany Valiante and the Co-
 Administrators of the Estate
 of Tiffany Valiante,

Plaintiffs,

v.

STATE OF NEW JERSEY and NEW
 JERSEY TRANSIT POLICE
 DEPARTMENT,

Defendants.

Civil Action

ANSWER, AFFIRMATIVE
 DEFENSES, AND R. 4:18-2
 DOCUMENT DEMANDS

Defendants State of New Jersey and New Jersey Transit Police
 Department hereinafter referred to as "the Defendants" by way of
 Answer to the Amended Complaint ("Complaint") state:

1. As to Paragraphs 1 through 3 of the Complaint, admitted.

2. As to Paragraphs 4 through 8 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

3. As to Paragraph 9 of the Complaint, Defendants admit Tiffany Valiante is deceased, but under information and belief, the coroner determined the cause of death as multiple traumatic injuries and suicide.

4. As to Paragraphs 10 through 15 of the Complaint, admitted.

5. As to Paragraph 16 of the Complaint, upon information and belief, admitted in part and denied in part. Defendant New Jersey Transit Police Department was involved in an investigation performed by the Atlantic County Prosecutor's office. The New Jersey Transit Police Department is created by statute within the New Jersey Transit Corporation. N.J.S.A. 27:25-1. The New Jersey Transit Corporation is an instrumentality of the State of New Jersey, not a department of the State of New Jersey. N.J.S.A. 27:25-4.

6. As to Paragraph 17 of the Complaint, admitted.

7. As to Paragraphs 18 and 19 of the Complaint, the article attached to the Complaint as Exhibit A speaks for itself, it does not require Plaintiffs' interpretation or clarification.

8. As to Paragraph 20 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded. It is believed that, while a preliminary finding was issued, a death certificate was not available on July 18, 2015.

9. As to Paragraphs 21 through 23 of the Complaint, the report attached to the Complaint as Exhibit B speak for itself, it does not require Plaintiffs' interpretation or clarification.

10. As to Paragraphs 24 through 27 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

11. As to Paragraphs 28 through 29 of the Complaint, upon information and belief, admitted.

12. As to Paragraph 30 of the Complaint, the allegation contains legal conclusions that do not require a response.

13. As to Paragraphs 31 and 32 of the Complaint, the interview speaks for itself, it does not require Plaintiffs' interpretation or clarification.

14. As to Paragraph 33 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

15. As to Paragraphs 34 through 35 of the Complaint, the Medical Investigator's Investigative Data sheet speaks for itself, it does not require Plaintiffs' interpretation or clarification.

16. As to Paragraph 36 of the Complaint, the Medical Investigator's Investigative Data sheet and the officer report speak for themselves, they do not require Plaintiffs' interpretation or clarification.

17. As to Paragraph 37 of the Complaint, the Medical Investigator's Investigative Data sheet and engineers' testimony speak for themselves, they do not require Plaintiffs' interpretation or clarification.

18. As to Paragraphs 38 and 39 of the Complaint, the officer investigation report speaks for itself, it does not require Plaintiffs' interpretation or clarification.

19. Paragraph 40 of the Complaint contains a legal conclusion that does not require a response.

20. As to Paragraphs 41 through 43 of the Complaint, engineer's testimony speaks for itself, it does not require Plaintiffs' interpretation or clarification.

21. As to Paragraphs 44 through 47 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

22. As to Paragraphs 48 through 53 of the Complaint, the report by Louise Houseman speaks for itself, it does not require Plaintiffs' interpretation or clarification.

23. As to Paragraph 54 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

24. As to Paragraphs 55 through 59 of the Complaint, the report by Dr. Jason speaks for itself, it does not require Plaintiffs' interpretation or clarification.

25. As to Paragraph 60 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

26. As to Paragraphs 61 through 62 of the Complaint, the letter speaks for itself, it does not require Plaintiffs' interpretation or clarification.

27. As to Paragraph 63 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

28. As to Paragraphs 64 through 68 of the Complaint, the fatality/major incident report speaks for itself, it does not require Plaintiffs' interpretation or clarification.

29. As to Paragraph 69 of the Complaint, upon information and belief, denied.

30. As to Paragraph 70 of the Complaint, the letter speaks for itself, it does not require Plaintiffs' interpretation or clarification.

31. As to Paragraph 71 of the Complaint, it is admitted that New Jersey Transit Corporation did not perform a rape kit. As to the remaining allegations, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

32. As to Paragraph 72 of the Complaint, upon information and belief, denied.

33. As to Paragraph 73 of the Complaint, the student engineer's interview speaks for itself, it does not require Plaintiffs' interpretation or clarification.

34. As to Paragraphs 74 through 85 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

35. As to Paragraph 86 of the Complaint, upon information and belief, admitted.

36. As to Paragraphs 87 through 88 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

37. As to Paragraph 89 of the Complaint, the photographs speak for themselves, they do not require Plaintiffs' interpretation or clarification.

38. As to Paragraph 90 of the Complaint, the allegations contain legal conclusions that do not require response.

39. As to Paragraphs 91 through 106 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

40. As to Paragraph 107 of the Complaint, the letter speaks for itself, it does not require Plaintiffs' interpretation or clarification.

41. As to Paragraph 108 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

42. As to Paragraphs 109 and 110 of the Complaint, the news report speaks for itself, it does not require Plaintiffs' interpretation or clarification.

43. As to Paragraphs 111 through 112 of the Complaint, the evidence reports speak for themselves, they do not require Plaintiffs' interpretation or clarification.

44. As to Paragraphs 113 and 114 of the Complaint, upon information and belief, denied. DNA was collected by the medical examiner.

45. As to Paragraphs 115 and 116 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

46. As to Paragraph 117 of the Complaint, denied. Plaintiffs have no right take possession or dispose of evidence, including DNA testing.

47. As to Paragraphs 118 and 119 of the Complaint, the evidence reports attached to the Complaint as Exhibit I speak for themselves, they do not require Plaintiffs' interpretation or clarification.

48. As to Paragraphs 120 through 122 of the Complaint, the various letters speak for themselves, they do not require Plaintiffs' interpretation or clarification. It is noted that the New Jersey Transit Police Department has advised Plaintiffs' counsel regarding stored evidence.

49. As to Paragraphs 123 through 126 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of allegations asserted and evidence is demanded.

50. As to Paragraph 127 of the Complaint, the letter speaks for itself, it does not require Plaintiffs' interpretation or clarification.

51. As to Paragraph 128 of the Complaint, upon information and belief, denied. New Jersey Transit Police Department has advised Plaintiffs' counsel regarding stored evidence.

52. As to Paragraph 129 of the Complaint, the report speaks for itself, it does not require Plaintiffs' interpretation or clarification. The remaining allegations are ad damnum that do not require a response.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint fails to set forth a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have no right to swabbing and testing of evidence for DNA.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have not been deprived of any right, privilege or immunity secured to them by the United States Constitution or any Act of Congress.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution and laws of the State of New Jersey.

FIFTH AFFIRMATIVE DEFENSE

Defendants acted at all times relevant hereto with good faith and without any fraud or malice.

SIXTH AFFIRMATIVE DEFENSE

Defendants are immune from suit.

SEVENTH AFFIRMATIVE DEFENSE

The Court should not exercise jurisdiction over plaintiffs' claims for injunctive relief, because plaintiffs have failed to exhaust State and/or administrative remedies, and appeals of agency decisions are venued in the Appellate Division.

EIGHTH AFFIRMATIVE DEFENSE

The plaintiffs' claims are barred by the doctrines of collateral estoppel and/or res judicata.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to seek any relief against the named Defendant State of New Jersey.

TENTH AFFIRMATIVE DEFENSE

The following requests in paragraph 129 of Plaintiffs' Complaint are moot as they have been satisfied: (1) requiring New

Jersey Transit Police Department to identify which items of evidence have been retained by their office; (2) requiring New Jersey Transit Police Department to identify which items of evidence have been destroyed by their office; and (3) requiring New Jersey Transit Police Department to identify from what persons or things the supposed DNA swabs were taken.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs provide no justification for an award of counsel fees.

DEMAND FOR DOCUMENTS PURSUANT TO R. 4:18-2

1. Death Certificate referenced in Paragraph 20 of the Complaint.

2. Interview testimony referenced in Paragraphs 31, 32, 37, 41, and/or 73 of the Complaint.

3. Medical Investigator's Investigative Data sheet dated July 13, 2015 referenced in Paragraphs 34 and 35 of the Complaint.

4. NJ Transit Police Officer Vine Packer Supplemental Investigative Report dated July 13, 2015 referenced in Paragraphs 36, 38, and/or 39 of the Complaint.

5. The Fatality/Major Incident Report referenced in Paragraphs 64, 65, 66, 67, and/or 68 of the Complaint.

6. Photographs referenced in Paragraph 89 of the Complaint.

7. News articles referenced in Paragraphs 109 and 110 of the Complaint.

NOTICE PURSUANT TO RULES 1:5-1(a) AND 4:17-4

PLEASE TAKE NOTICE that the undersigned attorneys do hereby demand, pursuant to the above cited Rules of Court, that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answered interrogatories, and all documents, papers and other material referred to therein, received from any party, upon the undersigned attorneys, and TAKE NOTICE that this is a CONTINUING demand.

RESERVATION OF RIGHTS

Defendants reserve the right, at or before trial, to move to dismiss the complaint and/or for summary judgment, on the ground that the complaint fails to state a claim upon which relief can be granted and/or the Defendants are entitled to judgment as a matter of law, based on any or all of the above defenses.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, the Court is advised that Jonathan B. Peitz, Deputy Attorney General, is hereby designated as trial counsel.

Wherefore, Defendants respectfully request the Court dismiss the Amended Complaint, with prejudice and without costs, fees, damages or any other relief awarded to the Plaintiffs.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Jonathan B. Peitz
Jonathan B. Peitz
Deputy Attorney General

Dated: January 15, 2020

CERTIFICATION OF SERVICE

I hereby certify that the within pleading was served and filed within the time period allowed by the Rules of Court as extended by consent of the parties pursuant to R. 4:6-1(c) and then as extended by Orders dated November 22, 2019 and December 20, 2019. I hereby certify that on January 15, 2020, I caused to be served a copy of the within Answer, by eCourts notification, on the following counsel:

Paul R. D'Amato, Esquire
D'Amato Law Firm
2900 Fire Road, Suite 200
Egg Harbor Township, NJ 08234

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

I certify in accordance with R. 4:5-1 that there are no other proceedings either pending or contemplated with respect to the

matter in controversy in this action and no other parties who should be joined in the action.

