

SALEM COUNTY PROSECUTOR'S OFFICE



KRISTIN J. TELSEY
PROSECUTOR

Fenwick Building
87 Market Street
P.O. Box 462
Salem, New Jersey 08079
(856) 935-7510, EXT. 8333
FAX (856) 935-8737

JEFFREY J. BARILE
FIRST ASSISTANT PROSECUTOR

JAMES H. GILLESPIE IV
CHIEF OF COUNTY DETECTIVES

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Filed via: eCourts
Filed by Michael Mestern – NJ Attorney ID: 014062009
Attorney for the State of New Jersey

Honorable Michael J. Silvanio, P.J.Cr./J.S.C
Gloucester County Justice Complex
70 Hunter Street
Woodbury, New Jersey 08096

**RE: State v. Sean M. Higgins
Ind. No. 24-12-400-I**

Dear Judge Silvanio:

Please accept allow this letter brief to supplement the State's brief filed in response to defendant's sur reply to his second Motion to Dismiss the Indictment.

Defense's argument relies on an expert's report that states, in pertinent part, "[T]he Toxicology Worksheet indicates that the blood was clotted, and the sample should be treated as a Serum sample." This misrepresentation is found throughout the defense submissions and is relied upon the erroneous argument that the test results from the New Jersey State Police Forensic Lab are for "serum levels" and not "whole blood, BAC". The defense's misrepresentations are contrary to the established evidence; to which the defense has full and complete access.

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Attached as Exhibit A is the Laboratory Report Toxicology Analysis from the New Jersey State Police Office of Forensic Sciences. The test result for the defendant's blood is reported as 0.087% ethyl alcohol (BAC).

Also, attached as Exhibit B, is the Toxicology Worksheet #1 referenced in the defense expert's report. The handwritten note from the forensic scientist that did the testing it states in full: "Blood appears to be clotted; sticking to side of tube and not completely in solution. Treated as a serum for BAC." The defense expert omitted this full and critical observation in his report. Similarly, the defense in its brief omitted this full and critical observation in its brief. The last portion of the full note says, "for BAC". That portion of the note is important as it shows that the forensic scientist that did the testing knew he needed to treat the defendant's blood as serum to get an accurate BAC reading and in fact did so.

Attached as Exhibit C are two printouts from the testing equipment used to test the defendant's blood.¹ To get an accurate reading, the blood was tested twice.² In the middle of the document on the right it states, "Sample Multiplier 0.862". That was the conversion factor the testing equipment used to internally convert the serum reading to a BAC reading. That BAC reading is reported at the bottom of each page. Those readings are then documented in the Toxicology Worksheet #1 under the section titled Ethyl Alcohol Analysis.

Together, these exhibits show that the testing of the defendant's blood and the results reported by the New Jersey State Police Forensic Lab were whole blood readings and not serum readings. The defendant's reported BAC was 0.087%. As such, the defense's argument that the State presented misleading "half-truths" and "affirmatively presented materially inaccurate

¹ It should be noted that Exhibits A, B, and C were provided to defense in discovery.

² The two readings, properly converted, were .088% and .087%. Consistent with testing best practices, the lower reading of .087% was used.

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scientific evidence as "BAC" to the Grand Jury is simply not true and dismissal of the indictment is unwarranted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Mestern", written over a horizontal line.

Michael Mestern
Assistant Prosecutor

Exhibit A

Exhibit B

Exhibit C

