

KLINEBURGER LAW

By: Richard F. Klineburger, III, Esquire
38 North Haddon Avenue
Haddonfield, New Jersey 08033
Telephone (856) 428-4000
Attorney ID#037671995
Email: rfk@klineburgerlaw.com

**Attorneys for Defendant,
Sean Higgins**

Matthew V. Portella, LLC

Matthew V. Portella, Esquire
25 Chestnut Street, Suite 2
Haddonfield, New Jersey 08033
Telephone: (856) 310-9800
Attorney ID#19921994
Email: matt@mvplawoffice.com

**STATE OF NEW JERSEY,
Plaintiff,**

v.

**SEAN M. HIGGINS,
Defendant.**

**SUPERIOR COURT OF NEW JERSEY
COUNTY OF SALEM
LAW DIVISION – CRIMINAL PART**

INDICTMENT No.: 24-12-400-I

**SUR REPLY BRIEF IN SUPPORT
OF MOTION TO DISMISS**

Defendant's Sur Reply in Further Support of Motion to Dismiss Indictment

The State's Grand Jury presentation violated the prohibition against misleading "half-truths" [REDACTED]

[REDACTED]

Dismissal is warranted under New Jersey Grand Jury standards where the State's presentation allegedly distorted the Grand Jury's fact-finding and decision-making function on a central element (recklessness) [REDACTED]

The State's opposition mischaracterizes Defendant's argument as a failure-to-present-defense-expert issue, rather than a claim that the State affirmatively presented materially inaccurate scientific evidence as "BAC."

Even if other evidence of recklessness exists, the State's use of the BAC/DWI inference in its legal instructions and sequencing rendered the presentation materially misleading.

The State's opposition fails because it addresses an argument the Defendant did not make. Either the State does not comprehend the basic and elementary argument put forth by the Defendant or it is feigning ignorance in an attempt to save face by their failure to properly review their own evidence before presenting it to the Grand Jury. The Defendant does not contend that the State was required to present a defense expert opinion to the Grand Jury. Nor does Defendant seek to litigate competing scientific conclusions at this stage. Rather, the issue is far more fundamental: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In reality, the State did not test whole blood. Instead, it tested plasma/serum and failed to perform the standardized and scientifically required conversion to whole blood. When properly understood, the result does not establish a BAC above the legal threshold. This is not an omission. It is not a failure to present competing evidence. It is the presentation of a false factual predicate to the Grand Jury. Under State v. Hogan, 144 N.J. 216 (1996), such a "half-truth" that distorts the Grand Jury's decision-making function requires Dismissal of the Indictment.

Legal Argument

I. The State's opposition addresses the wrong issue: Defendant challenges the State's affirmative presentation of a misleading BAC "fact," not a failure to present defense expert opinion

The State frames Defendant's Motion as if Defendant contends the prosecutor had a duty to present "the statements contained in [the defense] expert's opinion contesting the Defendant's BAC.". That framing does not answer the Motion actually presented.

Defendant's Motion is grounded in the rule that, although Grand Jury proceedings are non-adversarial, the State may not present evidence in a manner that misleads the Grand Jury or amounts to a "half-truth." State v. Evans, 352 N.J. Super. 178 (Law. Div. 2001). Under New Jersey law, dismissal is warranted where the omission or presentation distorts the Grand Jury's fact-finding function- i.e., where the failure is "tantamount to a resulting distorted version of the facts" or interferes with the Grand Jury's decision-making. Id. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Defendant's motion challenges whether that BAC representation was scientifically and legally accurate given the nature of the specimen and the need for conversion described in the defense expert report. That is a claim of misleading presentation, not a request that the State present defense advocacy.

The State's opposition repeatedly reframes the Defendant's Motion as an attempt to introduce or rely upon Post-Indictment expert opinion. That characterization is not only incorrect but is disingenuous as well. The Defendant's argument is not that the State should have presented defense expert conclusions nor that the Grand Jury should have resolved a scientific dispute. Instead, Defendant's rather clear argument is that [REDACTED]

[REDACTED] The distinction is dispositive.

Again, while a Prosecutor is not required to present all favorable evidence to a Grand Jury, the State may not present evidence in a manner that is misleading or materially incomplete such that it constitutes a “half-truth.” Hogan, supra, 144 N.J. at 236

Here, the State did not simply omit additional context. [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

Because that representation was scientifically inaccurate, the issue is not one of evidentiary balance, it is one of factual misrepresentation.

