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**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

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

The State's supplemental filing shows that not only does the State fail to comprehend the initial Brief and report from Dr. Lage, but it actually strengthens the defense position because it confirms the exact point the defense has been making all along:

The laboratory did not test a standard whole-blood sample in the ordinary forensic manner, but instead had to "treat" the sample as serum due to clotting.

The State is now poorly attempting to recharacterize the defense argument as though the defense claimed the State literally reported a "raw serum" number without any conversion. That is not the defense argument. The defense argument is far more fundamental:

1. The specimen was admittedly clotted and treated as serum;
2. Serum testing is scientifically distinct from whole blood testing;

3. Conversion methodology and reliability therefore became critical;

4. [REDACTED]

[REDACTED]

The State's newest filing confirms that the sample was "treated as serum for BAC" because the blood was clotted. That concession alone demonstrates the defense did not fabricate or misrepresent the issue. In fact, on page one of the initial Brief the defense clearly sets for the following:

"Defense toxicologist Dr. Gary L. Lage reviewed the laboratory materials and determined that the blood sample tested was clotted and treated as serum rather than whole blood. Exhibit B: Dr. Lage Report, Page 3. Dr. Lage explained that serum alcohol concentrations are approximately 16 percent higher than whole blood alcohol concentrations. Exhibit B: Dr. Lage Report, Page 3. The reported value of 0.087 percent serum alcohol converts to approximately 0.075 percent whole blood alcohol concentration. Exhibit B: Dr. Lage Report, Page 4. Dr. Lage further identified additional issues including delayed blood draw over two hours after the accident, potential improper mixing of blood tubes, possible fermentation causing elevated alcohol levels, and gaps in chain of custody prior to laboratory testing. Exhibit B..."
(**Emphasis** added)

Additionally, Dr. Lage's report which the State has had in its possession for months, states the following:

The blood samples were apparently collected on August 29, 2024, at 10:31 pm, over 2 hours after the accident. **Also, the Toxicology Worksheet indicates that the blood was clotted, and the sample should be treated as a Serum sample.** (**Emphasis** added)

More importantly, the State's filing does not cure the Grand Jury problem [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED] That is precisely why the State's presentation constituted a misleading half-truth under State v. Hogan, 144 N.J. 216, 229 (1996). The prosecutor cannot rehabilitate a defective Grand Jury presentation after the fact by attaching scientific explanations [REDACTED]. The issue before the Court is not whether the State can now construct a post-indictment justification for the number. The issue is whether the Grand Jury received a fair and accurate presentation of the scientific evidence when it voted on the Indictment. It plainly did not. The State's filing also improperly conflates admissibility issues at trial, with the integrity of the Grand Jury presentation. Even assuming arguendo that the State may ultimately attempt to defend its conversion methodology at a future N.J.R.E. 104 hearing or trial, that does not alter the fact that

[REDACTED]

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

Indeed, the State's own supplemental filing demonstrates that the reported number was not a simple direct whole-blood measurement at all. Rather, according to the State, the laboratory

██████████ treated the specimen as serum, used a conversion multiplier, and generated a purported equivalent value.

That is precisely the type of scientific qualification and contextual limitation that should have been disclosed before the prosecutor instructed the Grand Jury that ██████████

██████████
██████████ The State also incorrectly accuses the defense of omitting language from the laboratory note. Not only is it on Page one of the Brief, it is on page 3 of Dr. Lage's report! The defense did not omit the phrase "treated as serum for BAC." To the contrary, that phrase supports the defense position because it confirms the specimen was not handled as ordinary whole blood, serum treatment was necessary and, additional scientific interpretation was required before assigning a statutory BAC value. That only reinforces the defense argument that ██████████

██████████
██████████ Critically, Dr. Lage's opinion was not speculative. Dr. Lage specifically identified:

1. Clotting in the sample;
2. Serum treatment;
3. Delayed blood draw;
4. Possible improper inversion/mixing;
5. Possible fermentation; and,
6. Chain-of-custody concerns.

The State has not rebutted those concerns through competent expert testimony. Instead, it merely asserts in an attorney argument that the machine internally used a multiplier without any evidence ██████████. It goes without saying that attorney argument is not evidence, ██████████

