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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1567-15T4

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

GUNNAR WAHLSTROM,

Defendant-Respondent.

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Submitted April 24, 2017 – Decided May 11, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey,  
Law Division, Morris County, Municipal Appeal  
No. 14-056.

O'Donnell McCord, P.C., attorneys for  
appellant (Gregory D. Emond, of counsel and  
on the brief).

Gunnar Wahlstrom, respondent pro se.

PER CURIAM

The State appeals from an October 27, 2015 Law Division order  
dismissing on trial de novo four municipal complaints citing  
defendant Gunnar Wahlstrom for violations of a property  
maintenance ordinance. The Law Division judge dismissed the

complaints after finding they provided inadequate notice of the alleged violations, thus depriving defendant of due process. Because defendant never argued he had been deprived of due process, and because the Law Division judge decided the case on due process grounds sua sponte, we reverse and remand the matter to afford the parties the opportunity to brief and orally argue the issue.

This action has a protracted procedural history. In July 2014, an East Hanover Township code enforcement officer issued a complaint to defendant charging him with a violation of the Township's property maintenance ordinance. The following month, the Township's municipal court judge (JMC) dismissed the complaint as procedurally deficient.<sup>1</sup> When the JMC dismissed the complaint he told defendant, "he is going to do it right the next time . . . . [H]e's going to refile . . . the complaint."

In October 2014, the code enforcement officer filed four more property maintenance complaints against defendant. Each form complaint contained a section requiring the officer to provide a description of the offense. In that section of each complaint was handwritten, "Violation of Property Maintenance." Each complaint

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<sup>1</sup> The record on this appeal does not precisely identify the procedural defect in the complaint. During argument before the Law Division, the municipal prosecutor said the complaint consisted of "one single ticket and it had all four violations listed on it."

also cited a section of the Township Code: Complaint No. 00391 cited 119A-13-F-6; Complaint No. 00392 cited 119A-13-F-8; Complaint No. 00393 cited 119A-13-E; and Complaint No. 000394 cited 119A-13-F-3. None of the complaints included a factual description of the violations.

Defendant moved to dismiss the new complaints, contending his prosecution following the dismissal of the original complaint placed him in double jeopardy. The JMC denied the motion. At trial, the JMC found defendant guilty of all four offenses. However, the trial proceedings were not recorded due to a malfunctioning recording device. Accordingly, on appeal, the Law Division remanded the matter to municipal court to reconstruct the record or, if the record could not be reconstructed, for a new trial. On remand to municipal court, the case was tried again.

One week before the new trial, defendant filed a second motion to dismiss the complaints based on double jeopardy. On February 26, 2015, the JMC denied defendant's motion but nonetheless granted defendant an adjournment to review the State's opposing brief. The trial took place on March 17, 2015.

At trial, the only witness was the code enforcement officer who testified the first complaint charged defendant with violating Ordinance § 119A-13-F-6, prohibiting the storage of trailers and construction equipment on residential property. He introduced

photographs of a trailer and a car jack beneath a vehicle's flat tire as evidence that defendant violated the ordinance.

The second complaint charged defendant with violating Ordinance § 119A-13-F-8, which prohibits parking an uninspected vehicle on residential property. The code enforcement officer introduced photographs of vehicles with overdue inspection stickers parked on defendant's lawn as evidence of the ordinance violation.

The third complaint charged defendant with violating Ordinance § 119A-13-E, which governs residential property maintenance. As evidence that defendant violated this ordinance, the code enforcement officer introduced photographs of defendant's property depicting a loose-hanging gutter, a rusty door, and no gutter on defendant's garage. The code enforcement officer used the photographs to show that soffits, leaders, and gutters needed to be installed and the garage needed paint.

The fourth complaint charged defendant with violating Ordinance § 119A-13-F-3, which requires stored vehicles to be in operating condition and prohibits the performance of mechanical and body repair work on residential property. The code enforcement officer introduced a photograph of an inoperable vehicle on a car jack to show that defendant had engaged in mechanical or body repair work on his property in violation of this ordinance.

Defendant declined to testify. The JMC reserved decision. On April 2, 2015, the JMC issued a written opinion and read his findings into the record. He found defendant guilty on each complaint. The JMC reasoned defendant continued to maintain his property in a deplorable condition in violation of the property maintenance code, undermined the preservation of his property, created a blight on his neighborhood, and encouraged safety and fire hazards. The JMC noted that rather than remediate the conditions, defendant consistently disregarded his obligations.

