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October 17, 2025

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, NJ 08626

Re: State of New Jersey (Plaintiff-Movant)
v. Samantha Bonora (Defendant-Respondent)
Supreme Court Docket No. 091239
Appellate Division Docket No. AM-000119-24T1
Indictment No. 24-04-0392; Case No. 24000445
Criminal Action: On Motion for Leave to Appeal
Sat Below: Honorable Thomas W. Sumners, Jr., P.J.A.D.
Honorable Kay Walcott-Henderson, J.A.C.

Honorable Judges:

Please accept the within letter memorandum in lieu of a more formal brief in opposition to the Motion for Leave to Appeal to the New Jersey Supreme Court filed by the State of New Jersey through the Monmouth County Prosecutor.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On January 13, 2024 at approximately 4:41 p.m. Samatha Bonora was driving a Dodge Ram pick-up truck southbound on State Highway 34 behind a car being driven by Christina Devine. Ahead of Ms. Devine was a vehicle being driven by Richard French. The speed limit in the area was 50 miles per hour. Mr. French was going 55 miles per hour.

At the same date, time and place Joelle Williams was operating a Jeep northbound on Route 34. Her sister, Valerie Vitale was in the front passenger seat with her two children, K.W., age 3 and L.W., age 1 in the back seat.

The north and southbound lanes of Route 34 are separated by broken yellow lines indicating passing is permissible. While traveling southbound on Route 34 Ms. Bonora, in a passing zone, entered the northbound lane impacting the Williams' Jeep. Notably, none of the witnesses to the accident observed any erratic driving on the part of Ms. Bonora before she entered the northbound lane.

The impact between the Bonora and Williams' vehicles occurred in the northbound lane of Route 34 within seconds of Bonora entering the northbound lane.

The impact between the vehicles was significant. The witness statements are consistent with regard to the almost immeasurable time between the time Ms. Bonora entered the northbound lane and the collision. The most severe damage to the Jeep was to the driver's side front end into the left side of the passenger compartment.

As a result of the collision the child behind the driver in the Jeep, K.W., sustained severe head trauma. She was pronounced dead at the scene. The driver of the Jeep, Joelle Williams, was taken from the scene to the hospital. The other child seated behind the front passenger was also transported to JSUMC for evaluation.

Samantha Bonora sustained, *inter alia*, a compound fracture of her right wrist. She was also taken by ambulance to the hospital.

A post-accident search of the Dodge Ram pickup truck resulted in the seizure of an Apple iPhone "suspected to belong to Samantha Bonora."

A telephonic application was made for a search warrant seeking a blood withdrawal from Ms. Bonora. The application was granted. Blood was drawn at JSUMC on January 13, 2024. The samples of Ms. Bonora's blood were delivered to NMS Labs in Pennsylvania for forensic analysis. The toxicology report for Ms. Bonora's blood sample yielded positive results for methadone, morphine, free morphine, fentanyl, norfentanyl, motrigine and xylazine.

On February 1, 2024, Ms. Bonora was arrested and charged in a Warrant-Complaint with first-degree aggravated manslaughter [(N.J.S.A. 2C:11-4(a)(1)] and two counts of second-degree aggravated assault [(N.J.S.A. 2C:12-1(b)(1)]. Ms. Bonora was also issued motor vehicle summonses charging her with driving while intoxicated (N.J.S.A. 39:4-50), speeding (N.J.S.A. 39:4-98), improper passing (N.J.S.A. 39:4-86), failure to maintain lane (N.J.S.A. 39:4-88) and driving with an expired license [(N.J.S.A. 39:3-10(a)].

On February 16, 2024 the Hon. Henry Butehorn, J.S.C., based upon a Certification in Lieu of Oath by Howell Township Patrolman Daniel Scherbinski (Pa4-16)) and a purported certification of MCPO Detective Brian Jados (Pa17-22), granted a search warrant (Pa23-25) authorizing a forensic examination of all data, information, applications and the like of the subject Apple iPhone from January 2020 through January 13, 2024. It authorized an expansive, general search of every aspect of the phone, more specifically:

> Data and information stored on or within the above-described electronic device, including any removable flash media, relevant to the investigation of the crime(s) of Murder[1] and Aggravated Manslaughter, including items of investigative and/or evidential value which may be found, **from the time period of January 1, 2020 through, to, and including January 13, 2024**, to include: (See Pa23)

The phone was passcode protected. On or about February 22, 2024 the State filed a motion to compel Ms. Bonora to provide the passcode for the phone. Said motion was withdrawn on March 8, 2024, as the State got access to the data/information on the phone by independent means.

A forensic examination of defendant's cellphone pursuant to the search warrant was done by MCPO Detective Brian Jados on March 8, 2024. Using a Cellebrite Physical Analyzer the detective extracted any and all information/data in every and all files, apps and storage areas within the phone. This indiscriminate search yielded

[1] Defendant was not charged with murder.

information regarding defendant's location throughout the day prior to the accident. Information the State has argued circumstantially proves defendant secured drugs shortly before the accident was also extracted. Other extracted information included text exchanges the State has argued were with the person from who Samantha got the drugs. There were text exchanges extracted going back at least six weeks the State has used for various purposes during the pretrial proceedings which were clearly beyond the express purpose the State proffered to Judge Butehorn as the basis for the application, to wit; for a forensic toxicologist to consider when determining defendant's frequency of use and/or tolerance to drugs. There is nothing in Detective Jados's one-page report to even indicate from where in the phone the information and data was extracted.

On April 12, 2024 a Monmouth County Grand Jury handed up a five-count Indictment, Indictment No. 24-04-392 charging Samantha Bonora with one count of aggravated manslaughter (N.J.S.A. 2C:11-4), a first-degree crime, two counts of aggravated assault [(N.J.S.A. 2C:12-1(b)(1)], second-degree crimes, and two counts of assault by auto [(N.J.S.A. 2C:12-1(c)(2)], fourth-degree crimes.

On July 29, 2024 the defense filed a Motion to Suppress Evidence (phone extractions) seized pursuant to the February 16, 2024 warrant. The following day the State filed a Motion in Limine for the admission of N.J.R.E. 404(b) evidence. Both motions were argued before the Honorable Joseph W. Oxley, J.S.C. on October 15, 2024. The judge reserved decision. On October 23, 2024 His Honor denied the defense

motion to suppress the cellphone extractions. His Honor also denied the State's motion to admit N.J.R.E. 404(b) evidence. Defendant filed a Motion for Leave to Appeal. That motion was denied on November 27, 2024 but not served upon counsel until December 4, 2024. (Pa26)

The State also filed a Motion for Leave to Appeal the denial of its 404(b) motion. That was also denied by the Appellate Division.

On December 24, 2024 defendant filed a Motion for Leave to Appeal to the New Jersey Supreme Court. The State also filed Motion for Leave to Appeal the Appellate Division's denial of its N.J.R.E. 404(b) motion. By Order dated January 28, 2025 the State's Motion for Leave to Appeal to the Supreme Court was denied. By Order dated January 28, 2025 defendant's Motion to Suppress the phone extraction was granted with the matter being summarily remanded to the Appellate Division for consideration on the merits (Pa27). The Association of Criminal Defense Attorneys-New Jersey was permitted to argue the cause *amicus curiae*.

Oral argument on the remanded appeal was entertained virtually by the Honorable Thomas Sumners, Jr., C.J.A.D. and the Honorable Kay Walcott-Henderson, J.A.D. on August 6, 2025. On August 19, 2025, in a *per curiam* opinion, the Appellate Panel reversed the trial court and granted defendant's Motion to Suppress the cellphone extractions seized pursuant to the February 16, 2024 search warrant (Pa28-49).

On September 8, 2025 the State mailed a Notice of Motion for Leave to Appeal the August 19, 2025 Appellate Division decision to the State Supreme Court. Due to

logistical glitches and apparent deficiencies in the State's initial filing, the Notice of Motion was not formally docketed until October 10, 2025.

On October 14, 2025, via NJ Lawyers Service defendant/respondent filed a Motion to Supplement the Record below with the April 7, 2025 report of the State's expert forensic toxicologist, as well as the Grand Jury transcript.

