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|---------------------|---|-----------------------------------|
| STATE OF NEW JERSEY | : | SUPERIOR COURT OF NEW JERSEY      |
| Plaintiff,          | : | LAW DIVISION - CRIMINAL PART      |
|                     | : | SALEM COUNTY                      |
| v.                  | : |                                   |
|                     | : | INDICTMENT NO.: 24-12-400-I       |
| SEAN HIGGINS        | : |                                   |
| Defendant.          | : | <b>BRIEF IN SUPPORT OF MOTION</b> |
|                     | : | <b>TO DISMISS THE INDICTMENT</b>  |
|                     | : |                                   |

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**Statement of Facts**

On August 29, 2024, Mr. Higgins was driving a motor vehicle along County Route 551 (Pennsville Auburn Road), in the area of milepost 11.15, located in Oldmans Township, Salem County, New Jersey at approximately 8:20 p.m. According to reports, Mr. Higgins attempted to pass a motor vehicle and when he could not, and entered back into the lane of travel, he struck and killed two (2) bicyclists. Mr. Higgins was subsequently arrested and charged with two (2) counts of Reckless Death By Auto or Vessel (Vehicular Homicide).

On December 11, 2024, Mr. Higgins was matter was presented to a Grand Jury. [REDACTED]

[REDACTED]  
[REDACTED] The Grand Jury returned a six-count indictment against Mr. Higgins for two counts of Reckless Vehicular Homicide (2C:11-5a), two counts of Aggravated Manslaughter (2C:11-4a(1)), one count of Tampering with Physical Evidence (2C:28-6(1)), and one count of Leaving the Scene of a Fatal Accident (2C:11-5.1). [REDACTED]

[REDACTED]  
[REDACTED] For the reasons as set forth below, the Court should dismiss Counts 3, 4, and 6 of the above-captioned indictment.

## Legal Arguments

### Counts Three and Four of The Indictment Should Be Dismissed for the State's Failure to Allege an Essential Element of the Offense as well as Lack of Evidence before the Grand Jury

“In seeking an indictment, the prosecutor’s sole evidential obligation is to present a prima facie case that the accused has committed a crime.” State v. Hogan, 144 N.J. 216, 229 (1996).

“Nevertheless, in establishing its prima facie case against the accused, the State may not deceive the grand jury or present its evidence in a way that is tantamount to telling the grand jury a ‘half-truth.’” Id.

[T]he grand jury cannot be denied access to evidence that is credible, material, and so clearly exculpatory as to induce a rational grand juror to conclude the State has not made out a prima facie case against the accused. If evidence of that character is withheld from the grand jury, the prosecutor, in essence, presents a distorted version of the facts and interferes with the grand jury’s decision-making function.

Id.

Counts 3 and 4 of the indictment charge Mr. Higgins with Aggravated Manslaughter. A defendant is guilty of aggravated manslaughter if he recklessly causes the death of another person under circumstances manifesting extreme indifference to human life. N.J.S.A. 2C:11-4a, Model Jury Charge. In order for a defendant to be found guilty of aggravated manslaughter, the State must prove that (1) the defendant caused the named victim’s deaths, (2) the defendant did so recklessly, and (3) the defendant did so under circumstances manifesting extreme indifference to human life. Id. The essential element at question is “circumstances manifesting extreme indifference to human life.” The phrase “under circumstances manifesting extreme indifference to human life” does not focus on defendant’s state of mind, but rather on the circumstances under which you find he acted. Id. The defendant’s conduct must result in a *probability* as opposed to a

mere *possibility* of death in order to find that the defendant acted under circumstances manifesting extreme indifference to human life. Id.