The judge imposed a total fine of \$1432 and directed defendant to remediate the violations within thirty days or face a \$50 fine per day. Defendant appealed to the Law Division.

In his brief to the Law Division, defendant raised three arguments: his prosecution on the four complaints placed him in double jeopardy; the municipal ordinance does not specify a penalty for the sections he was charged with violating; and the JMC, by giving advice to the code enforcement Officer, had joined the prosecution. In response, the State argued: defendant's appeal should be dismissed as untimely; double jeopardy did not bar his retrial or convictions; and defendant did not raise before the trial court his contention the ordinance did not specify a penalty, and in any event, the contention was wrong. Defendant submitted a reply brief arguing the State's brief was untimely and the

reissuance of the four complaints after the dismissal of the first complaint violated court rules prohibiting the amendment of complaints after thirty days.

The Law Division judge rejected defendant's argument that double jeopardy barred his trial and retrial. The judge also rejected defendant's argument that the municipal ordinance did not provide a penalty for the sections he allegedly violated.<sup>2</sup>

Turning to the State's arguments, the Law Division judge exercised his discretion to hear the appeal, although it was filed two days out of time. The judge noted the Municipal Appeal Filing Response Letter, completed by the Municipal Appeals Clerk, informed defendant the appeal had been successfully filed. The judge determined "a dismissal in the eleventh hour of the appeal's procedural lifespan would threaten the interests of justice in the speedy disposition of charges."

The judge next stated: "Additionally, this [c]ourt has carefully considered [d]efendant's argument challenging the State's flawed, if not improper, method of serving its [c]omplaints on [d]efendant. This [c]ourt is somewhat concerned by the State's (repeated) failure to issue a sufficiently detailed and thorough [c]omplaint to defendant." The judge did not cite to the portion

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<sup>2</sup> Defendant has not filed a cross-appeal from those determinations.

of the record containing defendant's argument challenging the State's method of service.

The judge explained that the municipal ordinance contained "significant errors in the sequencing and numbering of subsections" resulting in confusion about which section is intended to be specified in a complaint. Additionally, the four complaints issued to defendant stated only that he was charged with a "violation of property maintenance." The complaints contained no factual specificity. These circumstances, according to the Law Division judge, violated defendant's right to due process. Based on the due process violations, the judge dismissed the complaints. The State appealed from the implementing order.

The State raises three arguments on appeal: the Law Division judge erred by not dismissing defendant's untimely appeal; the Law Division judge erred by dismissing the complaints on due process grounds because defendant never raised that issue; and, defendant's due process rights were not violated, and in any event, that issue was outside the scope of de novo review.

We agree with the State that the Law Division judge dismissed the complaints on an issue defendant did not expressly present. For that reason, we reverse and remand for further proceedings.

As previously noted, the Law Division judge did not identify where in the record defendant had raised the due process claim

upon which he based his opinion. Although one could arguably discern from the record the fundament of such an argument, the State was entitled to fair notice of the claim so that it could prepare a response for consideration by the court, as it has done in its appellate brief. The State, as well as defendant, was entitled to due process. "[D]ue process requires an opportunity to be heard at a meaningful time and in a meaningful manner." Doe v. Poritz, 142 N.J. 1, 106 (1995); see also McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 558 (1993) (quoting Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950)) ("At a minimum, due process requires notice and an opportunity to be heard 'appropriate to the nature of the case.'"). Here, the State was not afforded a reasonable opportunity to be heard in a meaningful way with respect to the issue on which the trial court dismissed its complaints against defendant.

For these reasons, we vacate the Law Division order dismissing the complaints. We remand the matter to the Law Division to permit the parties to file briefs on the issue of due process and to argue their respective positions. Our opinion should not be construed as restricting in any way the arguments the parties may present on the issue, nor should it be construed as suggesting in any manner how the due process issue should be decided. If the



Law Division judge decides the issue differently, he shall, if necessary, determine defendant's guilt or innocence based on undecided issues, if any, and the record before him, applying the appropriate standard of review.

We reject the State's argument that the Law Division judge erred by failing to dismiss defendant's appeal as untimely, substantially for the reasons expressed by the trial judge in his written opinion.

The order dismissing the State's complaints is vacated. The matter is remanded to the Law Division for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION