FILED, Clerk of the Appellate Division, October 02, 2024, **A-002740-23**, **AMENDED**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002740-23T5

STATE OF NEW JERSEY,	CRIMINAL ACTION
Plaintiff-Respondent	ON APPEAL FROM
v.	SUPERIOR COURT, LAW DIVISION ESSEX COUNTY (Trial Court Docket No. MA-2023-022)
LUDOVICO ARICO,	Honorable Arthur J. Batista, J.S.C. Sat below
Defendant-Appellant	

BRIEF AND APPENDIX
FOR
APPELLANT LUDOVICO ARICO

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FILED, Clerk of the Appellate Division, October 02, 2024, **A-002740-23**, **AMENDED**

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PROCEDURAL HISTORY

On September 14, 2023, November 2, 2023, and November 8, 2023, a trial took place in the township of Cedar Grove Municipal Court against Defendant Ludovico Arico (Da3). At the conclusion of the trial, Defendant was found guilty of driving while intoxicated ("DWI") in violation of N.J.S.A. 39:4-50; leaving the scene of an accident in violation of N.J.S.A. 39:4-129; and failure to report an accident in violation of N.J.S.A. 39:4-130 (Da3 – Da4).

On March 26, 2024, Defendant's appeal of the finding of guilt by the municipal court as to the DWI and leaving the scene of an accident was heard before the Superior Court of New Jersey, Law Division, Criminal Part, Morris County (1T).[1] On April 24, 2024, the Law Division found Defendant guilty, de novo, of driving while intoxicated in violation of N.J.S.A. 39:4-50 and leaving the scene of an accident in violation of N.J.S.A. 39:4-129 (Da1 – Da2; Da40).

On May 13, 2024, Defendant filed a Notice of Appeal, appealing the Law Division's finding of guilt (Da41 – Da43).

STATEMENT OF FACTS

On March 26, 2024, Defendant's appeal of the Cedar Grove Municipal Court's finding of guilt as to the DWI and leaving the scene of an accident was

[1] 1T = Transcript of Municipal Appeal, March 26, 2024.

heard before the Law Division (1T).

The Law Division reviewed the transcript from the municipal court, as well as the evidence submitted to the municipal court, which included video evidence (1T3:17-23). Defendant stipulated that he had consumed and smelled of alcohol, and that he was involved in a motor vehicle accident (1T4:7-11).

Defendant argued that during the municipal court trial, the State did not prove beyond a reasonable doubt that the accident was a result of his drinking (1T4:12-15). Defendant noted that his BAC was under the legal limit at .07% and that he passed the field sobriety tests with "flying colors" (1T4:12-18).

In response, the Law Division noted that the Horizontal Gaze Nystagmus ("HGN") test was "worthless," and agreed that Defendant passed the walk-and-turn test, but disagreed that Defendant passed the field sobriety tests with "flying colors" because during the one-leg stand test, he fell over at the beginning and his counting was "way off once he got to about six" (1T4:21 – 5:13).

In response, Defendant argued that although the counting may have been off, he stood and kept his leg in position even longer than the test required him to (1T6:2-6). Defendant further argued that he presented expert testimony from an expert who has administered many field sobriety tests and testified hundreds of times on behalf of the State, but was now testifying in favor of

Defendant, whereas the officer that testified for the State was not an expert, was inexperienced, and acknowledged that Defendant satisfactorily performed the one-leg stand after the initial instruction issue (1T6:11-25). In addition, Defendant acknowledged that he uses a second language and could have had difficulty following the instructions (1T6:23 – 7:1).

Ultimately, Defendant argued that there was reasonable doubt because there was no per se BAC reading, the HGN test did not apply, he passed the walk-and-turn test, and it was questionable whether he passed the one-leg stand test (1T7:2-6). Defendant also pointed out that the municipal court's ruling was "limited" and "generic" and that the State "actually had to ask the [municipal court] to clarify it" (1T7:6-11).

The Law Division then questioned Defendant's slurred speech, glassy eyes, and trying to drive away after crashing into a telephone pole that split in half (1T8:2-5). In response, Defendant argued that all of that goes to probable cause, not proof beyond a reasonable doubt (1T9:2-4).

