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STATE OF NEW JERSEY
Plaintiff,

PAUL CANEIRO,
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION (CRIMINAL)
MONMOUTH COUNTY
CASE NO. 18-4915
IND. NO. 19-02-0283

CRIMINAL ACTION
NOTICE OF MOTION TO AMEND EXCLUDABLE TIME AND/OR TO EXTEND DETENTION PURSUANT TO N.J.S.A. 2A:162-22(a)(2)(a) and R. 3:25-4(c)(2)

TO: THE HONORABLE MARC C. LEMIEUX, A.J.S.C.:

PLEASE TAKE NOTICE that the State of New Jersey, represented by Assistant Monmouth County Prosecutors Christopher J. Decker and Nicole Wallace, shall move, to amend excludable time and/or pursuant to N.J.S.A. 2A:162-22(a)(2)(a) and R. 3:25-4(c)(2), to extend pre-trial detention. The State shall rely upon the attached letter brief and exhibits. A proposed form of Protective Order is attached to this Motion.

Respectfully submitted,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

BY: _____
Christopher J. Decker
Deputy First Assistant Prosecutor
N.J. Attorney ID No. 038272003

Dated: September 8, 2025

OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH

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RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

September 7, 2025

The Honorable Marc C. Lemieux, A.J.S.C.
Superior Court of New Jersey
Monmouth County Courthouse
71 Monument Park
Freehold, New Jersey 07728

Re: State of New Jersey v. Paul Caneiro
Indictment No. 19-02-0283/Case No. 18-4915
Motion to Amend Excludable Time and/or to Extend Detention pursuant to R. 3:25-4(c)(2) and N.J.S.A. 2A:162-22(a)(2)(a)

Dear Your Honor:

As this Court is aware, on September 3, 2025, the New Jersey Supreme Court issued an Order granting the State's motion for leave to appeal and further ordered that the motion for acceleration of the motion for leave to appeal was granted, in part. As part of the Court's Order, they issued a briefing schedule and further ordered that the Court would hear oral argument during the session of November 3 or 5, 2025. As this Court recognized, jurisdiction currently belongs with the Supreme Court pending resolution of this matter. This Court, therefore, was forced to adjourn trial and set a new trial date of January 5, 2026.

On Friday, September 5, 2025, during a hearing before this Court, the defense raised the potential of defendant's release, given the potential expiration of the two-year Speedy Trial clock. In response, the Court ordered the State to provide its position, in writing, by Tuesday, September 9, 2025 at noon. Thereafter, this Court also issued an excludable time order, indicating that 62 days, from September 5, 2025 through November 5, 2025, was excludable time and that it is not attributed to the defendant. While, from a technical perspective, one could imagine that this time could be considered attributed to the State, the State firmly believes that the reality of this is not as clear given the timing of the motion to suppress which ultimately spawned the appeal to the Supreme Court. The State asks this Court to consider attributing the excludable time to the defendant in the interest of justice, given that the motion to suppress was filed May 7, 2025, more than six years after the February 25, 2019 Indictment was handed up.

As stated several times in the past, the State is not seeking to blame defense counsel for the timing of the motion to suppress the DVR or any of the other recently filed motions. But, the State would be remiss if it did not raise this timing issue in the context of excludable time. A brief review of the relevant procedural history makes clear that the State has not contributed to any significant delays in this case. This Court is well aware that it heard testimony regarding defendant's Daubert motion on November 12-15, November 18-19, December 2-4, December 6, and December 9, 2024. And, as the Court will recall, prior to submission of written summations from both parties on the Daubert motion and to this Court's written decision dated March 6, 2025, the Court and counsel executed plea cutoff forms on December 9, 2024, setting March 31, 2025 as the date to begin trial. See Exhibit 1. The State was trial-ready both at the time of plea cutoff and on March 31, 2025.

As this Court is also well aware, prior to that scheduled trial date, Ms. Mastellone entered an appearance on behalf of defendant. Obviously, the March 31, 2025 trial date was adjourned. Ms. Mastellone was later joined by Mr. Murray. Long after the execution of plea cutoff, this Court heard testimony on April 8, 2025, April 9, 2025, and April 10, 2025 concerning the State's motion to admit narration testimony pursuant to State v. Watson, 254 N.J. 558 (2023). On May 6, 2025, the Court issued its opinion regarding same. A portion of that Watson testimony and the Court's ultimate order concerned testimony from Captain Brian Weisbrot regarding observations he made after his viewing footage from the DVR in defendant's garage, which was seized by Ocean Township Police in the early morning hours of November 20, 2018. It was after the Court's May 6, 2025 Order that defendant then filed a motion to suppress the DVR on May 7, 2025 -- after the Court ruled that testimony regarding the contents of the DVR was admissible, subject to certain limitations. Despite the fact that the Court had already heard testimony during the Watson hearing regarding the seizure of the DVR, the State ultimately brought in Sgt. Jeffrey Malone to testify regarding his decision to seize the DVR. That testimony occurred on June 3, 2025.

On June 24, 2025, this Court issued an Order suppressing the contents of the DVR. The State then sought leave to appeal in the Appellate Division. On August 6, 2025, the Appellate Division affirmed this Court's suppression of the DVR. On August 13, 2025, the State filed a motion for leave to appeal with the Supreme Court of New Jersey. Ultimately, on September 3, 2025, the Supreme Court granted leave to appeal.

As this Court is aware, the State has since chosen not to file a motion to withdraw its appeal. The State did not take this decision lightly and certainly considered proceeding to trial without any clarification from the Supreme Court. In fact, on Friday, September 5, the Court acknowledged that this is the State's right. As indicated previously, the State believes that arguably, from a technical perspective, excludable time is attributable to the State; however, the above limited procedural history makes abundantly clear that this motion to suppress could have been filed anytime prior to year six of this case's pendency and certainly prior to the initial plea cutoff. Had the motion been filed in a timely fashion, the State could have exercised its right to appeal without the worry of defendant potentially being released. With respect to timeliness, while the State acknowledges that "pre-1995 caselaw addressing specifically the original 30-day requirement is no longer relevant although of continuing pertinence in respect to motions filed

outside the limits imposed by R. 3:10-2," R. 3:5-7 still explicitly states that "[i]f a timely motion is not made in accordance with this rule, the defendant shall be deemed to have waived any objection during trial to the admission of evidence on the ground that such evidence was unlawfully obtained." See R. 3:5-7 and Comment 1.2, "Timeliness." While the State certainly appreciates the circumstances unique to the timing of motions in this case, it should not create a scenario in which it is forced to choose between its right to appeal and the release of a defendant charged with four murders and facing the potential of life imprisonment without the possibility of parole.

That being said, the State would argue that excludable time previously entered on Friday, September 5, 2025 should be attributed to the defendant under N.J.S.A. 2A:162-22(b)(1)(c), "[t]he time from the filing to the final disposition of a motion made before trial by the prosecution or the eligible defendant." From a practical perspective, the State wholly acknowledges the holding in State v. Washington, 453 N.J. Super. 164 (App. Div. 2018), which made clear that "an interlocutory appeal constitutes a 'motion' under N.J.S.A. 2A:162-22(b)(1)(c)" and that includes excluding "[t]he time from the filing to the final disposition of a motion made before trial by the prosecutor or the [defendant]." Id. at 202-03. In Washington, the Court further indicated that the Trial Court could have granted excludable time under N.J.S.A. 2A:162-22(b)(1)(l), "[t]he time for other periods of delay not specifically enumerated if the Court finds good cause for the delay." Id. at 203. This provision of the CJRA, in the State's opinion, provides an opportunity for this Court to consider the totality of the circumstances surrounding this delay in light of the procedural history of this matter in granting excluding time to defendant. While clearly the interlocutory appeal filed by the State amounts to excludable time; the State would argue that given the timing of the motion and the necessitated timing of the appeal against the two-year clock, excludable time is less clearly attributed to the State, particularly when considering the "catch-all," good cause consideration enumerated in N.J.S.A. 2A:162-22(b)(1)(l).