CERTIFICATIONS OF FILING AND REDACTIONS

I certify in accordance with R. 1:38-7 that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: /s/ Jonathan B. Peitz
Jonathan B. Peitz
Deputy Attorney General

Dated: January 15, 2020

EXHIBIT C



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
One Penn Plaza, 4th Floor
NEWARK, NJ 07105-2246

GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

January 14, 2021

BY ECOURTS

Honorable John C. Porto, J.S.C.

Re: **Valiante v. NJ Transit and NJ Transit Police Department**
Docket No.: ATL-L-1840-19

Dear Judge Porto:

This office represents Defendants in the above-referenced matter. Please accept this letter, in lieu of a more formal submission, as opposition to Plaintiffs' Motion for Discovery returnable January 22, 2021. Defendants request oral argument on that date.

ABBREVIATED STATEMENT OF FACTS AND PROCEDURAL HISTORY

On or about July 12, 2015, Tiffany Valiante was struck by a New Jersey Transit ("NJ Transit") train in Atlantic County, New Jersey.

On or about August 13, 2019, Plaintiffs filed a First Amended Complaint ("Complaint") naming Defendants NJ Transit and NJ Transit Police Department ("NJTPD") seeking four items of relief as follows:

- a. Requiring [NJTPD] to identify which items of evidence have been retained by their office;
- b. Requiring [NJTPD] to identify which items of evidence have been destroyed by their office;
- c. Requiring [NJTPD] to identify from what persons or things the supposed DNA swabs were taken;
- d. An Order requiring that [NJTPD] transfer to DDC Forensics the items of evidence that the Plaintiffs want tested as well as any and all DNA swabs . . .



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The parties agree that since the filing of the Complaint in August 2019, requests (a), (b), and (c) have been satisfied. See ¶29 of Attorney Certification submitted with Notice of Motion to Reopen Discovery, Adjourn Trial Date and 90 Day Extension filed by Plaintiffs on October 6, 2020. Request (d) remains outstanding.

As set forth in NJTPD Property/Evidence Reports attached as Exhibit H to the Complaint, the following items were collected at or near the scene of the train strike, in or about July and August 2015, and are currently in the possession of NJTPD: (1) Black t-shirt; (2) "A" iron-on symbol; (3) shoe; (4) shirt/headband; (5) sweatshirt; (6) tri-color ankle bracelet; (7) DNA card; (8) white towel; and (9) folding knife.

The pending motion was filed on December 7, 2020 and seeks the following relief:

That the [NJTPD] and the State Medical Examiner's Office cooperate with the offices of Dr. Julie Heinig and the office of DNA Diagnostic Center located in Fairfield, Ohio, relative to the transfer of evidence in the possession of [NJTPD] and any evidence in the possession of the State Medical Examiner's Office to DNA Diagnostic Center along with any and all DNA Cards, DNA samples and DNA swabs so that the requested evidence is tested for DNA evidence.

[Proposed Order submitted with Motion for Discovery filed on December 7, 2020.]

While the pending motion was filed as a Motion for Discovery, it is a dispositive motion that seeks the one remaining item of relief requested in the Complaint.

A case management conference was held on December 9, 2020. During the conference, counsel for NJTPD requested a list of items that Plaintiffs want tested by their chosen lab and also requested information regarding chain of custody protocols to be followed by Plaintiffs' chosen lab.

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On January 11, 2021, counsel for Plaintiffs forwarded to Defendants' counsel a letter dated January 2, 2021 from DNA Diagnostics Center. Krogman Cert., Ex. A.¹ The letter discusses the qualifications of the lab and policies and procedures that are followed when samples are received, examined and tested. Ibid. The letter does not set forth what specific items Plaintiffs wish to have tested. Counsel for Defendants has sought clarification from counsel for Plaintiffs via email, but has not received a response as of the date of this submission.

LEGAL POSITION

Following receipt of the recent correspondence forwarded to counsel for NJTPD, NJTPD seeks certain information and clarification to better inform its position regarding the relief Plaintiff seeks. Specifically:

1. Are Plaintiffs requesting that all items of evidence held by NJTPD, as set forth above, be transferred to DNA Diagnostic Center? The DDC letter is not clear, as it states, "Based on our examinations we can communicate our findings to you to help prioritize what items of evidence should be tested" Krogman Cert., Ex. A, p. 2.
2. Will testing performed by DNA Diagnostic Center destroy or permanently alter the evidence so that testing cannot be performed again at some point in the future?
3. The letter provides, "We recommend that all evidence be sent to DDC by courier with overnight delivery. . . ." Krogman Cert., Ex. A, p. 1. Would UPS overnight shipment qualify as "courier with overnight delivery?"

¹ "Krogman Cert." refers to the Certification of Patricia A. Krogman submitted with these papers. "Ex. A" refers to Exhibit A to Krogman Cert.

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4. The letter also states that the evidence should be “accompanied by a DDC chain of custody form filled in by the individual releasing the evidence.” NJTPD requests a copy of this form for review.

Again, NJTPD requests information to answer these questions raised by the January 2, 2021 correspondence to better inform its position.

Should the court be inclined to enter an order providing the relief sought by Plaintiffs, NJTPD submits that the order should be more specific to the benefit of both Plaintiffs and Defendants. For example, the order should specify: (1) the exact items in possession of NJTPD, from those listed above, that must be sent to DNA Diagnostic Center; (2) the date by which the items should be sent by NJTPD to DNA Diagnostic Center; (3) that the items must be returned to NJTPD at an address provided by NJTPD within one week of the conclusion of the testing, following procedures set forth in the January 2, 2021 letter. NJTPD asserts greater specificity will benefit both parties.

Additionally, should the court be inclined to order the relief requested by Plaintiffs, there are provisions in the proposed order to which NJTPD objects and provisions it asserts should be added to such an order. Requirements of the proposed order include the State Medical Examiner's Office, which is not a party to this case. Reference to that Office should therefore be removed. Furthermore, NJTPD requests a provision be added releasing NJTPD of any liability should any evidence sent to DNA Diagnostic Center be damaged or destroyed in any way as a result of the shipping or testing of the evidence. Finally, compliance with such an order would satisfy the final item of relief in the Complaint. NJTPD therefore requests a provision be added acknowledging that the Complaint will be dismissed once all parties comply with an order requiring transfer of

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specific items being held by NJTPD to DNA Diagnostic Center, followed by the return of those items.

CONCLUSION

Defendants thank the Court for consideration of the items discussed and specific provisions requested in these papers.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Patricia A. Krogman
Patricia A. Krogman
Deputy Attorney General
NJ Attorney ID 013962005

PAK/

cc: Paul R. D'Amato, Esq., by eCourts and email

GURBIR S. GREWAL
 ATTORNEY GENERAL OF NEW JERSEY
 Attorney for Defendant
 New Jersey Transit Corporation

By: Patricia A. Krogman
 Deputy Attorney General
 NJ Attorney ID 013962005
 Division of Law
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 (973) 491-7039
 Patricia.Krogman@law.njoag.gov

STEPHEN F. VALIANTE and
 DIANNE F. VALIANTE,
 THE PARENTS OF TIFFANY VALIANTE
 AND THE CO-ADMINISTRATORS OF
 THE ESTATE OF TIFFANY VALIANTE,

Plaintiffs,

v.

STATE OF NEW JERSEY and
 NEW JERSEY TRANSIT
 POLICE DEPARTMENT,

Defendants,

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 OCEAN COUNTY
 DOCKET NO. ATL-L-1840-19

CERTIFICATION OF
PATRICIA A. KROGMAN

I, Patricia A. Krogman, of full age, hereby certify as follows:

1. I am a deputy attorney general with the New Jersey Office of the Attorney General, Division of Law, and represent New Jersey Transit ("NJ Transit") in my current assignment. As such, I am familiar with the facts of this case.
2. Attached to this Certification is a true and accurate copy of a letter from DNA Diagnostics Center to Paul R. D'Amato, Esq. dated January 2, 2021 forwarded to me on January 11, 2021.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 14, 2021

By: /s/ Patricia A. Krogman
Patricia A. Krogman



January 2, 2021

Paul R. D'Amato
 D'Amato Law Firm
 Counselors at Law
 2900 Fire Road, Suite 200
 Egg Harbor Township, NJ 08234

RE: Tiffany Valiante; File Number 3408-P; DDC # F19-25058

Dear Mr. D'Amato:

The purpose of this letter is to provide information regarding the policies and procedures that are followed when receiving, examining, and testing evidentiary samples at DNA Diagnostics Center (DDC), Forensics Department.

As the Laboratory Director and DNA Technical Leader of the Forensic Department at DDC, located in Fairfield, Ohio (a position I have held at DDC for 18 years), I am responsible for maintaining quality control in the laboratory and validating the methodology used by DDC to perform serological and DNA analysis on casework samples. In addition, I am responsible for training forensic DNA analysts, as well as directing and technically reviewing the casework (Refer to attached Curriculum Vitae).

DDC Forensics, accredited by ANAB (ANSI National Accreditation Board), has successfully performed serological and DNA analysis on thousands of evidentiary samples requested by prosecution and defense nationwide. Evidence is routinely submitted to DDC from Crime Laboratories, Police Departments, Coroners Offices, and Medical Examiners Offices in response to Court Orders.

We recommend that all evidence be sent to DDC by courier with overnight delivery, accompanied by a DDC chain of custody form filled in by the individual releasing the evidence. Once the evidence arrives at DDC it is accessioned by a forensic DNA analyst and the integrity of the evidence is maintained in a secure evidence room accessed by authorized personnel only. We ask that all evidence be individually bagged with labels, and sealed with initials and the date, prior to our receipt.

The examination and collection of evidence for DNA analysis follows strict procedures established by our laboratory that are in compliance with industry standards in forensics. DNA methods have become extremely sensitive and because of this contamination prevention is very important. The forensic DNA analyst wears protective clothing (ie. lab



coat, gloves, mask) and decontaminates their workspace (outlined in our Procedure Manual) prior to examination and collection of evidence. Only sterile and/or disposable consumables, as well as sterile reagents, are used during collection, and restricted access to the laboratory is enforced. The evidence is photographed and all findings are documented in laboratory notes. The forms, worksheets, laboratory notes, data, communications, and chain of custody documents are kept in a case file which is maintained at DDC indefinitely.

The evidence is examined one sample at a time to prevent contamination, and with the appropriate change of gloves. The forensic DNA analyst will examine the evidence visually and with the aid of a UV light for the detection of stains, tears, hairs or debris. Serological analysis can be performed on stains with suspected blood, semen, or saliva.

Based on our examinations we can communicate our findings to you to help prioritize what items of evidence should be tested and based on our evaluations we can provide recommendations on how to best collect samples for DNA analysis. The collection of cellular material from evidence for further DNA analysis can occur by swabbing or cutting the item, depending on the sample type, and what is warranted in order to get the best DNA profile. We will not consume a sample for testing until we receive written permission from you authorizing us to do so.

Chain of custody is maintained for all evidence while at DDC Forensics. Testing takes approximately four weeks and once it is complete the evidence is returned to the submitting agency using overnight delivery by courier, with tracking, and accompanied by the appropriate chain of custody.

If you have any questions regarding DDC Forensics' protocols and procedures don't hesitate to contact me at 513-881-7806 ext. 2283 or email me at jheinig@dnacenter.com. For shipping instructions and chain of custody forms please contact Kathy Gantzer at 800-406-1940 or email her at kgantzer@dnacenter.com.

Sincerely,

Julie A. Heinig, PhD
Laboratory Director of Forensics
DNA Technical Leader
DNA Diagnostics Center, Forensics

EXHIBIT D

No Shepard's Signal™
As of: February 4, 2025 4:43 PM Z

State v. J.M.

Superior Court of New Jersey, Appellate Division

April 17, 2023, Submitted; May 17, 2023, Decided

DOCKET NO. A-2984-21

Reporter

2023 N.J. Super. Unpub. LEXIS 753 *; 2023 WL 3486273

STATE OF NEW JERSEY, Plaintiff-Respondent, v. J.M., Defendant-Respondent. TANISHA LITTLE, Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Superior Court of New Jersey, Law Division, Essex County, Municipal Appeal No. 2022-05.

Core Terms

rights, municipal court, municipal, crime victim, compassion, criminal justice system, prosecuting attorney, dignity, assault, courts, county prosecutor, certification, conferred, video, reconsideration motion

Counsel: Arseneault & Fassett, LLC, attorneys for appellant (Jack Arseneault and Greg Jones, on the briefs).

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for respondent State of New Jersey (Stephen A. Pogany, Special Deputy Attorney General/Acting Assistant Prosecutor, on the brief).

Fusco & Macaluso, PC, attorneys for respondent J.M. (Joely Reyes, on the brief).

Judges: Before Judges Gooden Brown and Mitterhoff.

Opinion

PER CURIAM

Tanisha Little appeals from the April 18, 2022 Law Division order dismissing her municipal appeal filed under the Crime Victim's Bill of Rights (CVBR), *N.J.S.A. 52:4B-34 to -38*, and the Victims' Rights Amendment of the New Jersey Constitution (VRA), *N.J. Const.* art. I, ¶ 22, for lack of standing. Because we hold that Little has standing to enforce her right under the CVBR and VRA, we reverse and remand for a determination on the merits.

The municipal appeal arose from a dismissal order entered in the Belleville Municipal Court on the municipal prosecutor's motion. The order dismissed a complaint-summons charging defendant J.M. with simple assault of Little. Little and J.M. were both police officers employed by the Township of Irvington Department of Public Safety (IDPS). On March 4, 2021, J.M. allegedly assaulted [*2] Little "by striking her left arm with force and pushing her" as Little was leaving the IDPS communications center. Following the incident, Little was taken to a local urgent care center for medical treatment. The altercation was captured on IDPS surveillance cameras, and was further documented by medical treatment records and an IDPS Internal Affairs report in which J.M. reportedly admitted striking Little.

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On July 21, 2021, an Irvington Municipal Court Judicial Officer issued a complaint-summons against J.M. for simple assault, in violation of N.J.S.A. 2C:12-1(a)(1). The matter was ultimately transferred to the Belleville Municipal Court "due to conflicts of interest." A hearing on the complaint was conducted in Belleville Municipal Court on October 20, 2021. During the hearing, Little, who was then self-represented, participated in a Zoom "breakout room" with the municipal prosecutor assigned to the case, Krenar Camili. In a subsequent certification submitted in support of Little's motion to reinstate the complaint, Little detailed the ensuing discussions between herself and Camili.

Little averred that in the breakout room, Camili informed her that he had already spoken to J.M.'s attorney, who had provided [*3] him with the IDPS surveillance footage of the incident. According to Little, Camili "placed [her] on hold" while he reviewed the footage. Camili returned "approximately one minute" later and told her "he was dismissing the case." Camili described the video "as showing [Little] move from one side of the video frame to [J.M.'s] side, then 'somebody bump[ed] into somebody,' words [were] exchanged, and someone else step[ped] in between [them]."

When Little told Camili that J.M. "physically hit [Little] on [her] left arm," Camili "asked [Little] when." Despite Little's attempts to elaborate, Camili "interrupted [Little] and would not let [her] continue" to respond to the question. When Little informed Camili that she "had proof of medical treatment for the injury caused by [J.M.]," Camili "refused to look at [her] proofs and told [her] bluntly that [she] was not hit." Camili further declared that "his view of the video was that [Little] 'shoulder checked' [J.M.], [and] therefore, any injuries [Little] received were caused by [Little]." Camili concluded the meeting by telling Little that she "could tell the judge whatever [she] wanted later in open court."

According to Little, the municipal [*4] court judge allowed her to make a statement on the record, during which she asserted that she "could offer proofs of the assault, including: (1) [an] expert-enhanced video . . . , (2) [her] medical records from the day of the offense . . . , and (3) [J.M.'s] written admission in an Internal Affairs report that she struck [Little]." In her certification, Little explained that because the original surveillance footage was "dark and grainy, and . . . hard to see and interpret accurately[,] . . . at [her] own personal expense, [she had] retained a video expert to enhance, clarify, and slow down the video." Little stated that the enhanced version "clearly show[ed] that [she] did not touch [J.M.] and certainly did not 'shoulder check' her."

After hearing her statement, the municipal court judge "asked . . . Camili if those proofs would alter his determination not to prosecute," to which Camili "adamantly stated that they would not, and . . . maintained his position that the matter should be dismissed." The judge accepted Camili's answer and dismissed the complaint forthwith.

Little's subsequent attempts to obtain relief from the dismissal resulted in a cacophony of errors, none of which were [*5] her doing. First, Little's timely request for a transcript of the October 20 proceedings ended unsuccessfully when the Belleville Municipal Court Administrator informed Little's newly-retained attorney that it "d[id] not have any record on the requested case." Little's attempt to move for reconsideration fared no better.

On November 8, 2021, Little filed a timely motion for reconsideration in Belleville Municipal Court, alleging violations of her rights under the CVBR and the VRA based on Camili's refusal to consider the evidence she offered. In a supporting certification submitted by Little's attorney, counsel averred that in response to an inquiry regarding the status of the reconsideration motion, he was informed that the Belleville Municipal Court "had no record of the motion, that [the motion] was not on the docket, and that the file had likely been transferred to Irvington Municipal Court." Upon contacting Irvington Municipal Court, Little's counsel was informed that Irvington Municipal Court "had no record of the matter in its system."

During the ensuing months, Little's counsel repeatedly contacted both courts regarding the status of the reconsideration motion. Finally, on [*6] March 4, 2022, one year after the alleged assault, Belleville Municipal Court issued a letter to counsel which contained no reference to the pending reconsideration motion. Instead, the letter addressed "the prospective filing of a new charge against J.M." In response to counsel's attempt to correct the court's misapprehension of the underlying issue, court staff explained to counsel that "the courts did not know how to handle the motion" because after the complaint had been dismissed, "J.M. had been granted an expungement." A subsequent letter from the court to Little's counsel dated March 7, 2022, did not reference an expungement but stated, "[a]s no complaint currently exists in this matter the [c]ourt does not have the ability [to] hear your motion to reconsider." (Third alteration in original).

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Upon receipt of the letter, Little filed an appeal with the Law Division, reasoning that the March 7 letter "act[ed] as a final order of a court of limited jurisdiction, denying as moot . . . Little's [m]otion for [r]econsideration." On April 18, 2022, the Law Division judge issued an order dismissing the appeal "with prejudice, pursuant to Rules 3:23-2 and 3:23-9, as [Little] ha[d] no standing to appeal [*7] and in any event is not entitled to the relief requested because [she] is not a prosecuting attorney." In an accompanying written opinion, the judge noted the "procedural morass" created in the municipal courts, but elected to deem the reconsideration motion denied in the interest of "judicial economy."

Turning to the issue of standing, the judge acknowledged the appeal's basis in the CVBR and VRA. However, relying on our opinions in State v. Bradley, 420 N.J. Super. 138, 19 A.3d 479 (App. Div. 2011), and State v. Vitiello, 377 N.J. Super. 452, 873 A.2d 591 (App. Div. 2005), the judge noted that a complainant lacked standing to appeal the order of the municipal court dismissing their complaint where neither the complainant nor the complainant's attorney was designated as a private prosecutor under Rule 3:23-9(d) or qualified for such a designation under Rule 7:8-7(b).

Under Rule 3:23-9(d),

[w]ith the assent of the prosecuting attorney and the consent of the court, the attorney for a complaining witness or other person interested in the prosecution may be permitted to act for the prosecuting attorney; provided, however, that the court has first reviewed the attorney certification submitted on a form prescribed by the Administrative Director of the Courts, ruled on the contents of the certification, and granted the attorney's motion to act as private prosecutor [*8] for good cause shown.

Rule 7:8-7(b) allows the court to designate "an attorney to appear as a private prosecutor to represent the State in cases involving cross-complaints."

The judge observed:

[T]he municipal court never designated [Little] or her attorney as a "private prosecutor," nor was it requested. . . . [T]here were no cross-complaints, no assent of the municipal prosecutor, and there was no motion with the required supporting forms and certifications. Thus, under Bradley and Vitiello, [Little] does not have standing to appeal the dismissal of her complaint[] by the municipal prosecutor and municipal court.

The judge also determined that Little's CVBR and VRA rights "were properly vindicated . . . by her opportunity to address the municipal court directly to oppose the municipal prosecutor's discretionary decision to dismiss her complaint in open court." The judge observed that if the municipal judge had disagreed with the prosecutor's decision, "he could have directed that the matter be referred to the county prosecutor for review or [Little] could have requested such a review directly from the county prosecutor." However, Little failed to pursue that course of action. This appeal followed.¹

Little argues [*9] the judge misapprehended the nature of her appeal and erred in dismissing her municipal appeal for lack of standing. Little asserts she did not seek "the mere survival of the underlying complaint," but rather a remedy for the purported "victim's rights violation committed by the State." (Emphasis omitted). According to Little, she had "standing to file a motion . . . to enforce any right conferred [by the CVBR or VRA], and to receive an adjudicative decision by the court on any such motion." (Alterations in original). Little's standing claim is predicated upon her assertion that both Camili and the municipal judge, "acting on behalf of the State and as part of the criminal justice

¹ On June 2, 2022, the same day that Little filed a notice of appeal from the April 18, 2022 order, on Little's motion, the Assignment Judge entered an order directing Belleville Municipal Court to reopen the October 20, 2021 hearing on Little's complaint so that the record could be reviewed in camera pursuant to N.J.S.A. 2C:52-19 to determine whether an appeal to the Law Division was appropriate. The Assignment Judge vacated her June 2 order the following day upon learning of the April 18 order and pending appeal.

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system, failed to treat Little with the dignity, fairness, compassion, and respect owed [to] her under the CVBR and VRA." See N.J.S.A. 52:4B-36(a); N.J. Const. art. I, ¶ 22.²

"Standing is a threshold requirement for justiciability," Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 421, 591 A.2d 592 (1991), and "refers to the plaintiff's ability or entitlement to maintain an action before the court," In re Adoption of Baby T., 160 N.J. 332, 340, 734 A.2d 304 (1999) (quoting N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409, 686 A.2d 1265 (App. Div. 1997)). Standing "neither depends on nor determines the merits of a plaintiff's claim," Watkins, 124 N.J. at 417, but the absence of standing "precludes a court from entertaining any of the substantive issues presented for determination," Jen Elec., Inc. v. County of Essex, 197 N.J. 627, 645, 964 A.2d 790 (2009) (quoting [*10] Baby T., 160 N.J. at 340). "Whether a party has standing to pursue a claim is a question of law subject to de novo review." Cherokee LCP Land, LLC v. City of Linden Planning Bd., 234 N.J. 403, 414, 191 A.3d 597 (2018).

Through the CVBR, the Legislature has "addressed the evolving rights of crime victims, including standing to assert certain rights." State v. Lavrik, 472 N.J. Super. 192, 206, 275 A.3d 929 (App. Div. 2022). In Lavrik, we recounted that history as follows:

Enacted in 1985, the Legislature codified "specific rights," affording "full recognition and protection" to crime victims and witnesses under the CVBR. N.J.S.A. 52:4B-35. The Legislature found "[t]hese rights are among the most fundamental and important in assuring public confidence in the criminal justice system." *Ibid.* Six years later, in 1991, New Jersey voters passed the VRA, which provides:

A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature.

Nearly a decade later, in 2012, the Legislature enacted " [*11] Alex DeCrocce's Law," L. 2012, c. 27, which amended and supplemented the rights of crime victims and witnesses. Pertinent to this appeal, the Legislature added paragraph (r) to N.J.S.A. 52:4B-36, affording crime victims the right:

To appear in any court before which a proceeding implicating the rights of the victim is being held, with standing to file a motion or present argument on a motion filed to enforce any right conferred herein or by [the VRA], and to receive an adjudicative decision by the court on any such motion.

According to the Assembly Committee Statement, the 2012 "bill g[ave] victims standing to enforce the rights afforded by the '[CVBR].'" A. Appropriations Comm. Statement to A. 2380, at 2 (May 21, 2012); see also [State v. Tedesco, 214 N.J. 177, 184, 69 A.3d 103 (2013)] (recognizing the CVBR "grants victims standing to file a motion to enforce those rights"). In essence, N.J.S.A. 52:4B-36(r) confers standing to enforce the procedural rights granted under the VRA and the remaining seventeen paragraphs of N.J.S.A. 52:4B-36.

[Lavrik, 472 N.J. Super. at 206-07 (first, second, third, and fourth alterations in original) (emphasis omitted).]

See also State v. Blackmon, 202 N.J. 283, 298-99, 997 A.2d 194 (2010) (tracing the history of the CVBR and VRA); State v. Muhammad, 145 N.J. 23, 33-35, 678 A.2d 164 (1996) (discussing history of VRA).

² N.J.S.A. 52:4B-37 defines "victim" as "a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed . . . against that person." Disorderly persons offenses, such as the simple assault charge involved here, "are petty offenses and are not crimes within the meaning of the Constitution of this State." N.J.S.A. 2C:1-4(b)(1). Nonetheless, neither the State nor J.M. dispute that Little qualifies as a "victim" who is entitled to exercise the rights provided in the CVBR and VRA. Moreover, in Bradley, we tacitly acknowledged that the CVBR and VRA applied to the purported victim who unsuccessfully attempted to prosecute disorderly persons simple assault charges in municipal court. 420 N.J. Super. at 143.

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Among the remaining seventeen paragraphs of N.J.S.A. 52:4B-36, other pertinent provisions afford crime victims and witnesses the following rights:

- (a) To be treated with [*12] dignity and compassion by the criminal justice system;
- (b) To be informed about the criminal justice process;
- (c) To be free from intimidation, harassment or abuse by any person . . . ;
- (d) To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible;
-
- (h) To be informed about available remedies, financial assistance and social services; [and]
-
- (k) To be advised of case progress and final disposition and to confer with the prosecutor's representative so that the victim may be kept adequately informed.

It is clear that N.J.S.A. 52:4B-36(r) expressly confers standing on victims to enforce the rights enumerated in the CVBR and VRA, including the right "[t]o be treated with dignity and compassion by the criminal justice system." N.J.S.A. 52:4B-36(a). However, our courts have also afforded standing to victims even when the right sought to be enforced was not expressly referenced in the CVBR or VRA. See Lavrik, 472 N.J. Super. at 198, 210 (holding that "a victim in a criminal matter has standing to appeal from a trial court order granting [the] defendant's motion for a civil reservation" because "[a]lthough . . . civil reservations are not expressly referenced in the VRA or CVBR, the victim's [*13] standing in th[e] case finds support in the overarching principles embodied within both enactments - to ensure the criminal justice system treats crime victims fairly"); State v. Kane, 449 N.J. Super. 119, 134 n.6, 155 A.3d 612 (App. Div. 2017) (speculating that the victim would have standing to oppose the criminal defendant's motion seeking discovery of her medical records under N.J.S.A. 52:4B-36(r) because "[a]lthough the provision grants a victim standing to affirmatively seek enforcement of her victim rights, we do not read the standing grant so restrictively as to preclude standing to oppose efforts to undermine those rights").

Here, Little's standing claim is predicated upon her invocation of her right "[t]o be treated with dignity and compassion by the criminal justice system." N.J.S.A. 52:4B-36(a). She alleges Camili violated this right by "falsely blaming her for her own injuries and refus[ing] to consider her evidence." She asserts the judge "compounded that violation . . . by . . . failing to admonish [Camili] to review [her] evidence or remind him of Little's rights" and by "immediately granting Camili's motion . . . without affording [Little] any opportunity to retain counsel or . . . speak with the county prosecutor." Notably, neither the State nor J.M. has denied the prosecutor's [*14] or the judge's alleged malfeasance.

Based on our de novo review, we are satisfied that Little had standing to appeal the dismissal of the complaint to enforce her rights under the CVBR and VRA based on the prosecutor's alleged affirmative acts and the municipal court judge's alleged omissions. There can be no doubt that victims "are to be treated with fairness, compassion, respect, and dignity" by the criminal justice system. Tedesco, 214 N.J. at 196. If Little's allegations are true, that did not occur here. According to Little, the municipal prosecutor was dismissive of her claims, blamed her for provoking the alleged assault, and flatly refused to view the evidence she offered to prove her account. The municipal court judge compounded the error by failing to advise Little of her available remedies before dismissing the complaint on the prosecutor's motion.

If her allegations are accepted, Little has plausibly set forth a violation of her rights under N.J.S.A. 52:4B-36(a) and Article 1, Paragraph 22 of the State Constitution. In that regard, we disagree with the dicta in the judge's opinion that Little's rights "were properly vindicated" by the opportunity to oppose the prosecutor's decision in open court. The record suggests that the opportunity to be heard was "little more [*15] than a potentially cathartic but hollow exercise." State v. A.M., 252 N.J. 432, 453, 286 A.3d 660 (2023). The CVBR and VRA require more than a perfunctory observation of a victim's rights.

Little's appeal does not implicate the limitations on who may act as a prosecuting attorney in municipal court under the court rules as suggested by the State. In that regard, Rule 3:24(b) permits the prosecuting attorney to "appeal, as of right, a pre-trial or post-trial judgment dismissing a complaint." For purposes of appealing "a judgment of conviction" in municipal court, see R. 3:23-1, Rule 3:23-9 defines "prosecuting attorney" as "[t]he Attorney General,"

State v. J.M.

"county prosecutor," "municipal attorney," or private prosecutor under circumstances not applicable here. See R. 3:23-9(d).

It is undisputed that Little neither qualified as the prosecuting attorney under Rule 3:23-9(d) nor did she seek approval to act as such.³ She merely sought to have the municipal prosecutor assigned to her case treat her "with fairness, compassion, respect, and dignity." Tedesco, 214 N.J. at 196. For the same reasons, Vitiello and Bradley, upon which the Law Division judge relied in finding that Little had no standing, are distinguishable. In both Vitiello and Bradley, this court considered appeals raised by citizen-complainants seeking to challenge the dismissals of their respective [*16] complaints. Vitiello, 377 N.J. Super. at 454; Bradley, 420 N.J. Super. at 139-40.