In State v. Curtis, 195 N.J. Super. 354, 364-65 (App. Div. 1984), the court found that the difference between aggravated manslaughter and reckless manslaughter (as alleged in Counts 1 and 2 of the instant indictment) is the degree of risk created by defendant's conduct. If, under all the surrounding circumstances, the defendant's conduct creates a probability, as opposed to a "mere possibility" of death, then the circumstances manifest "extreme indifference to human life" and the offense is aggravated manslaughter. Id. at 365.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]















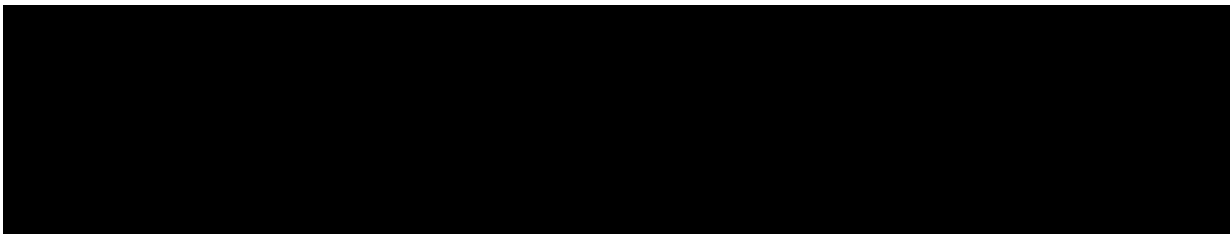
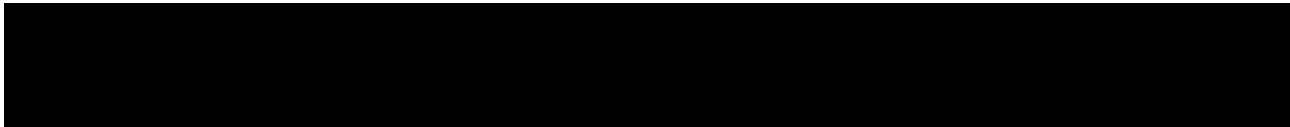
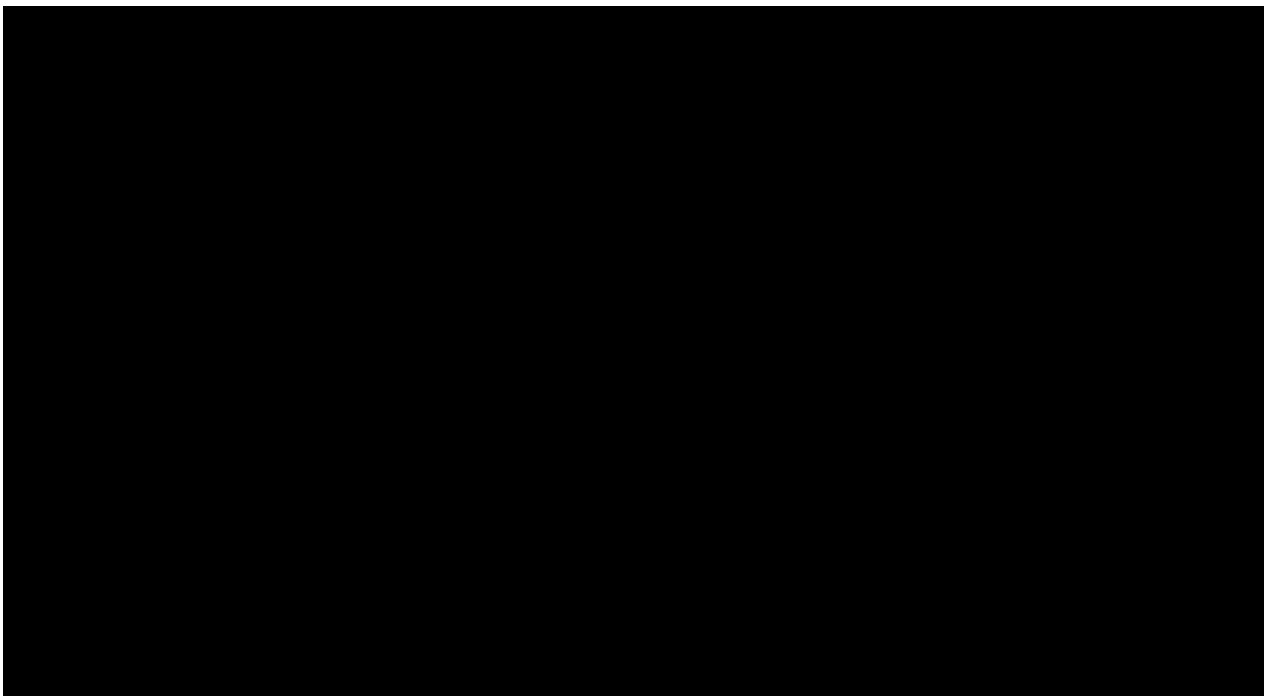
As the Court in Curtis, supra, found “If, under all the surrounding circumstances, the defendant’s conduct creates a probability, as opposed to a “mere possibility” of death, then the circumstances manifest “extreme indifference to human life” and the offense is aggravated manslaughter.” Id. at 365. Here, the State failed to present a prima facie case for Aggravated Manslaughter as neither Trooper Pope nor Trooper Allonardo’s testimony showed that Mr. Higgins actions created a probability of death as opposed to a mere possibility. Counts 3 and 4 of the Indictment should be dismissed.