The State submits that this delay is reasonable and the genesis of this delay was of no fault of the State. Additionally, the State submits that a review of well over 100 excludable time orders (not including approximately 14 Omnibus Covid-19 orders not attributable to defendant), would make clear that in the infancy of this case, the State was more than willing to accept excludable time when appropriate. This Court would recall that the State had some difficulty in the case's infancy in obtaining some of the voluminous discovery (i.e. issues that Google had in providing the requested information from information contained in the Cloud). However, since that relatively early stage of this case, excludable time has since been solely attributed to the defendant. The State would therefore submit that the only reason the State had to make the difficult decision to move forward with its appeal at this late date was due to the timing of the filing of the motion to suppress. Again, the State is not blaming defense counsel for doing their job thoroughly; it only notes that the timing of a series of involved motions, including the one now before the Supreme Court, put the State in the unenviable position of adjourning a case that it was ready to try.

In this respect, the State would note that on two separate occasions, the State filed trial readiness letters consistent with then-Administrative Director of the Courts Glenn A. Grant's

July 12, 2022 Directive #06-22 and State v. Mackroy-Davis, 251 N.J. 217 (2022). See attached letters dated August 25, 2022 and March 25, 2024. See Exhibits 2 & 3. It should also be noted that the Honorable Joseph W. Oxley, J.S.C. also inquired on several occasions regarding the State's trial readiness, pursuant to the above Directive and Mackroy-Davis. The State submits that it remains trial-ready and that the only reason that trial is not commencing is due to the State's exercising of its right to have the Supreme Court decide the appeal. Had this motion to suppress been filed in a more normal course, the State would not be in this position.

That being said, the State is aware of the rules put in place pursuant to the Criminal Justice Reform Act (CJRA) and the guidance provided in Mackroy-Davis. Therefore, if the Court is not willing to reconsider its grant of excludable time as being not attributable to the defendant, the State would move to extend defendant's pretrial detention past the two-year date of September 14, 2025. The State would also note that the post-Indictment release date is currently December 23, 2025, just a few weeks prior to the newly scheduled trial date on January 5, 2025.

As succinctly summarized in Mackroy-Davis, the CJRA includes several time limits designed to move cases with detained defendants to trial more quickly. First, defendants must be released if they have not been indicted within 90 days. Second, defendants must be released if their trial has not "commence[d] within 180 days of the return or unsealing of the indictment." N.J.S.A. 2A:162-22(a)(2)(a). Under the Act, a trial "commence[s] when the court determines that the parties are present and directs them to proceed to voir dire or to opening argument, or the hearing of any motions that had been reserved for the time of trial." Id. at -22(a)(2)(b)(i). The 180-day clock contains provisions that mirror both exceptions to the 90-day clock. Id. at -22(a)(2)(a). As stated above, the 180-day clock does not run until December 23, 2025.

Finally, the CJRA contains a two-year cap. Defendants shall be released from jail, after a hearing to consider conditions of release, if "the prosecutor is not ready to proceed" two years after the court ordered the defendant detained." Ibid. (Emphasis in the original). The Act considers the State ready if the prosecutor is prepared "to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial." Ibid. Only "delays attributable to the defendant can be excluded from the two-year cap." N.J.S.A. 2A:162-22(a)(2)(a). The State would argue that excludable time should be attributed to the defendant, given the filing of the motion to suppress years after it could/should have been filed. The State is entitled to review of this Court's order suppressing the DVR and the consequences of exercising its right to do so should not result in the release of the defendant, who is charged with the murder of four individuals, including an 8-year-old girl and an 11-year-old boy, all of whom were related to him. The interests of justice cannot include punishing the State, despite years of trial readiness, for exercising its right to appellate review at a time wholly out of its control.

Obviously, the most relevant of these CJRA time frames for this Court's consideration is the two-year cap. With respect to the confines of N.J.S.A. 2A:162-22(a)(2)(a), the State would submit that it was ready to "proceed to voir dire or opening argument..." While the State understands that its appeal left the Court without jurisdiction to proceed to voir dire and opening

argument, it does not change the fact that this Court does not have jurisdiction, and the State, while ready, cannot now proceed. It must be reiterated that, according to eCourts, since September, 2021, each and every grant of excludable time has been attributed to defendant. As per the eCourts "Post-Indictment" tab, this includes approximately 57 consecutive excludable time orders attributed to defendant, and more specifically, this includes every single order since September 17, 2021, up until the Court's most recent excludable time order, dated September 5, 2025, which for the first time in almost four years attributed excludable time to the Prosecutor.

As stated above, on more than one occasion, the State has asserted its trial readiness, as contemplated by R. 3:25-4(d)(3). The State again asserts trial readiness. "A statement of readiness can effectively extend the two-year cap and a defendant's pretrial release, if the Court is not able to proceed." State v. D.F.W., 468 N.J. Super. 422, 427 (App. Div. 2021). While the State is absolutely not shifting blame to the Court, the reality is that the Court is unable to proceed. Again, while the State acknowledges that its appeal is the genesis for the loss of jurisdiction, the timing of same is not a delay that was facilitated by the State. The State would note that because a statement of trial readiness can deprive a defendant of liberty beyond the two-year mark … "to sustain such an outcome, a prosecutor's brief comment on the record must convey a great deal: that discovery is complete at the time the representation is made; that no substantive motions remain to be filed; that the indictment is in final form and no superseding indictment is contemplated, based on information known to the State or that should have been known through the exercise of reasonable diligence; and that the State's witnesses are generally available." Mackroy-Davis, 251 N.J. at 234-35. The State satisfies each of these mandates in order to be considered trial-ready.

As a practical matter, the State submits that excludable time should be attributed to the defendant, the party which filed the motion to suppress which spawned the current appeal before the Supreme Court. However, if the excludable time is not attributed to the defendant, then the State moves pursuant to pursuant to R. 3:25-4(c)(2) and N.J.S.A. 2A:162-22(a)(2)(a) to extend defendant's detention to the newly rescheduled trial date of January 5, 2026. The State submits that, if released, defendant would pose "a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of criminal justice process would result from defendant's release from custody, so that no appropriate conditions for the defendant's release could reasonable address that risk." Second, the State would also note that, under the rule, "the failure to commence trial in accordance with the time requirements set forth in this rule was not due to unreasonable delay by the prosecutor." Ibid.

With respect to part one of the above, the State submits that defendant stands accused of the murder of his brother, sister-in-law, niece, and nephew. The Court is acutely aware of the evidence that the State possesses. Release in the instant case would be inappropriate given the seriousness of the crimes charged, including but not limited to four counts of Murder and two counts of Aggravated Arson, and due to the violent nature of these offenses – specifically, for instance, in light of the fact that the 8-year-old female victim died as a result of a combination of sharp-force injuries and smoke inhalation, meaning that she was stabbed repeatedly, left alone, yet alive, after the slow-burning fire was set in the basement of her own home. In addition thereto, defendant's indictment includes several aggravating factors under N.J.S.A. 2C:11-

3(b)(4), exposing him to life imprisonment without the possibility of parole. In light of these charges and the evidence at the State's disposal, it would be contrary to the interests of the community at large to release defendant. The State cannot contemplate any conditions that could be put in place which could reasonably address that risk.

Part two of the analysis requires the State to show that failure to commence trial within the "speedy trial" time frame was not due to unreasonable delay by the State. The State, as indicated previously, has been trial-ready, according to eCourts, for 1,658 days. Given a change in defense strategy, the State has diligently briefed and addressed a variety of pre-trial motions for the last several months, all past the date of original plea cutoff. This was also long after the State proactively filed its October 2, 2020 "Notice of Intent to Offer Certain Evidence" which "provide[d] the defense and the Court with notice of evidence the State intends to offer at defendant's trial..." See Exhibit 4 at page 1. To that end, even the plea cutoff forms from December 9, 2024 indicate that "* Defense is on notice of state's letter dated 10/2/20 and has indicated that no motions will be filed in response." See Exhibit 1, page 2 of 3. While the State appreciates the change in strategy, this left the State in the instant position and makes clear that there has been no unreasonable delay by the State.

The State would note, however, that "unreasonable" is not defined in the statute or the Rule. While it is unimaginable that pursuing its right to appeal could ever be seen as "unreasonable," the determination of unreasonableness should be made on a case-by-case basis, and based upon specific facts and circumstances presented. See D.F.W., 468 N.J. Super. at 444-45 (citing In Re Request to Release Certain Pretrial Detainees, 245 N.J. 218, 226-34 (2021) (recognizing that "whether the length of detention violates due process requires assessment on a case-by-case basis because due process is a flexible concept that does not necessarily set a bright line limit for length of pretrial confinement" and that a "fact-specific inquiry enables a court to balance the relevant factors and assess the level of risk a defendant presents."). Due Process, the State submits, is a concept that must inure to both sides in a criminal case; in the instant case, due process militates against defendant's pre-trial release.

With this in mind, the State submits that it has been awaiting trial for a substantial period of time. Delays have largely not occurred due to actions of the State. By way of one example, the State and defense were contemplating plea cutoff in early 2022 when the defense filed a motion to exclude the DNA under the then-Frye standard. This motion was filed by Patrice Bearden, Esq. on March 4, 2022. Ultimately, after months of back-and-forth, a protective order allowing source code review of STRmix by already-retained defense expert Nathan Adams was signed by Judge Oxley on August 15, 2022. Adams was advised to contact attorneys for STRmix in Ohio to set up this review. He didn't. The undersigned, after consulting with Ms. Bearden, had to call Adams' office myself to ensure that he set up the review. After speaking with him at least a month after the protective order was signed, he then contacted STRmix attorneys and set up the review, which was conducted on November 1-3, 2022 in Ohio.

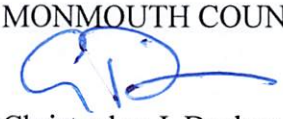
As this Court will recall from testimony at the Daubert hearing, Adams's report was not completed until July 31, 2023, some eight months later (despite allegedly not being able to execute or "step through" the source code and conduct the review in the way he expected). Once

in the State's possession, the State's experts quickly turned over their reports. In fact, Dr. John Buckleton's report was provided on August 23, 2023, only three weeks later. Obviously, as the Court knows, the hearing did not actually begin until November 12, 2024, largely due to the fact that the defense retained several additional expert witnesses. The State does not wish to belabor this point; however, it is just one example of delays that were not in any way attributable to the State.

In light of the fact that delays in this case have largely been unrelated to the actions of the State, it submits that it would be unreasonable to consider defendant's release from custody. As such, the State submits that, in exercising its right to appeal, it has been backed into the corner in which it now stands. Given the procedural history of this matter, the State submits that the defendant's release with a trial set for January 5, 2026, would be contrary to the rationale under which the Criminal Justice Reform Act was enacted. Therefore, the State would ask this Court to amend the September 5, 2025 excludable time order making this time attributed to defendant or, in the alternative, issue an order extending the two-year Speedy Trial clock to January 5, 2026.

Very truly yours,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR



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c: Monika Mastellone, ADPD
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