POINT I

THE STATE'S ASSERTION THE APPELLATE DIVISION DECISION CAUSED IRREPARABLE INJURY TO THE PROSECUTION IS CLEARLY WITHOUT MERIT[2]

In its brief submitted in support of its Motion for Leave to Appeal to the Supreme Court, the State claims the Appellate Division decision did not correct an error by the lower court, "it created error, irreparably injuring the prosecution by depriving the State's expert of the full panoply of information needed to render an opinion on defendant's impairment at the time of the collision that can withstand the scrutiny of cross-examination." (Sb12-17) Such a statement displays a desperate attempt to create an urgency which has no basis in fact. Simply put, the information/data extracted from the cellphone was timely in possession of the State but, according to the expert report of Barry K. Logan, Ph.D., F-ABFT never provided to, nor considered by the expert forensic toxicologist in conjunction with his opinion. (Ra1)

[2] The appendix documents referenced in Point I, the expert report of Barry K. Logan, Ph.D., F-ABFT dated April 7, 2024 (Ra1) and the April 10, 2025 Grand Jury transcript (Ra6) are the subjects of a Motion to Supplement the Record filed October 15, 2025.

Said information and data was not presented by the prosecutor to the grand jury as part of the expert's review, analysis or opinion. It was used for a purpose other than the exclusive purpose the affiant for the search warrant, Howell Township Patrolman Daniel Scherbinski represented in his submission to the issuing judge, Honorable Henry Butehorn, J.S.C.

In his certification in lieu of affidavit submitted in support of the search warrant application, Patrolman Scherbinski clearly and explicitly expressed the sole purpose for the search warrant. He represented to Judge Butehorn the purpose was to provide information to an unnamed forensic toxicologist who reportedly conferred with unidentified members of the Monmouth County Prosecutor's Office and "indicated that in evaluating the extent of a person's impairment, and any potential tolerance to substances, it would be useful to learn the extent of the person's history with narcotic substances, including what narcotics were used, in what amounts, in what combination, for how long and how often." (Pa14, ¶gg)

The State obtained the requested search warrant extractions from Ms. Bonora's cellphone on February 16, 2024. (Pa23) The warrant was executed by Monmouth County Prosecutor Detective Brian Jados on March 8, 2024. The State then requested an expert opinion from Dr. Logan, a board-certified forensic toxicologist employed by NMS Labs seeking an interpretation of the toxicological findings from the blood draw from Ms. Bonora taken approximately three hours after the accident. To assist Dr. Logan in his analysis/interpretation, the prosecutor provided him with "numerous

documents, electronic records and files." Those documents, records and files are noted in the doctor's April 7, 2024 report. (Ra2-3)

Notably, the phone extractions obtained pursuant to the February 16, 2024 search warrant **were not** provided to the doctor for his consideration. Hence, the information the State claims it sought pursuant to the search warrant for the exclusive purpose of submitting same to the then-unnamed forensic toxicologist who indicated it would be "useful" in determining an individual's impairment and personal tolerance to substances **was not** submitted to the expert. Such an omission is indicative of the ulterior motive behind the State's search warrant application, to wit; a fishing expedition in hope of obtaining some/any information which it could use to establish an additional aspect of recklessness necessary to justify the first-degree aggravated manslaughter charge. See; State v. Jimenez, 257 N.J. Super. 567, 582-583 (App. Div. 1992); State v. Choinacki, 324 N.J. Super. 19, 47-50 (App. Div.) certif. den. 162 N.J. 197 (1999); State v. Jamerson, 153 N.J. 318, 334 (1998).

In his report, Dr. Logan lists the information/documentation he received, reviewed and considered in rendering his opinion. (Ra2-3) Notably, the phone extractions seized pursuant to the search warrant for the exclusive purpose of submitting them to him for his consideration are not identified as information/documentation provided by the prosecutor, nor considered in his evaluation. Therefore, the disingenuous claim by the State that the Appellate Division deprived the State's expert of information needed to render an opinion on defendant's

impairment, and necessary to withstand the scrutiny of cross examination, is nothing more than a baseless attempt to create an issue in hope of this Court giving it the additional evidence it desperately needs to establish an additional aspect of reckless to prove the overreaching crime of first-degree aggravated manslaughter.

Further evidence of the State's ulterior motive for the search warrant is found in the Grand Jury transcript (Ra6) from the presentation on April 10, 2024, three days after Dr. Logan issued his report.

