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UNION COUNTY PROSECUTOR'S OFFICE
ANDREW K. RUOTOLO JR. JUSTICE CENTER
32 RAHWAY AVENUE
ELIZABETH, NEW JERSEY 07202-2155
(908) 527-4500 FAX: (908) 289-1267
UCPO@ucpo.org

WILLIAM A. DANIEL
Prosecutor of Union County

JAMES O. TANSEY
First Assistant Prosecutor

DAVID C. HUMMEL
Deputy First Assistant Prosecutor

January 9, 2025

MILTON S. LEIBOWITZ
Assistant Prosecutor
Of Counsel and on the Brief
Attorney ID No. 082202013
Michele.buckley@ucpo.org

LETTER IN LIEU OF BRIEF
ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
Post Office Box 970
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent) v.
Fernando J. Garcia-Moronta (Defendant-Movant)
Appellate Docket No.: AM-000105-24
N.J. Supreme Docket No.: 090118
Indictment No.: 24-09-00885-I

Criminal Action: On Motion for Leave to Appeal from an Interlocutory Order of the Superior Court of New Jersey, Appellate Division, Denying Defendant's Motion for Leave to Appeal.

Sat Below: Hon. Katie A. Gumner, J.A.D.
Hon. Adam E. Jacobs, J.A.D.

Honorable Justices:

Pursuant to R. 2:6-2(b), and R. 2:6-4(a), this letter in lieu of a formal brief is submitted on behalf of the State.

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TRIAL COURT JUDGMENTS, ORDERS, AND RULINGS BEING APPEALED

COUNTER-STATEMENT OF PROCEDURAL HISTORY[1]

On May 2, 2024, defendant-appellant Fernando J. Garcia-Moronta was charged in Complaint Warrant No. W-2024-000853-2004 with second-degree aggravated assault, in violation of N.J.S.A. 2C:12-1b(13) (count one), fourth-degree criminal mischief, in violation of N.J.S.A. 2C:17-3a(1) (count two), petty disorderly person harassment, in violation of N.J.S.A. 2C:33-4(a) (count three), petty disorderly person harassment, in violation of N.J.S.A. 2C:33-4(c) (count four), and disorderly person simple assault in violation of N.J.S.A. 2C:12-1a(1). (Da20 to 29).

On May 7, 2024, the Honorable Antonio Inacio, J.S.C., released defendant on his own recognizance, subject to certain enumerated pretrial release conditions. (Pa1 to 5).

On September 18, 2024, a Union County Grand Jury returned Indictment No. 24-09-00885, charging defendant with second-degree strangulation in violation of N.J.S.A. 2C:12-1b(13) (count one), and fourth-degree criminal mischief, in violation of N.J.S.A. 2C:17-3a(1) (count two). (Da30 to 31). A summons on indictment was issued on September 20, 2024. (Pa6).

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[1] Da refers to the defendant's appendix.
Db refers to the defendant's brief.
Pa refers to the State's appendix.
1T refers to the transcript of arraignment dated October 7, 2024.

On October 7, 2024, the State and counsel for defendant appeared for defendant's arraignment before the Honorable Stacey K. Boretz, J.S.C.; however, defendant did not appear because he was in Pennsylvania, in the custody of Immigration and Customs Enforcement. As a result of defendant's non-appearance, Judge Boretz issued a bench warrant. (Da32).

On October 25, 2024, defendant filed a Notice of Motion for Leave to Appeal. On November 14, 2024, defendant's motion was denied. (Da1).

On December 9, 2024, defendant filed a Notice of Motion For Leave to Appeal with this Court. This brief in opposition follows.

COUNTER-STATEMENT OF FACTS

The State relies upon the facts set forth in Complaint Warrant No. W-2024-000853-2004.

E.S. and defendant were in a dating relationship from January of 2024 through April 2024. (Da27). After the relationship ended, defendant continued to call her and go to her house, despite E.S. blocking defendant's phone number and her request that defendant stop contacting her. Ibid.

On May 2, 2024, defendant was waiting for E.S. when she was released from school and followed her to her dentist appointment. Ibid. Defendant eventually left the area, but then responded to her residence. Ibid. E.S. stated that defendant called her and asked her to step outside to give her a gift, which

was a stuffed teddy bear. Ibid. E.S. accepted the gift and then defendant entered her residence without her permission. Ibid. E.S. did not refuse his entry, but she asked defendant to leave the residence and informed him that she has been seeing someone new. Ibid.

Defendant became irate at hearing this news and an argument ensued. Ibid. Defendant then placed E.S. in a choke hold from behind. Ibid. He held her in this position for almost four seconds and E.S. could not breathe. Ibid. Defendant then loosened his arm from E.S.'s neck area, but then placed her in the choke hold again. Ibid. He eventually released her, but before doing so, caused E.S. to have difficulty breathing. Ibid. E.S. also complained of neck pain. Ibid.

E.S. also informed law enforcement that defendant took her Samsung Note cell phone and exited the residence. Ibid. Defendant then entered his vehicle and drove south on Monroe Ave. Ibid. He stopped at Julie Street, where E.S. made contact with defendant. Ibid. E.S. entered defendant's vehicle and attempted to retrieve her phone. Ibid. In response, defendant shoved E.S.'s face aggressively, injuring E.S.'s lip and scratching E.S.'s jaw. Ibid. Defendant then broke E.S.'s Samsung phone and then her Apple iPhone 14 Pro max. Ibid.

During the incident, defendant grabbed E.S.'s arms roughly leaving a bruise. Ibid. He also threatened to upload a video to social media that contained the two having sexual intercourse. Ibid. E.S. stated she is fearful of defendant, who has advised her that even though she is attending college in Florida next year, he will follow her there. Ibid.

LEGAL ARGUMENT

POINT I

THE APPELLATE DIVISION PROPERLY DENIED DEFENDANT'S MOTION FOR LEAVE TO APPEAL BECAUSE DEFENDANT CANNOT ESTABLISH HOW HE IS HARMED BY THE TRIAL COURT'S ISSUANCE OF A BENCH WARRANT OR WHY LEAVE SHOULD BE GRANTED IN THE INTERESTS OF JUSTICE. (Da1; Da32).

Defendant claims that his Motion for Leave to Appeal should be granted because the trial court erred in issuing a bench warrant to ensure his appearance at his arraignment. Specifically, defendant claims that it is fundamentally unfair to issue a bench warrant because his non-appearance was the result of his detention by Immigration and Customs Enforcement (ICE) and not his willful disregard of the Summons on Indictment. Defendant further claims that he is prejudiced by the issuance of a bench warrant as a detainer because it deprives him of his right to defend himself. Defendant's claims are

without merit and he cannot show why his motion should be granted in the interests of justice. The bench warrant that was issued as a detainer does not prevent defendant from defending himself. Rather, it is an appropriate procedural mechanism that, contrary to defendant's assertion, is intended to ensure defendant's appearance in court if he is released from ICE custody and to ensure he has an opportunity to defend himself. Moreover, the trial court's ruling is in accordance with R. 3:7-8 and, therefore, it was not improper. Additionally, contrary to defendant's claim, his right to due process is not infringed upon because he can review discovery, meet with counsel, formulate a defense and, when defendant is available to appear, will have his day in court. Accordingly, defendant failed to explain why his Motion for Leave to Appeal should be granted in the interests of justice and, therefore, his Motion for Leave to Appeal should be denied once again.

Parties do not have a right to appeal an interlocutory order under the Rules of Court. In re Pa. R.R. Co., 34 N.J. Super. 103, 107-08 (App. Div. 1955), aff'd, 20 N.J. 398 (1956). Rather, leave to file an interlocutory appeal of a trial court's order only is permitted "in the interest of justice." R. 2:2-4; Brundage v. Estate of Carambio, 195 N.J. 575, 598-99 (2008). This standard similarly applies to Motions for Leave to Appeal filed with the Supreme Court. See R. 2:2-2(b) (providing that this Court may take appeals from interlocutory

orders to "prevent irreparable injury"). An interlocutory appeal is not appropriate to "correct minor injustices ... ." Romano v. Maglio, 41 N.J. Super. 561, 567 (App. Div.), certif. denied, 22 N.J. 574 (1956), cert. denied, 353 U.S. 923 (1957). When leave is granted, it is because there is the possibility of "some grave damage or injustice" resulting from the trial court's order. Id. at 568. The moving party must establish, at a minimum, that the desired appeal has merit and that "justice calls for [an appellate court's] interference in the cause." Romano, 41 N.J. Super. at 568.

Here, the Appellate Division properly denied defendant's Motion for Leave to Appeal because the court aptly recognized that defendant failed to meet this standard. Despite defendant's claims of harm, the bench warrant does not prevent defendant from defending himself or from speaking with counsel to review discovery, speak about the case, and formulate a defense. Moreover, the bench warrant does not prevent defendant from appearing or resolving his case. Indeed, it is defendant's detention in ICE custody that causes the harms that he has alleged. Thus, defendant's claim of harm is baseless. Moreover, the trial court's ruling was in accordance with the Court Rules. Therefore, defendant cannot establish error, let alone why his Motion for Leave to Appeal should be granted in the interests of justice. Accordingly, this Court should deny defendant's Motion for Leave to Appeal.

According to R. 3:16(a), "the defendant must be present for every scheduled event unless excused by the court for good cause shown." An arraignment is one such pre-trial proceeding. Pursuant to R. 3:9-1, "[t]he arraignment shall be conducted in open court no later than 14 days after the return or unsealing of the indictment." At the arraignment, the trial court must

> advise the defendant of the substance of the charge; (ii) confirm that if the defendant is represented by the public defender, discovery has been obtained, or if the defendant has retained private counsel, discovery has been requested pursuant to R. 3:13-3(b)(1), or counsel has affirmatively stated that discovery will not be requested; (iii) confirm that the defendant has reviewed with counsel the indictment and, if obtained, the discovery; (iv) if so requested, allow the defendant to apply for pretrial intervention; and (v) inform all parties of their obligation to redact confidential personal identifiers from any documents submitted to the court in accordance with Rule 1:38-7(b).
>
> [R. 3:9-1(b)(2)]

And, at the arraignment, the defendant must enter a plea to the charges. R. 3:9-1(b)(3). Thus, defendant could not simply waive his appearance.

Moreover, pursuant to R. 3:7-8.

> Upon the return of an indictment or the filing of an accusation, a summons on indictment or warrant on indictment shall be prepared by a law enforcement officer or the prosecutor using the Judiciary's computerized system for issuance by the Assignment Judge or a designated Superior Court judge or, in their absence, by any Superior Court judge assigned to the

> Law Division in that county in accordance with R. 3:3-1 for each defendant named in the indictment or accusation who has not been previously charged in the matter. A defendant who is the subject of a warrant on indictment is an eligible defendant pursuant to N.J.S.A. 2A:162-15 et seq. If the defendant fails to appear in response to a summons, a bench warrant shall issue.
>
> [emphasis added].

Defendant was charged in Complaint Warrant No. W-2024-000853-2004. (Da20 to 29). He was then processed and released pursuant to Judge Inacio's pretrial release order. (Pa1 to 5). A Union County Grand Jury then returned Indictment No. 24-09-00885. (Pa30 to 31). A corresponding summons on Indictment No. 24-09-00885 was issued. (Pa6). Defendant then did not appear for his arraignment. (1T). As set forth in Rule 3:7-8, "[i]f the defendant fails to appear in response to a summons, a bench warrant shall issue." Thus, the trial court was obligated to issue a bench warrant as a result of defendant's failure to appear. Accordingly, the trial court's compliance with this Rule was proper.[2]

Defendant nevertheless claims it was unjust to enforce R. 3:7-8 because his non-appearance was not his fault. Below, defendant claimed that he could

[2] Defendant cites R. 7:2-3 as the Rule that "sets forth the circumstances under which a bench warrant may be issued." That rule applies to Municipal Court, not Superior Court and, therefore, is inapplicable to the case at hand.

have been physically produced with a court order or that he should have been permitted to appear telephonically or via zoom. The trial court asked defendant to provide law in support of his assertion that the court could compel a federal agency out of state to produce defendant for his first appearance. Defendant acknowledged there was no Court Rule, and instead argued that because there was no Court Rule that barred it, the rule of lenity should permit it. (1T4-2 to 7). This argument was without merit and appears to have been abandoned on appeal. Defendant did not offer another basis for the relief at issue.

Instead, now, defendant alleges constitutional principles, court rules, and case law mandate the vacatur of the bench warrant. (Db9). This claim similarly is without merit. Defendant's reliance on State v. Fajardo-Santos, 199 N.J. 520 (2009), State v. Molchor, 464 N.J. Super. 274, 294 (App. Div. 2020), aff'd sub nom, State v. Lopez-Carrera, 245 N.J. 596 (2021), and principles associated with bail and pretrial detention is misplaced. Defendant was granted pretrial release. (Pa1 to 5). Specifically, Judge Inacio released defendant on his own recognizance with limited conditions. Ibid. Notably, the trial court did not rule that defendant's non-appearance violated his conditions of release, express any indication that the court intended to modify defendant's conditions of release based on his non-appearance, and did not punish

defendant for his non-appearance. Rather, the trial court aptly recognized that defendant is in the out-of-state custody of a federal agency and that a bench warrant would ensure that he is sent to Union County upon resolution of his federal proceedings. As such, the court's issuance of a bench warrant, in accordance with R. 3:7-8, and not a pretrial detention order, was proper and defendant's claim is meritless.

Moreover, contrary to defendant's assertion, this case is distinguishable from Molchor. In Molchor, a pretrial detention court issued a pretrial detention order because it found that the defendant, who was an undocumented immigrant, might be deported and, therefore, he presented a great risk of non-appearance. Molchor, 464 N.J. Super. at 283. The Appellate Division ruled that it was inappropriate to consider the risk of defendant's involuntary non-appearance, resulting from federal immigration officials', when evaluating whether a pretrial detention order was appropriate. Id. at 294-95. This ruling was then affirmed by the Supreme Court. State v. Lopez-Carrera, 245 N.J. 596 (2021).

Unlike Molchor, this case does not involve a pretrial detention order. Indeed, as previously stated, defendant was released on pretrial conditions and presumably would remain released once the bench warrant detainer was satisfied. Moreover, unlike Molchor, the trial court, here, was not considering

potential future risks or probabilities. Rather, here, the trial court saw what was before it, or more specifically who was not before it, on the date of arraignment, and issued a bench warrant as a detainer in accordance with R. 3:7-8. Unlike Molchor, here, the court's concern was based upon the real event that occurred and not speculative fears. Thus, although both Molchor and this case involve defendants who have immigration concerns, they nevertheless are distinguishable in a very important respect: the trial court in this case did not use defendant's immigration status as a basis for its ruling.

Defendant's reference to State v. Quintana, 270 N.J. Super. 676 (App. Div. 1994), is similarly misplaced. In Quintana, the defendant pleaded guilty to a minor criminal charge, but then failed to show up at her sentencing. Id. at 678. The record was devoid of any proof that the defendant was ever advised of the sentencing date, which occurred four and a half months after her plea. Id. at 679. Thereafter, defendant was arrested twice, on bench warrants for her failure to appear at her sentencing. Id. at 679-80. However, as the Appellate Division noted, the record did not contain any proof that the defendant was advised of future court dates when she pleaded guilty, when she was arrested on the bench warrants, or when she was released from jail after posting bail. Ibid. Moreover, the record did not indicate what efforts the defendant's public defender made to locate the defendant. Ibid. Thus, as the Appellate Division

found, there was nothing to indicate that the defendant was aware of her court proceedings. Ibid. Accordingly, the Appellate Division found that a "defendant's nonappearance at sentencing cannot be deemed wilful [sic] if she was neither actually notified of the sentencing date nor ordered to keep either the court or the Probation Department advised of her changes of address." Id. at 684.

However, Quintana is distinguishable from the present matter. Foremost, unlike Quintana, the record unequivocally establishes that he was apprised of the date he needed to appear. The Summons on Indictment explicitly advised defendant that he needed to appear before Judge Boretz on October 7, 2024 at 8:30 a.m. (Pa6). Defendant did not do so. Thus, defendant is not similarly situated to the defendant in Quintana.

Moreover, unlike the defendant in Quintana, defendant is not being punished or found guilty for his failure to appear. The trial court did not issue a pretrial detention order or use defendant's immigration status as a basis to hold him. Rather, here, the trial court merely issued a Bench Warrant as a Detainer to ensure defendant will be brought to court when his immigration matter is resolved. As such, the order, its purpose, and its effect are all different than the finding at issue in Quintana. Therefore, the holding of Quintana is inapplicable here and defendant's reliance upon same is misplaced.

The State also notes that defendant's claim that "[t]he bench warrant is therefore the only obstacle preventing [defendant] from negotiating a resolution, filing a motion to dismiss the indictment, and other procedures that do not require his physical presence in court[,]" similarly is without merit. (Db9). And, defendant's assertion that the bench warrant prevents him from appearing telephonically or by writ likewise is meritless. (Db9). A bench warrant does not prevent the exchange of discovery. The issuance of a bench warrant does not stop counsel from speaking with defendant, discussing the case, and formulating a strategy. And, the existence of a bench warrant does not foreclose plea negotiations. Defendant's non-appearance, whether the result of his own creation or not, is the cause of any delay in proceedings, not the presence of a bench warrant. Although his non-appearance may be the result of his detention in ICE custody in Pennsylvania, it is not the result of the court's bench warrant.

Moreover, although the trial court denied defendant's request to appear at the arraignment telephonically, that was not because the court issued a bench warrant. Indeed, based on the order of proceedings, it appears that the bench warrant was issued after the court chose to deny defendant's request to appear telephonically. Thus, it is clear the harms defendant alleges pre-existed

the issuance of the bench warrant and, thus, the bench warrant cannot be their cause.

In sum, defendant does not establish how the trial court's order was legally erroneous, let alone show how he will be irreparably harmed by the issuance of a bench warrant. Contrary to defendant's claim, the bench warrant does not punish defendant for his immigration status. It is not a pretrial detention order. And, it does not prevent him from preparing a defense or his right to due process. Rather, the trial court correctly followed the requirements of R. 3:7-8 and issued a bench warrant as a detainer to ensure defendant will appear at a future date if he becomes available to produce. Thus, defendant fails to explain why the interests of justice calls for an appellate court's intervention. The Appellate Division properly denied defendant's Motion for Leave to Appeal and this Court should similarly deny defendant's motion.

CONCLUSION

For the foregoing reasons, the State respectfully requests that defendant's Motion for Leave to Appeal be denied.

Respectfully submitted,

WILLIAM A. DANIEL
Prosecutor of Union County

s/Milton S. Leibowitz

By: MILTON S. LEIBOWITZ
Assistant Prosecutor
Attorney ID No. 082202013

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