In Vitiello, the complainant sought "to appeal from an order of the Assignment Judge of Morris County dismissing [his harassment] complaint as de minimis under N.J.S.A. 2C:2-11." Vitiello, 377 N.J. Super. at 454. In Bradley, the complainant challenged the municipal court administrator's finding that there was no probable cause to justify the issuance of a complaint for simple assault. Bradley, 420 N.J. Super. at 140. Neither complainant argued that the dismissals violated their CVBR or VRA rights; instead, both challenged the sufficiency of the factual and legal bases underpinning the respective dismissals. Vitiello, 377 N.J. Super. at 454; Bradley, 420 N.J. Super. at 140-41. In both cases, we determined the complainants lacked standing because neither qualified as the prosecuting attorney. Vitiello, 377 N.J. Super. at 455-56; Bradley, 420 N.J. Super. at 142. Significantly, neither case involved an allegation of a violation under the CVBR or VRA, and both cases predated the amendment of the CVBR explicitly conferring standing on victims to enforce their rights under the CVBR and VRA.

We acknowledge that courts should generally avoid "intrusion . . . into . . . the exercise of prosecutorial discretion in deciding not to pursue an investigation or press a charge." In re Grand Jury Appearance Request by Loigman, 183 N.J. 133, 146, 870 A.2d 249 (2005) (emphasis omitted). However, prosecutorial discretion is not limitless. In choosing which cases to prosecute, a prosecutor must [*17] "examine the available evidence, the law and the facts, and the applicability of each to the other, and . . . intelligently weigh the chances of successful termination of the prosecution." State v. Ward, 303 N.J. Super. 47, 57, 696 A.2d 48 (App. Div. 1997). "If the prosecutor arbitrarily or corruptly fails or refuses to act, the courts must then intervene to correct the administrative abuse." Id. at 56-57; see also Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 3:25-1 (2023) ("The prosecutor's exercise of discretion in dismissing administratively is reviewable . . . under an abuse of discretion standard and extends to disorderly person's offenses.").

Here, Little accused the prosecutor of conduct that violated her right to be treated with dignity and compassion. Little acknowledges that "as a practical matter, [she] cannot receive the restorative dignity, fairness, compassion, and respect unless the [c]omplaint is first reinstated." Admittedly, a new complaint cannot be filed because the statute of limitations has expired. See N.J.S.A. 2C:1-6(b)(2) ("A prosecution for a disorderly persons offense . . . must be commenced within one year after it is committed."). The primary relief Little seeks to vindicate her right is to have a different prosecutor, in this case, the county prosecutor, [*18] "review [her] complaint and determine whether their intervention was warranted." Bradley, 420 N.J. Super. at 140; see also Ward, 303 N.J. Super. at 54 ("[T]he county prosecutor . . . has general supervisory power over municipal prosecutors.").

Because we hold that under the circumstances, Little has standing to enforce her right under the CVBR and VRA, we reverse the judge's order dismissing her municipal appeal for lack of standing and remand for a determination on the merits in accordance with N.J.S.A. 52:4B-36(r).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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³ Although Little's initial motion for reconsideration included a request for a private prosecutor, she has abandoned that request altogether.

EXHIBIT E



Neutral

As of: July 7, 2025 10:13 PM Z

Doe v. Burke

Superior Court of New Jersey, Appellate Division

November 2, 2020, Argued; August 17, 2021, Decided

DOCKET NO. A-4920-18

Reporter

2021 N.J. Super. Unpub. LEXIS 1756 *; 2021 WL 3625397

JANE DOE (a fictitious name), Plaintiff-Appellant, v. RICHARD BURKE, THE WARREN COUNTY PROSECUTOR'S OFFICE, THE COUNTY OF WARREN, CHRISTOPHER PORRINO, GURBIR GREWAL, and THE STATE OF NEW JERSEY, Defendants-Respondents.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] On appeal from the Superior Court of New Jersey, Law Division, Sussex County, Docket No. L-0389-18.

Jane Doe a Fictitious Name v. Burke, 2019 N.J. Super. Unpub. LEXIS 7049 (Law Div., June 4, 2019)

Core Terms

alleges, rights, disclosures, public employee, sexual assault, public entity, amended complaint, qualified immunity, crime victim, individual capacity, cause of action, immunity, assault, emotional distress, trial court, details, privacy, reasons, tort claim, damages, press, proximately, domestic, violence, reasonable person, supervision, compassion, offensive, sexual, substantial rights

Counsel: Robert E. Lytle argued the cause for appellant (Szaferman, Lakind, Blumstein & Blader, PC, attorneys; Robert E. Lytle, on the briefs).

Michael R. Sarno, Deputy Attorney General, argued the cause for respondents Richard Burke, Warren County Prosecutor's Office, Christopher Porrino, Gurbir S. Grewal, and the State of New Jersey (Gurbir S. Grewal, Attorney General, attorney; Sookie Bae, Assistant Attorney General, of counsel; Michael R. Sarno, on the brief).

Robert E. Levy argued the cause for respondent County of Warren (Scarinci & Hollenbeck, LLC, attorneys; Robert E. Levy, of counsel and on the brief; Jasmine B. Simmons, on the brief).

Judges: Before Judges Messano, Hoffman, and Suter.

Opinion

PER CURIAM

We address whether the Warren County Prosecutor (the prosecutor), the Warren County Prosecutor's Office (WCPO), the Attorney General, and County of Warren (County) have qualified immunity from suit by plaintiff under

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the New Jersey Civil Rights Act (CRA), N.J.S.A. 10:6-2. Plaintiff alleges she is a victim of sexual assault and domestic violence, and that the prosecutor disclosed in a press release, for his personal and political reasons, her name and the [*2] nature of the assault. We address whether plaintiff has an independent cause of action against the State of New Jersey (State) and the aforesaid public entities and officials for the claimed violation of the Crime Victim's Bill of Rights (CVBOR), N.J.S.A. 52:4B-34 to -38. We also address the legal viability of tort claims filed against defendant public entities and officials. The issues arise from the trial court's orders dismissing plaintiff's complaint against all defendants under Rule 4:6-2(e) for failing to state causes of action.

We are required in this procedural context to give plaintiff "every reasonable inference of fact[.]" liberally searching the complaint for "the fundament of a cause of action" Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746, 563 A.2d 31 (1989). Applying that standard and limited to the factual circumstances presented in this case, we find a cause of action under the CRA based on the CVBOR against the prosecutor in his individual capacity and reverse the dismissal of that claim. Because of the state of this record, we are not able to reach a conclusion about whether the prosecutor's actions were prosecutorial or administrative. We reverse the dismissal of the tort claims in Counts Four through Seven against the prosecutor in his official and individual capacities. [*3] We also reverse the dismissal of Counts Four through Eight against all the remaining defendants.

We emphasize the narrow scope of our decision. We express no opinion about the applicability of the CVBOR in other factual contexts involving other types of crime victims or witnesses. Our opinion does not preclude subsequent motion practice in this case, following discovery.

I.

We glean the facts from plaintiff's amended complaint. Plaintiff Jane Doe broke off her brief engagement to her ex-fiancé in March 2016. On March 17, 2016, he drove from Florida to Virginia, and called plaintiff. When she was not willing to resume their relationship, he purchased duct tape and zip ties. Later, he tried again to convince her to see him, but without success. At 10:30 p.m. that night, after driving to New Jersey, he arrived at plaintiff's residence armed with a nine-millimeter handgun, an extra magazine, two knives, the zip ties and duct tape. When plaintiff answered the door, he forced his way in, and although she was able to lock herself in the bedroom, he broke through the door and sexually assaulted her. Plaintiff tried to escape but could not.

With a knife to her neck, plaintiff's ex-fiancé threatened [*4] to kill her, and tied her to a chair. He spoke for hours about death and suicide, expressing there was no way out for him but death. Plaintiff begged for her life and entreated him to leave. "Unwilling to do so, her ex-fiancé emptied his handgun, demonstrated to [p]laintiff how to use the firearm, reloaded it, handed it to [p]laintiff, and then directed [p]laintiff to shoot him in the head." She refused, but once he "issued an ultimatum" that it was this or he would shoot her, plaintiff shot him in the rear shoulder blade "because she did not want to kill him." He yelled and turned toward her, whereupon she shot him again — this time in the shoulder — and she ran from the house and called 911. Her ex-fiancé died at the scene.

Plaintiff alleges her identity was kept confidential during the State Police investigation. She claims she did not discuss what occurred except with her "closest family members and medical providers." The Warren County Grand Jury did not issue an indictment against plaintiff for the shooting, instead returning a "no-bill."

Plaintiff alleges that on August 25, 2016, after the no-bill was returned, the prosecutor either held a press conference or issued a press release [*5] that "disclosed to the public the results of the investigation, details from the grand jury presentation, as well as [p]laintiff's identity" She claims the disclosures by the prosecutor or WCPO were made "willfully, knowingly and for the purpose of political and/or personal gain." Plaintiff claims she was not consulted ahead of time about these disclosures and would have refused permission if asked. She claims she was contacted by members of the public including "professors, teachers, neighbors, friends, family, strangers and reporters" after the disclosures. She now lives "in constant fear," continues to be "stigmatized" by the disclosures, experienced "physical and mental anguish" as well as "emotional distress, anxiety . . . and embarrassment."

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On August 23, 2018, plaintiff filed an amended complaint¹ against the prosecutor, WCPO, County, the State, former Attorney General Christopher Porrino (the Attorney General) and then Attorney General Gurbir Grewal, seeking compensatory and punitive damages for the prosecutor's comments.² Count One alleges that defendants acted under color of law to deprive plaintiff of rights guaranteed by the New Jersey Constitution,³ including but not [*6] limited to: "[t]he right [of] crime victims . . . to be treated with fairness, compassion and respect by the judicial system" and alleges this violated the CRA. The State is not a defendant in Count One.

Count Two alleges the disclosure was a violation by all defendants of the CVBOR that proximately caused plaintiff "anguish, emotional distress, anxiety, fear and embarrassment" for which she seeks monetary and other relief. Count Three alleges that defendants "purposely disclosed information" from the Grand Jury with "the intent to harm" her, an alleged violation of grand jury secrecy under N.J.S.A. 2B:21-10.

Counts Four, Five, Six, and Seven allege common law torts. Count Four alleges an invasion of privacy by intrusion on seclusion. Count Five alleges an invasion of privacy by publicity given to private life. Count Six is a negligence cause of action. Plaintiff alleges defendants owed her a duty as a crime victim to exercise proper care to comply with the Victim's Rights Amendment (VRA) of the Constitution, Art. I, ¶22, and the CVBOR, and to train and supervise qualified law enforcement officers. She claims defendants breached these duties to her, proximately causing damages. Count Seven [*7] alleges defendants intentionally inflicted emotional distress by the disclosures. Count Eight alleges all defendants except the prosecutor were vicariously liable under respondeat superior for "tortious actions" by the prosecutor and members of the WCPO.

On December 17, 2018, the County filed a motion to dismiss the amended complaint under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted. On January 30, 2019, the other defendants filed to dismiss under the same rule. The parties agreed to dismiss certain claims during oral argument of the motions on May 31, 2019.⁴

On June 4, 2019, the trial court granted both motions, dismissing all claims against the County and all State defendants under Rule 4:6-2(e) for reasons it expressed on the record and in its comprehensive written statement of reasons issued the same day. We address the trial court's decision in our analysis of the issues.

Plaintiff appealed the June 4, 2019 orders. She raises the following issues on appeal:

POINT I

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST BURKE UNDER THE TORT CLAIMS ACT, WHICH ARE NOT SUBJECT TO ANY IMMUNITY SET FORTH IN THAT ACT.

¹ The original complaint was filed on August 20, 2018.

² The record does not clarify if the comments were made orally or in a press release. We rely entirely on the amended complaint plaintiff filed for the content of the alleged communications.

³ Count One of the amended complaint is captioned as a violation of the CRA. The text of Count One does not allege that plaintiff was deprived of *statutory* rights under the CVBOR; it alleges *constitutional* violations. Plaintiff's appellate brief argues that her CRA claim is supported by rights under the Constitution *and* under the CVBOR, both of which were violated. We treat Count One as alleging both a constitutional and statutory violation despite this pleading deficiency.

⁴ Attorneys General Porrino and Grewal were dismissed from Count One in their official capacities because they are not "persons" under the CRA. The parties agreed the State and WCPO were not liable under Counts Three, Four and Seven because these alleged intentional torts. The punitive damages claims under Counts Six, Seven and Eight were dismissed for all defendants except for Attorney General Porrino, Attorney General Grewal and prosecutor Richard Burke in their individual capacities. In her appellate brief, plaintiff dismissed any claims under the amended complaint against Attorney General Grewal because he was not in office until after the events alleged in her complaint. Plaintiff has not pursued the dismissal of Count Three on appeal. We treat the issue about Grand Jury secrecy as abandoned. Muto v. Kemper Reinsurance Co., 189 N.J. Super. 417, 420-21, 460 A.2d 199 (App. Div. 1983).

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POINT II

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST BURKE UNDER THE NEW JERSEY [*8] CIVIL RIGHTS ACT, WHICH ARE NOT SUBJECT TO THE DEFENSE OF QUALIFIED IMMUNITY.

POINT III

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST FORMER ATTORNEY GENERAL PORRINO UNDER BOTH THE TORT CLAIMS ACT AND NEW JERSEY CIVIL RIGHTS ACT.

POINT IV

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST WARREN COUNTY, AS THE EMPLOYER OF PROSECUTOR BURKE AND THE INVESTIGATORS IN THE WARREN COUNTY PROSECUTOR'S OFFICE, BECAUSE THE DISCLOSURE OF PLAINTIFF'S IDENTITY AND DETAILS OF THE CRIMES COMMITTED AGAINST HER, AFTER THE INVESTIGATION OF THE CRIME AND GRAND JURY PROCEEDING HAD BEEN COMPLETED, DID NOT CONSTITUTE AN EXERCISE OF THE PROSECUTOR'S LAW ENFORCEMENT RESPONSIBILITIES.

POINT V

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST THE WARREN COUNTY PROSECUTOR'S OFFICE UNDER THE NEW JERSEY CIVIL RIGHTS ACT, THE TORT CLAIM ACT AND VICTIMS RIGHTS ACT.

POINT VI

PLAINTIFF'S COMPLAINT STATES CLAIMS AGAINST THE STATE OF NEW JERSEY UNDER THE TORT CLAIMS ACT AND VICTIM'S RIGHTS ACT.

II.

We review an order dismissing a complaint under Rule 4:6-2(e) by using the same standard as the trial court. Smerling v. Harrah's Entm't, Inc., 389 N.J. Super. 181, 186, 912 A.2d 168 (App. Div. 2006). The court examines whether "the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor." R. 4:37-2(b). The [*9] reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundement of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Printing Mart-Morristown, 116 N.J. at 746 (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252, 128 A.2d 281 (App. Div. 1957)). At the motion to dismiss stage in the litigation, "the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." *Ibid.* At this stage, the plaintiff is "entitled to every reasonable inference of fact." *Ibid.* We are not bound by the trial court judge's "construction of the legal principles." Smerling, 389 N.J. Super. at 186 (quoting Lombardo v. Hoag, 269 N.J. Super. 36, 47, 634 A.2d 550 (App. Div. 1993)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230 (1995).

A.

Count One of the amended complaint alleges a violation of the CRA. The CRA provides "any person" who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered [*10] with . . . by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

[N.J.S.A. 10:6-2(c).]

"[O]ur State Civil Rights Act is modeled off of the analogous Federal Civil Rights Act, 42 U.S.C.A. § 1983, and is intended to provide what Section 1983 does not: a remedy for the violation of substantive rights found in our State

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Constitution and laws." Tumpson v. Farina, 218 N.J. 450, 474, 95 A.3d 210 (2014). Our Supreme Court has said the interpretation of Section 1983's parallel provisions may provide guidance under our CRA. *Ibid*.

The CRA protects "against the deprivation of and interference with 'substantive rights, privileges or immunities secured by the Constitution or laws of this State,'" in contrast to Section 1983 that concerns procedural and substantive right deprivations. *Id.* at 477 (quoting N.J.S.A. 10:6-2(c)). "'Substantive' addresses those rights and duties that may give rise to a cause of action, whereas 'procedural' addresses 'the manner and the means' by which those rights and duties are enforced." *Id.* at 478 (citations omitted).

Under Section 1983, the State and "officials acting in their official capacities" are not "persons." Will v. Mich. Dep't of State Police, 491 U.S. 59, 71 (1988). We define "person" in the same manner under the CRA, meaning that the State and State officials are not amenable to suit under [*11] the CRA. Endl v. State, 5 F. Supp. 3d 689, 697 (D.N.J. 2014).

The parties agree that the Attorney General acting in his official capacity is not a person under the CRA and was properly dismissed from Count One. However, plaintiff argues the trial court erred by dismissing the WCPO and County of Warren from Count One for the same reason.

County prosecutors have been described "as having a dual or hybrid status." Coleman v. Kave, 87 F.3d 1491, 1499 (3d Cir. 1996). "When [New Jersey] county prosecutors engage in classic law enforcement and investigative functions, they act as officers of the State." *Id.* at 1505. When they perform "administrative function[s] . . . unrelated to the duties involved in criminal prosecution," they act as county officials. *Id.* at 1506. Local governments, such as a county and their officials, are "persons" under Section 1983, who are amenable to suit. Monell v. Dep't of Social Servs., 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

The trial court observed that as the county's chief law enforcement officer, the prosecutor was responsible for "inform[ing] the citizens of a county as to the outcome of a criminal investigation, especially where a homicide has occurred." In communicating with the press, the trial court noted the prosecutor's actions "were more closely aligned with its prosecutorial, investigative function."

A prosecutor's remarks about the conclusion of an investigation [*12] may not be "functionally tied to the judicial process," but can be viewed "an integral part of a prosecutor's job . . . and serve a vital public function." Buckley v. Fitzsimmons, 509 U.S. 259, 277-78, 113 S. Ct. 2606, 125 L. Ed. 2d 209 (1993). This final bookend to the investigation and prosecution provides clarity for the parties and public that the matter is concluded and affords the prosecutor the opportunity to explain what occurred and why. Buckley's comments about the nature of a prosecutor's role in communications with the press were made in the context of analyzing whether a prosecutor should have absolute or qualified immunity, and not in determining whether a prosecutor is a person for purposes of Section 1983 or the CRA. *Ibid*. The same issue was presented in Kulwicki v. Dawson, 969 F. 2d 1454, 1466 (3d Cir. 1992) (providing that because communication with the press was not a "core prosecutorial activity," qualified immunity applies rather than absolute immunity). Neither case addressed the issue of the prosecutor's status under our caselaw.

Whether the prosecutor's alleged actions in this case were prosecutorial or administrative functions is critical in determining whether the prosecutor was acting under the supervision of the Attorney General or acting as a county employee at the time. See, e.g., Lavezzi v. State, 219 N.J. 163, 175-77, 97 A.3d 681 (2014) (explaining these principals [*13] given the county prosecutor's hybrid status). However, we cannot definitively determine the issue on the record before us. The complaint does not include the contents of the alleged "press conference" or "press release," except that plaintiff's name was disclosed, nor does it explain any of the circumstances or context surrounding the allegations in plaintiff's complaint. We simply cannot reach a conclusion in this case.

However, the judge correctly dismissed Count One as to Warren County and the WCPO. Although both may be subject to suit under Section 1983 and the CRA, they are only liable if "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers," or it part the governmental agencies "custom." Monell, 436 U.S. at 690. Simply put, the complaint makes no such allegation.

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What remains of the CRA claim under Count One are the claims against the Attorney General and the prosecutor in their individual capacities. The trial court concluded that both were entitled to the defense of qualified immunity because it found the communication to the press did not violate clearly established rights.

"The [*14] affirmative defense of qualified immunity protects government officials from personal liability for discretionary actions taken in the course of their public responsibilities, 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Brown v. State, 230 N.J. 84, 97-98, 165 A.3d 735 (2017) (quoting Morillo v. Torres, 222 N.J. 104, 116, 117 A.3d 1206 (2015)). This applies to actions brought against public officials under the CRA. Id. at 98.

To determine whether qualified immunity applies, a court must determine "whether: (1) the facts, '[t]aken in the light most favorable to the party asserting the injury[] . . . show the [official's] conduct violated a constitutional right'; and (2) that constitutional 'right was clearly established' at the time that defendant acted." Ibid. (alterations in original) (quoting Saucier v. Katz, 533 U.S. 194, 201, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001)). Whether a right was clearly established must be ascertained "based on the state of the law and facts that existed at the time of the alleged statutory or constitutional violation." Schneider v. Simonini, 163 N.J. 336, 354-55, 749 A.2d 336 (2000).

"A government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear that a reasonable official understands that what he is doing violates [*15] that right.'" Radiation Data, Inc. v. N.J. Dep't of Env't. Prot., 456 N.J. Super. 550, 559, 196 A.3d 579 (App. Div. 2018) (alterations in original) (quoting Anderson v. Creighton, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987)). There does not need to be a published opinion directly on point defining the right in order for the right to be clearly established. What is required is that "existing precedent must have placed the statutory or constitutional question *beyond debate*." Ibid. (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011)). Thus, a government official can be considered "on notice that their conduct violates established law even in novel factual circumstances." Hope v. Pelzer, 536 U.S. 730, 741, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002). The "salient question" is whether the state of the law at the time of the conduct in question gave the government official "fair warning" that their conduct was unlawful. Ibid.

Although the defense of qualified immunity is generally a legal issue to be resolved by the court prior to trial, the New Jersey Supreme Court has noted an exception "when the case involves disputed issues of fact." Brown, 230 N.J. at 99. "In such a circumstance, the case may be submitted to the jury to determine 'the who-what-when-where-why type of historical fact issues,' after which the trial judge may incorporate those findings in determining whether qualified immunity applies." Ibid. (quoting Schneider, 163 N.J. at 359).

In this case, the motions to dismiss were made early in the litigation, prior [*16] to discovery. We do not know whether there will be disputed facts about this defense as discovery is pursued.

To determine if qualified immunity applies, we must determine whether in 2016 the law was "sufficiently clear that a reasonable official" in the prosecutor's position would have known that disclosure of plaintiff's name, as a sexual assault and domestic violence victim, along with details about the assault, violated her rights under the CVBOR or the VRA. Id. at 106 (quoting Anderson, 483 U.S. at 640). The trial court determined these rights were not sufficiently clear because plaintiff could not cite any authority that a prosecutor's office had been liable in a similar situation. The trial court noted the VRA and the CVBOR have not been construed in prior cases.

We disagree based on the facts that we are required to accept — that the prosecutor allegedly disclosed to the press the name of a sexual assault and domestic violence victim and details of the assault for his personal or political purposes. In this context and without more facts, we are hard-pressed to say that by 2016, the law was not clearly established that such conduct was unlawful under the CVBOR.

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We limit our analysis to the CVBOR.⁵ It is not necessary [*17] for us to analyze the VRA when we find the rights under the CVBOR. Randolph Town Ctr., L.P. v. Cnty. of Morris, 186 N.J. 78, 80, 891 A.2d 1202 (2006) (providing no need to "reach a constitutional question unless its resolution is imperative to the disposition of litigation").

In enacting the CVBOR in 1985, the Legislature found and declared that crime victims and witnesses were important to the criminal justice system and that their rights "should be given full recognition and protection." N.J.S.A. 52:4B-35. To "enhance and protect" their role, the Legislature declared "the improved treatment of these persons should be assured through the establishment of specific rights." *Ibid.* The Legislature found "[t]hese rights are among the most fundamental and important in assuring public confidence in the criminal justice system." *Ibid.* It defined a "victim" as "a person who suffers personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed by an adult . . . against that person." N.J.S.A. 52:4B-37.

In N.J.S.A. 52:4B-36, the Legislature found and declared that crime victims and witnesses "are entitled to the following rights," listing eighteen paragraphs, which included, "(a) To be treated with dignity and compassion by the criminal justice [*18] system." By 1991, the New Jersey Constitution was amended to include similar language, providing, "[a] victim of crime shall be treated with fairness, compassion and respect by the criminal justice system." N.J. Const. art. I, ¶22. Although there is no case that directly makes this point, we believe that at the very core of the CVBOR's right to be treated with dignity and compassion is the right by the victim of a sexual assault with domestic violence not to be identified by name to the press. It bores further into the core of this right when the details of the assault are disclosed, and the disclosure allegedly was for personal or political purposes. Sadly, we do not know if any of these facts are true. As already noted, we have not been provided by the parties with what facts were released or even in what format. The motions to dismiss were made early in the litigation before the facts were developed. We simply must accept the pleadings at this juncture.

There are many protections against disclosure for victims of sexual assault or domestic violence. The Court Rules maintain as confidential court records that provide the name and address of sexual assault victims. Since 2010, Rule 1:38-3(c)(12) has provided that the "[n]ames [*19] and addresses of victims or alleged victims of domestic violence or sexual offenses," shall be excluded from public access. Prosecutors and courts employ fictitious names for sexual assault victims and for their family members in court filings. See, e.g., State v. Mauti, 448 N.J. Super. 275, 280 n.1, 153 A.3d 256 (App. Div. 2017).

The Legislature has exempted from public access and deemed to be confidential both criminal investigatory records and victims' records, N.J.S.A. 47:1A-3, and has, through the Rape Shield Law, N.J.S.A. 2C:14-7, limited admissibility of prior sexual conduct of sexual offense victims "to protect the privacy and dignity of the victims of sexual crimes." State v. Cuni, 159 N.J. 584, 606, 733 A.2d 414 (1999). The Legislature also has privileged victim counselors from being "examined as a witness in any civil or criminal proceeding with regard to any confidential communication." N.J.S.A. 2A:84A-22.15.

As revised in 1993, the Attorney General Standards to Ensure the Rights of Crime Victims (Standards) provide that the name and address of a juvenile victim of sexual assault is not to be identified. See N.J.S.A. 2A:82-46 (providing that in prosecutions involving sexual assault, "the name, address, and identity of a victim who was under the age of 18 at the time of the alleged commission of an offense shall not appear on the indictment, complaint, or any other

⁵ Plaintiff's amended complaint alleges the unauthorized disclosure violated the CRA by depriving her of her constitutional rights to privacy, liberty, due process, equal protection, reputational security, and her rights as a crime victim "to be treated with fairness, compassion and respect by the criminal justice system." In her appellate brief, she declined to assert any of these grounds other than the right to privacy and rights as a crime victim; thus, we limit our analysis to those alleged harms. See Midland Funding LLC v. Thiel, 446 N.J. Super. 537, 542 n.1, 144 A.3d 72 (App. Div. 2016) ("[A]n issue that is not briefed on appeal is deemed waived.").

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public [*20] record"). Part Three of the Standards include a section on protecting crime victims and classify as a "special victim population" a victim of sexual assault.⁶

Our court has found the right to privacy and fair treatment. In *State v. Gilchrist*, 381 N.J. Super. 138, 147, 885 A.2d 29 (App. Div. 2005), we found that the crime victim's "right to privacy" and "her right to be treated with fairness, compassion, and respect" in the VRA were among the factors to be considered in deciding whether a photograph of the crime victim should be provided to the defense under the Sixth Amendment. We determined these rights, as well as other factors, outweighed the benefits of providing the photograph of the victim. *Ibid*.

This right to dignity and compassion under the CVBOR starts with the obvious: the sexual assault victim's name and details of the assault. This was not changed by the fact that at some point, plaintiff was subject of the prosecutor's investigation. It has long been established that "records relating to a person who was not arrested or charged with an offense" are entitled to "a high degree of confidentiality." *N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office*, 447 N.J. Super. 182, 211, 146 A.3d 656 (App. Div. 2016).

We believe the prosecutor would have had fair warning that his conduct in disclosing to the press the name of a sexual assault and domestic violence victim with the [*21] details of the assault for his own personal or political purposes violated established law even if the facts are novel. Thus, we reverse the order dismissing Count One against the prosecutor in his individual capacity.

We do not reach the same result for the Attorney General based on the allegations in the amended complaint. Plaintiff alleges the Attorney General was obligated "to protect and enforce the rights of crime victims . . ." Plaintiff alleges she is a "crime victim" under the CVBOR. The amended complaint alleges the prosecutor and WCPO made unlawful disclosures about plaintiff to the press. There is no allegation that the Attorney General made disclosures. Count One alleges that defendants, including the Attorney General "unlawfully deprived, interfered with or attempted to interfere with" plaintiff's rights, but there is nothing specific here about the Attorney General. Although the tort claims portions of the amended complaint make claims about lack of training and supervision, those are not made in Count One nor does plaintiff explain what rights to training and supervision by the Attorney General were clearly established under the CRA for plaintiff. Given the absence [*22] of allegations against the Attorney General, we affirm the trial court's dismissal of Count One against the Attorney General in his individual capacity.

B.

Count Two of the amended complaint alleges that as a proximate result of a violation of the CVBOR, plaintiff sustained injuries in the form of "physical and mental anguish, emotional distress, anxiety, fear and embarrassment" for which she seeks damages. Count Two appears to allege a direct cause of action for damages, injunctive relief, and attorney's fees against defendants under the CVBOR statute and is not a claim under the CRA. There is nothing in the CVBOR, however, that authorizes a free-standing civil cause of action for damages. *See, e.g., Jurzwiak v. Doe*, 415 N.J. Super. 442, 454-55 (App. Div. 2010); *Aly v. Garcia*, 333 N.J. Super. 195, 754 A.2d 1232 (App. Div. 2000). Therefore, we affirm the order dismissing Count Two of the amended complaint against defendants on this basis rather than based on qualified immunity.

III.

Counts Four through Seven allege common-law torts for invasion of privacy by intrusion upon seclusion, invasion of privacy by giving publicity to private life, negligence, and intentional infliction of emotional distress. These tort claims are made against all the public entity and public employee defendants. Count Eight alleges the [*23] State and State defendants are vicariously liable for the prosecutor's disclosures.

A.

⁶ Enacted in 2019, after the events at issue in this case, there is now a Sexual Assault Victim's Bill of Rights, *N.J.S.A. 52:4B-60.1 to -60.3*, where the Legislature declared the public policy of the State "that the criminal justice system accord victims of sexual violence" with rights that include the right "(1) . . . to be treated with dignity and compassion . . ." *N.J.S.A. 52:4B-60.2(c)(1)*.

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The *Tort Claims Act (TCA)*, N.J.S.A. 59:1-1 to 12-3, "re-established" sovereign immunity. *D.D. v. Univ. of Med. & Dentistry of N.J.*, 213 N.J. 130, 134 (2013), 61 A.3d 906 (citation and alteration omitted). Under the TCA, a public entity is generally not liable for an injury "whether such injury arises out of an act or omission of the public entity or a public employee or any other person." N.J.S.A. 59:2-1(a). Where the TCA establishes liability against a public entity, it is entitled to immunities and defenses. N.J.S.A. 59:2-1(b). Under N.J.S.A. 59:2-2(a), "[a] public entity is liable for an injury proximately caused by an act or omission of a public employee within the scope of his employment" "If the public employee is not liable for an act or omission, the public entity is not liable." *Nieves v. Office of the Pub. Defender*, 241 N.J. 567, 575 (2020) (citing N.J.S.A. 59:2-2(b)).

Chapter Three of the TCA concerns liability and immunity of public employees. Generally, "a public employee is liable for injury caused by this act or omission to the same extent as a private person." N.J.S.A. 59:3-1(a). However, under N.J.S.A. 59:3-1(c), "[a] public employee is not liable for an injury where a public entity is immune from liability for that injury." A public employee also is not liable "for an injury resulting from the exercise of judgment or discretion vested in him." N.J.S.A. 59:3-2(a). "Public employees and [*24] public entities, however, 'ha[ve] the burden to plead and prove [an] immunity under the TCA.'" *Maison v. N.J. Transit Corp.*, 245 N.J. 270, 298 (2021), 245 A.3d 536 (alterations in original) (quoting *Leang v. Jersey City Bd. of Educ.*, 198 N.J. 557, 582, 969 A.2d 1097 (2009)).

"The TCA provides that neither a public entity nor a public employee is 'liable for any injury caused by adopting or failing to adopt a law or by failing to enforce any law.'" *Id.* at 301 (citing N.J.S.A. 59:2-4 (public entity)); see N.J.S.A. 59:3-5 (public employee). "The failure-to-enforce-any-law immunity may be invoked whenever the 'critical causative conduct by government employees consists of non-action or the failure to act with respect to the enforcement of the law.'" *Ibid.* (quoting *Lee v. Brown*, 232 N.J. 114, 127, 178 A.3d 701 (2018)).

The TCA also includes a qualified immunity provision for employees. N.J.S.A. 59:3-3 provides "[a] public employee is not liable if he acts in good faith in the execution or enforcement of any law." "[A defendant qualifies] for this immunity only if [he] engaged in some act or acts to enforce a law." *Maison*, 245 N.J. at 305. However, a public employee is not "exonerate[d]" from liability if "his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct." N.J.S.A. 59:3-14(a).

B.

Count Four alleges that defendants are liable for the common-law tort of "intentionally intrud[ing] on [p]laintiff's privacy [*25] by unlawfully and unnecessarily disclosing information regarding the attack, sexual assault and killing without her consent." The tort of intrusion on seclusion imposes liability for "intentionally intrud[ing], physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns . . . if the intrusion would be highly offensive to a reasonable person." *Hennessey v. Coastal Eagle Point Oil Co.*, 129 N.J. 81, 94-95, 609 A.2d 11 (1992) (quoting *Restatement (Second) of Torts* § 652B (Am. Law. Inst. 1977)); accord *Leang*, 198 N.J. at 588. "The thrust of this . . . tort is . . . a person's private, personal affairs should not be pried into." *Bisbee v. John C. Conover Agency, Inc.*, 186 N.J. Super. 335, 340, 452 A.2d 689 (App. Div. 1982).

Plaintiff alleged that the prosecutor disclosed her name and the nature of the assault for political or personal reasons and with knowledge that release of this personal information would cause her harm. Reading the amended complaint liberally, as we must at this juncture, plaintiff has alleged sufficient facts to proceed on an intrusion on seclusion claim against the prosecutor. As currently alleged, a jury could find the disclosure "intrude[d] . . . upon [her] private affairs or concerns" in a manner that was "highly offensive to a reasonable person." *Leang*, 198 N.J. at 588-90. Perhaps the prosecutor had good faith reasons for this in executing the law, N.J.S.A. 59:3-3, but that will need to await [*26] discovery.

It also is premature to dismiss the other defendants. The amended complaint alleges the other defendants were involved in the disclosure. We are required to accept that allegation, because of the timing of defendants' motions, which precludes dismissal at this time.

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Count Five alleges the prosecutor was liable to plaintiff under the common-law tort of "unlawfully, unnecessarily and without [p]laintiff's consent[,] publiciz[ing] information concerning her private life, including her identity and information relating to the attack, the sexual assault, and the killing." The elements of this common-law cause of action are set forth in the Restatement:

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his [or her] privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.

[Castro v. NYT Television, 384 N.J. Super. 601, 610-11, 895 A.2d 1173 (App. Div. 2006) (alteration in original) (quoting Restatement (Second) of Torts, § 652D).]

It would be highly offensive to a reasonable person to have disclosed the details of their sexual assault. See Romaine v. Kallinger, 109 N.J. 282, 297-98, 537 A.2d 284 (1988) (providing that where the plaintiffs were subject to "criminal victimization, personal [*27] degradation, and physical abuse" at the hands of a convicted criminal and sued the publisher of a book about the ordeal, publicization of "the suffering and degradation [plaintiffs] were forced to endure" would be offensive to a reasonable person).

As to the legitimate concern prong, we assume the facts as alleged by plaintiff, that her identity and the details of her assault were not public but were made public by the prosecutor for personal and political reasons. There may be legitimate, good faith reasons for the disclosures, but we are foreclosed from dismissing the prosecutor from Count Five of the amended complaint at this time.

It is premature to dismiss the other defendants. Count Five of the amended complaint alleges the other defendants "unlawfully, unnecessarily and without [p]laintiff's consent publicized information concerning her private life" We again are required to accept these allegations because of the timing of defendants' motions.

Count Six alleges a negligence claim against defendants for failing to ensure that plaintiffs "identity and information relating to the attack, the sexual assault and the killing were not disclosed to the public." She alleges defendants [*28] owed her a duty of ensuring compliance under the VRA and CVBOR, a duty as a crime victim, and a duty to exercise proper care in hiring qualified law enforcement officers, and training and supervising them with respect to the rights of crime victims.

"The fundamental elements of a negligence claim are a duty of care owed by the defendant to the plaintiff, a breach of that duty by the defendant, injury to the plaintiff proximately caused by the breach, and damages." Robinson v. Vivirito, 217 N.J. 199, 208, 86 A.3d 119 (2014). "The determination of the existence of a duty of care to avoid harm to another is ultimately governed by fairness and public policy." *Ibid*. "Foreseeability is a critical but not dispositive factor in the analysis of whether a duty of care to avoid harm to a third party is recognized." *Ibid*.

Under the TCA, a public employee can be liable for negligence. The allegation here is that disclosure was made for political and personal reasons. This cause of action must await further factual development before we declare whether there is a duty, the nature of the duty or the defenses that may or may not apply. We reverse the dismissal of this count against defendants.

Count Seven alleges the intentional infliction of emotional harm. [*29] ⁷ "In order for [a] plaintiff to prevail on an intentional infliction of emotional distress claim, [s]he must show: (1) intentional conduct; (2) the conduct was extreme and outrageous; (3) the conduct proximately caused plaintiff's emotional distress; and (4) the emotional distress was severe." DeAngelis v. Hill, 180 N.J. 1, 20, 847 A.2d 1261 (2004) (citing Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 366, 544 A.2d 857 (1988)).

⁷ Plaintiff acknowledges the State and the WCPO should be dismissed because this claim alleges intentional conduct. See N.J.S.A. 59:2-10 (providing a public entity is not liable for "acts or omissions of a public employee constituting . . . willful misconduct"). We see no reason why this result should not extend to the County and to the Attorney General in his official capacity under this Count and Count Four.

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To satisfy the second element of intentional infliction of emotional distress, the defendant's "conduct must be 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" Buckley, 111 N.J. at 366 (quoting *Restatement (Second) of Torts § 46 cmt. d*, (Am. Law Inst. 1965)).

Plaintiff has alleged that the prosecutor acted intentionally and willfully in making the disclosures for political reasons, and that this was "outrageous and extreme" conduct, which caused her severe emotional distress. On the face of the pleadings, these are sufficient to withstand a motion to dismiss under Rule 4:6-2(e). However, there is no allegation of disclosure against the Attorney General. Because this Count is premised on an intentional disclosure, we affirm the trial court's dismissal of Count Seven against the Attorney General in his individual capacity. [*30]

Count Eight alleges a cause of action for respondeat superior and vicarious liability against the State, County, WCPO and Attorney General. It alleges the prosecutor was acting within the scope of his employment and that these defendants are responsible for his actions. As we already noted, whether the prosecutor was acting in his law enforcement capacity under the supervision of the Attorney General, or in an administrative function when he made the alleged disclosures, cannot be determined at this time. Lavezzi, 219 N.J. at 178. At this stage of the litigation, there is enough to proceed on this theory of liability under the TCA. See N.J.S.A. 59:2-2(a) (providing "[a] public entity is liable for an injury proximately caused by an act or omission of a public employee within the scope of his employment . . ."). We reverse the orders dismissing these claims, although we note that Count Eight is not pleaded against defendants in their individual capacities.

We summarize our decision. Count One is dismissed against all defendants except the prosecutor in his individual capacity. Count Two is dismissed against all defendants. Count Three was abandoned by plaintiff. Counts Four through Eight remain with exceptions. The State, WPCO, [*31] County and Attorney General are dismissed from Counts Four and Seven because the claims allege intentional acts. See N.J.S.A. 59:2-10 (providing "[a] public entity is not liable for the acts or omissions of a public employee constituting . . . willful misconduct"). The Attorney General also is dismissed from Count Seven in his individual capacity. We add that the punitive damage claims in Counts Four through Seven must be dismissed against all defendants except for the prosecutor and Attorney General in their individual capacities. See N.J.S.A. 59:9-2(c) (providing no punitive damages "shall be awarded against a public entity"). Count Eight does not plead a cause of action against the prosecutor or Attorney General in their individual capacities, and any punitive damage claims must be dismissed against them in their official capacities.

Affirmed in part and reversed and remanded in part. We do not retain jurisdiction.

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