During her presentation, the prosecutor limited the use of the cellphone extractions to create an inference Ms. Bonora had contacted a drug dealer, obtained the drugs and presumably ingested the illegal substances shortly before the accident. (Ra44-45, Ra47-49) This is clearly a use other than that which Patrolman Scherbinski cited as the exclusive purpose for the search warrant in his submission to the issuing judge.

In light of the foregoing, defendant/respondent, Samantha Bonora respectfully submits the Appellate Division decision did not, as the State represents, cause irreparable injury to the prosecution by depriving its expert the information needed to render an opinion and/or withstand the scrutiny of cross examination. Hence, such a false, unfounded representation does not provide reason or justification for this Court to review a well-reasoned Appellate decision rendered on remand from this Court for consideration of defendant's appeal on the merits.

POINT II

ON REMAND FROM THE SUPREME COURT THE APPELLATE PANEL CONSIDERED THE APPEAL ON THE MERITS AND PROPERLY GRANTED THE SUPPRESSION OF THE CELLPHONE EXTRACTIONS

In its brief, the State cites some comments from the trial judge, the Honorable Joseph W. Oxley, J.S.C. from his brief, summary-style decision denying defendant's motion to suppress the cellphone extractions. (Sb8) The State also severely criticizes what it characterizes as the Appellate Division's "flawed suppression of the evidence." (Sb9)

First, as the appellate review was de novo. (Pa42) Comments by the trial court are irrelevant to the State's instant application and argument. However, if there is any significance to Judge Oxley's decision to deny the motion it is his lack of recognition and failure to address the specific legal and factual arguments on what is a relatively novel and evolving issue regarding cellphone searches.

Despite the controlling instructional guidance provided by State v. Missak, 476 N.J. Super. 302 (App. Div. 2023) Judge Oxley made only one insignificant reference to that seminal case. (T:5,8-11) He never cited such as controlling authority in support of his decision. He failed to acknowledge the applicant's need not only to establish probable cause evidence of the crime under investigation will be found on the phone, but to also establish probable cause of the specific location on the phone where such

evidence would be located. He completely ignored consideration of the express purpose for which the warrant was sought. (T:6, 1-10)

Without commenting on the qualifications of a nine-year police officer whose entire career was in the traffic safety/patrol division of his department to make the statements he did in support of the warrant, or addressing the adequacy of the generic non-case-specific undated certification of a county detective, Judge Oxley rendered what was in essence a net opinion that "probable cause exists to support the idea that defendant's history of drug use was facilitated by the use of defendant's cellphone." (T:6,4-6)

Further, the State's self-serving criticism of the factual and legal analysis by the Appellate Panel are misplaced and just that, self-serving. The State's lack of persuasive legal authority and its conscious disregard or summary dismissal of critical deficiencies in the certification submitted in support of the search warrant are readily apparent. The well-reasoned analysis by the Appellate Panel clearly supports its findings. The submissions failed to establish probable cause to search for the information it sought for the purpose represented to the issuing judge. Its conclusion that the warrant was overbroad by seeking information beyond the expressed purpose, four years prior to the offense pertaining to a violation of any state criminal law, and the reasoning therefore is factually and legally sound. (Pa30)

The Panel properly limited its consideration to the "four corners of the certification of Patrolman Daniel Scherbinski and Monmouth County Detective Brian

Jados. (Pa31) Throughout its written opinion, the Appellate Panel noted the exclusive purpose for seeking the search warrant represented by Patrolman Scherbinski in his certification in lieu of affidavit, to wit; obtain information for the then-unnamed forensic toxicologist who purportedly told unidentified members of the Monmouth County Prosecutor's Office "it would be useful" to learn the extent of a person's drug history when evaluating the extent of one's impairment and potential tolerance to a drug. (Pa33, 45, 47)

The reviewing judges recognized the primary affiant for the search warrant, Patrolman Scherbinski had nine years of experience as a police officer. His entire career was in the patrol division investigating severe/fatal motor vehicle accidents. (Pa31-32) The patrolman's lack of experience in the investigation of narcotic offenses and/or forensic examinations of electronic devices was an obvious consideration supporting the conclusion that the submissions failed to establish probable cause to search the phone.

To secure a search warrant for a subject's cellphone the State would have to establish sufficient facts to establish not only a "fair probability" that evidence relevant to the investigation of the crimes will be found on the phone but also where in the phone. State v. Jones, 179 N.J. 377 (2004).

In other words, the only need advanced by the State in its search warrant application for such an expansive search was for consideration by a forensic toxicologist who purportedly stated it would be "useful" to have information regarding

Ms. Bonora's prior drug use to evaluate the quantitative forensic results of her blood draw. The only facts to remotely support probable cause, "a fair probability" that such information/evidence sought would be found in the phone were statements by Patrolman Scherbinski in paragraph hh (Pa15) of its certification. In said paragraph he states, in pertinent part:

> In my training and experience, I am aware that drug transactions are often set up via messaging on cell phones, to include text messages, application messages, exchange of pictures or videos of monetary or substances or drug-related items, and location data can oftentimes be ascertained and corroborative of those messages. Because I am aware, through my training and experience, relevant evidence can be obtained in many different locations throughout the entire cellphone. This request is to search the cellphone contents…

He again references his "training and experience" in support of his request to search the cellphone's contents from the time period of January 1, 2020 through, to, and including January 13, 2024. (Pa15) It is respectfully suggested Officer Scherbinski is not qualified to make these statements. The summary of his training and experience as a nine-year law enforcement officer set forth in paragraph 5(a) of his certification (Pa7-8) makes absolutely no mention of any training or experience in the area of narcotics and/or narcotic investigations or in the forensic analysis of electronic devices. In other words, the State relies on the officer's statements based on his training and experience in areas of investigation for which he has no training or experience. Hence, the inherent untrustworthiness of these statements by an unqualified agent is undeniable.

The Appellate Panel noted the officer's lack of qualifications, an observation never made nor addressed by the trial court. An obvious, significant fact the State refuses to acknowledge.

This Court cannot ignore the clearly generic, non-case-specific "certification" of the Monmouth County forensic detective attached to the certification in lieu of oath of Patrolman Scherbinski in connection with the search warrant application. Notably, the Appellate judges cited Detective Jados' certification claiming:

> "targeted extraction is often not feasible due to the complexity and comingling of data in media devices. Forensic tools cannot extract only specific items without processing the whole device, and a manual "targeted" extraction would be prohibitively time consuming." (Pa34)

In essence, Detective Jados suggests the Fourth Amendment does not apply to searches of electronic devices such as cellphones because the information sought to be seized and the locations of said information within the device either can't be identified or, if they can, it would be a "prohibitively time-consuming" process to extract them.

Obviously, the reviewing Courts who have established the procedures and judicial precedent regarding cellphone searches disagree. In fact, the Court, in Missak, supra, when remanding to the trial court provided guidance by stating: "any future search warrant application should address such issues to allow the Court to determine locations within the data and information on the cellular phone there is

probable cause to believe relevant information concerning to the crimes charged may be found." *Id.* at 322.

Additionally, to accept what is essentially a generic, non-case specific document to support an application to invade the constitutionally protected privacy interests of our citizens is an insult to the search warrant mandate and the strict procedures established to protect those interests. The Appellate judges recognized that, for many Americans, cellphones hold the "privacies of life." [(Pa44; citing Riley v. California, 573 U.S. 373 (2014)]. It acknowledged the "strong privacy interests" associated with the contents of personal electronic devices. [Pa44; citing Lipsky v. N.J. Ass'n. of Health Plans, Inc., 474 N.J. Super. 447, 473, 475 (App. Div. 2023)]. Most importantly, it heeded the caution by the United States Supreme Court expressed in Carpenter v. United States, 585 U.S. 296, 320 (2018), to ensure technical advances do not erode Fourth Amendment protections. (Pa44) These are just a few examples of the thorough analysis and sound reasoning behind the Appellate Division's decision.

Viewing the totality of the circumstances, the Appellate judges agreed with the defendant and amicus that the search warrant at issue was unconstitutionally invalid as it was not based on probable cause the phone contained evidence related to the charged crimes. It properly concluded "a mere claim that the cellphone may contain "useful" information is an unreasonable basis under our Federal and State Constitutions to search the defendant's cellphone containing her most private

thoughts and communications..." (Pa45-46) The Panel recognized the State's expectation that information which may be useful to a forensic toxicologist, to wit; how much or what drugs may have been consumed over what period of time would be found on the phone was speculative and "doubtful at best." (Pa46) Clearly, contrary to the State's assertion, the Appellate decision was based on much more than its observation that the application documents failed to identify the forensic toxicology expert. (Sb10)

In a further attempt to deflect attention away from the real issue, the State claims the defense attempted to negate the opinion of the expert forensic toxicologist because he was not named. (Sb16) Such a statement is simply not true. The expert's opinion is not the issue. The issue is that the cellphone extractions were never provided to the expert for consideration, the exclusive purpose for the warrant application. However, they were used for other reasons.

