SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1157-22

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of
v.	:	New Jersey, Law Division, Somerset County.
AJMAL NESBIT,	:	
		Indictment No. 21-06-433-I
Defendant-Appellant.	:	
	:	Sat Below:
		Hon. Michael J. Rogers, J.S.C. Hon. Peter J. Tober, J.S.C.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Failure to signal a lane change is not a violation of New Jersey's Motor Vehicle Code. Under N.J.S.A. 39:4-126, a motorist must signal an intention to "turn" if the turn could affect other traffic. In addition, a motorist must not "move right or left upon a roadway" unless and until the movement can be made with safety. Although the statute does not explicitly refer to lane changes, a lane change necessarily involves a "move[ment] right or left upon a roadway," such that the statute prohibits unsafe lane changes. When it comes to unsignaled lane changes, however, there is no similar prohibition, as a lane change does not qualify as a "turn" within the meaning of N.J.S.A. 39:4-126.

In recent years, our Supreme Court has time and again found unlawful car stops that were premised on an officer's observation of road behavior that he incorrectly believed to be in violation of the Motor Vehicle Code. In so doing, the Court has repeatedly warned against overly broad readings of traffic laws, which would fail to provide drivers with sufficient notice of proscribed conduct and open the door wide to pretextual stops that result in discriminatory enforcement.

In this case, Ajmal Nesbit was a passenger in a car that was pulled over after the driver began to change lanes without first activating a turn signal. Because a lane change is not a "turn" within the meaning of N.J.S.A. 39:4-126,

the failure to signal the lane change was not a motor vehicle violation, and therefore the motion court erred in finding that police had reasonable and articulable suspicion to stop the car. In the alternative, because the word "turn" in N.J.S.A. 39:4-126 is unconstitutionally vague as applied to the conduct of changing lanes, the failure to signal a lane change cannot serve as the basis for a traffic stop.

Moreover, even if a lane change qualifies as a "turn" within the meaning of the statute, the motion court nevertheless erred in finding that the traffic stop was justified. A motorist must signal a turn only "in the event any other traffic may be affected" by the movement. Here, the record does not establish that police had reasonable and articulable suspicion that other traffic on the road could have been affected by the driver's lane change. Consequently, the motion court's decision upholding the car stop must be reversed.

PROCEDURAL HISTORY

Somerset County Indictment Number 20-03-156, issued on March 4, 2020, charged Ajmal Nesbit with fourth-degree criminal trespass, in violation of N.J.S.A. 2C:18-3a. (Da 1)[1] Somerset County Indictment Number 21-06-433, issued on June 2, 2021, charged Nesbit with third-degree possession with intent to distribute a controlled dangerous substance, in violation of N.J.S.A. 2C:35-5a(1) and 2C:35-5b(5). (Da 2) Somerset County Complaint Warrants 2019-50-1809 and 2020-01-1818 each charged Nesbit with the disorderly persons offense of possession of less than 50 grams of marijuana or 5 grams of hashish, in violation of N.J.S.A. 2C:35-10a(4), and the former warrant also charged Nesbit with the disorderly persons offense of possession with intent to use drug paraphernalia, in violation of N.J.S.A. 2C:36-2. (Da 16, 19)

On July 29, 2020, a suppression hearing on Indictment Number 21-06-433 was held before the Honorable Michael J. Rogers, J.S.C. (1T) On August 4, 2020, the court denied the motion to suppress in a written opinion. (Da 3-9)

On September 23, 2022, Nesbit entered a guilty plea to third-degree possession with intent to distribute a controlled dangerous substance (Indictment

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[1] Da — Defendant's appendix
1T – Transcript of July 29, 2020 hearing on defense motion to suppress
2T – Transcript of September 23, 2022 plea hearing
3T – Transcript of December 9, 2022 sentencing

No. 21-06-433) and to an amended petty disorderly persons offense of criminal trespass, in violation of N.J.S.A. 2C:18-3b (Indictment No. 20-03-156). (Da 10-15; 2T 3-17 to 4-3) In exchange, the prosecutor agreed to dismiss the pending charges in the complaint warrants and recommend a sentence of four years flat on the possession charge and 30 days on the trespass charge, to be served concurrently. (Da 13, 15; 2T 3-24 to 4-3) The prosecutor also agreed to recommend that the custodial sentences be stayed pending the resolution of Nesbit's appeal of the denial of his motion to suppress. (Da 13, 15; 2T 4-4 to 10)

On December 9, 2022, the Honorable Peter J. Tober, J.S.C., sentenced Nesbit in accordance with the plea agreement to an aggregate term of four years and imposed all appropriate fines and assessments. (3T 8-21 to 9-24; Da 16-22) In addition, Judge Tober dismissed the pending charges in the complaint warrants and stayed the imposition of the custodial sentences until the Appellate Division renders a decision on the appeal of the suppression motion. (3T 9-1 to 3, 9-18 to 18, 9-25 to 10-4; Da 16, 19)

Nesbit filed a notice of appeal on December 15, 2022. (Da 23-27)

STATEMENT OF FACTS

On August 29, 2019, Officer Joshua Manzo, who was at that time employed by the Somerset County Sheriff's Department, was acting as the field training officer for Officer Michael Kromar, who was new to the job. (1T 9-8 to 13, 10-9 to 11, 10-23 to 11-5) Kromar was in the "road phase" of his training, which meant that he was learning how to identify traffic violations and execute traffic stops. (1T 11-9 to 12-4) As they drove in a marked patrol vehicle, Manzo instructed Kromar to call out if he observed "any of the wide variety of things you can pull a car over for." (1T 12-19 to 21, 45-8 to 19) Kromar testified that the goal of this training was "just to get reps in with" pulling over vehicles. (1T 45-24 to 46-3)

By about 1:30 p.m., the officers had already made 10 or so traffic stops. (1T 46-4 to 14) While driving westbound in Green Brook Township on Route 22, a four-lane highway, they got behind a white sedan in the left lane. (1T 15-21 to 24, 16-4 to 8, 16-14 to 23, 46-10 to 14) The sedan, after the patrol vehicle got behind it, began to move to the right lane. (1T 16-9 to 10) Manzo testified that the driver "appeared to look in her rearview mirror" as she switched lanes and that the sedan's blinker did not come on until the vehicle's right tires were already partially in the right lane. (1T 16-8 to 13, 19-2 to 7)

According to Manzo, there was a "medium amount of traffic" on the road at the time the sedan changed lanes. (1T 17-17 to 21) Manzo explained that "[i]t was the middle of the day during the week in a populated area" and there were cars in both lanes of Route 22 heading westbound. (1T 17-22 to 18-1) Manzo did not testify that the lane change was unsafe in any manner.

Once the sedan had moved to the right lane, the patrol vehicle followed suit so that it was directly behind the sedan again. (1T 18-16 to 20) The backseat passenger of the sedan then turned around to look at the patrol car. (1T 19-12 to 18) The two vehicles stopped at a red light, at which point Manzo activated his body-worn camera. (1T 19-19 to 20-5, 21-1 to 2) When the light turned green, Manzo activated his emergency lights to initiate a traffic stop. (1T 20-10 to 13)

After both vehicles had pulled into a parking lot, Manzo walked up to the driver's side window of the sedan. (1T 20-15 to 16, 21-11 to 12, 21-19 to 21) There were three people in the car: Ashley Smith, the driver; Ajmal Nesbit, the front-seat passenger; and Matthew Williams, the back-seat passenger. (1T 22-9 to 17) Manzo explained to Smith that he stopped the car because Smith left her lane and "did not use her turn signal properly." (1T 23-24 to 24-7)

Manzo testified that he smelled marijuana emanating from inside the sedan during this initial conversation with the occupants. (1T 23-2 to 5) After returning to his patrol vehicle to request a warrant check on all three occupants,

Manzo asked Smith to step out of the car so that he could speak with her. (1T 25-14 to 20, 27-7 to 10) He proceeded to tell her that her car smelled like marijuana. He then asked where inside the vehicle the marijuana was hidden, and Smith admitted that there was marijuana in the center console. (1T 27-13 to 19)

At this point, Manzo walked up to the passenger side of the sedan and ordered Nesbit to exit. (1T 28-23 to 29-3) Manzo then searched Nesbit's person and recovered an object that appeared to be narcotics, and which was later determined to be fentanyl. (1T 28-23 to 29-14, 29-21 to 23) Nesbit was handcuffed at the scene and later indicted on a charge of third-degree possession with intent to distribute a controlled dangerous substance. (1T 30-18 to 19; Da 2)

After hearing testimony and argument, the trial court denied Nesbit's motion to suppress. (Da 3) The court first concluded that the stop was lawful because the officers had reasonable and articulable suspicion that a traffic violation had occurred. The court explained that, pursuant to N.J.S.A. 39:4-126, a vehicle must signal a lane change when any other traffic may be affected by the movement. (Da 5) Relying on the officers' testimony, the court found that the sedan did not activate its blinker until it had already begun to change lanes and that other cars could have been impacted by this movement. (Da 5-6)

Second, the court held that the warrantless search of Nesbit's person was lawful in light of the odor of marijuana emanating from the vehicle and Smith's admission that there was marijuana in the center console. (Da 6-9) On appeal, Nesbit does not challenge this second ruling and instead focuses on the lawfulness of the stop.

LEGAL ARGUMENT

POINT I

THE TRAFFIC STOP WAS UNLAWFUL BECAUSE N.J.S.A. 39:4-126 CANNOT BE CONSTRUED TO REQUIRE A MOTORIST TO SIGNAL AN INTENTION TO CHANGE LANES. EVEN IF SUCH A CONSTRUCTION WERE PERMISSABLE, POLICE LACKED REASONABLE AND ARTICULABLE SUSPICION THAT A SIGNAL WAS REQUIRED UNDER THE CIRCUMSTANCES. (Da 3-9)

Both the United States and New Jersey Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7. "A motor-vehicle stop by the police, however brief or limited, constitutes a seizure of persons within the meaning of those provisions." State v. Scriven, 226 N.J. 20, 33 (2016) (internal quotations omitted). Warrantless car stops are prima facie invalid, and the State bears the burden of justifying such a seizure by a preponderance of the evidence. State v. Atwood, 232 N.J. 433, 446 (2018). "To justify a stop, an 'officer must have a reasonable and articulable suspicion that the driver . . . is committing a motor-vehicle violation' or some other offense." State v. Carter, 247 N.J. 488, 524 (2021) (quoting Scriven, 226 N.J. at 33-34).

Here, the State failed to meet its burden to justify the warrantless stop of Smith's vehicle. Officer Manzo testified that he stopped the sedan because it

failed to activate its blinker prior to changing lanes. (1T 23-24 to 24-7)[2] But N.J.S.A. 39:4-126 unambiguously does not require that a motorist signal his intention to make a lane change. To the contrary, the plain language of the statute indicates that a signal is only required when a vehicle stops or suddenly decreases speed, or when a vehicle turns if that turn could affect other traffic. With respect to a lane change, the statute merely prohibits such movement unless and until it can be effectuated safely. See N.J.S.A. 39:4-126.

An officer's mistaken belief about what the law prohibits cannot justify a traffic stop. Carter, 247 N.J. at 531. That outcome would impermissibly erode core principles of our State Constitution, such as the rule of law and equal justice under the law. Ibid. To uphold these ideals, "we depend on legislators to craft clear statutes" and "call on officers to learn the law in advance and enforce it correctly." Ibid. Moreover, "we count on judges to interpret and uphold the laws as written — not to validate an officer's mistaken view of the law, even if reasonable." Ibid.

[2] Officer Manzo also testified that Nesbit was not wearing a seatbelt, which constitutes a violation of N.J.S.A. 39:3-76.2f. (1T 24-8 to 11) The officer clarified, however, that he did not notice that anyone in the sedan was not wearing a seatbelt before he pulled the car over. (1T 38-18 to 39-1) Consequently, Nesbit's failure to wear a seatbelt did not provide reasonable and articulable suspicion to initiate the traffic stop.

Because N.J.S.A. 39:4-126 unambiguously does not prohibit changing lanes without signaling, Officer Manzo was wrong to stop the sedan on that basis. Alternatively, if the statute is construed as anything other than unambiguous in this regard, it must be deemed unconstitutionally vague as applied to the conduct of changing lanes without signaling. In either case, the traffic stop was unlawful, and all evidence seized during the course of the stop must be suppressed.

Furthermore, even if the statute could be read to require a motorist to signal a lane change under certain circumstances, Officer Manzo did not have reasonable and articulable suspicion that those circumstances were present here. Because the stop was not supported by reasonable and articulable suspicion of a motor vehicle violation, the stop was unconstitutional, and suppression is required.

A. The Plain Language of N.J.S.A. 39:4-126 Does Not Require a Motorist to Signal a Lane Change Because a Lane Change is Not a "Turn" Within the Meaning of the Statute. Alternatively, the Word "Turn" as Used in the Statute is Unconstitutionally Vague as Applied to the Conduct of Changing Lanes.

