

STATE OF NEW JERSEY

Plaintiff/Respondent,

v.

SEAN M. HIGGINS,

Defendant/Appellant.

**NEW JERSEY SUPERIOR COURT,
APPELLATE DIVISION**

DOCKET NO.: A-000150-24T6

**On Appeal from:
SUPERIOR COURT,
CRIMINAL DIVISION
SALEM COUNTY**

**The Hon. Michael J. Silvanio, J.S.C.
Sat Below**

**BRIEF ON BEHALF OF APPELLANT
SEAN M. HIGGINS**

**RICHARD F. KLINEBURGER, III, ESQ.
KLINEBURGER AND NUSSEY
38 North Haddon Avenue
Haddonfield, New Jersey 08033
Attorney No.: 037671995
Rfk@klineburgerandnussey.com
Richard F. Klineburger, III, on the brief**



Klineburger & Nussey

Attorneys At Law
38 North Haddon Avenue
Haddonfield, NJ 08033
Telephone (856) 428-7000
Facsimile (856) 428-7530

Richard F. Klineburger, III
*Certified by the Supreme Court of
New Jersey as a Criminal Trial Attorney*

D. Ryan Nussey
*Certified by the Supreme Court of
New Jersey as a Matrimonial Attorney*
Admitted to practice in New Jersey & Pennsylvania

Lisa G. Nolan
Of Counsel:
Frank J. Hoerst, III
Michael Caudo
Megan J. Davies *(Also DE Bar)*
*Certified by the Supreme Court of
New Jersey as a Criminal Trial Attorney*

October 7, 2024

Attention: John Zera
Superior Court of New Jersey
Appellate Division
Sent Via Electronic Filing

RE: State of New Jersey v. Sean M. Higgins
Docket No.: A-000150-24T6

Dear Honorable Judges of the Appellate Division:

Please accept this letter brief in lieu of a more formal brief pursuant to Rule 2:6-2(b).

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PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

The Defendant moves to appeal the granting of the State’s Motion for Pre-Trial Detention of Defendant Sean Higgins under Complaint Number: W-2024-000109-1715.

Defendant is charged with Two (2) Counts of Reckless Death by Auto or Vessel (Vehicular Homicide). Defendant faces a maximum total of twenty (20) years if the sentences are imposed consecutively and ten (10) years if the offenses run concurrently.

These charges stem from a motor vehicle accident which occurred on or about August 29, 2024. On the date in question, Defendant was driving a motor

¹ The Procedural History and Statement of Facts have been combined to avoid repetition and for the convenience of this Court.

vehicle along County Route 551 (Pennsville Auburn Road), in the area of milepost 11.15, located in Oldmans Township, Salem County, New Jersey at approximately 8:19 p.m. (DA-17-19) According to reports, the Defendant attempted to pass a motor vehicle and when he could not, and entered back into the lane of travel, he struck and killed two (2) bicyclists. The Defendant pulled over on the side of the road and was cooperative with the police investigators. (DA-17-25) Defendant waived his Miranda Rights, admitted to drinking approximately five (5) to six (6) beers prior to the accident and voluntarily turned over his cellular phone for an extraction as to any events over the last twenty-four (24) hours. (DA-17-25) The Defendant's blood alcohol content was determined to be a .087 at the approximate time of the accident (DA-7). The Defendant stated to the police investigators that he was not trying to illegally pass the motor vehicles and that he went back into the driving lane because he was being impatient. (DA-17-25) Defendant was subsequently charged with Two (2) Counts of Reckless Death by Auto or Vessel (Vehicular Homicide).

The State moved for Pre-Trial Detention on September 13, 2024 and the Honorable Michael J. Silvanio, J.S.C. granted the application and set forth his reasons in the written Order. (DA-4) The Defendant has been held at the Salem County Correctional Facility since said time.

STANDARD OF REVIEW

This Court reviews Pretrial Detention Orders under the Criminal Justice Reform Act for an abuse of discretion. State v. S.N., 231 N.J. 497, 500 (2018).

