SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002165-23T4
Essex County Docket No. 2023-020
(Municipal Appeal)

STATE OF NEW JERSEY,	:	Quasi-Criminal Action
	:	
Plaintiff-Respondent	:	DEFENDANT-APPELLANT'S
	:	BRIEF IN SUPPORT OF THE
v.	:	APPEAL FROM A DECISION OF THE
	:	SUPERIOR COURT, LAW DIVISION
DOMINICK COFONE,	:	- ESSEX COUNTY.
	:	
Defendant-Appellant	:	
	:	Sat Below:
	:	Hon. Arthur J. Batista, J.S.C.
	:	

BRIEF AND APPENDIX FOR DEFENDANT-APPELLANT

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Dated: May 13, 2024
(Amended May 16, 2024)

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Preliminary Statement

Late on a rainy night, a vehicle crashed into a parked car on a residential street in Cedar Grove. Whoever drove the vehicle left before a resident discovered the crash and called the police.

Determined to identify the driver, the police scouted the area, locating a damaged car in Dominick Cofone's driveway a few houses down from the crash scene. Before even speaking with Mr. Cofone, the officers had decided to "crush" him with tickets. The officers likely reinforced this opinion when they summoned Mr. Cofone to his front door and while speaking to him, concluded that he appeared "intoxicated." Although Mr. Cofone never admitted driving or crashing into a parked car, and there were no eyewitnesses either, the police issued him tickets for Careless Driving, N.J.S.A. 39:4-97; Leaving the Scene of an Accident, N.J.S.A. 39:4-129(d); and Failure to Report and Accident, N.J.S.A. 39:4-130.

The State decided to put Mr. Cofone on trial for the three motor vehicle charges. In doing so, the State assumed the weighty burden of proving him guilty of the charges beyond a reasonable doubt. Because of the State's inability to meet this high burden of proof that Mr. Cofone should be found not guilty.

As it turned out, the State did not prove Mr. Cofone guilty of Careless Driving at the municipal court trial. Despite this, the municipal court judge still concluded that the evidence sufficiently showed that Mr. Cofone drove and

crashed and then left the scene without calling the police. Upon appeal of that decision, the *de novo* judge also found Mr. Cofone guilty of these charges as well.

The courts below erred in finding Mr. Cofone guilty for several reasons.

First, there is a lack of direct evidence of Mr. Cofone driving and causing the accident. The circumstantial evidence is not convincing either.

Second, the courts below disregarded the reasonable doubt created by the defense arguments that even if Mr. Cofone drove, his conduct did not violate the charged law.

Third, the courts disregarded aspects of the testimony of the victim, Richard Hall, which were favorable to Mr. Cofone.

Fourth, the police and the courts below unfairly considered Mr. Cofone's alleged "intoxication" which then colored the conclusion of his guilt, even though intoxication was not an issue in the case.

Having decided to put Mr. Cofone on trial for these charges, the State assumed the risk and the burden of proving him guilty beyond a reasonable doubt. Mr. Cofone did *not* need to prove that he was *not* driving, nor did he need to *prove* that he complied with the statutes. The record that the State created at the municipal court trial contains reasonable doubt. Mr. Cofone should be found not guilty as a result.

Procedural History

The Cedar Grove Municipal Court held trial on August 3, 2023, and September 27, 2023, rendering a decision on November 8, 2023.[1]

The municipal court judge found Mr. Cofone guilty of Leaving the Scene of an Accident and Failure to Report an Accident. The judge found Mr. Cofone not guilty of Careless Driving, determining that because the police officer did not observe Mr. Cofone driving, Mr. Cofone could not be found guilty of Carless Driving as a matter of law (3T. 10-6 to 13).

The court stayed the fines and the mandatory six-month driver's license suspension for Leaving the Scene of an Accident pending appeal. (3T.11-2)

An application for *de novo* review of the decision was filed with the Superior Court – Law Division. (23a). The issues were briefed and then argued on February 1, 2024. On February 12, 2024, the Superior Court judge found Mr. Cofone guilty as stated in a written opinion and Order. (1a) The Superior Court judge granted an application for a stay of the mandatory six-month driver's license suspension pending this appeal. (25a)

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[1] The transcripts for this matter are designated as follows:
1T. – trial testimony, Cedar Grove Municipal Court, August 3, 2023.
2T. – trial testimony, September 27, 2023.
3T. – trial court decision, November 8, 2023.
4T. – *de novo* appeal argument, Superior Court, Law Division, February 1, 2024.

Statement of Facts

During the municipal court trial, Evan Hall testified seeing his brother's parked car in the street in front of the house when he left at around 8:00 p.m. on March 3rd. [2] He saw the damage when he returned home at about 2:45 a.m. (1T.7-8).[3] Upon arriving at the scene, the police had limited knowledge about the vehicle involved in the accident.[4]

The police searched the immediate area for any vehicle possibly involved in the crash. The colloquy portrayed on the body worn camera footage shows that as the police officers were approaching Mr. Cofone's house, seeing his damaged car parked in the driveway, they had already decided to charge him before speaking with him or conducting further investigation into the driver's identity.[5]

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[2] Defense objections to the content of bodycam recordings were overruled. Although portraying out of court witness statements offered for the truth, the municipal judge found that the recordings were "not hearsay," rather than finding an exception to the hearsay rule for admissibility. (See, e.g.,1T.25-13, 1T.27, 1T.36-14, 2T.10-8)

[3] The State never presented testimony from the car's owner or any proof of the monetary amount of any damage to the car (2T.14) which appear to be requirements of the statute.

[4] Richard Hall, father of the car's owner, mentioned that the paint marks left on the damaged vehicle may not have matched the color of the car in Mr. Cofone's driveway and thought initially that someone else caused the damage. (2T.6; 2T.13)

[5] One officer can be heard saying on the bodycam video when approaching Mr. Cofone's house that they were going to "crush him with tickets." (See 1T.24, when the video recording was played during the trial). (36a)

At trial, Police Officer Anthony Grigolo described how the weather that night was "raining, overcast, intermittent rain" and "a little chilly." The officer confirmed that Mr. Cofone lived "less than a block away" from the Hall residence. (1T.42)

Officer Grigolo testified to drawing his own conclusion that Mr. Cofone drove his car "earlier in the evening." But the officer acknowledged that when confronted by the police that night, Mr. Cofone made no admissions to driving. (1T.20-4 to 10; 1T.21-13 to 22). The officer conceded that during their conversation, Mr. Cofone had only "possibly indicated that he had been in a crash." (1T. 21-13 to 22)

The police did not investigate anyone else in the Cofone residence as a potential driver. The police also did not obtain any recorded Ring doorbell footage from any of the nearby properties that they were directed to, or from Mr. Cofone's Ring doorbell. These devices may have made and stored recordings that depicted the vehicle involved or the driver.

Richard Hall's son owned the damaged parked car. He testified that he has been neighbors with Mr. Cofone for twenty years (2T.7). Richard Hall confirmed that Mr. Cofone came to his house the next morning. Mr. Hall recounted Mr. Cofone stating to him that, "it was raining, he wasn't sure what vehicle was [sic]. ." and, "It's raining, he didn't want to go around ringing doorbells." Richard Hall

found these explanations to be "all understandable." (2T.9; 2T. 20). Richard Hall acknowledged, however, that Mr. Cofone never specifically stated to him that he drove the car and crashed.

Richard Hall made it clear to the municipal court judge that he had no interest in seeing Mr. Cofone prosecuted. He described Mr. Cofone as "a good neighbor" and a "good guy" (2T.21) who's explanation of the events "made sense" (2T.24). Richard Hall expressed this sentiment to the municipal court before the trial in a letter that he wrote (35a). He read that letter into the record:

> I'm a lifelong resident of Cedar Grove and lived on Anderson Parkway for sixty-two of my seventy years.
>
> For twenty of those years, Dominick Cofone has been our neighbor. Through the years he's been a good neighbor who always friendly and willing give others a helping hand when needed.
>
> Just one example, when my truck was stranded in the middle of the street, Dominick did not hesitate to stop his car to get out and help me push back into a driveway. He is a good person, hardworking family man. Recently very late at night, Dominick struck my son's car. No one in the house heard the crash. Nor any neighbors. He did not want to ring doorbells in the middle of the night. I was sure he was upset and unsure of what to do.
>
> He parked his car in the driveway across the street in plain view of all neighbors. He did not attempt to flee, or hide is vehicle. The first thing the next morning, he came to our house and took full accountability for what happened.
>
> He apologized for profusely and we're more than happy to accept the apology. It was an accident. No one was hurt.

> Since that day, he has called me or came over the house almost every day to make sure that the insurance was handling the claim exponentially. Excuse me.
>
> When he was -- when it was not moving quickly enough, he made numerous calls to call the insurance company to make sure that we were not inconvenienced and to get our vehicle taken care of.
>
> Thank you in advance for your understanding of the circumstances involved in this incident. (2T.29-30)

Richard Hall testified that he was satisfied with how Mr. Cofone resolved the situation directly with him. He reiterated during the trial that he did not want to see Mr. Cofone prosecuted. (2T.31)

Legal Argument

> The guilty verdicts should be vacated because the State failed to prove the charges Leaving the Scene of an Accident and Failure to Report an Accident beyond a reasonable doubt.

Generally, an appellate court considering a Law Division judge's *de novo* review of a municipal court's decision will consider whether sufficient credible evidence is present in the record to uphold the findings of the Law Division judge. State v. Johnson, 42 N.J. 146, 162 (1964). This is a quasi-criminal matter, and the State must prove each of the statutory elements beyond a reasonable doubt to convict Mr. Cofone of these charged offenses. State v. Feintuch, 150 N.J.Super. 414, 422 (App. Div. 1977). Each charged statute requires different proofs to meet its elements. Therefore, proof of culpability for each charge must be evaluated separately.

Based on the trial testimony, the following issues are presented:

A. The State did not prove beyond a reasonable doubt that Mr. Cofone drove and crashed into the parked car.

Initially, both charged statutes require proof beyond a reasonable doubt that Mr. Cofone drove a motor vehicle and crashed into the parked car. Here, the State failed to establish proof beyond a reasonable doubt that Mr. Cofone drove the motor vehicle involved in the accident. As a result, the judge below erred in finding Mr. Cofone guilty of the charges.

Foremost in considering the State's failure to establish this element of the offenses beyond a reasonable doubt is that no one saw Mr. Cofone driving the car.[6] Mr. Cofone made no admissions constituting proof beyond a reasonable doubt that he drove either.

The court below found that "circumstantial evidence" showed that Mr. Cofone drove and crashed. However, the court erred by relying heavily on the "permissive inference" to find that the registered owner of the involved vehicle drove. (5a-6a). In fact, this is a fact-sensitive inquiry, and the cases cited by the

[6] The municipal court judge recognized the lack of any witness to Mr. Cofone driving as the basis to find him not guilty of Careless Driving. (3T. 10-6 to 13)

court contain facts pointing to those defendants as the driver that are not present in Mr. Cofone's situation.[7]

The courts further erred in emphasizing Mr. Cofone's "intoxication" in arriving at the guilty verdict (10a; 11a-12a; 14a). Intoxication is not an element of the charges against Mr. Cofone. Intoxication was not an issue contested at trial. No definitive proof - such as a breath test result or field sobriety tests - showed Mr. Cofone to be intoxicated. It was unfairly prejudicial to consider possible intoxication in assessing Mr. Cofone's culpability under the charged statutes. References to Mr. Cofone's alleged intoxication suggest a motive to prosecute and convict Mr. Cofone because of a perception of him "getting away" with driving while intoxicated. In this way, consideration of Mr. Cofone's alleged intoxication tainted the evaluation of the evidence of whether he was proven guilty beyond a reasonable doubt of the charges that he was on trial for.

Therefore, the State's case did not meet the standard of "proof beyond a reasonable doubt" that Mr. Cofone was driving the car involved in the accident. This proof of driving is required to return a guilty finding on the two charges.

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[7] For example, an eyewitness in State v. Kay, 151 N.J. Super. 255 (Cty. Ct. 1977) saw the defendant driving; and the defendant in State v. Hanemann, 180 N.J. Super. 544 (App. Div.), certif. den. 88 N.J. 506 (1981) had injuries consistent with being in an accident. (Da 5-6) The other cases cited by the court deal with the issue of the driver's "knowledge" that there had been an accident, not with identifying the driver. (Da 6)

B. The State failed to prove beyond a reasonable doubt that Mr. Cofone violated the charged statutes by unlawfully leaving the scene of an accident.