Whether the Motor Vehicle Code requires a motorist to signal a lane change under any circumstances is an issue of first impression in New Jersey. Although the New Jersey Supreme Court in State v. Williamson, 138 N.J. 302 (1994), considered under what circumstances a motorist may be pulled over for

failing to signal a lane change, the Williamson Court was not presented with the question of whether the statute's signaling requirement applies to lane changes in the first instance. It appears that neither party raised this issue in Williamson, and thus the Court assumed that the requirement applies without expressly deciding or even considering it. In State v. Jones, 326 N.J. Super. 234 (App. Div. 1999), the Appellate Division applied the holding of Williamson, but it similarly appears that the Jones Court was not asked to consider the issue raised here. Given this lack of precedent, the Court must be guided by settled principles of statutory interpretation. A straightforward application of these principles indicates that N.J.S.A. 39:4-126 contains no requirement that motorists signal prior to changing lanes.

In interpreting a statute, "[t]he overriding goal . . . is to determine and give meaning to the Legislature's intent." Carter, 247 N.J. at 513. "The plain language of a statute is the best indicator of the statute's meaning, and statutory words should be read as they are commonly used and ordinarily understood." Scriven, 226 N.J. at 34. In addition, courts should "read and construe words and phrases in their context," "consider[ing] the words of a statute in context with related provisions so as to give sense to the legislation as a whole." Carter, 247 N.J. at 513 (internal quotations omitted).

"If the plain language leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources." State v. D.A., 191 N.J. 158, 164 (2007). Courts may "only turn to extrinsic evidence in limited circumstances, such as when 'there is ambiguity in the statutory language that leads to more than one plausible interpretation'" or when "a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language." Ibid. (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

The first sentence of N.J.S.A. 39:4-126 provides as follows: "No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 39:4-123, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway, or start or back a vehicle unless and until such movement can be made with safety." (emphasis added). The second sentence provides that "[n]o person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement." Ibid. (emphasis added). The statute also provides that "[n]o person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear." Ibid. The statute then offers

guidance as to how to signal an intention to turn left, turn right, and stop or decrease speed. Ibid.

As the plain language makes clear, a signal is required whenever a vehicle stops or decreases speed, and a signal is required when a vehicle "turn[s]" if the turn could affect other traffic. In contrast, when a vehicle "move[s] right or left upon a roadway" or starts or backs, no signal is required, but the movement is prohibited unless it can be made with safety. Because a car necessarily moves right or left upon a roadway to accomplish a lane change, N.J.S.A. 39:4-126 prohibits unsafe lane changes. The statute does not, however, require a signal when making a lane change, as a lane change does not constitute a "turn" within the meaning of the statute. Nor, of course, must a vehicle stop or decrease speed to accomplish a lane change, such that a signal would be required.

The ordinary meaning of the word "turn" demonstrates that the Legislature did not intend for the word "turn" to encompass a lane change. In the context of driving a car, it is commonly understood that a "turn" involves a change in course or direction. See The American Heritage Dictionary, https://ahdictionary.com/word/search.html?q=turn (last visited Nov. 27, 2023). (defining the verb "turn" as "[t]o change the direction or course of"). It is apparent that the Legislature used the word "turn" in a manner consistent with its common meaning in light of its inclusion of the phrase "or otherwise turn a

vehicle from a direct course" in the first sentence of the statute. See N.J.S.A. 39:4-126. This phrase functions as a catchall, invoking any type of turn that one could make beyond the two types specifically listed: a turn at an intersection and a turn to enter a private road or driveway. See Paroline v. United States, 572 U.S. 434, 447 (2014) ("[C]atchall clauses are to be read as bringing within a statute categories similar in type to those specifically enumerated.) (Internal quotations omitted.)

A car that changes lanes does not "turn," as that word is commonly understood, because it does not change course. The American Heritage Dictionary defines "course" as "[t]he route or path taken by something that moves, such as a stream or vehicle." The American Heritage Dictionary, https://ahdictionary.com/word/search.html?q=course (last visited Nov. 27, 2023). When a car changes lanes, its route or path does not change — it merely moves right or left upon the same roadway and continues heading in the same direction as before. Consequently, a lane change does not fall within the ordinary meaning of the word "turn."

The fact that a driver must rotate the wheel of a vehicle by some slight degree to change lanes does not render such an action a "turn." As stated, a lane change qualifies as a "move[ment] right or left upon a roadway." And yet, the Legislature distinguished between a "move[ment] right or left upon a roadway"

and a "turn . . . from a direct course." See N.J.S.A. 39:4-126. When the Legislature uses different words in the same statute, those words must be assigned different meanings. State v. Ferguson, 238 N.J. 78, 102 (2019). A "move[ment] right or left upon a roadway" therefore cannot be construed as a type of turn.

The language of a related provision, N.J.S.A. 39:4-88, further demonstrates that the Legislature used the word "turn" to refer to a change in course and used the word "move" to refer to a change in lanes. N.J.S.A. 39:4-88 provides in pertinent part that "[w]hen a roadway has been divided into clearly marked lanes for traffic[,] . . . [a] vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety." (emphasis added). N.J.S.A. 39:4-88 also specifies that a car must be driven in the farthest right lane when possible, "except when overtaking another vehicle or in preparation for a left turn." (emphasis added). That the Legislature used the word "turn" elsewhere in N.J.S.A. 39:4-88 but did not use it when discussing lane changes indicates that the Legislature did not consider a lane change to be a type of turn.

The inclusion of the phrase "so turn" in the second sentence of N.J.S.A. 39:4-126 does not alter this analysis. By using this phrase, the Legislature intended to refer to the types of turns listed in the first sentence: turns "at an

intersection," turns "to enter a private road or driveway," and turns that otherwise cause a vehicle to change "from a direct course." The second sentence thus requires a person to signal when making any of those types of turns "in the event any other traffic may be affected." See N.J.S.A. 39:4-126.

"So turn" cannot conceivably be read to invoke all the movements listed in the first sentence, which include not only "mov[ing] right or left upon a roadway" but also "start[ing] or back[ing] a vehicle." To read the phrase "so turn" as referring to the starting or backing up of a vehicle defies commonsense. Moreover, it is unclear how a person would signal to start a car. While the statute provides guidance as to how to signal an intention to turn left, turn right, or stop or decrease speed, it provides no guidance as to how to signal an intention to start or even to back up. See N.J.S.A. 39:4-126. The absence of any guidance as to how to signal to "start or back a vehicle" indicates that the Legislature did not believe any signal was required. Thus, "so turn" cannot be construed to refer to the "start[ing] or back[ing]" of a car simply based on the inclusion of this phrase in the prior sentence, and it likewise cannot be construed to encompass a "move[ment] right or left upon a roadway". Accordingly, the plain language of the statute does not require a motorist to signal a lane change, and the failure to do so cannot justify a traffic stop.

However, if the Court disagrees that N.J.S.A. 39:4-126 unambiguously does not require a driver to signal a lane change, suppression is still required because the statute is unconstitutionally vague. "The vagueness concept . . . rests on principles of procedural due process; it demands that a law be sufficiently clear and precise so that people are given fair notice and adequate warning of the law's reach." Carter, 247 N.J. at 518 (internal quotations omitted). A statute is unconstitutionally vague in violation of due process if "persons of common intelligence must necessarily guess at its meaning and differ as to its application." State v. Smith, 251 N.J. 244, 263 (2022) (internal quotations omitted). The Supreme Court has applied the vagueness principle to motor vehicle laws, which are presumed "to be written 'in language that can easily be grasped by the public so that every motorist can obey the rules of the road.'" Id. at 264. (quoting Scriven, 226 N.J. at 34).

A law may be challenged as facially vague or vague as applied to certain conduct. State v. Cameron, 100 N.J. 586, 593 (1985). If a statute is vague as applied to the particular conduct of a party, it may not be enforced even though the law might be validly imposed against others. Ibid. By contrast, "if a statute is not vague as applied to a particular party, it may be enforced even though it might be too vague as applied to others." Ibid.

In this case, the word "turn" in N.J.S.A. 39:4-126 is unconstitutionally vague as applied to the conduct of changing lanes. The public cannot easily grasp that "turn" means, among other things, switch lanes, given that the word "turn" is not commonly used to refer to the act of moving a vehicle from one lane to another. In addition, the Motor Vehicle Code contains no indication that the word "turn" as used in the code has any special meaning.

To be sure, many motorists utilize their blinkers to signal an intention to switch lanes. But the fact that this practice is commonplace does not indicate that the average person understands it to be compelled by law. Such behavior may demonstrate a desire to be cautious and courteous to other drivers on the road. It does not bespeak the public's understanding that the failure to properly signal a lane change is grounds to be pulled over by police.

Because N.J.S.A. 39:4-126 does not require a motorist to signal a lane change, or because the word "turn" is unconstitutionally vague as applied to the conduct of changing lanes, Officers Manzo and Kromar did not have reasonable and articulable suspicion that the sedan violated the motor vehicle laws by failing to activate its blinker prior to changing lanes. Accordingly, the traffic stop was unlawful and all evidence seized during the course of the stop must be suppressed. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun v. United States, 371 U.S. 471, 484 (1963); Smith, 251 N.J. at 263.

B. Assuming that a Lane Change is a "Turn" Within the Meaning of N.J.S.A. 39:4-126, Police Lacked Reasonable and Articulable Suspicion that a Turn Signal was Required Under the Circumstances.

Even if a lane change does constitute a "turn" within the meaning of N.J.S.A. 39:4-126, the traffic stop remains unlawful. The statute requires that a motorist signal a turn only "in the event any other traffic may be affected" by the movement. See N.J.S.A. 39:4-126. As the Supreme Court emphasized in Williamson, "[t]he statute . . . does not require that a signal be given whenever a lane change is made." 138 N.J. at 303. To justify a stop, then, police must have reasonable and articulable suspicion that a driver's failure to signal is "in some degree likely to" affect other traffic. State v. Moss, 277 N.J. Super. 545, 547 (App. Div. 1994).

Other traffic must be "fairly close and visible" for police to conclude that it may be affected by a car's movement. See Williamson, 138 N.J. at 304. In Jones, for instance, the defendant failed to signal a lane change on a weekday during rush hour, when there were "quite a few cars on the road." 326 N.J. Super. at 237, 239. The Court held that, in light of the rush hour traffic conditions, it was reasonable to conclude that the lane change might have an effect on other vehicles. Ibid.

The position of other traffic in relation to the car at issue is also a relevant consideration. For example, in Williamson, a motorist driving on a three-lane

highway moved from the center lane to the right lane without signaling. 138 N.J. at 303-04. The record was not developed as to the condition of other traffic in the area, but the testimony established that there was a police car driving in the left lane behind the motorist. Ibid. The Supreme Court held that the undeveloped record did not demonstrate that the traffic stop was justified and remanded the matter to the trial court to focus on this issue. Id. at 305-06. In so doing, the Court explained that "the motorist was moving away from the trooper's car, movement that would appear to facilitate the movement of the trooper's car." Id. at 304. The Court thus indicated that the presence of the police car alone did demonstrate that a signal was required, given the position of the police car in relation to the motorist.

In this case, the testimony fails to establish that the sedan's lane change was "in some degree likely to" affect other traffic, such that a signal was required. See Moss, 277 N.J. Super. at 547. Officer Manzo testified only that there was "a medium amount of traffic" on the road and that there were cars in both lanes of Route 22 heading westbound. (1T 17-20 to 18-1). He did not indicate whether the other vehicles on the road were behind the sedan or in front of it, nor did he describe how close to the sedan the other vehicles were. Given that the stop occurred in the middle of the day, rather than during rush hour or the morning commute, it is possible that the only other cars in the vicinity were

in front of the sedan or far behind it. Such vehicles would not likely be affected by the sedan's movement from the left lane to the right lane. See Williamson, 138 N.J. at 304.

The fact that a police car was directly behind the sedan prior to the lane change also does not support a conclusion that a turn signal was required in this instance. As in Williamson, the sedan moved away from the police car, which would appear to facilitate the police car's movement. 138 N.J. at 304. This case is also distinguishable from both Moss and State v. Heisler, where a police car was behind a motorist that failed to properly signal a left turn at an intersection. 277 N.J. Super. at 546; 422 N.J. Super. 399, 407 (App. Div. 2011). That a left turn at an intersection could impact other traffic behind the turning vehicle is fairly obvious. After all, a car turning left at an intersection will almost certainly slow down, thereby impacting any vehicle behind it. See Moss, 277 N.J. Super. at 546 (defendant "drove his vehicle into the middle of the intersection and braked suddenly" before making an unsignaled left turn). By contrast, a car switching lanes may not slow down at all. On its own, then, the fact that the police car was behind the sedan before it switched lanes does not justify the traffic stop. Tellingly, neither of the officers testified that the sedan's lane change affected the police car in this instance.

Because police lacked reasonable and articulable suspicion that the sedan violated N.J.S.A. 39:4-126 by failing to signal a lane change under the circumstances, the traffic stop was unlawful. All evidence found during the course of the stop must be suppressed as the fruit of an illegal seizure. U.S. Const. amends. IV, XIV; N.J. Const. art. 1, para. 7; Wong Sun, 371 U.S. at 484.

CONCLUSION

For the reasons set forth in this brief, the evidence seized during the course of the traffic stop must be suppressed. Mr. Nesbit respectfully requests that the matter be remanded to the trial court to provide him with an opportunity to withdraw his plea.