**Count Six of The Indictment Should Be Dismissed for the State’s Failure to Allege an Essential Element of the Offense as well as Lack of Evidence before the Grand Jury**

Count 6 of the Indictment charges Mr. Higgins with Leaving the Scene of a Fatal Accident. A defendant is guilty of leaving the scene of a fatal accident if the “motor vehicle operator who knows that he is involved in an accident and knowingly leaves the scene of that accident . . . shall be guilty of a crime . . . if the accident results in the death of another person.” N.J.S.A. 2C:11-5.1, Model Jury Charge. In order for a defendant to be found guilty of leaving the scene of a fatal accident, the State must prove that (1) the defendant was operating a motor vehicle, (2) the defendant was involved in an accident while operating that motor vehicle, (3) the defendant knew that he was involved in an accident, (4) the defendant knowingly left the scene of that accident under circumstances that violated the provisions of the New Jersey Motor

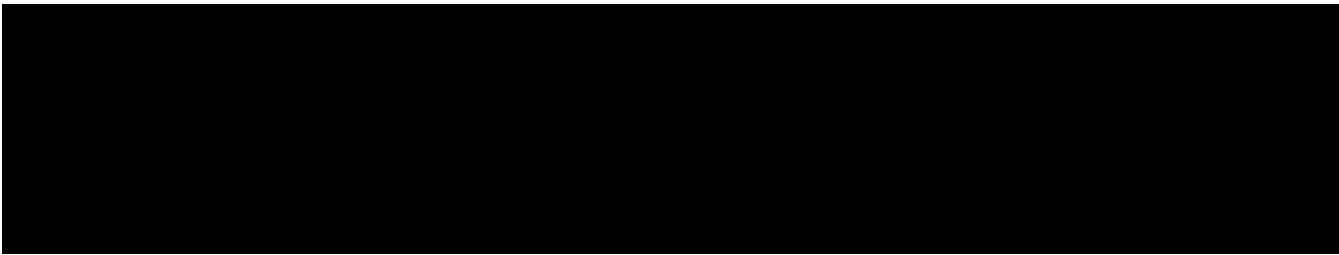
Vehicle Code [N.J.S.A. 39:4-129], and (5) the accident resulted in the death of another person. Id. N.J.S.A. 39:4-129(a) states that “[t]he driver of any vehicle, knowingly involved in an accident resulting in injury or death to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene.”

The focus of our analysis centers around the fourth element which is predicated upon a violation of N.J.S.A. 39:4-129. Our focus is even more narrowly drawn to the proximity of Mr. Higgins Jeep final resting place and the point of collision with the victims. As N.J.S.A. 39:4-129 clearly states and as laid out above, a defendant must “immediately” stop their vehicle at the scene or “as close thereto as possible.”