Even if the State proved beyond a reasonable doubt that Mr. Cofone drove and caused the accident, there is a lack of proof beyond a reasonable doubt in the record that Mr. Cofone left the scene under the circumstances making him guilty.

According to the statute, when there is an accident involving unattended property, the driver is to locate the property owner and advise of the accident. But the statute recognizes that this may not always be possible. For example, it presents as an alternative that a note may be left affixed to the damaged property until locating the property owner as soon as possible. N.J.S.A. 39:4-129(d).

The poor weather conditions, lateness of the time of the accident, and the location of the crash are relevant considerations creating reasonable doubt, suggesting that the State did not prove that Mr. Cofone is culpable.

Here, the hour was late. With the damaged car parked on a residential street, ownership was unclear. The State never placed evidence in the record to counter the defense argument based on this evidence that it was not immediately practical to find the vehicle owner. The State's witnesses described rainy weather conditions, suggesting that leaving a note on the damaged car did not present as a viable option. The State did not produce evidence to counter this argument either.

The court below erred in concluding that these defense arguments failed because the defense did not *prove* this to be the situation. These facts came from the evidence about the conditions that evening produced by the State. The defense is not required to enter its own proof to establish reasonable doubt in a quasi-criminal action like this. Nor is Mr. Cofone required to testify to create reasonable doubt. The State must prove its case beyond a reasonable doubt, and issues raised about the evidence, or a lack of evidence, may create reasonable doubt. N.J. Courts, Model Jury Charge, "Preliminary Instructions to the Jury," p. 3, Revised, September 1, 2022.

There is reasonable doubt of Mr. Cofone's unlawful intent and that he violated the essence of the statute.[8] Mr. Cofone parked at his nearby house and located the owner of the damaged property as soon as reasonably possible. This creates reasonable doubt that Mr. Cofone demonstrated the required intent to violate the statute.

Richard Hall's testimony provides ample justification to conclude that Mr. Cofone did not violate the letter of the law or the spirit and intent of the statute. Mr. Cofone sought out Richard Hall in a reasonable time after the accident,

[8] Ironically, after charging Mr. Cofone early that morning with Leaving the Scene and Failure to Report an Accident, the police themselves did not then contact Richard Hall either about the accident or notify him that Mr. Cofone had been charged with offenses for striking his son's car. (2T.8)

cooperating with him to address the situation. Richard Hall testified that a few hours later that morning, Mr. Cofone came over to his house and provided the vehicle's insurance information. According to Richard Hall, Mr. Cofone monitored the progress of the insurance claim and his insurance "took care of everything" (2T.9). The court erred by disregarding Richard Hall's testimony favorable to Mr. Cofone, including his letter to the municipal court judge stating that he disfavored Mr. Cofone's continued prosecution over the incident.

The State's evidence leaves reasonable doubt of Mr. Cofone's guilt.

Conclusion

It is respectfully submitted that reasonable doubt exists in the State's trial proofs. Based on an individualized consideration of each of the charges, a not guilty verdict is appropriate.

Respectfully submitted,

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

Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex
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RE: STATE OF NEW JERSEY (Plaintiff-Respondent) v.
DOMINICK COFONE (Defendant-Appellant)
DOCKET NO. A-002165-23T4

Criminal Action:	On Appeal From a Judgment of Conviction of the Superior Court, Law Division, Essex County.
Sat Below:	Hon. Arthur J. Batista, J.S.C.

Honorable Judges:

Pursuant to *R.* 2:6-2(b) and *R.* 2:6-4(a), this letter in lieu of a more formal brief is submitted on behalf of the State of New Jersey in response to defendant's brief in the above-entitled matter.

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COUNTER-STATEMENT OF PROCEDURAL HISTORY[1]

On March 4, 2023, the Cedar Grove Police charged Dominick Cofone (hereinafter "Defendant") with motor vehicle violations of careless driving in violation of N.J.S.A. 39:4-97; leaving the scene of an accident in violation N.J.S.A. 39:4-129; and failure to report an accident in violation of N.J.S.A. 39:4-130.

On August 3, 2023 (1T), a trial began in Cedar Grove Municipal Court before the Honorable Nicholas S. Brindisi, J.M.C. The trial was continued on September 27, 2023 (2T), and November 8, 2023 (3T). On November 8, 2023, the defendant was found guilty of leaving the scene, and failure to report an accident. He was found not guilty of careless driving. The defendant was sentenced to fines and a mandatory six-month driver license suspension which were stayed pending this appeal. (3T 8-22 to 11-10).

Thereafter, the defendant filed a Notice of Appeal to the Law Division on or about November 17, 2023. (Da 23-24). After submission of briefs and

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[1]Da refers to Defendant's Appendix;
Db refers to Defendant's Brief;
1T refers to the transcript dated September 16, 2022;
2T refers to the transcript dated September 30, 2022;
3T refers to the transcript dated May 4, 2023.

oral argument, the Honorable Arthur J. Batista, J.S.C., issued a written opinion on February 12, 2024, finding the defendant guilty of DWI and imposed the same sentence as the municipal court. (Da 1-16). On March 21, 2024, defendant filed a Notice of Appeal from the Law Division decision. (Da 27-33). This appeal follows.

COUNTER-STATEMENT OF FACTS

On March 4, 2023, at approximately 2:45 a.m., Evan Hall (Hall Jr.) arrived at his parent's house after being out of the house since around 8 p.m. the previous night. When Hall Jr. got to the house, he observed that his brother's car, which was parked in the front of the house, had extensive damage to it. Hall Jr. entered his house to see if his father, who was asleep inside, was aware of what happened to the car parked in front. After seeing the damage and not knowing how it occurred, Hall Jr. and his dad contacted the Cedar Grove police to report the damage. (1T 6-16 to 9-16).

Cedar Grove Officer Anthony Griglio (Griglio) also testified on behalf of the State. Griglio stated that he was dispatched to the Hall's residence on March 4, 2023 at approximately 3 a.m. to document the Hall's vehicle's "significant" damage while it was parked on the street. (1T 11-19 to 13-6). Griglio conducted an investigation into whether he could determine what vehicle could have caused such significant damage. Based

on where the damage mostly occurred on the Hall's car, Griglio and other Cedar Grove officers started to canvass the area to see if there was a vehicle with similar damage. After a brief period of canvassing the immediate neighborhood, Griglio observed the defendant's vehicle irregularly parked in his driveway with extensive front-end damage. (1T 13-7 to 18-18; 1T 32-7 to 34-3).

Griglio waited for another officer, Sergeant Snyder, to arrive before approaching the defendant's home and inquiring about the damage to his car. The defendant did answer the door and answered questions posed about the damage to his vehicle. However, the defendant gave vague and ambiguous statements of how the damage to his vehicle occurred. (1T 22-1 to 11). During this interaction, Griglio testified that the defendant's demeanor was indicative of someone who was highly intoxicated based on his slurred speech, odor of alcohol on his breath and bloodshot eyes. Additionally, the defendant admitted to operating his vehicle earlier in the evening. The interaction was captured by Griglio's body-worn camera. (1T 19-18 to 22-18).

The State's final witness was Richard Hall (Hall Sr.). Hall Sr. testified how he was alerted by his son in the early morning hours of March 4, 2023, to extensive damage to his other son's vehicle that was parked on

the street. After seeing this damage, the police were called to report the damage. (2T 4-20 to 6-4). Hall Sr. assisted the Cedar Grove police in canvassing the area to see if the car that caused this damage belonged to a neighbor but after not finding anything, decided to go back to bed. (2T 6-20 to 7-12).

The next morning, Hall Sr. was alerted by his daughter that the defendant's vehicle, which was parked in his driveway several houses away from Hall Sr.'s house, had extensive damage and was likely the car that caused the damage to the Hall vehicle. (2T 8-1 to 21). Hall Sr. also testified that the defendant approached him and apologized for causing the damage and made sure that his insurance covered all expenses from the accident. (2T 9-2 to 10-3).

The defendant did not call any witnesses.

LEGAL ARGUMENT

POINT I

THE LEAVING THE SCENE OF AN ACCIDENT AND FAILURE TO REPORT AN ACCIDENT WERE PROVED BEYOND A REASONABLE DOUBT AGAINST THE DEFENDANT.

The defendant's sole argument is that the municipal court and Law Division erred by concluding that the State proved beyond a reasonable doubt that the defendant failed to report the accident he caused and left the scene of that same accident in violation of the relevant statutes. (Db 7-12). However, both the municipal court and Law Division made correct findings of fact and conclusions of law when they held that the State did prove the defendant violated these statutes beyond a reasonable doubt based on the evidence that was submitted in the municipal court.

"[A]ppellate review of a municipal appeal to the Law Division is limited to 'the action of the Law Division and not that of the municipal court.'" State v. Hannah, 448 N.J. Super. 78, 94 (App. Div. 2016) (quoting State v. Palma, 219 N.J. 584, 591-92 (2014)). "In reviewing a trial court's decision on a municipal appeal, [the Appellate Division] determine[s] whether sufficient credible evidence in the record supports the Law Division's decision." State v. Monaco, 444 N.J. Super. 539, 549

(App. Div. 2016). We must "determine whether the findings made could reasonably have been reached on sufficient credible evidence present in the record. " State v. Johnson, 42 N.J. 146, 162 (1964). "When the reviewing court is satisfied that the findings and result meet this criterion, its task is complete and it should not disturb the result . . . ." Ibid.

A review of a municipal court conviction by the Superior Court is conducted de novo on the record. R. 3:23-8. The Superior Court should defer to the municipal court's credibility findings. State v. Locurto, 157 N.J. 463, 470-71 (1999) (citing Johnson, 42 N.J. at 161-62). However, "[o]n a de novo review on the record, the reviewing court . . . is obliged to make independent findings of fact and conclusions of law, determining defendant's guilt independently but for deference to the municipal court's credibility findings." Pressler & Verniero, Current N.J. Court Rules, comment 1.1 on R. 3:23-8 (2021). Moreover, when the Law Division agrees with the municipal court, the two-court rule must be considered. "Under the two-court rule, appellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." Midler v. Heinowitz, 10 N.J. 123, 128-29 (1952).

In the instant case, the defendant claims the municipal court and Law Division erred in finding that the defendant operated his motor vehicle causing the damage to the Hall's vehicle and left the scene of this accident in contravention of the applicable statutes. According to the defendant, because nobody observed him driving the car, the State's proofs did not satisfy the standards required to prove operation beyond a reasonable doubt. Additionally, because the defendant did not report the accident due to adverse weather conditions and the time of day, he is not culpable under the applicable statutes. (Db 7-12). However, the defendant misconstrues the credibly testified to facts of this case, and the controlling case law that guides courts on the question of operation and whether one has failed to properly report an accident.

The defendant first argues that the evidence presented at trial was insufficient to convict him of N.J.S.A. 39:4-129, leaving the scene of an accident; and failure to report an accident in violation of N.J.S.A. 39:4-130. According to the defendant, because this accident occurred in the early morning hours and during inclement weather, the evidence was insufficient to sustain a conviction. (Db 7-9). However, the evidence adduced at trial showed that the defendant attempted to obfuscate his involvement in the accident entirely when Officer Griglio questioned him about the damage to

his vehicle. Further, the defendant only fully apologized for the damage to the Hall's vehicle, and followed up on ensuring the Halls were made whole via his insurance the following day. While the defendant should be credited for ultimately taking responsibility for the damage he caused to a neighbor's car, and implicitly recognizing that he was operating his car when he caused the damage, the language of the statute makes clear that his responsibility to report the accident and not leave the scene does not depend on the time of day or the weather. (2T 9-2 to 10-3).

N.J.S.A. 39:4-129 (d) states:

> The driver of any vehicle which knowingly collides with or is knowingly involved in an accident with any vehicle or other property which is unattended resulting in any damage to such vehicle or other property shall immediately stop and shall then and there locate and notify the operator or owner of such vehicle or other property of the name and address of the driver and owner of the vehicle striking the unattended vehicle or other property or, in the event an unattended vehicle is struck and the driver or owner thereof cannot be immediately located, shall attach securely in a conspicuous place in or on such vehicle a written notice giving the name and address of the driver and owner of the vehicle doing the striking or, in the event other property is struck and the owner thereof cannot be immediately located, shall notify the nearest office of the local police department or of the county police of the county or of the State Police and in addition shall notify the owner of the property as soon as the owner can be identified and located. Any person who violates this subsection

> shall be punished as provided in subsection (b) of this section.

In State v. Feintuch, 150 N.J. Super. 414 (App. Div. 1977), this Court held that the purpose of the leaving the scene of an accident statute is "to prohibit the automobile driver involved in an accident from evading his responsibilities by escaping or departing before his identity is made known. Id. at 421. A driver who is knowingly involved in an accident resulting in damage to any attended vehicle (including the driver's vehicle) must immediately stop at the scene (or stop as close to the scene as possible and return to the scene "forthwith"), and remain there until the requirements of subsection (c) of the statute have been fulfilled. N.J.S.A. 39:4-129(a), (b). "If a driver knowingly collides with a vehicle or other property that is unattended at the time of the accident, the driver has a duty to stop immediately and 'then and there' to locate and notify the owner or operator of the vehicle or other property, or (if a vehicle is struck) to attach the driver's name or address in a conspicuous place on the vehicle." Richmond & Burns, N.J. Municipal Court Practice, comment 35:1-2 (GANN, 2024) (citing N.J.S.A. 39:4-129(d)).

Further, the 'knowing' element of being involved in an accident can be gleaned from the circumstances surrounding the accident. See e.g., LoBiondo v. Allan, 132 N.J.L. 437 (1945); State v. Valeriani, 101 N.J.

Super. 396, 400 (App. Div. 1968); State v. Fisher, 395 N.J. Super. 533, 545-546 (App. Div. 2007). Specifically, the leaving the scene of an accident statute creates a permissive inference of knowledge if the accident caused personal injury, death, or damage in the amount of $250 or more to any vehicle or property. See N.J.S.A. 39:4-129(e).

In the instant case, there was testimony about the extent of the damage, which was noticeable and severe, to the Hall's vehicle caused by the defendant's vehicle. (1T 6-16 to 9-16; 1T 11-19 to 13-6; 1T 32-7 to 34-3). Further, when the Halls and the Cedar Grove police arrived at the scene and noticed the damage to the Hall's car, it was not immediately apparent where the defendant was located. Body-cam evidence and testimony showed that a canvass needed to be conducted which ultimately led to the defendant's driveway. The defendant, when questioned about his damaged car in his driveway, gave "vague and ambiguous" statements about his involvement in the accident. (1T 22-1 to 11). While clearly such evidence does not represent the most blatant violations of the leaving the scene of an accident statute, the clear language and spirit of the statute was violated by the defendant in this case. Further corroborating this fact was Griglio's testimony that the defendant had a distinct odor of alcohol on his breath and appeared disheveled when questioned. (1T 19-18 to 22-18). This testimony

provides a rationale for why the defendant did not immediately alert either the Halls or the police to the accident – he feared arrest for driving while intoxicated.

As the Law Division judge held,

> This court finds ample evidence proving that the [defendant] violated N.J.S.A. 39:4-129(b) and N.J.S.A. 39:4-130 beyond a reasonable doubt. The totality of the evidence, including but not limited to, the damage to the two vehicle, police officers interactions with the [defendant] at his home where he admits ownership of the vehicle and operation earlier in the evening, coupled with [defendant's] intoxicated appearance and equivocation, [defendant's] admission and/or statement against interest to Richard admitting responsibility for the damage to the vehicle (witnessed by Evan Hall) combine both circumstantial and direct evidence, along with the inferences this court chooses to draw from the evidence, that is sufficient for this court to conclude that the [defendant] was the driver of a vehicle, that he knowingly was involved in an accident resulting in damage to his neighbor's vehicle and his own vehicle, and that he failed to immediately stop his vehicle at the scene of such accident, or as close thereto as possible, and did not forthwith return to the scene of such accident until after police had already located him and charged him with motor vehicle offenses. Further, he failed to report the accident to police as required by the applicable statute.
>
> [Da 14].

Given all of the evidence presented, the State proved beyond a reasonable doubt that the defendant left the scene of the accident and failed to report same.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Law Division's Order finding the defendant guilty of the charged offenses be affirmed.

Respectfully submitted,

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/s/ Stephen A. Pogany

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