

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TREVOR LEVI GAULT,

Defendant-Appellant.

UNPUBLISHED

December 16, 2021

No. 356553

Schoolcraft Circuit Court

LC No. 20-007012-FC

Before: STEPHENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by leave granted¹ the trial court's order denying his motion for discovery of personnel records. For the reasons set forth in this opinion, we reverse.

I. BACKGROUND

Defendant has been charged with open murder, MCL 750.316, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, in connection with the shooting death of Douglas Orr. In the trial court, defendant moved for discovery of disciplinary and personnel records of the officer who was first to respond to the scene of the shooting. Defendant argued that these records contained information affecting the officer's credibility. Defendant claimed that the officer had previously arrested him for an operating while intoxicated offense that was subsequently dismissed, that the officer was biased against him, that the officer had been a defendant in a federal civil action that was no longer pending, and that the officer had been terminated from previous employment based on criminal conduct.

At the hearing on the motion, defense counsel explained that he was requesting an *in camera* review of the officer's personnel file from his previous employment as a police officer in Kalamazoo on the basis of a news article indicating that the officer's employment in Kalamazoo.

¹ *People v Gault*, unpublished order of the Court of Appeals, entered June 15, 2021 (Docket No. 356553).

According to the news article, the officer had been terminated following an investigation into the officer's conduct which revealed the officer had engaged in the solicitation of prostitutes. This article was attached to defendant's motion. Defense counsel noted that the officer was involved in taking initial statements at the scene of the shooting at issue in this case. Defense counsel argued that, based on the nature of the issue that led to the officer's termination in Kalamazoo, the officer's personnel file could contain information bearing on his credibility and bias because the officer's actions did not conform to the standards to which police officers are held. The prosecution argued that the officer's "[p]oor choices made off duty" involving prostitutes were not relevant, admissible facts in the instant case and that defendant therefore had not demonstrated that he was entitled to an *in camera* review of the officer's personnel file. The prosecution maintained that even if the officer had committed the alleged conduct, it did not involve an issue of credibility.

The trial court denied defendant's motion, finding that defendant had "not demonstrated a good faith belief, grounded in articulable fact, that there's a reasonable probability that those records are going to contain material information necessary for the defense." This appeal followed.

II. DISCUSSION

Defendant argues that he was entitled to have the trial court conduct an *in camera* review of the officer's personnel file pursuant to MCR 6.201(C)(2).

In general, "[a] trial court's decision regarding discovery is reviewed for abuse of discretion." *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2003). The trial court's specific decision whether to order an *in camera* review under MCR 6.201 is also reviewed for an abuse of discretion. *People v Laws*, 218 Mich App 447, 455; 554 NW2d 586 (1996). "A trial court abuses its discretion when its decision falls outside the range of principled outcomes." *People v Green*, 310 Mich App 249, 252; 871 NW2d 888 (2015) (quotation marks and citation omitted). To the extent that it is necessary to interpret a court rule, the issue is one of law that we review de novo. *Phillips*, 468 Mich at 587.

Our Supreme Court held that "MCR 6.201 governs discovery in criminal cases." *Phillips*, 468 Mich at 589. At issue in the present case is MCR 6.201(C), which provides in relevant part as follows:

(1) Notwithstanding any other provision of this rule, there is no right to discover information or evidence that is protected from disclosure by constitution, statute, or privilege, including information or evidence protected by a defendant's right against self-incrimination, except as provided in subrule (2).

(2) *If a defendant demonstrates a good-faith belief, grounded in articulable fact, that there is a reasonable probability that records protected by privilege are likely to contain material information necessary to the defense, the trial court shall conduct an in camera inspection of the records.* [Emphasis added.]

"Discovery should be granted where the information sought is necessary to a fair trial and a proper preparation of a defense." *Laws*, 218 Mich App at 452. "Even inadmissible evidence is discoverable if it will aid the defendant in trial preparation." *Laws*, 218 Mich App at 452. "Defendants have a due process right to obtain evidence in the possession of the prosecutor if it is

favorable to the accused and material to guilt or punishment.” *People v Stanaway*, 446 Mich 643, 666; 521 NW2d 557 (1994), citing *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963). “Material has been interpreted to mean exculpatory evidence that would raise a reasonable doubt about the defendant’s guilt.” *Stanaway*, 446 Mich at 666. The *Brady* rule applies to evidence affecting the credibility of a witness if “the reliability of a given witness may well be determinative of guilt or innocence.” *Giglio v United States*, 405 US 150, 154; 92 S Ct 763; 31 L Ed 2d 104 (1972) (quotation marks and citation omitted).

Here, defendant submitted a news article explaining that the officer had been found to have violated the policies and oath of the department, the public trust, and the trust of other officers. The article also stated that an investigator had questioned the officer’s honesty related to the investigation. Defendant argues that information in the officer’s personnel file related to the officer’s discipline, termination, and statements is discoverable because it is necessary to prepare for cross-examination of the officer and to prepare for defendant’s defense.

With the attachment of the news article and the arguments presented on appeal, we conclude that defendant has demonstrated a good-faith belief that there is a reasonable probability that the officer’s personnel file is likely to contain material information bearing on the officer’s credibility that is necessary to the defense such that defendant is entitled to have the trial court conduct an *in camera* inspection of the records. MCR 6.201(C)(2); see also *Giglio*, 405 US at 154; *Laws*, 218 Mich App at 452. Contrary to the prosecutor’s arguments on appeal, whether the information in the file is admissible as evidence during trial does not control the determination whether the information is discoverable. *Laws*, 218 Mich App at 452 (“Even inadmissible evidence is discoverable if it will aid the defendant in trial preparation.”). “[F]airness to the defendant and an adequate opportunity to prepare a defense, including preparation for cross-examination of witnesses, requires that the defendant be given access to all relevant information.” *People v Walton*, 71 Mich App 478, 484; 247 NW2d 378 (1976). “[W]here a defendant can establish a reasonable probability that the privileged records are likely to contain material information necessary to his defense, an *in camera* review of those records must be conducted to ascertain whether they contain evidence that is reasonably necessary, and therefore essential, to the defense.” *Stanaway*, 446 Mich at 649-650. “[W]ithout an examination of the requested information, it is impossible to see if such information would be relevant and whether its suppression would lead to a failure of justice.” *Walton*, 71 Mich App at 484.

“Only after the court has conducted the *in camera* inspection and is satisfied that the records reveal evidence necessary to the defense is the evidence to be supplied to defense counsel.” *Stanaway*, 446 Mich at 679. Our Supreme Court has explained that the inquiry to determine whether to actually provide information to defense counsel is “similar, but not identical” to the inquiry to determine whether *in camera* review is warranted:

The initial threshold is whether there is a reasonable probability, that material information necessary to the defense is likely to be in the record. The determination to be made after looking at the record is whether the evidence is material and necessary to the defense, with material meaning exculpatory evidence capable of raising a reasonable doubt about the defendant’s guilt. [*Id.* at 679 n 40.]

Accordingly, the trial court abused its discretion by denying *in camera* review of the officer's personnel file. An *in camera* review in this case will balance the interest of confidentiality in the records sought with "the possibility that there may be exculpatory evidence in such records necessary to prevent the conviction of an innocent person." *Id.* at 650. We therefore reverse the trial court's order and order the trial court to conduct the requisite *in camera* review on remand.

On remand, as provided by the relevant provisions of the court rule, "[i]f the court is satisfied, following an *in camera* inspection, that the records reveal evidence necessary to the defense, the court shall direct that such evidence as is necessary to the defense be made available to defense counsel." MCR 6.201(C)(2)(b). "Regardless of whether the court determines that the records should be made available to the defense, the court shall make findings sufficient to facilitate meaningful appellate review." MCR 6.201(C)(2)(c). "The court shall seal and preserve the records for review in the event of an appeal" as provided in MCR 6.201(C)(2)(d). "Records disclosed under this rule shall remain in the exclusive custody of counsel for the parties, shall be used only for the limited purpose approved by the court, and shall be subject to such other terms and conditions as the court may provide." MCR 6.201(C)(2)(e).

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

/s/ Cynthia Diane Stephens
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien