STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: February 26, 2013)

IN re: GRAND JURY	:	**C.A. No. PM-2010-6179**

DECISION

GIBNEY, P.J. Luis Mendonca ("Mendonca") asks this Court to reconsider its December 3, 2010 Decision (the "Decision"), denying the disclosure of grand jury transcripts pursuant to Super. R. Crim. P. 6(e). Mendonca seeks disclosure of the entire record developed before the grand jury in 2009 to investigate then-Providence Police Department Detective Robert DeCarlo ("DeCarlo"). The State of Rhode Island, by and through its Attorney General (the "State"), joins in Mendonca's disclosure request but seeks to limit release to the transcripts of certain witnesses.

I

Facts and Travel

On October 20, 2009, Rhode Island School of Design ("RISD") Safety Officer Justin Wall ("Wall") and Sergeant William LaPierre ("LaPierre") (collectively, the "RISD officers") responded to a call that Mendonca was attempting to enter a RISD building without authorization. Mendonca left the scene before the RISD officers arrived, but Wall and LaPierre located Mendonca and stopped him for questioning and a pat down. During this exchange, Mendonca struck both Wall and LaPierre and fled on foot. The Providence Police Department was contacted, and DeCarlo responded.

DeCarlo caught up with Mendonca and placed him under arrest. DeCarlo thereafter struck Mendonca in the head with a flashlight, causing Mendonca severe injury.

Mendonca was convicted of assaulting the RISD officers and violating the terms of his probation on December 3, 2009.[1] A grand jury, convened to investigate DeCarlo's conduct (the "DeCarlo Grand Jury"), returned a true bill against him. DeCarlo was subsequently indicted on one count of felony assault and one count of simple assault. Before DeCarlo's trial, the State moved to obtain certain transcripts from the DeCarlo Grand Jury.[2] Mendonca also moved for disclosure but requested access to the entire testimonial record.[3] DeCarlo objected to any disclosure of the transcripts.[4] In the Decision, this Court denied the State's and Mendonca's motions without prejudice, finding that neither the State nor Mendonca showed the "particularized need" required by prevailing case law to warrant disclosure.

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[1] Mendonca's appeal is currently pending before the Superior Court. See Docket Sheet, P3-2009-3725A at 1.

[2] In support of its motion, the State argued that DeCarlo Grand Jury witnesses may have testified concerning the allegations against Mendonca and such information should be available to both it and Mendonca in preparation for his appeal. See Decision at 2.

[3] Mendonca contended that such broad access was necessary for him to properly prepare his defense and therefore was required under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. He further asserted that broad disclosure was warranted under the liberal precepts of Super. R. Crim. P. 16. See Decision at 2.

[4] DeCarlo argued that before his trial commenced, neither limited nor full disclosure was warranted because any form of disclosure would undermine the fair administration of proceedings in his case. In particular, DeCarlo posited that Mendonca should not obtain access to the grand jury materials until after Mendonca testified at DeCarlo's trial to avoid potentially tainting his testimony. DeCarlo further maintained that Mendonca could not show the requisite "particularized need" for the transcripts prior to DeCarlo's trial because Mendonca could not identify specific uses for the information. See Decision at 2.

II

Discussion

Now that DeCarlo's trial has ended, Mendonca again seeks disclosure of the entire testimonial record developed before the DeCarlo Grand Jury to prepare for his appeal. Mendonca argues that the need for continued secrecy has ended because the DeCarlo Grand Jury concluded its deliberations years ago and returned a true bill against DeCarlo. Mendonca believes the need for secrecy has been further obviated because DeCarlo and the State repeatedly referenced grand jury testimony during DeCarlo's trial, causing such testimony to enter the public domain.

Mendonca also contends that he has demonstrated the requisite "particularized need" for the entire grand jury testimonial record. In particular, Mendonca argues that because he plans to call at his appeal all forty-two potential witnesses that the State identified in discovery—and he cannot identify which of these witnesses testified before the DeCarlo Grand Jury—he requires the entire testimonial record to adequately prepare direct and cross-examination questions. Mendonca further requests the entire record to impeach and test the credibility of certain witnesses who he alleges have engaged in a conspiracy to withhold testimonial evidence of DeCarlo's assault upon Mendonca. In support, Mendonca points to the inconsistencies and admitted gaps in Wall's trial and interview testimony.

The State has joined Mendonca's request for disclosure. It agrees the need for continued secrecy has ended because the DeCarlo Grand Jury concluded its deliberations and returned a true bill against DeCarlo, and DeCarlo was indicted and tried.

The State, however, seeks to limit disclosure of the transcripts to only three witnesses: Wall, LaPierre, and RISD facility monitor Megan Stuart ("Stuart"). First, the State asserts that because it has represented to Mendonca that it will call only Wall, LaPierre, and Stuart as witnesses during Mendonca's appeal, an injustice could result if the State and Mendonca do not have access to the grand jury transcripts to prepare for the appeal. The State further contends that Mendonca has failed to show a "particularized need" for the entire testimonial record because he has made no effort to obtain relevant information from or about his forty-two trial witnesses using traditional discovery sources. Finally, the State maintains that Mendonca's broad disclosure request is not tailored to cover "only material so needed" because Mendonca cannot identify why he requires the entire record absent general concerns of fairness. For these reasons, the State requests only limited disclosure of the grand jury transcripts.

III

Standard of Review

A

The Tradition of Grand Jury Secrecy

"[T]he proper functioning of our grand jury system depends upon the secrecy of [its] proceedings . . . ."[5] Douglas Oil Co. of California v. Petrol Stops Northwest, 441

[5] Specifically, the Court has stated that the secrecy of grand jury proceedings serves, among others, the following functions:

> "First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be

U.S. 211, 218-19 (1979). The United States Supreme Court has articulated five objectives for preserving grand jury secrecy:

> "(1) To prevent the escape of those whose indictment may be contemplated; (2) To insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) To prevent subornation of perjury or tampering with the witnesses who may testify before the grand jury and later appear at the trial of those indicted by it; (4) To encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; and (5) To protect innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt."

Id. at 219. Congress has codified this tradition of grand jury secrecy in Rule 6(e) of the Federal Rules of Criminal Procedure.[6] U.S. v. Sells Engineering, Inc., 463 U.S. 418, 425

> open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule."

Douglas Oil, 441 U.S. at 218-19.

[6] Rule 6(e) provides in pertinent part:

> "(e) Secrecy of Proceedings and Disclosure.-
>
> (1) General Rule.- A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the Government, or any person to whom disclosure is made under paragraph (2)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in

(1983). In Rhode Island, grand jury disclosure is governed by Super. R. Crim. P. 6(e). The language of Rule 6(e) tracks that of its federal counterpart and, as such, our Supreme Court has noted the United States Supreme Court's grand jury jurisprudence. See, e.g., In re Young, 755 A.2d 842, 844-48 (R.I. 2000); In re Doe, 717 A.2d 1129 (R.I. 1998); State v. Carillo, 112 R.I. 6, 307 A.2d 773 (1973).

B

Disclosure of Grand Jury Transcripts

Rule 6(e)(3)(C)(i) provides for the disclosure of grand jury transcripts "when so directed by a court preliminarily to or in connection with a judicial proceeding." Douglas Oil, 441 U.S. at 220. The term "judicial proceeding" encompasses, at the least, "garden-variety civil actions [and] criminal proceedings." U.S. v. Baggot, 463 U.S. 476, 479 n.2 (1983). The term "preliminarily to" means "a judicial proceeding . . . not yet initiated," and the term "in connection with" signifies a proceeding "already pending." Id. at 479. Overall,

> "[Rule 6(e)(3)(C)(i) contemplates only uses related fairly directly to some identifiable litigation, pending or anticipated. Thus, it is not enough to show that some litigation may emerge from the matter in which the material is to be used, or even that litigation is factually likely to emerge. The focus is on the actual use to be made of the material. If the primary purpose of disclosure is not to assist in preparation or conduct of a judicial proceeding, disclosure under (C)(i) is not permitted."

Id. at 480; see also In re Barker, 741 F.2d 250, 253-54 (9th Cir. 1984).

For applying the requirements of Rule 6(e)(3)(C)(i), the United States Supreme Court has developed a three-part "particularized need" test. This test "require[s] a strong

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> accordance with this rule. A knowing violation of Rule 6 may be punished as contempt of court."

showing of particularized need for grand jury materials before any disclosure will be permitted." Sells Engineering, 463 U.S. at 443. To satisfy the "particularized need," petitioners must demonstrate that the material they seek "is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for secrecy, and that their request is structured to cover only material so needed." Douglas Oil, 441 U.S. at 222.

The first prong of the test necessarily requires that the petitioner be actually engaged in "another judicial proceeding" apart from the one instituted to obtain disclosure. See Douglas Oil, 441 U.S. at 213; Hernly v. U.S., 832 F.2d 980, 981 (7th Cir. 1987); Lucas v. Turner, 725 F.2d 1095, 1096 (7th Cir. 1984). Furthermore, the petitioner must also demonstrate that "without the transcript a defense would be greatly prejudiced or that without reference to it an injustice would be done." U.S. v. Proctor & Gamble, 356 U.S. 677, 682 (1958); see also Simpson v. Hines, 729 F. Supp. 526, 527 (E.D. Tex. 1989).

Second, the burden of showing that "the need for disclosure outweighs the need for secrecy" rests on the party seeking disclosure. Douglas Oil, 441 U.S. at 223. This burden is lessened, however, when the five Douglas Oil factors lose their relevance in light of the particular facts of the case. Id. For example, the fact that the grand jury whose transcripts are sought has concluded its operations weighs in favor of disclosure, but does not eliminate the interests of secrecy altogether. Id. at 222; see Proctor & Gamble, 356 U.S. at 682 (finding that witnesses who testified before the grand jury continue to have an interest in avoiding retaliation after the grand jury concludes its deliberations, lest future witnesses be inhibited from testifying by the knowledge "that

the secrecy of their testimony may be lifted tomorrow."); see also Illinois v. Sarbaugh, 552 F.2d 768, 755 (7th Cir. 1977).

With respect to the third prong of the "particularized need" test, the petitioner must tailor his or her request to cover only those materials vital to his or her case. See Dennis v. U.S., 384 U.S. 855, 869 (1966) (quoting Proctor & Gamble, 356 U.S. at 683 and finding that "disclosure . . . is to be done 'discretely and limitedly'"). A disclosure request must "focus on a specific area of inquiry," Grumman Aerospace Corp. v. Titanium Metals Corp. of Am., 554 F. Supp. 771, 774 (E.D.N.Y. 1982) (quoting U.S. v. Moten, 582 F.2d 654, 663 (2nd Cir. 1978)), so that the reviewing court may release only "discrete portions of [the] transcripts." Douglas Oil, 441 U.S. at 219-20. (Emphasis added.) Thus, "[d]isclosure . . . must be closely confined to the limited portions of the testimony for which there is found to be a particularized need." Cox v. Administrator U.S. Steel & Carnegie, 17 F.3d 1386, 1421 (11th Cir. 1994) (quoting Allis-Chalmers Mfg. Co. v. City of Fort Pierce, 323 F.2d 233, 242 (5th Cir.1963)). (Emphasis added.)

Taken together, the United States Supreme Court has stated that Rule 6(e)(3)(C)(i) and the "particularized need" test "though related in some ways, are independent prerequisites to (C) (i) disclosure. The particularized need test is a criterion of degree; the "judicial proceeding" language of (C) (i) imposes an additional criterion governing the kind of need that must be shown." Baggot, 463 U.S. at 480. Therefore, a court will not release grand jury transcripts unless the party seeking disclosure fulfills both the requirements of Rule 6(e)(3)(C)(i) and the three prongs of the "particularized need" test. See id. For example, in In re Young, 755 A.2d 842 (R.I. 2000), concerning an off-duty Providence Police officer who was fatally shot by two on-duty officers, our

Supreme Court affirmed a trial justice's limited disclosure of grand jury testimony. See In re Young, 755 A.2d at 845-48. In applying the Douglas Oil factors to the facts therein, the trial justice found that "the need for [disclosure] outweigh[ed] the public interest in secrecy." Id. at 847. Our Supreme Court cautioned, however, that the trial court justice's decision was not an "open sesame" for grand jury disclosure in the future as the case was decided "realistically in light of [its particular] circumstances and facts." Id. at 843-44.

IV

Analysis

A

Rule 6(e)(3)(C)(i)

Both parties seek disclosure pursuant to the "in connection with" clause of Rule 6(e)(3)(C)(i), arguing that they require the grand jury transcripts to prepare for Mendonca's pending appeal. Following his conviction for assaulting the RISD officers, Mendonca timely filed an appeal on December 10, 2009. As Mendonca and the State argue that they require disclosure of the DeCarlo Grand Jury transcripts to prepare for that appeal, see Pet'rs' Br. at 2, 6-7; Reply Br. at 4-5, both parties have shown that they seek disclosure pursuant to "a judicial proceeding . . . already initiated," Baggot, 463 U.S. at 479, and will "actual[ly] use" these materials "to assist in preparation" for that judicial proceeding. Id. at 480; see Barker, 741 F.2d at 254-55 (holding that the disclosure to the petitioner to aid in preparing for potential disciplinary action following an investigation of alleged violations of local professional responsibility rules was "in connection with a judicial proceeding" because the only disciplinary action that could result from the investigation was a public hearing before the state supreme court).

B

The "Particularized Need" Test

The "particularized need" test requires petitioners to satisfy three prongs to obtain disclosure: the "injustice" prong, the "interest-weighing" prong, and the "particularized request" prong. See Douglas Oil, 441 U.S. at 222; In re Young, 755 A.2d at 847. Our Supreme Court has recognized that "the burden of demonstrating a particularized need . . . is not a heavy one." In re Young, 755 A.2d at 847 (quoting Carillo, 112 R.I. at 11, 307 A.2d at 776). Accordingly, this Court must strike the appropriate balance between the interests of disclosure and secrecy when applying the "particularized need" test to the instant case. See Douglas Oil, 441 U.S. at 221-23.

1

The "Injustice" Prong

The first prong of the "particularized need" test considers whether the petitioner requires disclosure "to avoid a possible injustice in another judicial proceeding." Douglas Oil, 441 U.S. at 221; In re Young, 755 A.2d at 847. To satisfy this prong, the petitioner must show that he or she is engaged in a judicial proceeding separate from the one initiated to obtain the grand jury materials, Douglas Oil, 441 U.S. at 213, and that absent disclosure "a defense would be greatly prejudiced or . . . an injustice would be done." Proctor & Gamble, 356 U.S. at 682.

Mendonca and the State argue that they could be prejudiced in preparing their respective witnesses for Mendonca's appeal without disclosure of the transcripts because

the witnesses gave testimony before the DeCarlo Grand Jury.[7] Mendonca alleges that at least some of the witnesses he plans to call at his appeal have engaged in a conspiracy to withhold information, and disclosure of grand jury transcripts will cure the testimonial deficiencies by allowing Mendonca to impeach them and test their credibility.[8]

Both Mendonca and the State have satisfied the first requirement of the "injustice" prong because they seek disclosure pursuant to a judicial proceeding separate from the instant matter—Mendonca's pending appeal. See Douglas Oil, 441 U.S. at 213. This Court further finds, however, that the parties' respective witness preparation argument fails to satisfy the second, "potential prejudice" requirement of this prong. "[A] mere showing that [the] material [sought] is relevant" for trial preparation is insufficient to establish a "particularized need" without some additional evidence that "the grand jury testimony [sought] will contain needed information not otherwise available." Grumman Aerospace Corp., 554 F. Supp. at 774; see U.S. v. Ferguson, 844 F. Supp. 2d 810, 829 (E.D. Mich. 2012) (recognizing that the "general . . . need to prepare for trial" is not a valid basis for showing a "particularized need"); Lucas, 725 F.2d at 1102; Thomas v. U.S., 597 F.2d 656, 657-58 (8th Cir. 1979). (Emphasis added.) Neither Mendonca nor the State has demonstrated that they cannot prepare their witnesses for trial using information gleaned from traditional discovery sources. See Proctor &

[7] Mendonca maintains that he requires the entire testimonial record developed before the DeCarlo Grand Jury to prepare his forty-two witnesses because he is unsure which of the witnesses actually gave testimony before the grand jury. (Pet'r's Br. at 2.) The State explains that it plans to call as its only witnesses Wall, LaPierre, and Stuart. (Reply Br. at 5.)

[8] In support of this argument, Mendonca points to marked inconsistencies and admitted falsehoods and gaps in Wall's former trial and interview testimony as evidence of the alleged conspiracy. See Pet'r's Br. at 3-6; Pet'r's Br., Ex. F at 5; DeCarlo Trial Tr. at 27-28; Internal Affairs Interview Tr. at 10-11.

Gamble, 356 U.S. at 682 (holding that petitioners must demonstrate with specificity that they have thoroughly pursued other potential avenues of information before seeking grand jury materials); Bank Brussels Lambert v. Chase Manhattan Bank, N.A., 174 F.R.D. 306, 309 (S.D.N.Y. 1997) (finding similarly that "disclosure is denied in cases where evidence could be obtained through ordinary discovery"); see also Lucas, 725 F.2d at 1109; Shell v. Wall, 760 F. Supp. 545, 547 (W.D.N.C. 1991). Thus, Mendonca's and the State's trial preparation argument fails to satisfy the second requirement of this prong, and the State has therefore failed to fulfill both requirements of the first prong of the "particularized need" test.

Mendonca's second argument—that disclosure will cure an alleged conspiracy among witnesses to withhold testimony—satisfies the second requirement of this prong. Courts have widely acknowledged that the potential prejudice posed by inconsistent or false former testimony in upcoming judicial proceedings is a valid "possible injustice" warranting disclosure. See Hines, 729 F. Supp. at 527 (holding that the plaintiffs were entitled to disclosure of grand jury transcripts in part because they "must . . . resolve [testimonial] inconsistencies if justice is to be done in the instant case"). Indeed, "[p]articularized need is most often established when there is a need 'to impeach a witness, refresh his recollection, or test his credibility'" U.S. ex rel. Stone v. Rockwell Int'l Corp., 173 F.3d 757, 759 (10th Cir. 1999); see Grumman Aerospace Corp., 554 F. Supp. at 776; Carillo, 112 R.I. at 12, 307 A.2d at 777 (holding that a "particularized need might arise . . . where the trial testimony of a witness either during direct or cross-examination indicated inconsistencies, mistakes, or confusion"). Mendonca has shown that Wall's former testimony—from an interview conducted after Mendonca's arrest and

at DeCarlo's criminal trial—contained falsehoods and admitted gaps. See Pet'r's Br. at 3-6; Pet'r's Br., Ex. F at 5; DeCarlo Trial Tr. at 27-28; Internal Affairs Interview Tr. at 10-11. Mendonca seeks to use Wall's grand jury testimony to cure these inconsistencies and impeach Wall's credibility at his appeal. (Pet'r's Br. at 6-7.) Thus, this Court finds that Mendonca has satisfied both requirements of the "particularized need" test's first prong.

2

The "Interest-Weighing" Prong

The second prong of the "particularized need" test considers whether "the need for disclosure outweighs the need for secrecy." Douglas Oil, 441 U.S. at 221; In re Young, 755 A.2d at 847.[9] Both Mendonca and the State argue that the need for continued secrecy is diminished in this case because the DeCarlo Grand Jury concluded its deliberations years ago and returned a true bill against DeCarlo, and DeCarlo was indicted and tried.

[9] The United States Supreme Court has held that notions of grand jury secrecy are lessened when the five Douglas Oil factors lose their relevance based on the facts of the case at hand. See Douglas Oil, 441 U.S. at 223. The five Douglas Oil factors are

> "(1) To prevent the escape of those whose indictment may be contemplated; (2) To insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) To prevent subornation of perjury or tampering with the witnesses who may testify before the grand jury and later appear at the trial of those indicted by it; (4) To encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; and (5) To protect innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt."

Id. at 219; In re Young, 755 A.2d at 846.

This Court agrees. The first three Douglas Oil factors, and the fifth one, are not implicated here because the DeCarlo Grand Jury has concluded its deliberations and the resulting criminal proceedings have also ended. See In re Grand Jury Proceedings GJ-76-4 & GJ-75-3800, F.2d 1293, 1300-01 (4th Cir. 1986) (recognizing that "all the public interest considerations favoring secrecy are satisfied after the grand jury investigation and the resulting criminal proceedings have been exhausted except for the consideration of [the fourth factor]"). The fourth factor is also not relevant because the DeCarlo Grand Jury transcripts were referenced during DeCarlo's public trial, and DeCarlo was given a copy of the entire record to prepare his defense. Id. (finding that the fourth factor "is seriously eroded if the grand jury materials have already been disclosed, particularly if the disclosure was to the target of the grand jury investigation"). In Young, our Supreme Court eliminated the fourth factor from consideration because there was no showing that disclosure would discourage free and honest testimony in later grand jury proceedings. See In re Young, 755 A.2d at 846. As neither Mendonca nor the State has proffered any evidence demonstrating that disclosure of DeCarlo Grand Jury materials would discourage or hinder future testimony, this Court eliminates the fourth factor as well. See id. at 846. Mendonca and the State have shown that "the need for disclosure outweighs the need for secrecy" and satisfied the second prong of the "particularized need" test. Douglas Oil, 441 U.S. at 221; In re Young, 755 A.2d at 847.

3

The "Particularized Request" Prong

The third prong of the test requires the reviewing court to consider whether "the request is structured to cover only material so needed." Douglas Oil, 441 U.S. at 222; In

re Young, 755 A.2d at 847. To satisfy this prong, the petitioner must limit his or her request to cover only those materials essential to his or her claim. See Douglas Oil, 441 U.S. at 222-23; Lucas, 725 F.2d at 1101, 1103-04, 1106; U.S. v. Sobotka, 623 F.2d 764, 768 (2nd Cir. 1980); Hernly, 832 F.2d at 984-85. Mendonca seeks disclosure of the entire testimonial record developed before the DeCarlo Grand Jury to prepare questions for his witnesses and impeach other witnesses' credibility. He contends that his request for the entire transcript is "particularized" because he cannot identify which of the forty-two witnesses he plans to call also testified before the DeCarlo Grand Jury. The State, by contrast, seeks disclosure of the grand jury transcripts of Wall, LaPierre, and Stuart.

A request seeking access to an entire grand jury record is too expansive to justify disclosure because "the secrecy of the proceedings [should only] be lifted discretely and limitedly." Douglas Oil, 441 U.S. at 221 (quoting Proctor & Gamble, 356 U.S. at 683); see U.S. v. Aisenberg, 358 F.3d 1327, 1349 (11th Cir. 2004) (quoting U.K. v. U.S., 238 F.3d 1312, 1321 (11th Cir. 2001) and finding that a "blanket request for all . . . grand jury materials . . . cannot be described as the kind of particularized request required for the production of otherwise secret information"). (Emphasis added.) Mendonca's request for the entire grand jury record therefore fails to satisfy this prong of the "particularized need" test.

However, Mendonca has demonstrated a "particularized need" for Wall's grand jury transcript because he has shown that Wall's former testimony contains falsehoods and admitted gaps. See Grumman Aerospace Corp., 554 F. Supp. at 776 (recognizing that the "need to refresh a witness' demonstrably faulty recollection, or to impeach current testimony that is in probable contradiction with statements to the grand jury, will support

access to . . . a specific witness' grand jury testimony"); U.S. ex rel. Stone, 173 F.3d at 759; Carillo, 112 R.I. at 12, 307 A.2d at 777. (Emphasis added.) Therefore, the "ends of justice" require that Mendonca receive access to Wall's grand jury testimony. See State of Texas v. U.S. Steel Corp., 546 F.2d 626, 629 (5th Cir. 1977) (quoting Allis-Chalmers Mfg. Co., 323 F.2d at 242 and finding that "disclosure of grand jury testimony is properly granted where there is a compelling need for such disclosure and such disclosure is required by the ends of justice"). As Mendonca's demonstrated need for Wall's testimony has satisfied the third prong of the "particularized need" test, this Court shall release only Wall's grand jury transcript to him.[10] See Cox, 17 F.3d at 1421.

On the other hand, the State's request for the transcripts of Wall, LaPierre, and Stuart fails to satisfy the "particularized request" prong. It is true that the State's request is narrowly crafted because it seeks only three transcripts out of the entire testimonial record. See Simpson, 729 F. Supp. at 527 (finding that the petitioners' request for the transcripts of certain enumerated witnesses was "tailored . . . to cover only [needed] testimony"). Nonetheless, the State has not demonstrated any "particularized need" for the three transcripts in the first instance. See Douglas Oil, 441 U.S. at 222 (holding that the third prong of the "particularized need" test requires that a petitioner's disclosure request must cover "only material so needed"). (Emphasis added.) The State's goal in obtaining disclosure—to prepare trial questions for the three witnesses using their grand jury testimony—is not a valid basis for establishing "particularized need." See Ferguson, 844 F. Supp. 2d at 829 (holding that the "general . . . need to prepare for trial" is not a

[10] While Mendonca alleges that several witnesses have engaged in a conspiracy to withhold testimony, he has produced evidence of only Wall's testimonial inconsistencies. Thus, disclosure must be limited to Wall's transcript. See Douglas Oil, 441 U.S. at 222; U.S. ex rel. Stone, 173 F.3d at 759.

valid basis for showing a "particularized need"). Moreover, the State can accomplish this goal using traditional discovery tools. See Proctor & Gamble, 356 U.S. at 682-83 (finding that disclosure of grand jury transcripts cannot substitute for proper discovery); Bank Brussels Lambert, 174 F.R.D. at 309 (acknowledging that courts deny disclosure when "parties seek [grand jury materials] . . . to reduce delay and expense of trial preparation"); see also Lucas, 725 F.2d at 1109; Wall, 760 F. Supp. at 547.[11] Thus, this Court finds that the State has failed to satisfy the third prong of the "particularized need" test.

V

Conclusion

This Court finds that in his broad request for disclosure, Mendonca has met his burden of proving a "particularized need" for release of Wall's grand jury testimony pursuant to Super. R. Crim. P. 6(e). Mendonca has demonstrated his need for such disclosure outweighs the need for secrecy, as he requires Wall's grand jury testimony to cure inconsistencies in Wall's former testimony and avoid possible injustice at his upcoming appeal. Mendonca's motion seeking disclosure is granted as to Wall.

This Court further finds that the State has failed to carry its burden in this case. In seeking disclosure pursuant to Mendonca's pending appeal, the State has demonstrated that the need for disclosure outweighs the need for secrecy and has crafted a narrowly-tailored request for only certain transcripts from the DeCarlo Grand Jury. However, it

[11] Indeed, the United States Supreme Court has emphasized that the First Amendment to the United States Constitution affords grand jury witnesses the right to freely discuss their grand jury testimony, and the grand jury proceedings themselves, immediately after the grand jury concludes its deliberations. See Butterworth v. Smith, 494 U.S. 624, 633-36 (1989).

has not demonstrated a "particularized need" for the materials because it seeks disclosure only for general trial preparation purposes.

Counsel shall submit the appropriate Order for entry.