ARGUMENT

POINT ONE

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DEPARTED FROM THE PSA RECOMMENDATION WHEN GRANTING THE STATE’S MOTION TO DETAIN

In making their decision to deny the Defendant Pretrial Release, the Court at ignored the very low risk score of the PSA (DA-1-3) for the Defendant at bar focused heavily on the Defendant’s alleged aggressive driving that seems to have stemmed from a statement made by the Defendant where he said he was being “impatient.” (NT 35, 5-10) (DA-18) The Court failed to take into consideration that the Defendant had a relatively clean driving record (DA-8) and that there are many alternatives, less restrictive than incarceration, as to ensure that the Defendant would not driving in a intoxicated manner much less drive at all. Both counsel for the Defendant amply described alternative such as an interlock device or a suspension of the Defendant’s driving privileges. (NT 29, 1-10 & NT 31, 10-25, NT 32, 1-2). Common sense would dictate that if the Defendant’s driving privileges were suspended and/or the Court entered an Order that the Defendant

was prohibited from driving a motor vehicle then the alleged concern as to safety of the general public due to the Defendant's perceived aggressive and/or intoxicated driving would be negated and no longer an issue.

The Court also very briefly touched upon the fact that the Defendant "may absent himself from the Court" given the potential consequences of a state prison sentence. The Court does not expand on this other than to say the Defendant made "comments to that effect" and then went on to note that the Defendant was no longer in "the special attire that they place individuals in the jail who were on suicide watch." (NT 36, 3-11) It should be noted that here was no suicide attempts by the Defendant and he was initially placed on suicide watch due to the fact that he made a comment to investigative officers that "his life was over." (NT 27, 22-25 & NT 28, 1-7) Despite the fact that the Defendant was obviously evaluated, removed from suicide watch and placed in general population, the Trial Court, without any documentary proof of same, claimed to "have concerns if he is released from the jail what he may or may not do." (NT 36, 3-11) It should be noted that counsel for the Defendant reminded the Court prior to his decision that it is a matter of danger to the community and not danger to himself and that there was an offer to have the Defendant undergo a mental health examination and

evaluation with the caveat that the Defendant follow through and complete any recommended treatment of same. (NT 28, 8-25).

Much like the suggestion of defense counsel to have the Defendant's driving suspended and make same a condition of release, the Court also ignored the suggestion of a mental health evaluation and instead, on its own, made up an alleged concern and mental health diagnosis that was lacking a professional evaluation, examination and diagnosis. There was no indication from any mental health professionals nor anyone from the Salem County Correctional Facility that the Defendant was a danger to himself or others.

Similarly, there was no reason why the Court could not simply enter an Order and make part of release that the Defendant not drive a motor vehicle.

The condition suggested by defense counsel in the form of a mental health examination and prohibition of driving coupled with the PSA Recommendation were improperly rejected by the Trial Court without any explanation.

This Court reviewed a similar situation in State v. Crusen, 2022 N.J. Super. Unpub. DOCKET NO. A-3234-21 (DA-26) and properly released the Defendant with restrictions so as to protect society as well as ensure his appearance at future Court appearances. The defendant in Crusen was charged with first-degree

reckless vehicular homicide within 1,000 feet of school property along with related offenses including driving with a suspended license. The trial court in Crusen reviewed the defendant's driver abstract, which indicated that not only was his license was suspended at the time of the incident but had been suspended sixteen times and his commercial driver's license had been suspended six times. The Court also was aware of Crusen's prior conviction for third degree eluding and three prior disorderly persons convictions. While the Court found that the defendant in Crusen posed a "serious risk of danger to others and the community based upon the nature and circumstances of the instant offenses and defendant's prior criminal history" it found "that risk [wa]s lessened by available treatment and the means to continually monitor and promptly report as to defendant's sobriety." Crusen at 10, 11. The court Ordered the defendant in Crusen released on Level III plus monitoring, with home detention, subject to conditions, including: No driving and Remote Breath Alcohol Testing Device testing with facial recognition, four (4) times daily, on a random basis, and promptly report by email and telephone call any missed or failed test of BAC above 0.0, to Pretrial Services.

There is no logical reason why the Trial Court at bar ignored the arguments of Defendant's counsel when they clearly addressed the concerns of driving and alleged mental health issues (despite that there were no reports of any mental

health issues nor suicide attempts). Much like the defendant in Crusen, who had much worse driving record and criminal history, the Defendant at bar should be properly placed on Level II monitoring, subject to the following conditions: No driving; random alcohol monitoring; and a mental health examination within two weeks of release with a copy of the report to be supplied to Pretrial Services and the Defendant to follow all recommendations.

CONCLUSION

For all of the reasons set forth above, the Defendant respectfully request that this Court Reverse the Trial Court and Order that the Defendant be placed on Pretrial Release with conditions as deemed appropriate and fit so as to ensure both the safety of the community as well as the Defendant's appearance at all future Court appearances.

s/ **Richard F. Klineburger, III**

RICHARD F. KLINEBURGER, III