II. The State may not secure an indictment by presenting a distorted scientific predicate for a statutory inference of recklessness

New Jersey recognizes a limited duty to present evidence to the Grand Jury only when it directly negates guilt and is clearly exculpatory. State v. Cook, 330 N.J. Super. 395 (N.J. Super. 2000). But even apart from that limited duty, the State's presentation cannot be misleading or deceptive in a way that distorts the Grand Jury's function. Evans, supra, 352 N.J. Super. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED] or [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED] Defendant's expert report states that the Toxicology Worksheet indicates the sample was clotted and should be treated as a serum sample and that serum alcohol levels are higher than whole blood by approximately 16%, converting 0.087% serum to approximately 0.075% whole blood. On that record, the State's presentation of ". 087 BAC as a dwi-threshold-exceeding blood alcohol concentration" is precisely the kind of distorted factual predicate that can mislead a Grand Jury when the prosecutor has instructed jurors on a bright-line statutory threshold and an inference that flows from it.

This is not a dispute about competing credibility determinations reserved for a petit jury in the ordinary sense. It is a dispute about whether the State's own scientific evidence was accurately characterized to the Grand Jury as blood alcohol concentration exceeding the per se threshold, when the defense points to record materials indicating the specimen required treatment as serum and conversion to whole blood equivalency. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Id.

Grand Jury proceedings are largely controlled by prosecutors, who are charged to use "all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the laws." N.J.S.A. 2A:158-5; In re The Grand Jury Appearance Request by Loigman, 183 N.J. 133, 144 (2005) (explaining that obligation "to bring before the Grand Jury meritorious complaints of potential criminal conduct and to weed out frivolous allegations unworthy of presentation" is "a function our court rules already entrust to [prosecutors]"). Rather than take this obligation seriously, the State is wasting valuable Judicial resources.

The Defendant's Motion does not depend on what the State knew from a defense expert. Instead, it turns on what the State was obligated to know about its own evidence. There is no onus on the Defendant at the Grand Jury stage. The burden and responsibility to ethically and properly present evidence falls on the State. It is undisputed that the State collected the blood samples; Selected the testing methodology; and, [REDACTED]

[REDACTED] Under these circumstances, the State had an affirmative obligation to ensure that the number it presented was scientifically and legally accurate. The duty articulated in Hogan is not limited to known exculpatory evidence. It also prohibits the State from presenting evidence in a way that "misleads the Grand Jury, regardless of intent." Hogan, supra, 144 N.J. at 236–37. A Prosecutor cannot present a scientific measurement as legally dispositive without understanding nor disclosing the limitations inherent in said measurement.

III. The State's "we did not have the defense report" argument does not cure a misleading presentation where the State's own materials reflect the specimen issue

The State argues it could not have presented the defense expert report because it received it over fourteen months after the Grand Jury presentment. That misses the point. Defendant's Motion is not premised on a duty to present the defense report; it is premised on the State's duty not to present a misleading scientific conclusion as a statutory BAC fact. Evans, supra 352 N.J. Super. 178. The defense expert report expressly grounds its serum/whole-blood point in the State's own laboratory documentation, stating: "the Toxicology Worksheet indicates that the blood was clotted, and the sample should be treated as a Serum sample." Thus, the issue is not whether the State had Defendant's expert opinion in hand; it is whether the State accurately characterized what it was presenting as blood alcohol concentration for purposes of the DWI threshold and the recklessness inference [REDACTED]

IV. The State cannot avoid dismissal by arguing it had other evidence of recklessness, because it affirmatively invited the Grand Jury to rely on the DWI/BAC inference

The State contends BAC is but one of many ways it will prove recklessness and points to witness statements, odor of alcohol, field sobriety tests, admissions, and leaving the scene. Even if those facts were sufficient to establish a prima facie case, that does not answer whether the State's Grand Jury presentation was materially misleading on a key scientific fact it highlighted through its legal instructions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Evans, supra, 352 N.J. Super.

Moreover, New Jersey case law recognizes that intoxication evidence can be used to satisfy recklessness, including potentially standing alone. State v. Green, 236 N.J. 71 (2018). That reality increases, not decreases, the materiality of ensuring the BAC evidence is accurately characterized when it is used to support recklessness and, by extension, the aggravated manslaughter theory requiring recklessness "under circumstances manifesting extreme indifference to human life."

The State attempts to minimize the significance of the BAC evidence by suggesting that other evidence supports the Indictment. That argument ignores the structure of the State's own presentation. The State defined the statutory BAC threshold; Linked intoxication to recklessness;

and, [REDACTED]. This was not incidental evidence, it was a keystone fact used to establish recklessness, an essential element of the charged offenses. Where the State affirmatively builds its theory around a specific fact, it cannot later argue that the accuracy of that fact is immaterial.

V. The State not only violated it's duty due to their improper presentation to the Grand Jury but their justification for same, or lack thereof requires the Court to Dismiss this Indictment with Prejudice

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Evans,
supra, 352 N.J. Super.

New Jersey law recognizes that Grand Jury proceedings are largely controlled by prosecutors, and that prosecutors are charged to use reasonable and lawful diligence in the detection, arrest, indictment, and conviction of offenders. State v. Triestman, 416 N.J. Super. 195 (App. Div. 2010). Because the prosecutor operates in a forum without the ordinary checks of a judge and defense counsel, New Jersey courts emphasize that prosecutors must ensure fairness and may not employ improper methods calculated to produce a wrongful conviction. Loigman, supra, 183 N.J. 133. Those fairness obligations are not merely aspirational; they are grounded in the Rules of Professional Conduct. Prosecutors are ethically forbidden from prosecuting a charge they know is not supported by probable cause. Id. That ethical constraint necessarily requires the State to screen and review the evidence and charges before seeking an indictment, because prosecutors "routinely screen and investigate criminal complaints to determine whether there is

probable cause to support the return of an indictment," and they are ethically bound not to seek an indictment absent probable cause. Id.

New Jersey courts recognize that, while the prosecutor may assist the Grand Jury in investigating and examining witnesses and in explaining testimony with reference to the law, that assistance has limits: the prosecutor cannot impinge on the Grand Jury's independence or improperly influence its determination. State v. Francis, 191 N.J. 571 (2007). Consistent with that limitation, prosecutors may not mislead the Grand Jury by permitting a half-truth or distorted version of the facts. Loigman, supra, 183 N.J. 133. In addition, New Jersey imposes a defined duty to present exculpatory evidence to the Grand Jury in limited circumstances. State v. J.L.C., 2008 N.J. Super. Unpub. LEXIS 88. The duty arises only when the prosecutor knows of evidence that (1) directly negates the guilt of the accused and (2) is clearly exculpatory. § 5.16 The Prosecutor's Role in the Grand Jury. Thus, an argument that the State must "present proper evidence" should be framed in New Jersey terms as a duty to (a) present a prima facie case without deception and (b) disclose known evidence that directly negates guilt and is clearly exculpatory, rather than a generalized obligation to present all favorable material. § 5.16 The Prosecutor's Role in the Grand Jury; Loigman, supra, 183 N.J. 133.

New Jersey Grand Jury proceedings are presumed valid, and the defendant bears the burden of proving prosecutorial error or misconduct. Triestman, supra, 416 N.J. Super. 195. Once an indictment is returned, dismissal is permitted only on the clearest and plainest ground, and only when the indictment is manifestly deficient or palpably defective. State v. Bell, 241 N.J. 552 (2020). Dismissal is warranted if the prosecutor's conduct impinges on the Grand Jury's independence and improperly influences its determination. State v. Tucker, 473 N.J. Super. 329 (App. Div. 2022). This framework supports a focused argument: if the State fails to ethically

screen for probable cause, or presents evidence in a misleading manner (including half-truths), or withholds evidence that directly negates guilt and is clearly exculpatory, the misconduct crosses the line from mere evidentiary dispute into an impairment of the Grand Jury's ability to make an informed and independent charging decision. Loigman, supra, 183 N.J.; Bell, supra, 241 N.J.

New Jersey authority articulates the "bad faith" concept in due process terms. Before dismissal is warranted for prosecutorial misconduct, there must be a finding of egregious carelessness or prosecutorial excess tantamount to suppression. Absent those conditions, dismissal should occur only if otherwise there would be manifest and harmful prejudice to the defendant. State v. Clark, 347 N.J. Super. 497 (App. Div. 2002). This standard provides the doctrinal bridge that the State's failure to review and present proper evidence was not a good-faith mistake, but conduct inconsistent with fair play and egregious excess tantamount to suppression that materially impaired the Grand Jury's charging function and caused manifest prejudice. Clark, supra, 347 N.J. Super.; State v. Ramadan, 481 N.J. Super. 435 (App. Div. 2025).

Dismissal is required when the indictment was obtained through conduct that is grossly violative of constitutional rights or otherwise fundamentally unfair. The prosecutor's ethical breaches (probable cause screening failure; misleading half-truth presentation; non-disclosure of clearly exculpatory evidence that directly negates guilt) were extreme and infringed the Grand Jury's independent decision-making. Loigman, supra, 183 N.J.; Ramadan, 481 N.J. Super. The conduct reflected intention inconsistent with fair play/due process, egregious excess tantamount to suppression and caused manifest and harmful prejudice. Clark, supra, 347 N.J. Super. No lesser remedy can cure the taint or protect the integrity of the proceedings, making dismissal with prejudice necessary. State v. Sosinski, 331 N.J. Super. 11 (App. Div. 2000).

Conclusion

For the foregoing reasons, Defendant respectfully requests that this Court:
Dismiss the Indictment in its entirety With Prejudice; or, alternatively, Dismiss Without
Prejudice and Order the State to utilize the proper BAC reading to the Grand Jury if it were to re-
present this matter.

Respectfully Submitted,
Co-Counsel for Defendant, Sean M. Higgins:

Dated: April 30, 2026

Richard F. Klineburger, III
Richard F. Klineburger, III, Esquire

Matthew V. Portella
Matthew V. Portella, Esquire

Yannick W. Cools
Yannick W. Cools, Esquire