Respectfully submitted,

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Dated: December 1, 2023

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO. A-1157-22

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction in the Superior Court of New Jersey, Law Division, Somerset County.
v.	:	Sat Below:
AJMAL NESBIT,	:	Hon. Michael J. Rogers, J.S.C. Hon. Peter J. Tober, J.S.C.
Defendant-Appellant.	:	

BRIEF AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

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February 21, 2024

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PRELIMINARY STATEMENT

For the first time on appeal, defendant argues that the use of a signal when changing lanes on a roadway is optional. To the contrary, N.J.S.A. 39:4-126 plainly delineates the movements that the statute covers, including "otherwise turn[ing] a vehicle from a direct course or mov[ing] right or left upon a roadway," and provides that those who "so turn" must "giv[e] an appropriate signal" if other motorists may be affected. The language plainly requires motorists to signal lane changes. Though there is no need to go beyond the words of the statute, the law's purpose and history confirm this reading of the statute.

Countless drivers follow this law every day on New Jersey roads, not just simply as a matter of courtesy, but because it is understood what the law plainly requires. The law—on the books in its present form since the 1950s—has been enforced for decades without controversy. Indeed, the New Jersey Supreme Court applied this statute to un-signaled lane changes thirty years ago, and this Court has followed suit on multiple occasions. Because a lane change falls within the meaning of N.J.S.A. 39:4-126's signaling requirement, the vehicle in which defendant was a passenger was properly stopped on reasonable and articulable suspicion of a motor vehicle violation when the driver failed to signal before changing lanes.

Moreover, the credible testimony of the two officers who made the stop established that other traffic may have been affected by the un-signaled lane change based on the presence of cars in both lanes of the roadway, including the police vehicle immediately behind the driver. Accordingly, the trial court's decision upholding the car stop must be affirmed.

COUNTERSTATEMENT OF PROCEDURAL HISTORY

On March 4, 2020, a Somerset County grand jury returned Indictment Number 20-03-0156-I charging defendant, Ajmal Nesbit, with fourth-degree criminal trespass, in violation of N.J.S.A. 2C:18-3(a). (Da1).

On June 2, 2021, a Somerset County grand jury returned Indictment Number 21-06-0433-I charging defendant with third-degree possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(5). (Da2).

On July 29, 2020, defendant's motion to suppress under Indictment Number 21-06-0433-I was held before the Honorable Michael J. Rogers, J.S.C. (1T). On August 4, 2020, the court denied the motion in a written opinion. (Da3-9).

On September 23, 2022, defendant pleaded guilty to third-degree possession with intent to distribute a controlled dangerous substance under Indictment Number 21-06-0433-I and to an amended petty disorderly persons

offense of criminal trespass, in violation of N.J.S.A. 2C:18-3(b), under Indictment Number 20-03-0156-I. (Da10-15; 2T3-17 to 19-2). In exchange, the State recommended a four-year prison sentence on the possession with intent charge and a concurrent 30-day jail sentence on the trespassing charge as well as the dismissal of two complaints charging disorderly persons offenses. (Da13, 15; 2T3-24 to 4-3).

On December 9, 2022, the Honorable Peter J. Tober, J.S.C. sentenced defendant in accordance with the plea agreement. (Da16-22; 3T6-11 to 9-24). As provided for in the plea agreement, the custodial sentence was stayed pending defendant's appeal of the denial of his motion to suppress. (Da16, 19; 2T4-4 to 10; 3T9-24 to 10-4).

On December 15, 2022, defendant filed a notice of appeal. (Da23-27).

COUNTERSTATEMENT OF FACTS

A. Motion to Suppress Hearing

On August 29, 2019, Sheriff's Officers Joshua Manzo and Michael Kromar were on patrol in Somerset County. (1T9-12 to 10-10, 10-23 to 11-3, 15-23 to 24). The officers were in a "low profile" patrol vehicle, meaning that the car was visible as a patrol vehicle, but the lettering was faded and no lights were on the roof. (1T12-19 to 13-22). As Kromar's field training officer, Manzo was driving Kromar around the county and showing him how to make

traffic stops, interact with citizens, and complete paperwork. (1T11-2 to 12-18, 15-25 to 16-2, 43-4 to 14, 44-6 to 12, 45-8 to 46-1). Manzo instructed Kromar to call out motor vehicle violations and would advise Kromar whether or not he agreed. (1T12-10 to 12, 16-5 to 7, 44-24 to 45-7). From 8:30 a.m. to the early afternoon, the officers had made approximately ten traffic stops. (1T15-10 to 15, 46-4 to 17, 52-1 to 7).

Around 1:30 p.m., the officers were in Green Brook Township driving westbound on Route 22, a four-lane highway with a barrier separating the two eastbound and two westbound lanes. (1T15-16 to 24, 16-14 to 17-3, 46-10 to 22). Officer Manzo described the traffic volume as "medium" at the time. (1T17-17 to 21). "It was the middle of the day during the week in a populated area." (1T17-17 to 23). There were vehicles in both lanes of Route 22 westbound. (1T17-17 to 18-1). The area the officers were traveling through was commercial, with a shopping center, storage facility, large industrial building, White Castle restaurant, and motel in the vicinity. (1T17-4 to 16).

As the officers were driving on Route 22, they got behind a white sedan traveling in the left lane. (1T16-4 to 8, 18-2 to 9, 46-25 to 47-3). The driver looked in her rearview mirror as the sedan drifted over the center line with its two right side tires. (1T16-9 to 12, 18-3 to 11, 19-2 to 7, 47-3 to 5, 49-2 to 7). The driver did not activate the turn signal until after the sedan was partially in

the right lane. (1T16-12 to 13, 18-11 to 19-1, 47-5 to 6).

After the sedan was in the right lane, the officers pulled behind it and observed the backseat passenger turn fully around to look back. (1T19-12 to 18, 49-7 to 9). As the sedan and police car stopped at a red light at the intersection with King George Road, the officers activated their body-worn cameras, which captured Manzo stating, "blinker." (1T19-19 to 20-8, 20-17 to 21-2, 48-6 to 13; Pa1 at 13:35:38).[3] When the light turned green, Manzo activated his emergency lights to initiate a traffic stop. (1T20-9 to 13, 48-21 to 49-1).

The officers followed the sedan into the Ivory Tower Motel parking lot where it stopped. (1T20-14 to 16, 21-7 to 15, 48-6 to 9). Manzo walked up to the driver's side and Kromar walked up to the rear passenger side. (1T21-19 to 22-1, 48-18 to 20). There were three people in the sedan: Ashley Smith, the driver; defendant, the front seat passenger; and Matthew Williams, the backseat passenger. (1T19-2 to 11, 22-9 to 17, 49-22 to 50-1; Da4). Both officers smelled marijuana emanating from inside the sedan. (1T23-2 to 22, 50-2 to 8). Manzo began speaking to Smith and explained "the reason we're

[3] The body-worn camera videos were admitted at the hearing and are appended as Pa1 and Pa2. Time references in this brief are to the "real time" depicted on the videos. The patrol car was not equipped with a dash camera. (1T14-5 to 10, 47-9 to 12).

stopping you is he's gotta have his seatbelt on, and you gotta use your blinker, but you can't put your blinker on after you're already in the lane you're going into."[4] (1T23-23 to 24-7; Pa1 at 13:36:40). Smith and defendant both appeared nervous and would not make eye contact. (1T24-12 to 25-5).

While waiting on county communications to run a warrant check on all three occupants, Manzo asked Smith to step out of the car. (1T25-6 to 20, 26-6 to 27-10). Manzo told Smith that her car smelled like marijuana and told her this was her opportunity to disclose where it was hidden. (1T27-15 to 18). Smith admitted that her car smelled like marijuana and that it was located in the center console. (1T27-18 to 23).

As Kromar stood with Smith by the patrol vehicle, Manzo walked up to the passenger side of the sedan and asked defendant to exit. (1T28-9 to 29-1). After defendant stepped out of the sedan, Manzo observed a knife and pepper spray on his waistband. (1T29-6 to 9, 34-22 to 23). When asked if he had anything else on him, defendant replied, "nothing." (1T29-11 to 12). Manzo conducted a "pat frisk" of defendant and pulled out a bundle wrapped in pages of a pornographic magazine from his left front pants pocket. Based on his training and experience, Manzo suspected that it was narcotics packaged for

[4] Manzo testified that he did not observe that defendant was not wearing his seatbelt until after the stop. (1T24-8 to 11, 38-18 to 39-1).

distribution. (1T29-12 to 14, 30-5 to 14). Defendant said it was "weed," but the narcotics turned out to be approximately 250 bags of fentanyl. (1T29-15 to 23, 30-17 to 18).

Defendant also testified at the hearing. According to defendant, he was the front passenger in Smith's car as they were driving down Route 22 in the right lane when they approached the sheriff officers finishing up a traffic stop. (1T56-3 to 4, 57-5 to 6, 65-12 to 24, 70-15 to 22). As she passed by the officers, Smith used her blinker as she changed from the right to left lane. (1T57-5 to 13). Smith again used her blinker as she changed back from the left to the right lane. (1T57-6 to 16). Because he had drugs on his person, when defendant saw police pulling people over he became "attentive" to Smith's use of her turn signal. (1T71-25 to 73-6). He knew Smith used her signal because he could hear the "click." (1T73-7 to 15). Defendant did not notice the officers behind them until Smith stated that they were being pulled over. (1T56-20 to 57-1). At that point, they were back in the right lane. (1T57-14 to 16). Defendant admitted he was nervous when he saw they were being pulled over. (1T66-23 to 68-14).

Defendant admitted that there was marijuana in the car and that he had smoked earlier that day. (1T74-7 to 75-6). He acknowledged having a can of pepper spray attached to a box cutter on his belt clip. (1T60-24 to 61-10, 73-

22 to 74-4). Defendant testified that the officer did not conduct a limited Terry[5] frisk for weapons but rather recovered the drugs after "digging" in his pockets. (1T62-15 to 65-4). Defendant admitted lying to the officer that the drugs he pulled out of his pocket was marijuana. (1T79-15 to 80-8).

Defense counsel's principal argument to the trial court was that the search of defendant's person was invalid. (1T83-24 to 85-23, 86-23 to 87-16, 89-1 to 10). Regarding the stop, defense counsel relied on defendant's testimony that Smith used her turn signal and further argued that they appeared to be "targeted." (1T85-24 to 86-1, 87-18 to 23). The construction or constitutionality of N.J.S.A. 39:4-126 was not raised. (1T83-23 to 89-11).

After considering the testimony and evidence and hearing argument, Judge Rogers denied the motion to suppress. (Da3). The court found the two officers credible based on their demeanor, ability to recall, responsiveness to questioning, consistency, and corroboration by the body-cam videos. (Da7). The judge found defendant's testimony "lacking in several respect[s]," including defendant's "wish[] to advance his narrative . . . regardless of what made sense," his "rambling" testimony, the fact that his observations would have been impacted by the "stress of the moment" from having drugs on his

[5] Terry v. Ohio, 392 U.S. 1 (1968).

person, and his "body language and demeanor" while he testified. (Da8).

Judge Rogers found that the stop was lawful because the credible testimony of the officers as corroborated by the body-camera videos demonstrated the existence of reasonable and articulable suspicion of a motor vehicle violation. (Da5-6). The court examined N.J.S.A. 39:4-126, emphasizing that the statute only requires a driver to signal a lane change "when any other traffic may be affected by such movement." (Da5) (emphasis in original). Relying on the officers' credible testimony, the court found that Smith did not signal until she had already begun to move from the left to right lane. (Da5). The judge also found that other vehicles could have been impacted because there was "medium" traffic at the time and cars in both westbound lanes. (Da6).

The judge also upheld the warrantless search of defendant's person based on the odor of marijuana emanating from the vehicle and Smith's admission that there was marijuana in the center console.[6] (Da6-7, 8-9).

B. Guilty Plea

Following the denial of the motion to suppress, defendant pleaded guilty to possession with intent to distribute a controlled dangerous substance under

[6] On appeal, defendant does not challenge the ruling on the warrantless search.

Indictment Number 21-06-0433-I and to criminal trespass under Indictment Number 20-03-0156-I. As to the possession of CDS with intent to distribute charge, defendant admitted that he was a passenger in a car stopped on August 29, 2019 in Green Brook and was in possession of fentanyl that he intended to distribute. (2T11-21 to 13-17). As to the criminal trespass charge, defendant admitted that on January 2, 2020, he was in an apartment complex in Somerville where he was not licensed or privileged to be. (2T13-22 to 15-1).

This appeal follows.

LEGAL ARGUMENT

POINT I

POLICE HAD REASONABLE AND ARTICULABLE SUSPICION THAT THE DRIVER VIOLATED N.J.S.A. 39:4-126, WHICH PLAINLY REQUIRES A MOTORIST TO SIGNAL PRIOR TO CHANGING LANES.

Signaling before changing lanes is not a mere suggestion; it is a mandate when other traffic may be affected. The officers here stopped the sedan defendant was traveling in because the driver did not activate her turn signal until crossing into the adjacent lane. The "signaling before starting, turning or stopping" statute plainly includes lane changes as one of the "movement[s]" to which the signaling requirement applies. Defendant's contrary reading isolates the word "turn" from its surrounding words and phrases. But reading the

statute in its entirety and consistent with the statute's unmistakable intent removes any doubt. Indeed, New Jersey courts have already understood the signaling requirement to apply to lane changes, including in cases where the statute's language was at issue.

Furthermore, at the motion hearing, the State established that the officers had reasonable and articulable suspicion that a turn signal was required under the circumstances of this case because of the other traffic on the road, including the police vehicle. Giving due deference to the judge's factual and credibility findings, which are fully supported by the record, this Court should affirm the denial of the motion to suppress.

A. The plain language of N.J.S.A. 39:4-126, as confirmed by the statute's purpose, history, and longstanding understanding by the courts, requires a motorist to signal a lane change.

At the outset, defendant's present argument about the meaning of N.J.S.A. 39:4-126 in the context of lane changes was not raised below and should not be considered now. However, should this Court consider this issue for the first time on appeal, it should reject defendant's construal of the "signaling" statute as not requiring a signal before a lane change. Reading the first and second sentences of the statute in harmony, it is clear that "so turn" in the second sentence—addressing the signaling requirement—is a specific reference to the movements listed in the first sentence, including "turn[s] . . .

from a direct course or move[s] [to the] right or left upon a roadway." The Supreme Court and this Court in numerous decisions have understood this nearly-century-old statute to apply not only to turns off the roadway, but also lane changes on the roadway. And when the words and phrases of the statute are read in context with their surrounding language, a person of ordinary intelligence can easily understand that the statute proscribes un-signaled lane changes when other drivers may be affected. Thus, Officers Manzo and Kromar conducted a valid traffic stop based on reasonable and articulable suspicion that Smith violated N.J.S.A. 39:4-126 when she failed to activate her signal before changing lanes.

1. Defendant's construal of the signaling statute does not substantially implicate public interest to be considered for the first time on appeal because the Supreme Court has already found that it applies to lane changes.

Defendant's challenge to N.J.S.A. 39:4-126 on statutory interpretation and vagueness grounds was not raised in the trial court. "Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below." State v. Galicia, 210 N.J. 364, 383 (2012). While there is an exception for issues that "substantially implicate public interest," State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006), this is not such an issue because our Supreme Court and this Court have already ruled that the signaling requirement of N.J.S.A. 39:4-126 applies to lane changes.

In State v. Williamson, 138 N.J. 302 (1994), the Supreme Court expressly stated that the statute "requires a motorist to signal a lane change 'in the event any other traffic may be affected by such movement.'" Id. at 303 (quoting N.J.S.A. 39:4-126) (first emphasis added). The Court observed that while the statute "does not require a signal for every lane change," an officer could validly stop a vehicle if they "have some articulable basis for concluding that the lane change might have an effect on traffic." Id. at 304 (emphasis added). The Court remanded for a determination of whether the defendant's failure to signal a lane change may have affected other traffic. Id. at 305.

To be sure, the Williamson Court's focus was on the phrase "in the event any other traffic may be affected by such movement," but the Court explicitly accepted that the signaling requirement applies to lane changes. And the Court accepted this premise in a case in which it was tasked with interpreting the language of the very statute—indeed the very sentence—that defendant now questions. This Court has also applied the signaling requirement of the statute to lane changes. See State v. Jones, 326 N.J. Super. 234, 239 (App. Div. 1999) ("N.J.S.A. 39:4-126 requires a motorist to signal a lane change 'in the event any other traffic may be affected by such movement.'"); State v. Garland, 270 N.J. Super. 31, 42-43 (App. Div. 1994) ("Defendant committed a motor vehicle violation by failing to signal while changing lanes . . ."); Hornberger v.

American Broadcasting Companies, Inc., 351 N.J. Super. 577, 604-05 (App. Div. 2002) ("[A]s the Law Division judge found, the initial stop was justified; the driver . . . admitted that he probably did not use his signal when changing lanes."); State v. Casimono, 250 N.J. Super. 173, 178 (App. Div. 1991) (agreeing with trial court that "sudden change of lanes without signaling provided a reasonable basis for the trooper stopping the car").

Defendant would have this Court disregard this 30-year-old Supreme Court decision as non-precedential, but Williamson is binding on this Court. "Appellate and trial courts consider themselves bound by [the Supreme] Court's pronouncements, whether classified as dicta or not." State v. Dabas, 215 N.J. 114, 136-37 (2013). "'[M]atters in the opinion of a higher court which are not decisive of the primary issue presented but which are germane to that issue . . . are not dicta, but binding decisions of the court.'" State v. Rose, 206 N.J. 141, 183 (2011) (quoting 5 Am. Jur. 2d Appellate Review § 564 (2007)). "If the Supreme Court's dictum is 'deemed carefully considered, necessary to the decision reached, or directly involved with the central issue in the case, we are bound by it.'" Matter of R.H., 475 N.J. Super. 460, 467 (App. Div. 2023) (emphasis added) (quoting Loigman v. Twp. Comm. of Twp. of Middletown, 409 N.J. Super. 13, 22 (App. Div. 2009)).

The Williamson Court's statement that "N.J.S.A. 39:4-126 requires a

motorist to signal a lane change" cannot be passed off as mere dicta because it was an essential precondition to resolving the issue before the Court. Had the Court not accepted that N.J.S.A. 39:4-126 applied to lane changes, there would have been no need for it to decide under what circumstances a motorist may be pulled over for failing to signal a lane change. In essence, the whole case depended on lane changes being subject to N.J.S.A. 39:4-126. As the Court's express statement that lane changes are subject to the statute was "necessary to the decision reached" and "directly involved with the central issue," see R.H., 475 N.J. Super. at 467, Williamson is binding on this Court. Thus, defendant's argument on appeal should be summarily rejected.

2. The plain language of N.J.S.A. 39:4-126 requires a motorist to signal a lane change.

Even if Williamson was not binding, the signaling requirement of N.J.S.A. 39:4-126 plainly applies to lane changes. The goal of construing statutes "is to discern the Legislature's intent." State v. Rosado, 475 N.J. Super. 266, 275 (App. Div. 2023) (citing State v. Twiggs, 233 N.J. 513, 532 (2018)). "The plain language of a statute 'is typically the best indicator of intent.'" State v. O'Donnell, 255 N.J. 60, 70 (2023) (quoting State v. A.M., 252 N.J. 432, 450 (2023)). The "words and phrases" of a statute are not read "in isolation," but instead read "in context, along 'with related provisions[,] . . . to give sense to the legislation as a whole.'" A.M., 252 N.J. at 451

(alterations in original) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "Additionally, words alone do not control; rather it is the internal sense of the law which controls." Loboda v. Clark Tp., 40 N.J. 424, 435 (1963). Courts "'strive[ ] for an interpretation that gives effect to all the statutory provisions and does not render any language inoperative, superfluous, void[,] or insignificant.'" State v. Gargano, 476 N.J. Super. 511, 524 (App. Div. 2023) (alterations in original) (quoting In re DiGuglielmo, 252 N.J. 350, 360 (2022). "If the plain language leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources." State v. D.A., 191 N.J. 158, 164 (2007) (citing DiProspero v. Penn, 183 N.J. at 492).

"Only where the statutory language at issue is ambiguous should a court 'look to extrinsic evidence[.]'" State v. Martinez-Mejia, ___ N.J. Super. ___, ___ (App. Div. 2023) (slip op. at 13) (quoting Tumpson v. Farina, 218 N.J. 450, 467 (2014)). This can include legislative history, relevant case law, and other sources. O'Donnell, 255 N.J. at 74; State v. Carter, 247 N.J. 488, 513 (2021). "Courts also consider extrinsic aids 'if a literal reading of the statute would yield an absurd result, particularly one at odds with the overall statutory scheme.'" Carter, 247 N.J. at 513 (quoting Rozenblit v. Lyles, 245 N.J. 105, 122 (2021)).

The statute for which Smith was stopped provides in pertinent part:

> No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 39:4-123, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway, or start or back a vehicle unless and until such movement can be made with safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.
>
> A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.
>
> [N.J.S.A. 39:4-126 (emphasis added).]

Defendant claims that while a lane change must be made with safety under the first sentence, a lane change is not a "turn" as used in the statute and as the word is "commonly understood," and thus a signal is not required under the second sentence. (Db14-15). His reasoning is flawed for several reasons.

The first and second sentences impose two requirements on drivers. The first sentence requires the driver to ascertain safety before making the listed "movement[s]", while the second sentence requires a signal "in the event any other traffic may be affected by such movement." N.J.S.A. 39:4-126; cf. State v. Regis, 208 N.J. 439, 447-48 (2011) (interpreting the failure to maintain lane statute, N.J.S.A. 39:4-88(b) as describing "two separate legal predicates

directing the conduct of drivers"). The language of the statute makes plain that the movements described in the first sentence are included in the second sentence.

The first sentence sets forth the "movement[s]" that must be made with safety: turning a vehicle at an intersection; turning to enter a private road or driveway; otherwise turning a vehicle from a direct course; moving right or left upon a roadway; and starting or backing a vehicle. N.J.S.A. 39:4-126. The second sentence imposes a duty to give the required signal, stating "[n]o person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement." Ibid. (emphasis added). The phrase "so turn" is a clear reference to the "movement[s]" specified in the immediately preceding sentence, including "turn[ing] a vehicle from a direct course or mov[ing] right or left upon a roadway."[7] Rather than relist the movements set forth in the

[7] Defendant argues that "so turn" cannot include all the movements listed in the first sentence because such an understanding of "start[ing] or back[ing]" "defies commonsense" and the statute does not provide guidance on how to signal the starting or backing a vehicle "indicat[ing] that the Legislature did not believe any signal was required. (Db17). To the contrary, considering the statute is entitled "Signaling before starting, turning or stopping," (emphasis added), it is apparent the Legislature did intend to require signaling if the starting or backing may affect other traffic. And while the statute does not specifically state how to signal an intention to start or back up, there are situations in which these movements fall within the meaning of a turn to the

first sentence, the Legislature substituted "so turn" in the second sentence to avoid needless repetition. See State v. DeCamp, 622 N.W.2d 290, 295 (Iowa 2001) ("It is a common practice in drafting statutes to make reference to definitions and other matters set forth in the same statute without repeating the definition or previous matters . . . by using linking expressions to avoid clutter and repetition[.]"); see also 1A Norman Singer, Sutherland Statutory Construction § 21.13 (7th ed. Nov. 2023 Update) ("To avoid repetition, reference may be made to . . . definitions set forth in the same or another statute."). Such a reading comports with the canon that each part of a statute be construed "in connection with every other part or section to provide a harmonious whole." State v. Marquez, 202 N.J. 485, 499 (2010).

Despite the plain meaning of "so turn," defendant maintains that this phrase only refers to "the types of turns listed in the first sentence." (Db16). But changing lanes is a type of "turn" listed in the first sentence. The phrase "otherwise turn[ing] a vehicle from a direct course" is broadly written to contemplate not only turns onto another roadway, but also turning movements

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right or left in the third sentence as to require a signal. For example, a driver pulled over to the side of the road who activates their turn signal upon entering the stream of traffic. Or a driver about to parallel park who activates their turn signal as they back into the spot. Regardless, "[i]solated expressions cannot be invoked to defeat a reasonable construction" of the entire statute. Loboda, 40 N.J. at 435 (citation omitted).

on the same roadway. The dictionary defines "turn," in part, as "to cause to move around an axis or center; make rotate or revolve." Merriam-Webster, https://www.merriam-webster.com/dictionary/turn (last visited Jan. 21, 2024). As the Michigan Court of Appeals observed, when interpreting the similarly-worded phrase "turning from a direct line" in its signaling statute,

> [w]hile rotating a vehicle may result in moving the vehicle from a roadway (as in a left turn onto a different roadway), there is nothing in this definition that limits a vehicle "turn" to such a movement. Indeed, a partial rotation would constitute movement around "a central or focal point," and it would constitute a change in direction or course. The fact that a rotation can be terminated and followed by another movement—for example, straightening out the vehicle once a given point is reached—does not mean that the movement was not a turn.
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> [People v. Hrlic, 744 N.W.2d 221, 224 (Mich. Ct. App. 2007).]

A driver who changes lanes rotates the steering wheel and turns the wheels, momentarily changing the vehicle's orientation. The roadway remains the same, but the course of the vehicle changes slightly. See Merriam-Webster, https://www.merriam-webster.com/dictionary/course (last visited Jan. 21, 2024) (defining "course" to include "the path over which something moves or extends").

Not only does the phrase "otherwise turn from a direct course" encompass a lane change, but so does the phrase "move right or left upon a

roadway," and is thus one of the turning movements to which the signaling requirement also applies. On this point, the manner of use of "turn" is different in the first and second sentences. In the first sentence, the various "turns" are modified by the specific kind of turn described (i.e., turn "at an intersection," turn "to enter a private road or driveway," turn "from a direct course"). Conversely, by including the word "so" before "turn" in the second sentence, the statute refers generally to all the turning movements just specified in the first sentence, including "move[s] right or left." See Norman v. New Jersey State Parole Board, 457 N.J. Super. 513, 520 (App. Div. 2019) (noting that "courts should avoid a construction that would render 'any word in the statute to be inoperative, superfluous or meaningless'").

And because the portion of the second sentence requiring signals "in the manner hereinafter provided" indicates that subsequent portions of N.J.S.A. 39:4-126 set forth the specifics on how to signal, lane changes—as one of the types of movements falling under "so turn" as used in the second sentence—necessarily fall within the third sentence of the statute regulating "[a] signal of intention to turn right or left when required." It was unnecessary to specify that a lane change must also be preceded by a signal 100 feet before turning because the statute already defined a turn to include a "move right or left."

This construction is further supported by the manner of usage of

"movement" in the statute. Namely, in the first sentence, after listing the various "turn[s]," "move[s]," and "start[ing] or back[ing]," the statute provides that "such movements" may not be made until safe. Thus, "such movements" as used in the first sentence, includes both "turn[s]" and "move[s] right or left." The phrase "such movement" is repeated in the second sentence to correspond to "so turn," and hearkens back to the first sentence, in which "such movement[s]" refers to all the listed movements. So, while defendant attempts to drive a wedge between "turn" and "movement," the statute in fact uses the words interchangeably.

In interpreting the New York statute's substantially similar first two sentences and finding it applied to lane changes, one court stated this construction "is wholly consistent with common sense, since every 'turn' necessarily includes 'a move [to the] right or left on the roadway,' and every 'move [to the] right or left on the roadway' necessarily includes a 'turn,' however slight, to the extent that it represents a change in the direction of the vehicle." People v. James, 842 N.Y.S.2d 859, 862 (N.Y. Crim. Ct. Queens Co. 2007); see also State v. Starr, 213 P.3d 214 (Ariz. Ct. App. 2009) (interpreting Arizona's substantially similar signaling statute and observing that "[a] driver who changes lanes 'turns from a direct course' and 'moves right or left.'"). Indeed, in rejecting an earlier court's treatment of "turn" and "move" as

separate and distinct, the New York judge in James observed the absurdity that would ensue from such an interpretation:

> if "turn" and "move" are indeed separate and distinct, triggering different rules, the paragraph would be rendered meaningless, because the admonition regarding "reasonable safety" would then apply only to "movements" and not turns, inasmuch as the statute's language only specifically refers to "movement" when referring to the "reasonable safety" requirement "unless and until such movement can be made with reasonable safety." . . . Thus read, the paragraph would become a blanket admonition against "turning" ("no person shall . . . turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course"), while "movement" (i.e. lane changing) would be permitted as long as it is done safely.
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> [842 N.Y.S.2d at 862.]

Courts should "avoid statutory interpretations that 'lead to absurd or unreasonable results.'" State v. Lewis, 185 N.J. 363, 369 (2005) (quoting State v. Gill, 47 N.J. 441, 444 (1966)).

Defendant's interpretation would also run counter to the statute's purpose. The title of N.J.S.A. 39:4-126 itself—"Signaling before starting, turning or stopping"—promotes signaling as the law's fundamental objective. Addotta v. Blunt, 114 N.J.L. 85, 88 (1934) ("Any ambiguity as to the meaning of the enacting clauses may be resolved by resorting to the title."). The purpose of requiring a driver to signal is to alert other drivers of movements

that could affect them so they can react accordingly. See Williamson, 138 N.J. at 304 ("Motorists in the vicinity whose movements may be affected must be made aware of a driver's intentions."). It would be an absurdity for the Legislature to require a lane change be made with safety under the first sentence, but not require a signal under the second sentence even if "other traffic may be affected by such movement." See Starr, 65 213 P.3d at 219 (observing that statutory purpose would not be fulfilled if a driver was not required to signal a lane change "even when on a major freeway at the height of rush hour," as long as the turn could be made with reasonable safety).

In fact, ascertaining safety before changing lanes is already covered by N.J.S.A. 39:4-88(b), which provides that "[a] vehicle . . . shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety." Thus, if defendant were correct that the only portion of N.J.S.A. 39:4-126 applicable to lane changes is the requirement to ascertain safety prior to moving over, the statute would serve no function in the context of lane changes. "Since the Legislature is presumed to be fully conversant with its legislation, courts are to avoid constructions that make statutory provisions redundant or meaningless." State v. Wright, 107 N.J. 488, 502 (1987) (citing Brewer v. Porch, 53 N.J. 167, 174 (1969)). The signaling statute must—and does—do something more than N.J.S.A. 39:4-88(b).

Defendant's attempt to apply the meaning of "turn" from N.J.S.A. 39:4-88 to the signaling statute is without merit because the context in which the word is used in each statute is different. N.J.S.A. 39:4-88(a) and (c) regulate which lane a vehicle should travel in "except when overtaking . . . another vehicle or in preparation for a left turn." It is clear from the language immediately proceeding it that "left turn" is referring to a turn from one road onto another. But in N.J.S.A. 39:4-126, the statute describes specific turning movements in the first sentence, followed by "so turn" in the second sentence, indicating that "turn" covers a wider range of movements in this section. See State v. Rangel, 213 N.J. 500, 509 (2013) (noting that courts "do not view words and phrases in isolation but rather in their proper context"). The meaning of "turn" also has to be understood in relation to the statutes' different purposes; N.J.S.A. 39:4-126 regulates the signaling requirements when turning onto other roadways and changing lanes, while N.J.S.A. 39:4-88 regulates how motorists should travel in lanes.

The language of N.J.S.A. 39:4-126 is clear; both the safety and signaling requirements apply to lane changes.

3. Extrinsic aids confirm that N.J.S.A. 39:4-126 requires the motorist to signal a lane change.

Even if a literal reading of the statute were as defendant claims, resort to extrinsic sources would be necessary to avoid the absurd results described

above and a construction "at odds with the overall statutory scheme." See Carter, 247 N.J. at 513. The history of the statute and our relevant caselaw confirm that the law requires signals before lane changes.

The statute was originally enacted in 1928 and provided in pertinent part:

> The driver of any vehicle, upon a highway, before starting, stopping, backing or turning from a direct line, shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement, shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal, as required in this section, plainly visible to the driver of such other vehicle or pedestrian of the intention to make such movement.
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> [L. 1928, c. 281, Art. XIV, § 4(a) (emphasis added).]

The original statute proceeded to set forth the method of signaling, by hand or mechanical or electrical device, and explained how the driver should hand signal to "indicate his intention to start, or stop, or turn." Id. at § 4(b), 5.

The 1928 law adopted nearly verbatim the language proposed in the 1926 Uniform Vehicle Code produced by the National Conference on Street and Highway Safety. See Unif. Act Regulating the Operation of Vehicles on Highways, § 18 ("Signals on Starting, Stopping or Turning"), 2d Nat'l Conference on Street and Highway Safety (1926). Beginning in 1924, the Conference sought for the first time to impose uniform traffic laws with the

goal of "reduction in loss of life, personal injury and property damage upon our streets and highways." Foreword to Final Text of Unif. Vehicle Code (August 20, 1926).

"In 1951, the Legislature undertook a comprehensive reform of New Jersey's motor vehicle laws to 'revise and bring up to date the New Jersey Traffic Act . . . because of the changes in motor vehicle traffic conditions and to bring [the] New Jersey Traffic Act into greater conformity with the 'Uniform Act Regulating Traffic on Highways.'" Regis, 208 N.J. at 445 (quoting Statement to Assembly Bill No. 4, at 64 (Jan. 15, 1951)). The 1951 version of the statute is nearly identical to section 79 of the 1948 Uniform Vehicle Code (entitled "Turning movements and required signals"), with the only differences being the inclusion of "or start or back a vehicle" and the substitution of "safety" for "reasonable safety" in the first sentence of N.J.S.A. 39:4-126. Compare L. 1951, c. 23, § 67 with Act V, Unif. Act Regulating Traffic on Highways, § 79, Nat'l Committee on Uniform Traffic Laws and Ordinances (1948).

Since 1951, the only amendment to N.J.S.A. 39:4-126 was to the portion of the statute explaining how to give hand signals. See L. 1956, c. 107, § 2. The sponsor's statement noted that the 1956 amendments "will promote greater safety on our highways, and will make our traffic laws more sensible,

more uniform, and easier to understand, both for our own drivers and those from other States." Sponsor's Statement to S. 177, at 10 (1956). In all other respects, the present version of the statute is the same as the 1951 version.

Apparent from the statements accompanying the Uniform Vehicle Code and New Jersey legislation, the legislative intent in enacting traffic laws generally was to promote safety and the orderly flow of traffic. N.J.S.A. 39:4-126 should be viewed through that lens. From its inception in 1928, there was an intent to include several maneuvers ("starting, stopping, backing or turning") within the meaning of "such movement," and a requirement to signal before any of these "movement[s]" if another vehicle might be affected. This history demonstrates that the duty to signal "such movement" as used in the present version of the statute does not merely apply to turns off a roadway as defendant maintains, but includes all movements listed in the first sentence.

As aforementioned, both this Court and the Supreme Court have understood the signaling statute to impose a duty to signal before lane changes. See, e.g., Williamson, 138 N.J. at 303-04; Jones, 326 N.J. Super. at 239. In the thirty years since Williamson was decided—and despite this Court repeatedly following suit in both published and unpublished opinions—the Legislature has not amended the statute. "As a principle of statutory construction, the legislative branch is presumed to be aware of judicial constructions of

statutory provisions." State v. Singleton, 211 N.J. 157, 180-81 (2012) (citations omitted). If this construction of the statute as applying to lane changes were contrary to legislative intent, the Legislature would have amended the statute to so reflect. "This legislative acquiescence reflects the Legislature's agreement" with the Supreme Court and this Court's understanding of N.J.S.A. 39:4-126 as applied to lane changes. See State v. Frye, 217 N.J. 566, 580 (2014).

The New Jersey Motor Vehicle Commission's (MVC) understanding of the statute is also noteworthy. "'An administrative agency's interpretation of a statute it is charged with enforcing is entitled to great weight.'" Piatt v. Police and Firemen's Retirement System, 443 N.J. Super. 80, 99 (App. Div. 2015) (citation omitted). The "Driving Signals" section of the 2023 New Jersey Driver Manual [Manual] states:

> A motorist should always give a proper signal when turning, changing lanes, stopping, or slowing down. A motorist should always use the vehicle's turn signals. A motorist should put on the turn signal at least 100 feet before turning and be sure to cancel the signal after making a turn. Not doing so could mislead other motorists. (N.J.S.A. 39:4-126)
>
> [Id. at p. 54 (emphasis added).]

And when discussing "changing lanes and passing," the Manual reiterates to "[a]lways signal lane changes." Id. at p. 96. That the agency tasked with

educating New Jerseyans on the rules of the road interprets N.J.S.A. 39:4-126 to require signals before lane changes is persuasive evidence of the statute's meaning given the Legislature's inaction in response. Accordingly, the plain language of N.J.S.A. 39:4-126, as confirmed by extrinsic aids, requires a driver to signal a lane change if other drivers may be affected.

4. A reasonable person of ordinary intelligence would understand that N.J.S.A. 39:4-126 requires a driver to signal a lane change when other traffic may be affected.

Defendant's challenge to the statute as constitutionally vague as applied to changing lanes is without merit for similar reasons; namely, a person of common intelligence reading N.J.S.A. 39:4-126 in its entirety does not have to guess to understand that it applies the signaling requirement to lane changes. "A law is void as a matter of due process if it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application." State v. Troisi, 471 N.J. Super. 158, 167 (App. Div. 2022) (internal quotations omitted). "Put differently, a statute must give fair notice of conduct that is forbidden." State v. Smith, 251 N.J. 244, 263 (2022) (internal quotations omitted). "A statute that is challenged as vague as applied must lack sufficient clarity respecting the conduct against which it is sought to be enforced." State v. Lenihan, 219 N.J. 251, 267 (2014). However, "'[u]ltraspecificity' is not required for a statute to pass constitutional muster

under the void for vagueness doctrine." Troisi, 471 N.J. Super. at 167 (citing Jenkins v. N.J. Dep't of Corrs., 412 N.J. Super. 243, 256 (App. Div. 2010)).

A person of ordinary intelligence would readily understand that N.J.S.A. 39:4-126 requires the use of a signal before changing lanes when other traffic may be affected. In arguing otherwise, defendant isolates "turn" from the statute and argues that the public would not understand this to mean switching lanes. First, as argued above, rotation—as in rotating the wheels of a vehicle—is within the definition of "turn." See Merriam-Webster, https://www.merriam-webster.com/dictionary/turn (defining "turn," in part, as "to cause to move around an axis or center; make rotate or revolve"); Hrlic, 744 N.W.2d at 224 (observing that "a partial rotation would constitute movement around 'a central or focal point' and it would constitute a change in direction or course" under the definition of "turn") (quoting The American Heritage Dictionary (1985)).