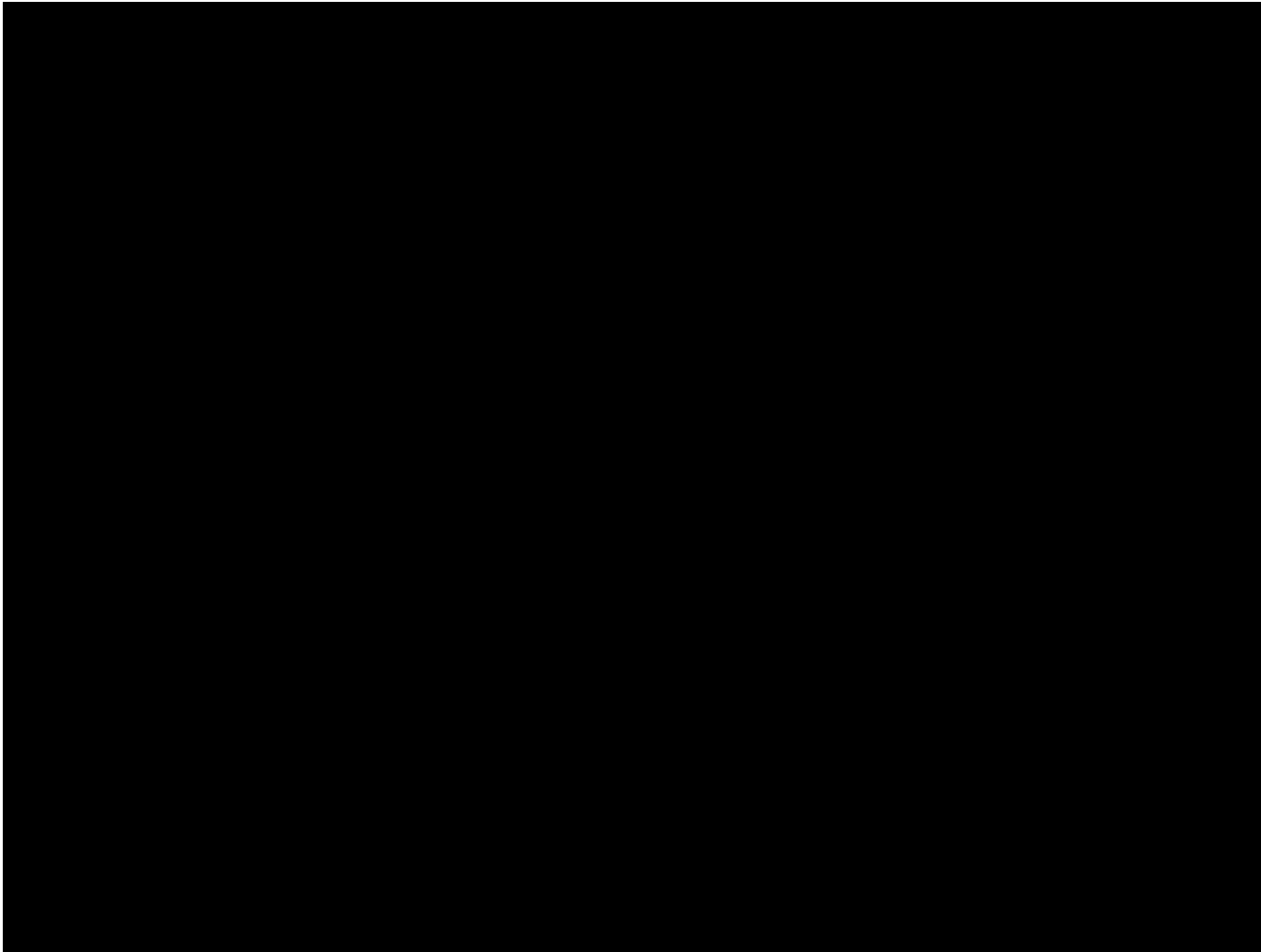
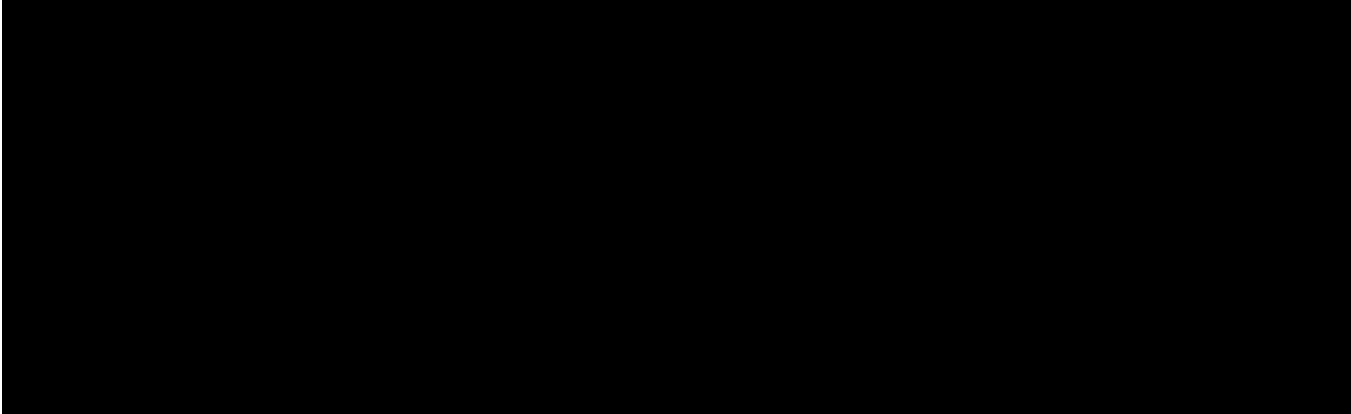


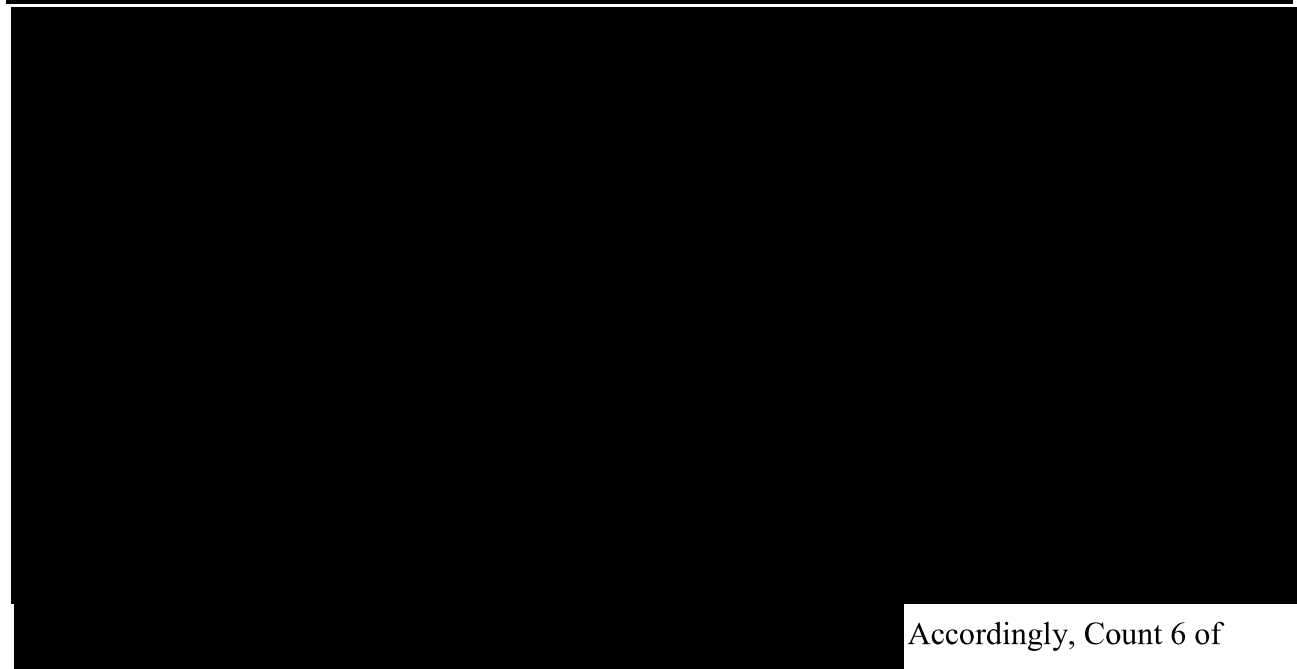
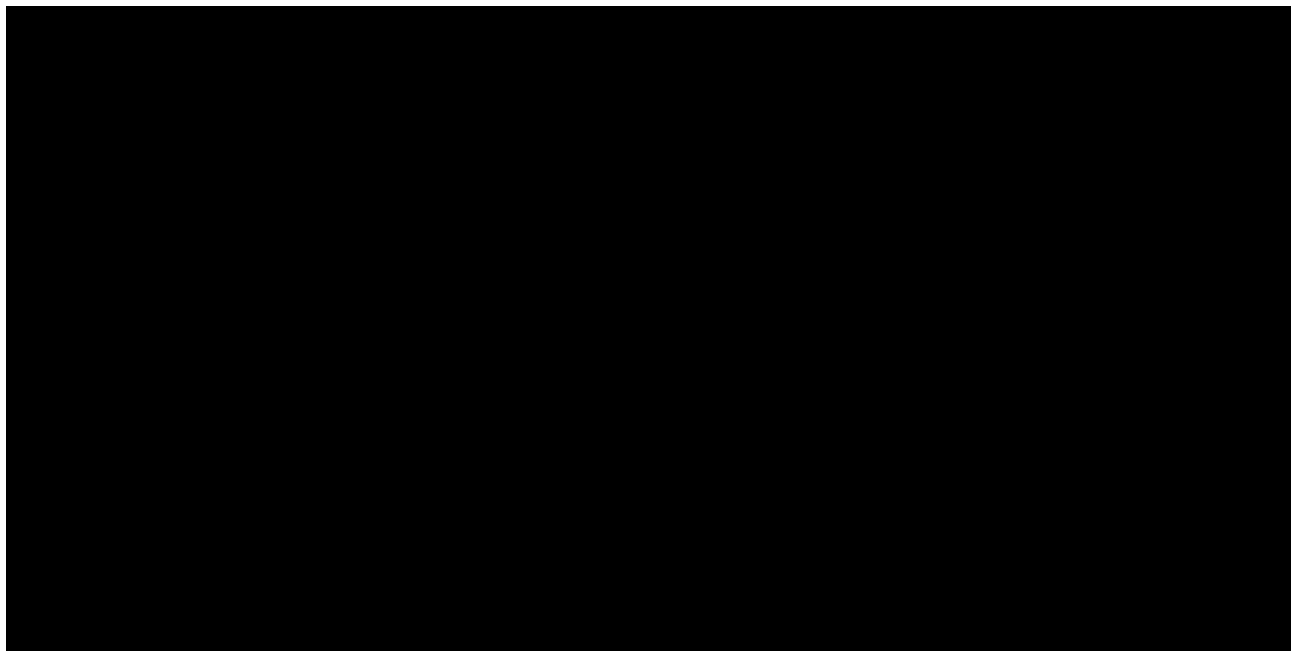






Finally, N.J.S.A. 39:4-129 states the defendant “shall then forthwith return to and in every event shall remain at the scene.”

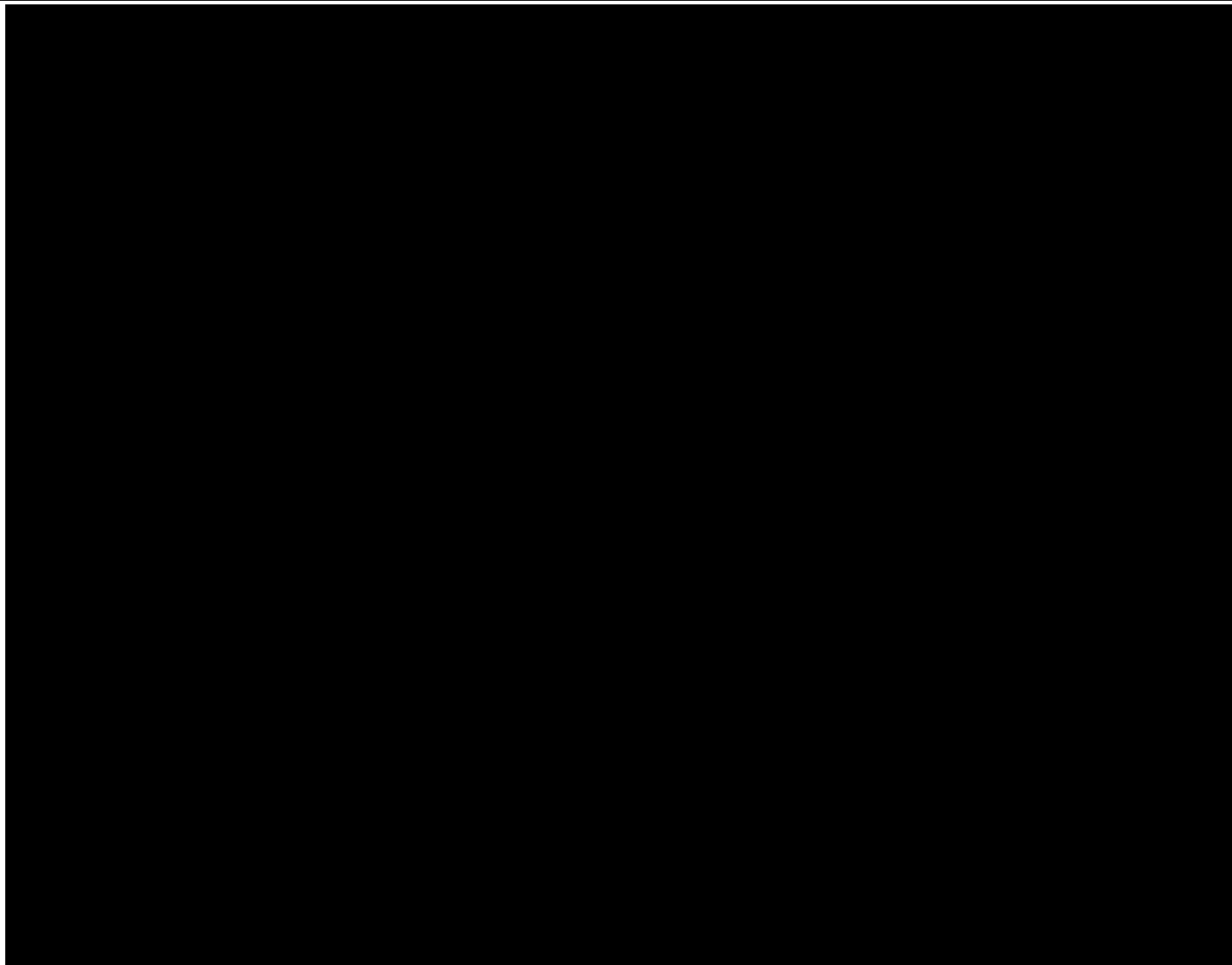
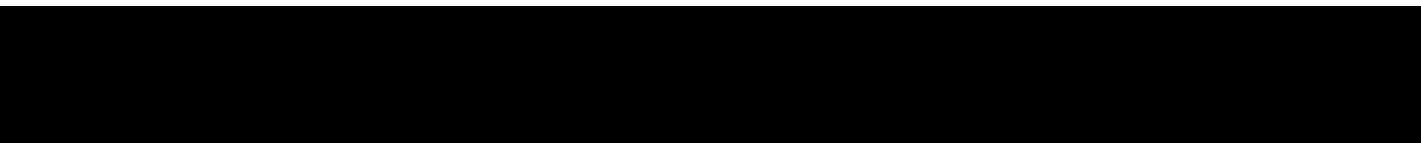




Accordingly, Count 6 of

the above-captioned Indictment should be dismissed.

**The Indictment Should Be Dismissed for the State's Failure to Advise  
the Grand Jury of Possible Contributory Negligence**



Person who operated a motorized bicycle (moped) while under the influence of intoxicating liquor could be found guilty of violating the Drunken Driver Statute, N.J. Stat. Ann. § 39:4-50, even though under N.J. Stat. Ann. § 39:1-1, the definition of a motor vehicle did not include mopeds because pursuant to N.J. Stat. Ann. §§ 39:4-14.1 and 39:4-14.3, the operation of

a moped upon a public road was subject to the same standards of conduct and care as was the operation of a motor vehicle. State v. Lyons, 152 N.J. Super. 533, 378 (1977), *aff'd*, 159 N.J. Super. 100, (App.Div. 1978). Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by chapter four of Title 39 of the Revised Statutes and all supplements thereto except as to those provisions thereof which by their nature can have no application. Regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. *See* State v. Tehan 190 N.J. Super. 348, (1982).

Evidence of intoxication is relevant to the issue of negligent driving. Maladowitz v. Coley, 47 N.J. 55 (1966); Roether v. Pearson, 36 N.J. Super. 465 (App.Div.1955); *see also* Damchug v. Public Serv. R. Co., 5 N.J.Misc. 365, 136 *A.* 604 (Sup.Ct.1927). Gustavson v. Gaynor, 206 N.J. Super. 540, 544, (Super. Ct. App. Div. 1985).

As set forth in Tehan, "... the drunken operator of a bicycle may create situations endangering both himself and others on the roads. He might, for example, swerve into traffic, cross the line into oncoming traffic, or fall in the path of traffic. Therefore, the operator of a bicycle is under an obligation to stay off the roads when intoxicated."





As the New Jersey Supreme Court set forth in State v. Hogan, 144 N.J. 216 (1996):

In order to perform that vital protective function, the grand jury cannot be denied access to evidence that is credible, material, and so clearly exculpatory as to induce a rational grand juror to conclude that the State has not made out a *prima facie* case against the accused. See Peter Arenella, "Reforming the Federal Grand Jury and the State Preliminary Hearing to Prevent Conviction Without Adjudication," 78 *Mich. L.Rev.* 468, 549 (1980). If evidence of that character is withheld from the grand jury, the prosecutor, in essence, presents a distorted version of the facts, *id.* at 551, and interferes with the grand jury's decision-making function. See Murphy, *supra*, 110 N.J. at 35, ; *cf.* State v. Marshall, 123 N.J. 1, (1991) ("The primary duty of a prosecutor is not to obtain convictions but to see that justice is done.").

This is clearly not an argument that simply because the cyclists were intoxicated that it somehow exonerates Mr. Higgins by way of an affirmative defense and the Indictment should be dismissed with prejudice. Rather, in an effort to ensure that a matter of this magnitude where the State is making plea offer where they are requesting five (5) times the state prison sentence of others similarly charged, there is a heightened need for transparency throughout the proceedings from start to finish.

[REDACTED] United

Supreme Court Chief Justice Earl Warren wrote in Wood v. Georgia 370 U.S. 375 (1962) that the grand jury serves as “primary security to the innocent against hasty, malicious and oppressive prosecution.... the invaluable function in our society of standing between the accuser and the accused . . . to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will.” Mr. Higgins is not demanding to be treated differently than any other but rather is respectfully requesting that the presentation of the charges against him be full, complete and transparent so as to allow him the ability to fairly defend the matter at bar.

### **Conclusion**

For the reasons listed above, the indictment against Sean Higgins should be properly dismissed.

Respectfully Submitted,  
Co-Counsel for Defendant, Sean M. Higgins:

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*Matthew V. Portella*

Matthew V. Portella, Esquire  
Attorney ID#19921994  
Matthew V. Portella, LLC  
25 Chestnut Street, Suite 2  
Haddonfield, New Jersey 08033  
Telephone: (856) 310-9800  
Email: matt@mvplawoffice.com

*Richard F. Klineburger, III*

Richard F. Klineburger, III, Esquire  
Attorney ID#037671995  
Klineburger & Nussey  
38 North Haddon Avenue  
Haddonfield, New Jersey 08033  
Telephone: (856) 428-7000  
Email: [rfk@klineburgerandnussey.com](mailto:rfk@klineburgerandnussey.com)











































































































































































