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September 4, 2025

The Honorable Marc C. Lemieux, A.J.S.C.
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. 18004915
Motion For a Stay of Trial
Returnable: To Be Determined

Dear Judge Lemieux:

Please accept the following to address the significance of our Supreme Court's September 3, 2025 order, in which it granted the State's motion for leave to appeal this Court's grant of suppression of evidence and set a schedule for the hearing of this appeal – all briefing to be completed by October 8, 2025 and oral argument scheduled for November 3 or 5, 2025 – that will post date the currently scheduled trial date of September 8, 2025.

Admittedly, the State's filing of its motion for leave to appeal with the Supreme Court did not divest this Court of jurisdiction over the above-captioned prosecution and, in the absence of the grant of a stay by this Court or an appellate court, did not stay the trial. See R. 2:5-6(a); State v. Washington, 453 N.J. Super. 164, 204 (App. Div. 2018).

However, these circumstances have been changed by our Court's grant of leave to appeal. Once the grant of leave to appeal is entered "an appeal is taken," bringing the matter within the purview of R. 2:9-1(a) – "[t]he supervision and control of the proceedings on appeal ... shall be in the appellate court from the time the appeal is taken," (emphasis added) –

“divesting the [trial] judge of jurisdiction regarding” this indictment. State in the Interest of N.P., 453 N.J. Super. 480, 486 n. 2 (App. Div. 2018).¹

¹ The comment to R. 2:5-6 suggests a contrary interpretation of N.P. and these operative Rules: “Although the State filed, under this rule, an interlocutory appeal of the Family Part judge’s decision to divert a juvenile offender to the J.C.C., the Appellate Division in [N.P.], suggested, without explanation, that when the Appellate Division granted leave to appeal, the Family Part lost jurisdiction over the matter pursuant to R. 2:9-1, which governs appeals from final judgments. The Appellate Division may have believed that the appeal from the Family Part’s disposition encompassed the entirety of the matter and, thus, in effect, was an appeal from a final judgment. A trial court, of course, is divested of jurisdiction as to specific or narrow issues that are before the Appellate Division by leave granted.” Pressler & Verniero, 2026 N.J. Court Rules, Comment R. 2:9-5 (Gann 2026). This non-binding interpretation of a binding Appellate Division decision is not an accurate representation of N.P.; the Honorable Carmen Messano, P.J.A.D. (ret.) did not suffer from any confusion as to the posture of the case or the interplay between R. 2:9-5 and R. 2:9-1 when he found that the grant of leave to appeal divested the trial court of jurisdiction:

The [trial] judge mistakenly concluded she had continuing jurisdiction over the April 2017 complaint against N.P., the subject of A-0135-17. She cited Rule 2:5-6(a), which states “[t]he filing of a motion for leave to appeal shall not stay the proceedings in the trial court ... except on motion made to the court ... which entered the order or if denied by it, to the appellate court[,]” and noted we had not entered any stay. However, we granted the State’s motion for leave to appeal in A-0135-17 on September 8, 2017, thereby divesting the judge of jurisdiction regarding that complaint. See R. 2:9-1(a) (granting the Appellate Division exclusive jurisdiction over all proceedings on appeal). We agree with the judge, however, that we had not exercised jurisdiction over the July 2017 complaint, which was properly before her.

N.P., 453 N.J. Super. at 486 n.2 (emphasis added).

Because the Supreme Court's September 3, 2025 order granting leave to appeal constitutes the "taking of an appeal," this Court no longer has jurisdiction over the matter. Trial cannot commence on September 8, 2025, before the Supreme Court's hearing of the State's appeal. Only after the Supreme Court's determination of the appeal will jurisdiction be returned to this Court.

Should the Court disagree with the above, the State respectfully requests this Court grant a stay of the trial to allow the Supreme Court's order on this appeal to be realized and an issue the Supreme Court has deemed worthy of its review to be addressed pretrial. See R. 2:9-3; cf. R. 2:9-4; State v. Robertson, 228 N.J. 138, 151-54 (2017).

Respectfully submitted,

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s/Christopher J. Decker

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