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APPROVAL OF THE APPELLATE DIVISION**

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-4685-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN H. CROSS,

Defendant-Appellant.

Submitted September 13, 2017 – Decided September 29, 2017

Before Judges Koblitz and Manahan.

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Municipal Appeal
No. 6075.

John R. Klotz, attorney for appellant.

Gurbir S. Grewal, Bergen County Prosecutor,
attorney for respondent (Michael R. Philips,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant John H. Cross appeals from an order entered in the
Law Division finding him guilty of refusal, N.J.S.A. 39:4-50.2,
after a de novo hearing. On appeal, defendant raises the following
contentions:

POINT I

THE MOTION TO SUPPRESS THE MOTOR VEHICLE STOP OF [DEFENDANT] SHOULD HAVE BEEN GRANTED BY THE COURTS BELOW.

POINT II

THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT [] DEFENDANT KNOWINGLY REFUSED TO SUBMIT A BREATH SAMPLE.

[A.] THE STATE FAILED TO PROVE THAT [DEFENDANT] REFUSED TO CONSENT.

[B.] THE CONFUSION DEFENSE APPLIES AND WAS SATISFIED.

[C.] THERE WAS INSUFFICIENT PROOF BEYOND A REASONABLE DOUBT THAT THE TROOPER HAD PROBABLE CAUSE THAT [] DEFENDANT OPERATED A MOTOR VEHICLE UNDER THE INFLUENCE [OF] ALCOHOL.

POINT III

THE AIR WAS INADMISSIBLE.¹

In a comprehensive, well-reasoned written opinion, Judge Edward Jerejian found defendant guilty after rejecting these arguments. In sum, the judge noted the municipal court judge found the trooper was credible regarding the basis for the stop (a BOLO and her own observations of erratic driving by defendant),² which provided her with a reasonable articulable suspicion to stop

¹ AIR is an acronym used for "Alcohol Influence Report."

² BOLO is an acronym used for "Be on the lookout."

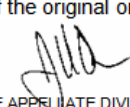
the vehicle. The judge further held that there was sufficient proof that defendant failed to submit to the Alcotest after being properly advised of the requirement to submit and the State had established the elements of refusal.

Regarding the confusion defense, the judge noted that defendant neither raised it before the municipal court judge nor provided any proofs that would sustain that defense. Finally, in reaching his de novo finding of defendant's guilt, the judge did not consider in evidence the printout from the Alcotest as proof of refusal.

Having considered the record on appeal, and in light of our standard of review, we determine that the arguments raised by defendant, the same arguments he raised before the Law Division, are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons stated by Judge Jerejian.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION