



State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Forensic Science Unit
Tamar Lerer, Deputy
31 Clinton Street, 10th Floor, P.O. Box 46003
Newark, New Jersey 07101
Tel. 973-877-1200 · Fax 973-877-1239

MIKIE SHERRILL
Governor

JENNIFER N. SELLITTI
Public Defender

Dr. DALE G. CALDWELL
Lt. Governor

January 26, 2026

Superior Court of New Jersey, Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625
Via E-Courts

Re: State v. Bryant and Hunter
Docket No. A-1399-24

Your Honors:

Please accept this letter in lieu of a more formal opposition to the State’s motion for leave to appeal. The State cannot appeal in this case, because it won. Popow v. Wink Associates, 269 N.J. Super. 518, 528 (App. Div. 1993) (“The general rule is that a litigant may not appeal from a judgment or so much of a judgment which is in that party's favor. Stated differently, the traditional rule is that a judgment cannot be appealed by a party not thereby aggrieved.”). By asking this Court to issue an opinion that would have “no bearing on the disposition of the appeal”—because the evidence is currently admissible and the State seeks this Court to articulate other reasons why it should be admissible—the State is asking for an advisory opinion, which this

Court does not issue. State v. J.M., Jr., 225 N.J. 146, 163 (2016). Although arguably the defense motion for leave to appeal allows the State to file a cross-appeal expanding the scope of what this Court could consider if it grants the defense appeal, the State cannot ask the Court to deny the defense appeal and take up only a State’s appeal of a case the State already won.¹

This Court may grant leave to appeal interlocutory orders “when necessary to prevent irreparable injury.” R. 2:2-2(a). The State faces no risk of irreparable injury in this case: it has avoided suppression of evidence obtained through unlawful warrants. If it wants to continue litigating whether warrants that result in the seizure of thousands of New Jerseyans’ personal information without any guardrails for protecting the privacy of those thousands of people are legal, it can do so in other cases to come where the defense challenges the fruits of those warrants.

¹ The State claims that this “Court has previously granted petitions for certification filed by a party not seeking to change the appellate court’s overall ruling and has previously affirmed Appellate Division decisions as modified.” (State MLA at 10) It cites two cases in support of this conclusion. First is State v. Allen, 254 N.J. 530, 535 (2023), which was a defense appeal of an affirmance of defendant’s convictions by the Appellate Division. That is how appeals work: the party that loses can appeal. The second is State v. Spell, 196 N.J. 537, 538 (2008). It seems that the defense did not argue that the State lacked standing to appeal. State v. Spell, Letter (Cross-Petition) for Certification, 2007 WL 9591590 (Nov. 13, 2007).

The only parties suffering irreparable harm in this case are the defendants, who lost the suppression issue when the Appellate Division sua sponte and inappropriately expanded the scope of the appeal to include issues the State never raised, not in the trial court and not in the Appellate Division. This Court should summarily grant the defendants' motion for leave to appeal, modify the Appellate Division opinion, and let litigation about the proper remedy for the constitutional violations in this case occur where they are supposed to occur: in the trial court. In the alternative, if this Court grants either the defense motion or the State's cross-motion, the defense asks for the opportunity to present supplemental briefing. But one thing this Court should not do is grant only the State's appeal, which would not only be procedurally inappropriate, but would echo the fundamental unfairness of what the Appellate Division did in this case: giving the State extra chances to prevail in a case where defendants are facing decades in prison.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY:



TAMAR Y. LERER
Deputy Public Defender
Attorney ID: 063222014