More importantly, it is presumed that the public can read words and phrases in context. "Analysis of constitutional vagueness is not 'a linguistic analysis conducted in a vacuum' but requires consideration of the questioned provision itself, related provisions, and the reality in which the provision is to be applied." State v. Saunders, 302 N.J. Super. 509, 521 (App. Div. 1997) (quoting In re Suspension of DeMarco, 83 N.J. 25, 37 (1980)). "Turn" does

not appear in a vacuum in N.J.S.A. 39:4-126. In pertinent part, it appears within the phrase "or otherwise turn a vehicle from a direct course or move right or left upon a roadway," which a person of ordinary intelligence can understand to include changing lanes. "Turn" is also preceded by "so" in the second sentence, empowering a person of ordinary intelligence to understand that "so turn" includes the movements set forth in the preceding sentence. When read in context of the aim of the statute—signaling—and the surrounding language, "turn" is within the understanding of persons of ordinary intelligence. See e.g., Chez Sez VIII, Inc. v. Poritz, 297 N.J. Super. 331, 352 (App. Div. 1997) ("[A]lthough the term 'entertainment' is arguably general, when read in the particular context of this ordinance, it cannot be said that it is beyond the grasp of persons of ordinary intelligence.") (quoting Berg v. Health & Hospital Corp., 865 F.2d 797, 803 (7th Cir. 1989)).

The signaling statute has been in effect unchanged since the 1950s, with multiple judicial decisions and the MVC applying it to lane changes. See New York State Rifle and Pistol Ass'n, Inc. v. Cuomo, 804 F.3d 242, 268 (2d Cir. 2015) (noting that a term's "repeated use for decades, without evidence of mischief or misunderstanding [] suggests that the language is comprehensible"), abrogated on other grounds by New York State Rifle & Pistol Ass'n., Inc. v. Bruen, 597 U.S. 1 (2022). All one needs to do is drive

down any highway or multi-lane roadway and see the millions of New Jerseyans using their signals before changing lanes to understand that there is no confusion over the meaning of the law. See State v. Borjas, 436 N.J. Super. 375, 397 (App. Div. 2014) ("notions of common intelligence, coupled with 'ordinary human experience,' bear upon the judicial assessment of vagueness") (citing State v. Lashinsky, 81 N.J. 1, 18 (1979)).

Indeed, the testimony here suggests that Smith knew she was required to signal her lane change, as she activated her turn signal upon looking in her rearview mirror and seeing a police car behind her. (1T18-7 to 19-7). And contrary to his position on appeal, defendant also demonstrated his knowledge that they could be pulled over for not signaling, testifying that he became attuned to Smith's driving—including her use of a "blinker"—when he saw the sheriff's officers pulling motorists over. (1T71-22 to 72-21). Smith had fair warning of the unlawfulness of her conduct in failing to signal until she was partially in the adjacent lane.

Because N.J.S.A. 39:4-126 plainly requires a driver to signal their intention to change lanes when other traffic may be affected, Officers Manzo and Kromar had reasonable and articulable suspicion that Smith violated the Motor Vehicle Code by failing to activate her signal before changing lanes. The order denying the motion to suppress should be affirmed.

B. The officers had reasonable, articulable suspicion to stop the car because there was other traffic that may have been affected by the driver's failure to signal prior to changing lanes.

The credible testimony established two groups of motorists that "may be affected" by Smith's un-signaled lane change: (1) the other mid-day traffic on the commercial stretch of Route 22 where the violation occurred, and; (2) the patrol vehicle immediately behind Smith's vehicle. As to the first group, the trial court correctly ruled that the "medium" traffic in both lanes of westbound Route 22 supported "a reasonable and articulable suspicion" that a violation of N.J.S.A. 39:4-126 occurred. (Da6). As to the second group, the presence of the patrol car directly behind Smith's vehicle independently supported an objectively reasonable basis to conduct the stop. As the caselaw makes clear, a trailing motorist may be affected if the lead motorist fails to provide notice of her intentions. The trial court correctly ruled that there existed a reasonable and articulable basis to stop Smith for failing to signal her lane change. This Court should affirm that ruling.

Review of a trial court's decision on a motion to suppress is limited. State v. Robinson, 200 N.J. 1, 15 (2009). This Court will "defer[ ] to the trial court's factual findings" and uphold them so long as they are supported by "sufficient credible evidence in the record." State v. Nelson, 237 N.J. 540, 551 (2019). This Court defers to those factual findings because the trial court has

the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). Reversal is only appropriate where the trial court's findings "are so clearly mistaken that the interests of justice demand intervention and correction." Robinson, 200 N.J. at 15 (quoting Elders, 192 N.J. at 244).

"A lawful roadside stop by a police officer constitutes a seizure under both the Federal and New Jersey Constitutions." State v. Dunbar, 229 N.J. 521, 532 (2017). "To be lawful, an automobile stop 'must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed.'" State v. Bacome, 228 N.J. 94, 103 (2017) (quoting State v. Carty, 170 N.J. 632, 639-40, modified on other grounds, 174 N.J. 351 (2002)). Reasonable suspicion is less demanding than probable cause. State v. Nyema, 249 N.J. 509, 527 (2022). Only "some minimal level of objective justification for making the stop" must be shown. State v. Nishina, 175 N.J. 502, 511 (2003) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). "[R]aw, inchoate suspicion grounded in speculation cannot be the basis for a valid stop." State v. Scriven, 226 N.J. 20, 34 (2016).

"Determining whether reasonable and articulable suspicion exists . . . is a highly fact-intensive inquiry that demands evaluation of 'the totality of

circumstances surrounding the police-citizen encounter, balancing the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions.'" Nyema, 249 N.J. at 528 (quoting State v. Privott, 203 N.J. 16, 25-26 (2010)). "It is fundamental to a totality of the circumstances analysis of whether reasonable suspicion exists that courts may consider the experience and knowledge of law enforcement officers." State v. Stovall, 170 N.J. 346, 363 (2002).

Under N.J.S.A. 39:4-126, a signal of intention to change lanes is required "in the event any other traffic may be affected by such movement." The "clear and unambiguous language" of N.J.S.A. 39:4-126 does "not project a requirement that a turn movement must affect other traffic but merely that it has the potential of doing so." State v. Moss, 277 N.J. Super. 545, 547 (App. Div. 1994); accord Williamson, 138 N.J. at 304.

In Williamson, the Court interpreted the language "may affect traffic" as implying that other traffic is "fairly close and visible, and that the signal need not be dictated solely by concerns of safety and accident avoidance." 138 N.J. at 304. The Court reasoned that "[m]otorists in the vicinity whose movements may be affected must be made aware of a driver's intentions." Ibid. Police may rely on N.J.S.A. 39:4-126 to make a lawful motor-vehicle stop even where the only vehicle that may be affected by the driver's failure to make an

appropriate turn signal is the police car behind it. Ibid. The State "need not establish that the move actually affected traffic," nor does the State need to "prove that a motor-vehicle violation occurred as a matter of law." Ibid. It only needs to prove that the "police lawfully stopped the car, not that it could convict the driver of the motor-vehicle offense." Ibid.

Willamson is controlling here. As such, Officer Manzo "needed only a reasonable and articulable suspicion that [Smith]'s failure to signal may have affected other traffic." Ibid. Despite the statute requiring a signal be given for at least 100 feet prior to changing lanes, both officers testified that Smith did not activate her turn signal until the car had already crossed the white line dividing the left and right lanes. (1T16-9 to 13, 18-3 to 19-7, 47-3 to 6, 49-2 to 7). The judge found the officers credible and accepted their testimony on this point. (Da5-6, 7). The traffic violation took place in the early afternoon in a commercial area with businesses lining the road. (1T17-4 to 23). Officer Manzo described the traffic volume as "medium" with cars in both lanes of westbound Route 22 at the time he observed Smith's white sedan. (1T17-17 to 18-1). His description of the traffic conditions was corroborated by the officers' body cameras, which depict numerous vehicles in close proximity with one another traveling in both lanes of westbound Route 22 just moments

after the observed motor vehicle violation.[8] (Pa1 at 13:35:50 to 13:36:04; Pa2 at 13:35:55 to 13:36:09).

Defendant argues that Manzo's testimony did not establish where or "how close" the other vehicles on the road were to Smith's car. (Db21). But that level of precision is not required. In Moss, this Court found reasonable suspicion for a violation of N.J.S.A. 39:4-126 existed where the defendant made a left turn without signaling. 277 N.J. Super. at 546-47. In addition to the police vehicle immediately behind the defendant's vehicle, this Court found the lack of signal had the potential of affecting "other traffic on Broad Avenue" even though traffic was "light," and the only other car identified was in the right lane. Ibid.

And in Jones, the trooper testified that the defendant's un-signaled lane change occurred "during rush hour and that there were quite a few cars on the road," but he "could not say" whether the defendant's lack of signaling "affected other traffic on the roadway or where such traffic was in relation to defendants' vehicle." 326 N.J. Super. at 239. Despite the lack of specifics as to the location of the other vehicles, this Court ruled that "the rush hour traffic

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[8] Officer Manzo testified that Smith pulled into the Ivory Tower Motel parking lot and came to a stop facing east, with the officers pulling behind her, giving a clear view of the westbound side of Route 22, from which Smith and the officers had just come. (1T21-12 to 18).

conditions were sufficient to support an articulable and reasonable basis for concluding that the unsignaled lane change might have an effect on other vehicles." Ibid.

Further, in State v. Heisler, 422 N.J. Super. 399 (App. Div. 2011), the defendant drove westbound, pulled into a left-turn lane at an intersection, and waited at a red light, only turning on his directional signal after noticing the officer behind him also signaling a turn. Id. at 407, 413. In addition to the patrol car, the only other vehicles the officer observed "in the vicinity" was a car that "turned into a parking lot before reaching the intersection," and another vehicle traveling eastbound that turned right at the intersection while the defendant waited at the light. Id. at 407. This Court found sufficient credible evidence supporting a reasonable suspicion that the failure to signal not only may have affected the patrol car, but also "other vehicles." Id. at 413.

Apparent from the above cases, an officer does not have to articulate the position of other vehicles with exactitude to have an objectively reasonable suspicion that other drivers may be affected by the lack of a signal. It is enough that the evidence establishes that the other traffic is "fairly close and visible." Williamson, 138 N.J. at 304. Manzo's testimony—largely corroborated by the body camera videos showing the traffic conditions within minutes of the observed violation—that there was a medium volume of traffic,

in an area with numerous businesses lining the road, and cars in both lanes of westbound Route 22 at the time he observed Smith's sedan sufficiently established reasonable suspicion that the failure to signal may have affected other traffic in the vicinity.

Additionally, police cars qualify as vehicles in considering the presence of traffic and whether a failure to signal may have affected the same. Ibid. Any other driver "in the vicinity whose movements may be affected must be made aware of a driver's intentions." Ibid. Prior to the stop, the officers testified that they pulled directly behind Smith's sedan in the left lane. (1T16-7 to 13, 18-2 to 9, 46-25 to 47-6). They were close enough to see the driver of the sedan look in her rearview mirror and discern that there were three occupants inside. (1T19-2 to 11, 49-3 to 12). Thus, Smith's lack of a turn signal had the "potential" of affecting other traffic—namely, the police car immediately behind her—to support reasonable suspicion of a traffic violation.

Relying on Williamson, defendant maintains that the fact that another vehicle is behind the car making a lane change alone cannot justify a traffic stop when the car in front fails to signal. To the contrary, Williamson does not stand for this proposition and is factually distinguishable. In Williamson, "a State trooper testified that while driving in the left lane on a three-lane divided highway, he observed defendant, driving a few car lengths ahead, move from

the center lane into the right lane without a signal." 138 N.J. at 303-04. Due to the limited testimony and findings by the trial court on the subject, the Court remanded for a determination of whether the failure to signal may have affected any other traffic. Id. at 304-06. Based on the limited record, the Court observed that "[t]he only evidence of which we are aware is that the motorist was moving away from the trooper's car, movement that would appear to facilitate the movement of the trooper's car." Id. at 304.

The Court in Williamson did not hold that a lead car's failure to signal can never affect the vehicle behind it. Rather, the Court found on the facts before it that the record was inadequate to make a determination. Notably, in Williamson, the police car was not in the same lane as Williamson's car, and Williamson's lane change from the center to right lane put him two lanes away from the trooper in the left lane. In contrast, Officers Manzo and Kromar were directly behind Smith's vehicle in the left lane of the two-lane divided highway. And the trooper in Williamson testified that Williamson was a few car lengths ahead, whereas the officers here "got pretty close" behind Smith's vehicle to the point where they could see the driver looking in her mirror and could count the number of occupants. (1T19-2 to 11, 49-2 to 7).

As this Court has repeatedly found, a driver's failure to signal may affect other traffic when a police car is behind them as in the present case. See, e.g.,

Moss, 277 N.J. Super. at 547 (holding that the defendant's failure to signal violated the statute where "the police vehicle immediately behind the turning vehicle" in addition to other traffic was "likely to be affected by the left turn of defendant's vehicle"); Heisler, 422 N.J. Super. at 413 (holding that the defendant's failure to signal his intention to turn left until he was a few feet away from the intersection "may have affected [the police officer's] own vehicle" directly behind the defendant's vehicle); Garland, 270 N.J. Super. at 42-43 (finding articulable suspicion to make the original stop where the defendant failed to signal while changing from the right lane to the left lane in front of a police vehicle).

And contrary to defendant's argument, it is of no moment that the officers did not testify that they were actually affected by Smith's failure to signal. By only requiring that the lane change "may affect traffic," the statute places the onus on the driver who intends to make the move to be aware of the other traffic around them. See Williamson, 138 N.J. at 304 (under language of the statute, the State "need not establish that the move actually affected traffic"); Moss, 277 N.J. Super. at 547 ("[T]he key words [of N.J.S.A. 39:4-126] do not project a requirement that a turn movement must affect other traffic but merely that it has the potential of doing so.").

Common sense dictates that a driver's failure to signal a lane change

"may" affect the car behind them as any number of real-life examples demonstrate. For instance, two cars could be in the left lane of a highway with the trailing driver intent on passing the lead driver. The trailing driver looks back to ensure it is safe to move over and begins to change lanes. While the trailing driver is looking back, the lead driver also decides to change lanes without having signaled their intention causing a potential collision or near collision. Or imagine two cars in the right lane of a roadway. The lead driver intends to turn right into the driveway of a business but does not activate their turn signal. The trailing driver has less opportunity to react when the lead car begins to slow down because of the failure of the leading driver to indicate their intention.

It goes without saying that other motorists need to know where the car in front of them is planning on going. See Williamson, 138 N.J. at 304 ("Motorists in the vicinity whose movements may be affected must be made aware of a driver's intentions."). Activating a signal after the vehicle has already partially entered the adjacent lane—as Smith did here—does not accomplish the purpose of N.J.S.A. 39:4-126 to afford notice to other motorists so they can react accordingly. Thus, the trial court correctly ruled that the officers had reasonable and articulable suspicion that Smith's failure to signal may have affected other traffic to support a lawful stop.

Moreover, as the State argued below, (1T91-1 to 5), there was another valid, independent basis to stop the car. Under N.J.S.A. 39:4-88(b), "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety." In Regis, the Supreme Court determined that the above language "consists of two separate, independent clauses, each of which addresses a distinct offense." 208 N.J. at 447. The first clause "is not limited to circumstances in which the deviation from the lane is demonstrated to be a danger to other drivers," but rather "imposes a continuous requirement upon the driver: to maintain his or her vehicle in a single lane, by avoiding drifting or swerving into an adjoining lane or the shoulder. . ." Id. at 448 (emphasis added). The second clause, similar to the first sentence of N.J.S.A. 39:4-126, "requires a driver to ascertain the safety of switching lanes before conducting a lane change." Id. at 449.

According to Officer Manzo, as he pulled behind Smith's vehicle, he observed her look in her rearview mirror and "as she did this, that's when the vehicle swerved over into the other lane." (1T19-4 to 7). As Smith's vehicle "swerve[d] over the center line with its two right side tires, the blinker came on and she finished the lane change. (1T18-9 to 12). Officer Kromar similarly testified that after the officers got behind Smith, he observed her vehicle

"steadily drove on the white line and then drifting over the white line, and then it moved into the right lane and then put the blinker on quick and then rushed over." (1T47-2 to 6).

Smith's failure to maintain her lane by "steadily driving" over the white dividing line and eventually "drifting" into the adjacent lane could constitute a violation of the first clause of N.J.S.A. 39:4-88(b) even if the move presented no danger to other drivers. Smith's movement coupled with her failure to signal until she had already crossed into the adjacent lane give rise to reasonable suspicion that she had not intended her vehicle to change lanes. And Smith's failure to look into her rearview mirror until she was actually "swerv[ing]" into the right lane could support a violation of the statute's second clause since she did not ascertain whether the lane change could be made safely "before conducting [the] lane change." Regis, 208 N.J. at 449 (emphasis added). Bearing on the second clause, there was another vehicle—the police car—and other traffic in the vicinity at the time she changed lanes. Thus, the officers' credible testimony supported an objectively reasonable basis to stop Smith for a violation of N.J.S.A. 39:4-88(b) even though she was not ticketed for this infraction and the motion judge did not address this statute. See Williamson, 138 N.J. at 304 (observing that the State "need prove only that the police lawfully stopped the car, not that it could convict the

driver of the motor-vehicle offense[]"); see also State v. Maples, 346 N.J. Super. 408, 417 (App. Div. 2002) (noting "we affirm or reverse judgments and orders, not reasons").

As a final point, while defendant now hones in on the "may be affected" language of N.J.S.A. 39:4-126, this argument was not raised below. Both counseled briefs submitted on defendant's behalf prior to the motion hearing focused almost entirely on the search, not the stop.[9] (Pa3-24). The fleeting references to the stop in the defense briefs challenged whether Smith used her turn signal, not whether traffic may have been affected as to require it. (Pa4-5, 7, 17). Likewise, at the motion hearing, defense counsel posed no questions to the witnesses about the traffic conditions (1T31-3 to 40-10; 51-10 to 52-24; 55-16 to 65-5), made no argument in closing about the traffic conditions, and only referred to defendant's testimony that "the blinkers were put on." (1T83-23 to 89-10; 85-24 to 25).

So, while defendant now faults the State for not eliciting the proximity of other vehicles relative to Smith's sedan, (Db21-22), it is he who must bear the burden of failing to adequately present the issue below. See State v. Witt, 223 N.J. 409, 419 (2015) ("Parties must make known their positions at the

[9] Defendant changed defense counsel prior to the motion being heard. Both attorneys had submitted briefs on his behalf.

suppression hearing so that the trial court can rule on the issues before it.") (citing Robinson, 200 N.J. at 19); Robinson, 200 N.J. at 21 ("The failure to raise defendant's present claim during the motion to suppress denied the State the opportunity to confront the claim head-on; it denied the trial court the opportunity to evaluate the claim in an informed and deliberate manner; and it denied any reviewing court the benefit of a robust record within which the claim could be considered."). Thus, even if the evidence below—that other traffic may be affected—could somehow be deemed insufficient, the remedy would be limited to a remand to allow the State to further develop the record on that issue. See Williamson, 138 N.J. at 305-06 (affirming remand to the trial court to address "whether the failure to signal may have affected any other traffic" because the hearing "did not address that question").

Regardless, for the reasons stated above, the facts developed at the hearing and found by the judge were more than sufficient to establish that other motorists may have been affected by the un-signaled lane change. Giving due deference to the trial court's factual and credibility findings, Officers Manzo and Kromar had reasonable and articulable suspicion of a motor vehicle violation to warrant a traffic stop. The motion judge correctly found that the stop was lawful. This Court should affirm the ruling below.

CONCLUSION

For the reasons stated above, this Court should affirm the denial of defendant's motion to suppress and affirm his judgment of conviction.

Respectfully submitted,

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REPLY LETTER-BRIEF ON BEHALF OF DEFENDANT-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1157-22
INDICTMENT NO. 21-06-433-I

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from an Order of the Superior Court of New Jersey,
v.	:	Law Division, Somerset County.
AJMAL NESBIT,	:	Sat Below:
Defendant-Appellant.	:	Hon. Michael J. Rogers, J.S.C.,
	:	Hon. Peter J. Tober, J.S.C.

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

DEFENDANT IS CONFINED

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THE COURT SHOULD NOT CONSIDER WHETHER THE TRAFFIC STOP WAS INDEPENDENTLY JUSTIFIED UNDER N.J.S.A. 39:4-88(b) BECAUSE THE TRIAL COURT DID NOT RULE ON THIS ISSUE. ON THE OTHER HAND, ASSUMING ARGUENDO THAT N.J.S.A. 39:4-126 REQUIRES SOME LANE CHANGES TO BE SIGNALED, THE COURT SHOULD CONSIDER WHETHER A SIGNAL WAS REQUIRED UNDER THE CIRCUMSTANCES BECAUSE THERE IS A FULL RECORD AND A TRIAL COURT RULING ON THIS ISSUE..... 12

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

Defendant-appellant Ajmal Nesbit relies on the procedural history and statement of facts from his initial brief. (Db 3-8)[1]

LEGAL ARGUMENT

Mr. Nesbit relies on the legal arguments from his initial brief and adds the following:

POINT I

DEFENDANT'S ARGUMENTS ABOUT THE MEANING AND VALIDITY OF N.J.S.A. 39:4-126 WARRANT CONSIDERATION BY THIS COURT. IN ADDITION, NEITHER THE PLAIN LANGUAGE OF THE STATUTE NOR THE EXTRINSIC EVIDENCE RELIED ON BY THE STATE INDICATES THAT A MOTORIST MUST SIGNAL PRIOR TO CHANGING LANES.

In his initial brief, Mr. Nesbit argued that the plain language of N.J.S.A. 39:4-126 does not require a motorist to signal a lane change because a lane change is not a "turn" within the meaning of the statute. (Db 11-17) In the alternative, Mr. Nesbit argued that the word "turn" is unconstitutionally vague as applied to the conduct of changing lanes. (Db 18-19) In response, the State argues that (1) the scope and constitutionality of N.J.S.A. 39:4-126 do not

[1] This brief uses the same abbreviations as Mr. Nesbit's initial brief. In addition, Db refers to Mr. Nesbit's initial brief, and Sb refers to the State's brief.

warrant consideration for the first time on appeal (Sb 12-15), (2) the plain language of the statute and extrinsic evidence indicate that the signaling requirements in N.J.S.A. 39:4-126 apply to lane changes (Sb 15-30), and (3) N.J.S.A. 39:4-126 is not unconstitutionally vague (Sb 30-33). These arguments lack merit.[2]

At the outset, Mr. Nesbit's challenge to N.J.S.A. 39:4-126 on statutory interpretation and vagueness grounds present legal issues, which are reviewed by an appellate court de novo. See State v. Gandhi, 201 N.J. 161, 176 (2010). Consequently, even if the trial court had ruled on these arguments, this Court would owe no deference to the trial court's decision. Ibid. The fact that the trial court did not do so thus presents no impediment to this Court's consideration of these issues.

Furthermore, as the State points out, appellate courts will consider issues not raised below that "substantially implicate public interest." State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006). Whether New Jersey law requires a motorist to signal a lane change, such that the failure to do so is grounds for being pulled over by police, is undoubtedly a question that substantially implicates public interest. Countless motorists across the State change lanes

[2] Mr. Nesbit relies on his initial brief with respect to the vagueness issue and addresses the remaining arguments raised by the State herein.

every day; these motorists need to know what is legally required of them. In State v. Smith, the Supreme Court considered whether N.J.S.A. 39:3-74, which prohibits operating a vehicle with "non-transparent material" on the front windshield or side windows, was unconstitutionally vague, despite the fact that the vagueness issue was not raised before the trial court or the Appellate Division. 251 N.J. 244, 263-65 (2022); State v. Smith, Brief and Appendix on Behalf of the State of New Jersey, 2022 WL 18584338 at *24, n. 8. The Smith Court's willingness to consider this new argument demonstrates that the scope and legality of the provisions of the Motor Vehicle Code are of substantial importance to New Jersey residents.

The State appears to concede that the scope of N.J.S.A. 39:4-126 is an issue of public importance but argues that the statute's application to lane changes was determined by the Supreme Court in State v. Williamson, 138 N.J. 302 (1994). Not so. In Williamson, the Court considered the meaning of the phrase "in the event any other traffic may be affected by such movement." 138 N.J. at 303-04. It is evident that, for purposes of the defense argument, the defendant accepted the premise that N.J.S.A. 39:4-126 requires a motorist to signal a lane change in such circumstances. The Court appropriately did not reject this premise, as doing so would have constituted crossing the line into advocacy and making the defense argument for it.

A critical component of our adversarial system is the "party presentation" principle, which requires judges to limit themselves to the arguments adduced by the parties. See United States v. Campbell, 26 F.4th 860, 893-897 (11th Cir. 2022) (Newsom, C.J., and Jordan, C.J., dissenting) (discussing in-depth the reflection of adversarial principles in United States Supreme Court jurisprudence). Abiding by this principle, the Williamson Court did not address whether the signaling requirements of N.J.S.A. 39:4-126 apply to lane changes in the first instance. We cannot now interpret the Court's silence on this issue, which was proper given the circumstances, as a decision on the merits. Accordingly, despite the State's resistance, it is an open question whether motorists in New Jersey are legally required to signal prior to changing lanes. It is critical that this Court provides an answer.

Turning to the merits, the State argues that the phrase "so turn" in the second sentence of N.J.S.A. 39:4-126 refers to all the movements listed in the first sentence, such that the statute prohibits making any of those movements without signaling in the event any other traffic may be affected. (Sb 17-22) In so doing, the State seeks to have this Court ignore the plain meaning of the word "turn" and hold that whenever a car "move[s] right or left upon a roadway" or "start[s] or back[s]," it accomplishes a turn. Even under the State's proffered definition of the word "turn," this makes no sense.

The State argues that a "turn" occurs whenever a vehicle rotates its wheel (Sb 20), but no rotation of the wheel is necessary when a vehicle "start[s] or back[s]." To the contrary, a motorist must merely step on the gas and, if the gear is in drive, the car will start from a stopped position, and if it is in reverse, the car will back up. Thus, under the State's own definition of the word "turn," a vehicle that "start[s] or back[s]" does not "turn."