The State also criticizes the Appellate Panel for its citation and reliance on Missak, supra. (Sb15) Interestingly, in attempting to distinguish Missak from the case at bar, the State admits the true reason it sought the search warrant as opposed to the purpose cited by Patrolman Scherbinski in his certification. While ignoring the lack of training and experience by Patrolman Scherbinski, the State argues that his certification "established probable cause to believe evidence relevant to establish an element of the defendant's criminal conduct - the reckless and indifference to human life occasioned by impaired driving...could be found in locations beyond the

call logs for the date and time of the collision. (Sb15) Again, the express purpose cited by the patrolman in his certification was to seize information/data for use by a forensic toxicologist in evaluating the toxicology results of the blood draw. In essence, by that statement, the State acknowledges what the defense has been arguing, the search warrant was a fishing expedition in hope of finding some information/data to establish an aspect of recklessness, beyond mere impairment to justify the first-degree aggravated manslaughter charge. To condone this type of conduct would establish a very dangerous precedent for future search warrant applications.

The Appellate Panel's citation of Missak, supra and the precedent set thereby, was appropriate and well reasoned. Missak, supra, included a historical review of the Fourth Amendment protections against unreasonable searches and seizures. It reaffirmed the importance that probable cause be established which particularly describes the place to be searched and the things to be seized. Id. at 316 citing State v. Marshall, 199 N.J. 602, 610 (2009). This seminal case specifically noted that fundamental Fourth Amendment protections apply to searches of cellphones. Id. In other words, a valid search warrant for a cellphone requires "probable cause to believe that a crime has been committed, was being committed, at a specific location or the evidence of the crime is at the place sought to be searched. Id. citing State v. Sullivan, 169 N.J. 204, 210 (2001).

The Missak court also reaffirmed that there must be "substantial evidence" supporting a court's probable cause determination that "the items sought are in fact seizeable by virtue of being connected with the criminal activity and...the items will be found in the place to be searched. Again, this probable cause determination must be based on information "within the four corners" of the supporting affidavit. Missak, supra at 317. The decision instructs courts to consider "the totality of the circumstances" and sustainability of a search only if the finding of probable cause relies on adequate facts. Id.

The Appellate Panel also found the warrant "constitutionally problematic" as it allowed for a search of the cellphone for information covering a four-year period. (Pa46) The judges correctly analyzed the "totality of the circumstances" and determined "there is no reasonable indication in the State's affidavits why the search covered this length of time." (Pa46)

The Panel also found the warrant overbroad for the scope of information or data sought to be seized from the phone. Recognizing "the scope of a lawful search is defined by the object (purpose) of the search and the places in which there was probable cause to believe that it may be found" (Missak, supra, at 317) the Panel reasonably held:

> Considering the State claims it was specifically looking for evidence showing the extent of defendant's drug use, the warrant's authorization for information or data related to a violation of any of our State's criminal laws is constitutionally invalid.

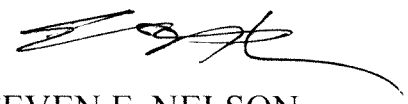
As with its attack of other aspects of the Appellate Panel's decision, the State's criticism and reasoning is unjustified, unsupported by fact, self-serving and unpersuasive.

In conclusion, a thorough review of the Appellate Division's decision reveals a thorough examination of the facts, a thoughtful and proper application of the law and an overall well-reasoned opinion. The Panel did exactly what the Supreme Court ordered on remand, consideration of the appeal on the merits.

CONCLUSION

In light of the foregoing, defendant/respondent Samantha Bonora respectfully requests that the State's Motion for Leave to Appeal to the Supreme Court be denied.

Respectfully yours,
NELSON, FROMER, CROCCO & JORDAN



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cc: Caitlin Sidley, Assistant Prosecutor
Ms. Samantha Bonora