MIKIE SHERRILL
Governor

Dr. DALE G. CALDWELL
Lt. Governor

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

JENNIFER N. SELLITTI
Public Defender

February 12, 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. Phillip Bryant
APP. DIV. 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 cross appeal. The Court should deny the State's motion because they concede that the underlying warrant was overbroad and unparticularized. Their remaining arguments would not change the outcome of the decision and rely on misstatements of fact and law. In the alternative, if the Court grants either the defense motion or the State's cross-motion, the defense asks for the opportunity to present supplemental briefing.

First, the State in their cross-motion concedes that the warrant used in this case was overly broad and unparticularized. See State Motion for Leave to

Cross-Appeal from an Interlocutory Order, at pg. 2 & 22. They then claim that the Appellate Division incorrectly, "failed to preserve the lawful portion of the warrants." *Id.* However, the state did not raise the issue of severance before the Appellate Division and therefore waived the argument. See Letter Brief on Behalf of The State of New Jersey, (March 14, 2025) (Ma 15-31)[1]; Supplemental Letter Brief on Behalf of The State of New Jersey, (Sept. 29, 2025) (Ma 41-55); see also State v. Mahoney, 226 N.J. Super. 617, 626 (App. Div. 1988) (citing State v. Daquino, 56 N.J.Super. 230, 233 (App.Div.1959), certif. den. 30 N.J. 603 (1959), cert. den. 361 U.S. 944 (1960)).

Even if the court was to entertain the State's argument, the warrant in this case cannot be severed as the State suggests because the admittedly invalid portions are neither distinguishable from the valid portions, nor do the valid portions make up a greater part of the warrant. Severance is available only if: (1) the search warrant describes with sufficient particularity items to be seized for which there is probable cause; (2) the valid portions of the warrant "are distinguishable from the invalid portions; and (3) the valid portions of the warrant make up the greater part of the warrant. State v. Summers, No. A-1578-22, 2024 WL 5252023, at *7 (N.J. Super. Ct. App. Div. Dec. 31, 2024) (quotations omitted)

[1] This letter brief refers to back the appendix from Mr. Bryant's motion for leave to appeal and continues that numbering sequentially for any new documents filed with this opposition.

(citing United States v. Sells, 463 F.3d 1148, 1155 (10th Cir. 2006), cert. denied, 549 U.S. 1229 (2007)); see also United States v. Christine, 563 F.Supp. 62 (D. N.J. 1983)

Here, the invalid portions of the warrant are neither distinguishable from the invalid portions nor do they make up a greater portion of the warrant. The portion of the warrants describing the types of data to be seized begins with the phrase "including but not limited to" and lists the following records:

> "Mobile Subscriber Integrated Services Digital Network (MSISDN), Mobile Identification Number (MIN), account number, account type, subscriber account name, billing address, subscriber's social security number, subscriber's date of birth, "can be reached" numbers, date account established, activation date, account status, Electronic Serial Number (ESN) or International Mobile Equipment Identity (IMEI) number, International Mobile Subscriber Identity (IMSI) number, cell site information for the period requested, all other telephones on the same accounts, ***and all other account information*** for the said wireless telephone facility number(s) …"
>
> Warrant 511A ¶ 2, 511B ¶ 2, 511C ¶ 2, 511D ¶ 2, (Mca 29-40) (emphasis added)

This laundry list of data includes virtually all data stored by cellular phone providers. The phrases at the beginning of the end of this laundry list of data indicate that ***all*** of the listed categories of data must be provided and that it is not an exhaustive list. Therefore, the individual categories within that paragraph cannot be separated from one another. See e.g. Summers, 2024 WL 5252023, at *6 (listing evidence to be seized as "stored electronic data" and detailing virtually all types of data possibly stored on a cellular phone). Moreover, even if the Court were to

parse out those pieces of data the government could have legitimately seized, they would not make up the majority of the data demanded in the warrant. The data used by the government to connect Mr. Bryant and Mr. Hunter to the location of the crime included their Mobile Subscriber Integrated Services Digital Network (MSISDN)[2] and the cell site information. In other words, the government listed 18 types of data when only two were necessary to their investigation. To put it mathematically the necessary data makes up 1/9th of each warrant, not greater than 1/2 of the warrant. To put this visually, the relevant portion of the warrants if redacted would look like Figure 1 below.

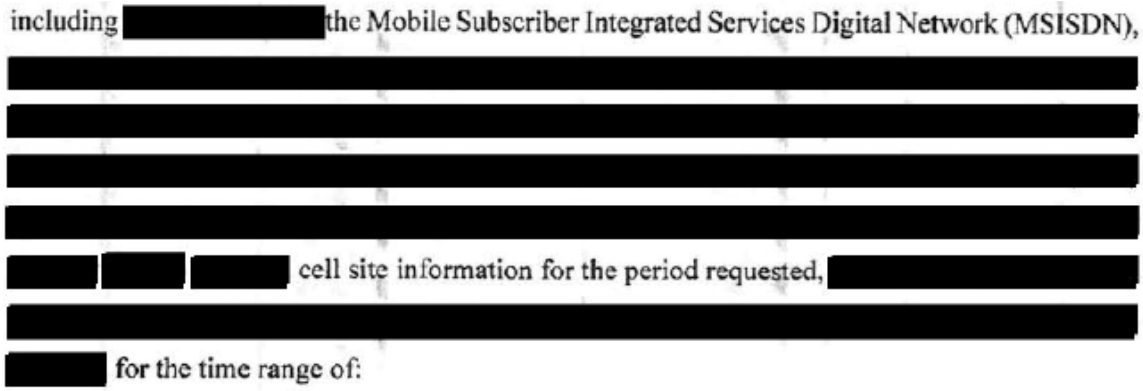

Figure 1.

In other words, no matter how you examine the warrants, the valid portions do not make up the greater part of each warrant. The State, in their motion for leave to cross appeal, does not even attempt to engage in the process of severance because the results inevitably show such an exercise would not change the

[2] An MSISDN is essentially the mobile number users dial to connect a call to a mobile phone with some additional information like the country code.

outcome in this case. Therefore, the State has conceded the warrant was overbroad and unparticularized and this Court should deem their admission dispositive to their cross-motion for leave to appeal.

Third, the State misstates the facts underlying the Appellate Division's decision that the warrants were also insufficiently particularized because of the geographic area covered by the warrant. Specifically, they claim that police "did not and could not know which specific cell sites serviced the victims' homes or streets nearby." See State Motion for Leave to Cross-Appeal from an Interlocutory Order, at pg. 21. They then quote a paper that was never introduced into the record to claim it is "practically impossible for external experts to create accurate sector coverage maps." [3] *Ibid.* However, that quote is taken completely out of context and does not accurately reflect the contents of the paper they cite. First, the Jovanovic and Cummings paper does not stand for proposition that law enforcement cannot use cellular data to estimate the cell sites that likely cover a known geographic area for the purposes of limiting the scope of a tower dump—it criticizes the incomplete records used to create cellular maps admitted at trial. *See* Vladan M. Jovanovic and Brian T. Cummings, Analysis of Mobile Phone Geolocation Methods Used in US

[3] This paper was not introduced into the record below and therefore the defense expert was not given a chance to respond to it or place it's meaning in the context of the arguments being made in this case.

Courts, 10 IEEE Access 28037 (2022). Indeed, the paper notes that even incomplete records can be used to show where a device was not and inversely eliminate towers that would not cover an area. Id. at 28050-28051. Thus, the State could have deployed the methods of mapping cellular antenna and sector locations as adopted by the Scientific Working Group on Digital Evidence ("SWGDE")[4] and the State's own expert[5] to limit the scope of the massive search conducted in this case. See id. at 28051 (suggesting mapping using sector antenna locations and orientations instead of coverage estimates). Furthermore, the paper is in agreement with the expert affidavit submitted in this case and other experts in this field that drive testing is a reliable method of determining the actual coverage of a crime scene, especially when conducted immediately after the commission of the crime. Compare id. at 28049-28050; with Joseph Hoy, Forensic Radio Survey Techniques for Cell Site Analysis, 281-282 (2d ed. Wiley 2024) (2015); and Ma 97 § 5:20. Therefore, the prosecution is attempting to rewrite the factual record relied on by the Appellate Division to challenge the conclusion that this warrant did not

[4] Scientific Working Group on Digital Evidence Recommendations for Cell Site Analysis Version: 2.0, §§ 10.1-10.5 (Dec. 18, 2023) (Ma 69-72).

[5] In discovery the state has provided maps utilizing the "wedge" shapes showing the direction of the antennae near the crime scene that they intend to introduce in their case in chief. Draft Cellular Analysis of SA John Hauger, Slides 2-4 (Ma 79-81) (explaining mapping using cell sites and sectors). This same method could have been deployed to identify the antennae likely covering the area of the crime scene prior to issuing the tower dump warrants here.

appropriately narrow its request to specific towers serving the area of the crime.

Finally, the State's argument regarding third party standing would not alter the ultimate decision regarding the suppression of Mr. Bryant's cell site data. The Appellate Division's decision carefully considered the intrusion these warrants had on the privacy rights of New Jersians, noting that thousands of cell phone users' data was searched and turned over to the government without their knowledge the seizure had occurred. State v. Bryant, No. A-1399-24, 2025 WL 3481348, at *9 (N.J. Super. Ct. App. Div. Dec. 4, 2025). To address this massive privacy invasion the court fashioned a specific remedy—directing the State to delete information about the third-party users in this case and provide notification to each of the affected individuals. Id. at *12-13. This remedy for third parties was not applied to Mr. Bryant or Mr. Hunter's records and therefore should not be considered as a part of this appeal.

The State cannot appeal in this case, because it prevailed in the courts below. 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."). Although arguably the defense motion for leave to appeal allows the State to file a cross-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 won. The parties suffering irreparable harm in this case are the defendants, who lost the suppression issue when the Appellate Division *sua sponte* expanded the scope of the appeal to include issues the State never once raised, not in the trial court and not in the Appellate Division. R. 2:2-2(a).

This Court should summarily grant the defendants' motion for leave to appeal, modify the Appellate Division opinion, and remand this case to the trial court for a determination of whether the independent source or inevitable discovery doctrines apply.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY:
SIDNEY W. THAXTER, Esq.
National Association of Criminal Defense Lawyers
4th Amendment Center
1660 L St. NW, 12th Floor
Washington, D.C. 20036
Pro-Hac Vice
New York Bar Number 5036009

/s/ Alison Perrone
ALISON PERRONE, Esq.
Deputy Public Defender
Office of the Public Defender
31 Clinton St. 9th Fl.
P.O. Box 46003
Newark, New Jersey 07101
(973) 877-1200
Alison.Perrone@opd.nj.gov
Attorney ID: 005741997

INDEX TO APPENDIX

CONFIDENTIAL INDEX TO APPENDIX