The State insists that "there are situations in which these movements fall within the meaning of a turn," such as when a driver pulled over on the side of the road "activates their turn signal upon entering the stream of traffic." (Sb 18) But the statute does not indicate that its use of the word "start" is limited to such a specific circumstance. Instead, the statute plainly applies to whenever a vehicle "start[s]" from a stopped position, including when the vehicle is simply moving forward without any rotation of the wheel. The statute prohibits a motorist from making such a movement "unless and until [it] can be made with safety," but it does not require a motorist to signal the movement. N.J.S.A. 39:4-126. This is a sensible construction, given that the statute offers no guidance as to how to signal a movement forward from a stopped position. When one considers a vehicle stopped in traffic on a highway that starts again once traffic clears, it becomes obvious that no motorist believes that a signal is required in those circumstances. The State's construction of N.J.S.A. 39:4-126 leads to the

absurd conclusion that a signal is required in those circumstances and that motorists across the State are unwittingly committing traffic infractions every time they fail to signal such a movement.

The State's reliance on Michigan and New York court decisions to support its plain language argument is misplaced. (Sb 20, 22-23) Those courts were interpreting their own statutes, which contain different language than N.J.S.A. 39:4-126. Starting with the Michigan statute, its first paragraph provides that: "The driver of a vehicle or bicycle upon a highway, before stopping or turning from a direct line, shall first see that the stopping or turning can be made in safety and shall give a signal as required in this section." People v. Hrlic, 277 Mich. App. 260, 263–64 (2007) (citing Michigan Compiled Laws Annotated (M.C.L.A.) 257.648). Unlike the first paragraph of N.J.S.A. 39:4-126, the Michigan statute's first paragraph makes no reference to moving right or left upon a roadway. As a result, the Michigan court did not have to grapple with how a "move[ment] right or left upon a roadway" differs from a "turn . . . from a direct course." See N.J.S.A. 39:4-126. In addition, the Michigan statute combines the requirement that motorists assess safety and the requirement that they signal into one sentence, making clear that both ascertaining safety and signaling are necessary preconditions to stopping and turning. See M.C.L.A. 257.648. By contrast, the first paragraph of N.J.S.A. 39:4-126 contains two

sentences, the first of which prohibits specified movements unless they can be made safely, and the second of which prohibits "turns" without signaling. Whether a "turn" encompasses all the movements listed in the first sentence is a question that the Michigan court did not have to consider. Given these differences, and given that the Michigan court's interpretation of the phrase "turning from a direct line" was informed by the surrounding statutory language and structure, that interpretation has no bearing on this Court's construction of N.J.S.A. 39:4-126.

The New York statute at issue in the decision cited by the State has a similar structure to N.J.S.A. 39:4-126, but it contains no language about starting or backing in its first paragraph. See People v. James, 842 N.Y.S.2d 859, 861 (Crim. Ct. 2007); N.Y. Vehicle & Traffic Law (V.T.L.) 1163. More importantly, however, the New York statute expressly provides that "signals . . . shall be used to indicate an intention to . . . change lanes." N.Y. V.T.L. 1163. N.J.S.A. 39:4-126, on the other hand, makes no reference to changing lanes at all. Thus, while the New York statute unambiguously requires motorists to signal lane changes, that it does so is of no moment to this Court in construing N.J.S.A. 39:4-126.

The State also argues that the language of N.J.S.A. 39:4-126 should be construed in line with its "purpose," which the State derives from the title of the section: "Signaling before starting, turning or stopping." (Sb 23-24) The

Legislature has made clear, however, that the descriptive heading of a statute, more properly referred to as its "headnote," is not a part of the statute itself. N.J.S.A. 1:1-6; State v. Malik, 365 N.J. Super. 267, 279 (App. Div. 2003). Consequently, "the descriptive heading does not control the statute's interpretation." Malik, 265 N.J. Super. at 280 (citations omitted).

The State fares no better in resorting to extrinsic evidence to support its interpretation of N.J.S.A. 39:4-126. (Sb 25-30) Relying on prior versions of N.J.S.A. 39:4-126, the State argues that the statute has, "[f]rom its inception in 1928," consistently required motorists to signal before starting, stopping, backing or turning if another vehicle might be affected by the movement. (Sb 28) This proves, according to the State, that the Legislature's use of the phrase "so turn" in the second sentence of N.J.S.A. 39:4-126 is shorthand for all the movements listed in the first sentence, including "mov[ing] right or left upon a roadway" and "start[ing] or back[ing]." Because a lane change necessarily requires a motorist to "move right or left upon a roadway," the State maintains that a lane change is a "turn" within the meaning of the statute, such that the statute's signaling requirements apply to lane changes.

Setting aside the absurdity of using the word "turn" to refer to all those movements, the State's premise is wrong: the Legislature amended the 1928

version of the statute substantially in 1951, and in doing so, it changed the statute's meaning. The 1928 version of the statute provided, in relevant part:

> The driver of any vehicle, upon a highway, before starting, stopping, backing or turning from a direct line, shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement, shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal, as required in this section, plainly visible to the driver of such other vehicle or pedestrian of the intention to make such a movement.

Laws of 1928, Chapter 281, Article XIV, Sec. 4. Thus, the 1928 version of the statute plainly required motorists to signal in certain circumstances prior to starting, stopping, backing and turning, and it provided explicit guidance as to how to do so. For instance, the statute dictated that "[w]henever the signal is given by means of the hand and arm, the driver shall indicate his intention to start, or stop, or turn by extending the hand and arm from and beyond the side of the vehicle." Laws of 1928, Chapter 281, Article XIV, Sec. 5.

The 1951 version of the statute is in large part identical to the current version -- with two separate sentences in the first paragraph -- and it did not require a signal prior to starting and backing. Indeed, the Legislature removed the word "start" from the previously cited sentence so that it read: "When the signal is given by means of the hand and arm, the driver shall indicate his intention to <u>stop or turn</u> by extending the hand and arm from and beyond the

side of the vehicle." Laws of 1951, Chapter 23, Sec. 67 (emphasis added.) This change indicates that the Legislature no longer sought to require motorists to signal prior to starting a vehicle.

As the State points out, the Legislature amended the Motor Vehicle Code in 1951 with an eye towards bringing New Jersey law into greater conformity with the Uniform Vehicle Code. (Sb 27) See State v. Regis, 208 N.J. 439, 445 (2011). It is noteworthy, then, that the version of the Uniform Vehicle Code in force in 1951 also did not require motorists to signal prior to starting a vehicle. The Code regulated starting a vehicle "which is stopped, standing, or parked" in a separate section altogether and provided that such movements shall not be made unless they could be accomplished safely. See Uniform Vehicle Code of 1952, Act V, Sec. 79. The section contained no requirement that vehicles signal prior to starting.

Accordingly, the State is wrong that since 1928, New Jersey law has required motorists to signal in certain circumstances before starting, stopping, backing and turning. To the contrary, it appears that the Legislature made a conscious decision in 1951 to change the law so that no signal is required prior to starting a stopped car. The State's argument that the phrase "so turn" broadly encompasses "mov[ing] right or left upon a roadway" as well as "start[ing] or back[ing]" should therefore be rejected. Although a lane change involves a

"move[ment] right or left upon a roadway," it is not a "turn" within the meaning of the statute, and thus no signal is required.

Finally, while the State turns to the New Jersey driver manual to bolster its argument (Sb 29-30), that manual is decidedly not law. In fact, the second page of the manual explicitly states that it is "not a legal reference for New Jersey motor vehicle and traffic laws." The 2023 New Jersey Driver Manual, available at https://www.nj.gov/mvc/about/manuals.htm, at 2. The manual further provides that "[i]f there is a discrepancy between what is cited in this manual and what is in statute or regulation, the statute or regulation governs." Ibid. Thus, this Court should not defer to the guidance set forth in the driver manual to determine the meaning of N.J.S.A. 39:4-126.[3]

In sum, Mr. Nesbit's arguments regarding the meaning and validity of N.J.S.A. 39:4-126 warrant consideration. Upon consideration, the Court should hold that the statute does not require a motorist to signal prior to changing lanes. In the alternative, the Court should hold that the statute is unconstitutionally vague as applied to this case. See Db 18-19. Either ruling would render unlawful

[3] As a case in point, the manual states that "New Jersey law prohibits add-on tinting on windshields and front-side windows." Id. at 47. The Supreme Court determined in Smith, however, that window tinting is only prohibited where it is so dark "that police cannot clearly see people or articles within the car." 251 N.J. at 265. Thus, not only did the Supreme Court not defer to the Motor Vehicle Commission's (MVC) interpretation of N.J.S.A. 39:3-74 when deciding Smith, but the MVC's current guidance conflicts with published law.

the traffic stop of Smith's car, in which Mr. Nesbit was a passenger, and suppression of all evidence seized during the course of the traffic stop would therefore be required.

POINT II

THE COURT SHOULD NOT CONSIDER WHETHER THE TRAFFIC STOP WAS INDEPENDENTLY JUSTIFIED UNDER N.J.S.A. 39:4-88(b) BECAUSE THE TRIAL COURT DID NOT RULE ON THIS ISSUE. ON THE OTHER HAND, ASSUMING ARGUENDO THAT N.J.S.A. 39:4-126 REQUIRES SOME LANE CHANGES TO BE SIGNALED, THE COURT SHOULD CONSIDER WHETHER A SIGNAL WAS REQUIRED UNDER THE CIRCUMSTANCES BECAUSE THERE IS A FULL RECORD AND A TRIAL COURT RULING ON THIS ISSUE.

The State argues that, independent of whether the traffic stop of Smith's car was justified under N.J.S.A. 39:4-126, police acted lawfully in stopping the car because they observed a violation of N.J.S.A. 39:4-88(b), which prohibits changing lanes without first ascertaining the safety of doing so and failing to maintain one's lane. (Sb 44-46) This argument is not viable, as the trial court did not rule on this issue.

Unlike the proper construction of N.J.S.A. 39:4-126, which is a legal issue that this Court considers de novo, whether police observed Smith violate the traffic laws by failing to maintain her lane or by failing to ascertain the safety of changing lanes before doing so is a factual question. With respect to factual

issues, the role of an appellate court is not to make findings of fact but to review those of the trial court to ensure that they are supported by sufficient credible evidence. State v. McNeil-Thomas, 238 N.J. 256, 272 (2019). Here, however, the trial court made no factual findings as to any alleged violation of N.J.S.A. 39:4-88(b); the Court found that the officers lawfully stopped Smith's car based on a perceived violation of N.J.S.A. 39:4-126, and that's it. (Da 6) Given that the trial court never considered the issue, this Court should not rule on whether the officers could have stopped Smith's car under N.J.S.A. 39:4-88(b).

Even on the merits of the issue, the State should lose, as it failed to establish at the suppression hearing that the officers reasonably believed that Smith violated the traffic laws in this manner. Officer Kromar testified that Smith "repeatedly" looked in her rearview mirror when the police car was behind her, suggesting that she did in fact ascertain the safety of changing lanes before doing so. (1T 49-4 to 9) As for failing to maintain one's lane, it is obvious that this statutory prohibition does not apply to vehicles changing lanes. To suggest otherwise is preposterous. Furthermore, the State's argument that Smith "had not intended her vehicle to change lanes" and only did so after driving over the dividing line is entirely speculative. (Sb 45) These arguments should be rejected in full.

While simultaneously raising a factual issue that the trial court did not rule on, the State urges this Court to not consider a factual issue that the trial court did rule on, and which Mr. Nesbit raised in his opening brief: whether, even if N.J.S.A. 39:4-126 requires a motorist to signal a lane change when other traffic may be affected by the movement, police still did not act lawfully in stopping Smith's vehicle because those circumstances were not present. (Db 20-23; Sb 46-47) This Court should reject the State's hypocritical contentions.

Although the State is technically correct that the defense motions below did not focus on the issue of whether police reasonably believed that Smith was required to signal her lane change, there is a full record and a trial court ruling on the issue, such that appellate review is appropriate. During the hearing on Mr. Nesbit's suppression motion, the prosecutor asked Officer Manzo to describe the traffic on the road at the time of Smith's unsignaled lane change. (1T 17-17 to 19) When Manzo described the traffic as "medium," the prosecutor followed up by asking if there were "cars in both lanes of Route 22" in the direction that Smith was traveling, to which Manzo responded, "Yes." (1T 17-20 to 18-1) The purpose of these questions was undoubtedly to make a factual record about the lawfulness of the stop. Indeed, in its written decision, the trial court evaluated the lawfulness of the stop under N.J.S.A. 39:4-126 before moving on to the lawfulness of the search. (Da 5-6) Relying on Officer Manzo's

testimony about traffic conditions at the time of Smith's lane change, the court found that the officers had reasonable and articulable suspicion that Smith violated the traffic laws by failing to signal prior to changing lanes. (Da 5-6)

Because there is a factual record on this issue and a ruling from the trial court, this Court may properly consider whether the trial court's decision was supported by credible evidence in the record. Cf. State v. Witt, 223 N.J. 409, 419 (2015) (holding that appellate review of an issue raised for the first time on appeal was inappropriate where the trial court did not rule on the issue in the first instance). Upon consideration, this Court should conclude that it was not. See Db 20-23.

CONCLUSION

For the reasons set forth here and in Mr. Nesbit's initial brief, this Court should reverse the trial court's denial of the motion to suppress. The evidence should be suppressed, and Mr. Nesbit should be offered the opportunity to withdraw from his guilty plea if he chooses to do so.

Respectfully submitted,

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