Defendant argued that drinking in and of itself does not prove intoxication beyond a reasonable doubt because although slurred speech is an indicator of drinking, that alone does not mean Defendant was legally impaired to drive, especially when he passed the field sobriety tests (1T8:6 – 9:4). Defendant further argued that an accident in and of itself does not prove

intoxication beyond a reasonable doubt because there is nothing to dispute that he swerved out of the way to avoid a deer, and similar accidents happen every day even when the driver is not legally impaired (1T8:23 – 10:24).

As to Defendant's BAC of .07%, the State argued that Defendant changed his story as to what and how much he had to drink, and the breathalyzer was administered almost one hour after police were called to the scene, and, therefore, due to alcohol metabolizing in the system, it was "plausible" that the defendant's calculation was above the legal limit at the time of the accident but went down prior to the breathalyzer (1T12:7 – 13:20). However, Defendant countered that the State presented no expert testimony as to alcohol metabolization or any issues with the results of the breathalyzer (1T15:11 – 16:3). The Law Division acknowledged on the record that the State did not present any testimony to support their argument in this regard (1T17:25 – 18:4).

As to the expert testimony regarding the field sobriety tests, the State argued that the expert was "pigeonholed to the videos" but the State also presented testimony of the officers on scene and at the police station, who testified to their observations, which included "at least five different indicators that establish observational evidence of DWI" (1T11:9 – 12:6).

After the appeal hearing the Law Division reserved on a decision, and on

April 24, 2024, found Defendant guilty, de novo, of driving while intoxicated and leaving the scene of an accident (Da1 – Da40).

LEGAL ARGUMENT

I. DEFENDANT'S CONVICTION FOR DWI SHOULD BE REVERSED BECAUSE THERE WAS SUFFICIENT CREDIBLE EVIDENCE IN THE RECORD TO SUPPORT REASONABLE DOUBT. (Raised below: Da1; Da40; 1T4:1-15)

On appeal from the Law Division's decision on appeal from a municipal court, the Appellate Division's review "focuses on whether there is 'sufficient credible evidence…in the record' to support the trial court's findings." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). "[A]ppellate courts ordinarily should not take to alter concurrent findings of fact and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." Id. at 148 (quoting State v. Locurto, 157 N.J. 463, 470 (1999)). However, the trial court's legal rulings are considered de novo. Id. at 148. See Locurto, 157 N.J. at 463 (appellate review of a de novo conviction in the Law Division following a municipal court appeal is "exceedingly narrow.").

A conviction of driving while intoxicated requires proof beyond a reasonable doubt. State v. DiSomma, 262 N.J. Super. 375, 280 (App. Div. 1993). Any factor alone may be insufficient to carry the State's burden, but, in

combination, can "more than ampl[y]…support the conclusion that [a] defendant was driving under the influence of alcohol…" State v. Kent, 391 N.J. Super. 352, 384 (App. Div. 2007).

In State v. Zingas, the defendant's conviction for DWI was affirmed based on the odor of alcohol on his breath, slurred speech, blood shot eyes, *and* his inability to perform the field sobriety tests. 471 N.J. Super. 590, 595-96 (App. Div. 2022). Unlike this defendant, the Defendant here satisfactorily completed the field sobriety tests.

In State v. Kashi, the defendant was involved in an accident, had the odor of alcohol on his breath, admitted to drinking alcohol, *and* failed all field sobriety tests. 360 N.J. Super. 538, 540-43 (App. Div. 2003). The municipal court determined that the officer's observations alone were insufficient to support a finding of guilt beyond a reasonable doubt, however, the Law Division found that the officer's observations were sufficient when coupled with the facts that defendant failed the field sobriety tests. Id. Unlike the defendant in Kashi, the Defendant here satisfactorily performed *all* field sobriety tests. Also unlike the defendant in Kashi, who had no explanation for driving into the shoulder and crashing into another vehicle, Defendant explained the cause of the accident was swerving to avoid a deer.

Here, the credible evidence in the record does not support a finding of

guilt beyond a reasonable doubt. Even if it supported a finding of guilt by a preponderance of the evidence, or even clear and convincing evidence, neither of these are sufficient for a finding of guilt in this case. This was an observation case. The record revealed that Defendant's BAC was under the legal limit at .07% and that he passed the field sobriety tests. There was no debate by the Law Division that the HGN test was "worthless" and that Defendant passed the walk-and-turn test. While it was perhaps at first questionable whether Defendant passed the one-leg stand test, this question was resolved when the State's own witness acknowledged that Defendant passed the one-leg stand test after an initial instruction issue, which is easily attributable to the fact that Defendant uses a second language. Yet, despite Defendant's satisfactory performance, the Law Division supported its finding with his "poor performance" (Da33).

Having said this, the observations of the officers as to DWI were that Defendant admitted he consumed alcohol, had slurred speech and glassy eyes, and had been in an accident. However, none of these alone are sufficient to sustain a conviction for DWI. In its decision, the Law Division reasoned that "[t]he general proposition that an individual cannot be convicted solely based upon observation and opinion testimony is erroneous" (Da9). However, this mischaracterizes Defendant's argument. While this *may* be sufficient, it does

not automatically mean that officers' observations and opinion testimony are *always* sufficient. Defendant argued that the observations and opinion testimony have to be considered together with the fact that his BAC was below the legal limit and that he satisfactorily performed the field sobriety tests.

As noted by the State at the appeal hearing, it is a matter of the totality of the circumstances (1T18:8-10). When you look at the totality of the circumstances, Defendant's BAC was below the legal limit at .07% and he passed the field sobriety tests. These factors are crucial because it makes it more than reasonable that Defendant had slurred speech and glassy eyes simply because he had consumed alcohol, but that the accident was caused by him swerving to avoid a deer rather than him being impaired. The credible evidence in the record reveals that this version of events is just as reasonable, and, therefore, demonstrates the existence of reasonable doubt. While the Law Division supported its finding of guilt with Defendants "lack of situational awareness or passage of time" (Da33), this does not prove intoxication, especially when Defendant had just crashed into a telephone pole, which split in half. The accident could have been the cause of these issues, rather than his consumption of alcohol.

Thus, while the accident, admission of drinking alcohol, slurred speech, and glassy eyes together *can* support the conclusion that Defendant was

driving while intoxicated, the fact that his BAC was under the legal limit at .07% and he satisfactorily performed the field sobriety tests supports the conclusion that he drank, but the accident resulted from his serving to avoid a deer, rather than being impaired. There is no evidence that Defendant was not properly driving his vehicle prior to the accident. This all amounts to reasonable doubt.

Accordingly, the credible evidence in the record revealed reasonable doubt and, therefore, did not support the Law Division's finding of guilt.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court grant Defendant's appeal and reverse Defendant's DWI conviction.

Respectfully submitted,
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s/ Marco A. Laracca
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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
Trenton, New Jersey 08625

RE: STATE OF NEW JERSEY (Plaintiff-Respondent) v.
LUDOVICO ARICO (Defendant-Appellant)
DOCKET NO. A-002740-23T5

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 April 22, 2023, the Cedar Grove Police charged Ludovico Arico (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; failure to report an accident with property damage in violation of N.J.S.A. 39:4-129; driving while intoxicated (DWI) in violation of N.J.S.A. 39:4-50(a).

On September 14, 2023 (1T), a trial began in Cedar Grove Municipal Court before the Honorable Nicholas S. Brindisi, J.M.C. The trial was continued on November 2, 2023 (2T), and November 8, 2023 (3T). On November 8, 2023, the defendant was found guilty of DWI, leaving the scene, and failure to report an accident. (3T 5-24 to 7-16). He was found not guilty of careless driving. The defendant was sentenced to fines, fees, imposition of an ignition interlock device for three-months, an aggregate six-month driver license suspension, and 12 hours IDRC. (3T 5-24 to 9-19).

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[1]Da refers to Defendant's Appendix;
Db refers to Defendant's Brief;
1T refers to the transcript dated September 14, 2023;
2T refers to the transcript dated November 2, 2023;
3T refers to the transcript dated November 8, 2023.

Thereafter, the defendant filed a Notice of Appeal to the Law Division on or about November 27, 2023. (Da 5). After submission of briefs and oral argument, the Honorable Arthur J. Batista, J.S.C., issued a written opinion on April 24, 2024, finding the defendant guilty of DWI, and leaving the scene of an accident and imposed the same sentence as the municipal court. (Da 1-40).

On May 13, 2024, defendant filed a Notice of Appeal from the Law Division decision. (Da 41-44). This appeal follows.

COUNTER-STATEMENT OF FACTS

On April 22, 2023, Cedar Grove Police Officer Nyron Watson, who testified at trial, received a call from dispatch, that an automated On-Star system reported a car crash had occurred in the area of Stevens Avenue and Route 23. (1T 6-1 to 6-14). Officer Watson immediately responded to the dispatch and proceeded to Stevens Avenue. (1T 7-13 to 7-15). Approximately 100 yards down Stevens Avenue, Officer Watson observed a telephone pole, snapped in half and leaned over, a debris field, and a trail of fluids and tire marks leading north on Stevens Avenue. (1T 7-17 to 7-22). As he drove in the direction of the trail of fluids, he saw that the fluid crossed over the yellow lines into the oncoming lane of traffic. (1T 8-18 to 9-9). He continued to follow the trail of fluids and found a white pickup

truck with the hazards on and smoke coming from the engine compartment on Lopez Road. (1T 12-5 to 12-8). He approached the driver, identified as Ludovico Arico (defendant). Officer Watson told him to exit the vehicle and he "escorted him, held his hand, towards the side of the street where" he sat [the defendant] down on the curb. (1T 13-17 to 13-21).

When the defendant first exited his vehicle, he stated to Officer Watson, "'A deer ran across the road.' And reiterated, 'A deer ran across the road.'" (1T 14-24 to 15-1). The video recording played at trial, labelled as S-7, demonstrates the defendant as saying, "Fucking deer. It just crossed the street…[i]t just fucking, you know, cross down the street." (1T 51-19 to 24). When the defendant spoke, Officer Watson smelled the "strong odor" of "alcoholic beverage emanating from his breath." (1T 15-1 to 15-6). Because Officer Watson smelled the odor of alcoholic beverage, he asked the defendant where he was coming from and how much he had to drink. (1T 15-19 to 15-24). The defendant initially admitted to having two beers. (1T 16-6 to 16-11). The video played during the trial shows the defendant first saying he had a "couple glasses of wine" but then pivoted to saying he had two or three beers. (1T 52-5 to 52-21).

Based on this admission, Officer Watson conducted standardized field sobriety testing on the defendant. (1T 16-17 to 16-22). Officer Watson

administered an HGN, which demonstrated nystagmus and other clues that the defendant was under the influence of alcohol. (1T 22-20 to 24-8). Officer Watson also performed a walk-and-turn field sobriety test during which the defendant did not follow all directions, turned incorrectly, and stepped off the line. (1T 24-18 to 26-5). Officer Watson followed that by administering the one-legged stand test. (1T 26-9 to 26-10). During the test, the defendant failed to maintain a one leg stand, swayed, and repeated a number during the counting phase of the test. (1T 27-10 to 27-16).

Based on his training and experience and upon the totality of the circumstances, including the admission, odors, and clues from the standardized field sobriety tests, Office Watson testified "that, due to [defendant's] consumption of alcohol, he was impaired, and he shouldn't have been driving that night." (1T 29-16 to 30-4). After that, Officer Watson arrested the defendant and transported him to police headquarters. (1T 30-6 to 30-10). At police headquarters, the defendant was Mirandized[2] for a second time and "stated he had two Coronas and one shot" of cognac. (T1 39-1 to 39-7).

Seargeant Joseph Ligas also testified. Seargeant Ligas is an officer for the Township of Cedar Grove. Seargeant Ligas conducted the Alcotest on

[2] See Miranda v. Arizona, 384 U.S. 436 (1966).

the defendant. (1T 100-11 to 104-23). The defendant gave two valid samples, which the Alcotest calculator calculated a .07. (1T 106-11 to 106-20). Although the .07 calculation would not be a per se indication of a DWI, Seargeant Ligas testified that if they felt that the defendant was intoxicated, they would still charge the defendant with a DWI based on the totality of the circumstances. (1T 111-17 to 111-19). While performing the test, Seargeant Ligas smelled the "distinct odor of alcohol coming off of him and his eyes were bloodshot." (1T 106-5 to 106-7). Seargeant Ligas opined that the defendant appeared to be intoxicated consistent with his training and experience. (1T 107-14 to 107-19).

LEGAL ARGUMENT

POINT I

THE RECORD SUPPORTS THE LAW DIVISION'S FINDING THAT THE DEFENDANT WAS GUILTY OF DRIVING WHILE INTOXICATED BEYOND A REASONABLE DOUBT.

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 operated his vehicle in violation of the DWI statute. (Db 5-9). 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 the DWI statute 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 in contravention of the DWI statute. According to the defendant, the evidence in this case was simply incapable of satisfying the standards required to prove the defendant operated his vehicle while under the influence beyond a reasonable doubt. Additionally, because the defendant's version of events, namely that the accident was caused by him swerving in the road to miss a deer was plausible, and his Alcotest results were not a per se violation, he is not culpable under the DWI statute. (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 proofs necessary to find

beyond a reasonable doubt a conviction for driving while intoxicated based on driver observation and not chemical breath testing.

Probable cause determinations require an assessment based on totality of the circumstances and an objective standard of reasonableness. State v. Novembrino, 105 N.J. 95, 121 (1987). Probable cause is defined as a well-grounded suspicion that a criminal offense has been or is being committed. State v. Burnett, 42 N.J. 377, 387 (1964). It is more than a bare suspicion, but less than the legal evidence necessary to convict beyond a reasonable doubt. State v. Waltz, 61 N.J. 83, 87 (1972).

It is also well established that lay people are permitted to offer an opinion as to operator intoxication in a drunk-driving case. State v. Cryan, 363 N.J. Super. 442, 454-56 (App. Div. 2003). Some of the relevant pieces of testimony that can support the lay opinion that an operator of a motor vehicle was intoxicated include:

- Dangerous Operations (excessive speed, recklessness)
- Traffic Accident
- Slurred Speech
- Bloodshot and Watery eyes
- Inappropriate demeanor or mood swings
- Lack of Awareness or passage of time

- Inability to stand without support

- Odor of alcoholic beverage on the operator's breath or clothing

- Presence of alcoholic beverages in the vehicle

- Admission of consumptions of alcoholic beverages

See, State v. Pichadou, 34 N.J. Super. 177, 180 (App. Div. 1955); State v. Higgins, 132 N.J. Super. 67, 70-71, (App. Div. 1975).

Given this framework, Officer Watson had probable cause to arrest the defendant on suspicion of driving while intoxicated after the defendant admitted drinking, showed clues of intoxication during his field sobriety tests, and had the odor of an alcoholic beverage emanating from his breath. These facts also fully support the defendant's ultimate conviction for DWI. The facts that Officer Watson and Seargeant Ligas testified to overwhelmingly showed the defendant in a physical state that illegally impacted his ability to operate a motor vehicle. The video evidence of this incident only buttresses that testimony.

Upon his initial encounter with the defendant, after the defendant crashed his vehicle into a telephone pole and drove a short distance away, Officer Watson smelled the "strong odor" of alcohol prior to administering field sobriety tests (1T 15-1 to 15-6). The defendant admitted to having two beers at the scene when Officer Watson asked him if he had anything to

drink. (1T 15-19 to 16-11). The defendant's story later changed to having multiple beers and a shot of cognac. (T1 39-1 to 39-7). Officer Watson administered standardized field sobriety tests, which demonstrated clues that the defendant was under the influence of alcohol, including nystagmus, inability to follow directions, repetition in speech, swaying, and stepping off from standing in a straight line. (1T 22-20 to 27-16). Ligas conducted the Alcotest on the defendant, which calculated a .07. (1T 100-11 to 106-20). Although the .07 calculation is not a per se DWI violation, the Cedar Grove Police testified that the defendant appeared to be intoxicated based on the totality of the circumstances and was thus guilty of DWI based on "observational" indicia of diminished driving ability. (1T 107-14 to 107-19). The defendant's demeanor, performance of the field sobriety tests, and changing story regarding his alcohol consumption established beyond a reasonable doubt defendant's conviction for DWI. The video evidence submitted corroborates all this testimony. Simply put, these facts fully support both the municipal court and Law Division's decision to find the defendant guilty of DWI.

Given all of the evidence presented, the State proved beyond a reasonable doubt that the defendant operated his vehicle while intoxicated in contravention of the DWI statute.

CONCLUSION

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

Respectfully submitted,

THEODORE N. STEPHENS, II
ESSEX COUNTY PROSECUTOR

/s/ Stephen A. Pogany

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ATTORNEY ID# 014882006

Cc: Marco Laracca, Esq.

October 31, 2024

FILED, Clerk of the Appellate Division, November 12, 2024, **A-002740-23**, AMENDED

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November 12, 2024

LETTER IN LIEU OF A MORE FORMAL REPLY BRIEF ON BEHALF OF APPELLANT

The Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Hughes Justice Complex
Trenton, NJ 08625

Re: State of NJ v. Ludovico Arico
App. Div. Docket No.: A-002740-23T5
On Appeal from MA-2023-022 before the
Honorable Arthur J. Batista, J.S.C.

Dear Judges:

Please accept this letter in lieu of a more formal reply brief on behalf of the Appellant Ludovico Arico with regard to the above referenced appeal of the denial of a municipal appeal (MA-2023-022) before the Honorable Arthur J. Batista, J.S.C. from a Municipal Court trial out of the Township of Cedar Grove.

In short, when the State argues that the totality of the circumstances establish guilt of driving while intoxicated beyond a reasonable doubt, they

really mean that they want the Court to disregard all objective evidence and accept their subjective opinion. Period. Everything detailed and argued by the State in fact establishes probable cause to bring Mr. Arico to the Cedar Grove Police Headquarters to administer the Alcotest but does not prove beyond a reasonable doubt intoxication. The video evidence, coupled with the defense expert's testimony, is the best evidence of the fact that the State failed to prove the DWI beyond a reasonable doubt.

The State argues the totality of the circumstances, including the repetition of speech, admission as to drinking alcohol, changing of stories, etc., is observational evidence. It is, and it establishes probable cause but then when all the objective evidence contradicts, not that he drove after drinking alcohol, not that he may have been impaired to a certain extent, but that he was impaired beyond the legal limit, he is not guilty of DWI.

The objective evidence in this case is the Alcotest which was a .07, and therefore, not a *per se* DWI violation so we then have to go to the field sobriety tests which the defendant/appellant passed. Not only did the defense expert render his opinion in this regard, but viewing the video clearly shows same.

The defense expert. Retired State Police DWI Coordinator, Matteo Russo was asked about the "walk and turn" test, and testified that he

successfully completed it. (2T 31-11 to 31-13). He was also asked about the "One Leg Test" and testified "So you go for 30 seconds until the officer or whoever's timing-------- I think both officers may have been timing it, they tell you to stop. So he goes the duration of the test, holding his leg appropriately, until they tell him to stop. In my opinion, I think they could have walked away and came back and he would have still been in that position. It seemed like he--- he could have went for a while, which again, is commendable considering what he had been involved with." (2T 32-16 to 33-1).

So to find the Appellant Mr. Ludovice Arico guilty of driving while intoxicated after he blew under the *per se* legal limit on the Alcotest, and he clearly successfully completed the field sobriety psycho-physical tests, is to say that the officers' subjective opinion controls and simply can override the objective tests accepted and utilized by law enforcement and courts alike.

For all the reasons submitted in the Appellant Ludovico Arico's brief, reply brief and argued below, Appellant requests that the finding of guilt be overturned. Thank you.

Respectfully,
BIO & LARACCA, P.C.
/s/ Marco A. Laracca
MARCO A. LARACCA

cc: Stephen A. Pogany, Assistant Prosecutor