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Supreme Court of New Jersey

DOCKET NO. 083221

		Criminal Action
STATE OF NEW JERSEY,	:	
Plaintiff-Respondent,	:	On Certification Granted to the Superior Court of New Jersey, Appellate Division.
v.	:	
DARIUS J. CARTER,	:	Sat Below: Hon. Robert J. Gilson, J.A.D.
Defendant-Petitioner.	:	Hon. Arnold L. Natali, Jr., J.A.D.

SUPPLEMENTAL BRIEF AND APPENDIX
ON BEHALF OF THE STATE OF NEW JERSEY

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PRELIMINARY STATEMENT

New Jersey's license-plate-frame provision under N.J.S.A. 39:3-33 is clear and unambiguous: "No person shall drive a motor vehicle which has a license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted upon the vehicle's registration plate." Interpreting the provision to prohibit frames that cover only the registration number would be contrary to its plain text and the Legislature's intent as shown by language used elsewhere in the statute and in other provisions of the Motor Vehicle Code.

There is sound reasoning behind this provision. License plates do not just need to be readable by law-enforcement officers following directly behind vehicles on roadways. They also need to be identifiable in a myriad of other situations where officers, civilians, or electronic devices may only briefly observe or capture a portion of a plate and thus will need to rely on information other than the state and registration number to identify the vehicle.

Defendant's three constitutional challenges to the Appellate Division's interpretation of the license-plate-frame provision, raised in his brief for the first time before this Court, are unavailing. As to the first challenge, the license-plate-frame provision is no more susceptible to arbitrary and discriminatory enforcement than any other provision of the Motor Vehicle Code. And defendant has not shown that the officers arbitrarily and discriminatorily applied the statute here. The

statistics relied on by defendant fail to distinguish between stops for license-plate-frame violations and other violations of N.J.S.A. 39:3-33, and thus are meaningless. Much of the "evidence" relied on by defendant in support of this argument is either misleading or irrelevant, as it relates to national statistics rather than the statute at issue.

As to the second challenge, a statute prohibiting the covering of a state motto does not violate the First Amendment per se. Though a motorist who objects to the ideological message of a state motto has a First Amendment right to cover the motto without suffering a penalty, defendant here has never expressed any ideological objection to New Jersey's motto. Therefore, he cannot establish that the license-plate-frame provision violated his First Amendment rights as applied. And even were he to do so, it would not render the statute unconstitutional as a whole.

Finally, as to the third challenge, defendant does not meet his burden to show that the statute is overbroad merely by alleging that many people violate it. And far from being unconstitutionally vague, N.J.S.A. 39:3-33 is quite specific in what it proscribes: frames that conceal or obscure any part of <u>any part of any marking</u> on the license plate. This language leaves no doubt as to the prohibited conduct.

Even if this Court were to disagree with the Appellate Division's sound interpretation of the license-plate-frame provision's plain text, it should still uphold the lawfulness of

the traffic stop. This Court has held that the State need not establish that a Title 39 violation occurred as a matter of law to support a valid stop based on reasonable suspicion. And this precedent is in accord with the United States Supreme Court's decision in Heien v. North Carolina, 574 U.S. 54, 61 (2014). Heien holds that "[r]easonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law." Here, the arresting officers' on-the-scene interpretation of the statute, which had never been addressed by any court in this context in a published opinion before, was reasonable.

This Court should adopt Heien because it is consistent with New Jersey's long history of following the federal standard for determining whether there has been a constitutional violation. Although New Jersey has declined to adopt the federal good-faith exception to the exclusionary rule, this does not mean that it should not follow Heien as well. This is because the good-faith exception addresses the remedy for a constitutional violation and not the separate question presented here and in Heien — whether there has been a Fourth Amendment violation at all. Because the officers had a reasonable and articulable suspicion to believe defendant was in violation of New Jersey's license-plate-frame law, there was no such violation here.

For all of these reasons, this Court should affirm the Appellate Division's sound decision and defendant's conviction.

STATEMENT OF PROCEDURAL HISTORY[1]

On April 30, 2015, a Burlington County Grand Jury returned Indictment No. 15-04-0319, charging defendant with fourth-degree tampering with evidence, in violation of N.J.S.A. 2C:28-6(1) (Count One); second-degree possession with intent to distribute a controlled dangerous substance (CDS), in violation of N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(2) (Count Two); third-degree possession of CDS, in violation of N.J.S.A. 2C:35-10(a)(1) (Count Three); third-degree possession of CDS, in violation of N.J.S.A. 2C:35-10(a)(1) (Count Four); and third-degree possession with intent to distribute CDS, in violation of N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3) (Count Five). (Da5 to 9).

On October 5, 2016, the Honorable Charles A. Delehey, J.S.C., Ret., Recall, held a hearing on defendant's motion to suppress physical evidence. (4T). Judge Delehey denied the motion orally the same day. (4T25-24 to 27-15; Da25).

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[1] The following citation form is adopted:
Da – appendix to defendant's Appellate Division brief;
Dsa – appendix to defendant's supplemental brief;
Dsb – defendant's supplemental brief;
Pa – appendix to defendant's Petition for Certification;
Pb – defendant's Petition for Certification;
Rsa – appendix to respondent's supplemental brief;
1T – motion transcript dated May 18, 2016;
2T – motion transcript dated May 23, 2016;
3T – motion transcript dated May 24, 2016;
4T – suppression transcript dated October 5, 2016;
5T – plea transcript dated February 15, 2017;
6T – sentencing transcript dated April 20 2017.

On February 15, 2017, defendant pleaded guilty before Judge Delehey to Count Two – second-degree possession with intent to distribute CDS – of Indictment No. 15-04-0319, and Count One – third-degree possession with intent to distribute CDS – of Indictment No. 15-03-0372.[2] (5T3-2 to 13; Da26). In exchange, the State agreed to recommend a sentence of ten years' imprisonment with a five-year period of parole ineligibility on Indictment No. 15-04-0319, concurrent to a term of five years' imprisonment with a two-and-one-half-year period of parole ineligibility on Indictment No. 15-03-0372. (5T3-17 to 20; 5T4-1 to 12; Da28). The State also agreed to dismiss all remaining charges, including six other indictments and three unindicted matters, against defendant. (5T2-3 to 25; 5T4-14 to 15; Da28).

On April 20, 2017, Judge Delehey sentenced defendant to the plea-negotiated sentence of ten years' imprisonment with a five-year period of parole ineligibility on the second-degree conviction under Indictment No. 15-04-0319. (6T6-14 to 22; Da32). The judge also imposed all appropriate fines and penalties, dismissed two traffic tickets and a disorderly persons warrant, and suspended defendant's driver's license for six months. (6T6-23 to 7-7; 6T9-3 to 5; Da32 to 33).

[2] On Indictment No. 15-03-0372, defendant was also charged with two additional counts of third-degree possession of CDS, which were dismissed as part of the plea. (Da1 to 4). This indictment is unrelated to the traffic stop.

Defendant filed a Notice of Appeal with the Appellate Division, challenging the denial of his motion to suppress and raising three other claims that are not pertinent to the issue before this Court. The Appellate Division remanded so that defendant could be provided notice and an opportunity to address the judge's decision to change his award of jail credit to gap-time credit, but otherwise affirmed defendant's convictions and sentences for both indictments. (Pa17).

On June 24, 2019, the Appellate Division affirmed defendant's conviction and the order denying suppression, finding that N.J.S.A. 39:3-33's prohibition of license-plate frames that cover "any part of any marking" included covering the words "Garden State," which the license-plate frame on the car operated by defendant did. (Pa5; Pa10 to 13).

On July 3, 2019, defendant filed a Petition for Certification solely challenging the Appellate Division's affirmance of the denial of his motion to suppress. (Pa18 to 19; Pb2). On December 6, 2019, this Court requested the parties to file supplemental letter briefs addressing whether there was a rational basis for N.J.S.A. 39:3-33 and whether the law may authorize arbitrary and discriminatory enforcement. (Dsa2). On May 19, 2020, this Court granted defendant's Petition for Certification. (Dsa1).

STATEMENT OF FACTS

On September 24, 2014, Pemberton Township Police officers conducted a motor-vehicle stop of the car defendant was driving because its license-plate frame obstructed the words "Garden State" at the bottom of the plate. (4T4-14 to 25). Because defendant, who was driving without a license, had two outstanding warrants, he was arrested. (Pa3; Da11). During subsequent searches incident to arrest and at the police station, police found over one-half ounce of heroin as well as small amounts of marijuana and cocaine in defendant's possession. (Pa3 to 4; Da11).

Defendant moved to supress the drugs, based solely on the grounds that covering the words "Garden State" on the license plate was not sufficient to justify the stop. (4T6-14 to 25). The trial court found that the words "Garden State" were included within the term "marking" in N.J.S.A. 39:3-33 and denied defendant's motion to suppress the drugs. (4T25-24 to 27-15).

On appeal, the Appellate Division affirmed, finding that the unambiguous plain language of N.J.S.A. 39:3-33 prohibits even a partial concealment of any markings on the license plate, including the words "Garden State." (Pa12-13). The Court rejected defendant's argument that, under a "common sense" reading of the provision, the statute is only violated when the vehicle's registration numbers are obstructed. (Pa13).

LEGAL ARGUMENT

POINT I

THE PLAIN TEXT OF N.J.S.A. 39:3-33 PROHIBITS THE USE OF A LICENSE-PLATE FRAME THAT CONCEALS THE WORDS "GARDEN STATE."

In enacting N.J.S.A. 39:3-33, the Legislature was quite clear. It barred the use of any "license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted upon the vehicle's registration plate." N.J.S.A. 39:3-33. The statute does not, as defendant argues, differentiate between the registration number and other so-called "cosmetic" markings on the plate.

Because the license-plate frame on defendant's car completely hid the words "Garden State," the police had reasonable suspicion to believe that defendant had violated the Motor Vehicle Code's strict license-plate-frame provision. The officers were therefore justified in stopping defendant's vehicle for a violation of the license-plate-frame statute, and there was no violation of defendant's constitutional rights warranting suppression of the drugs found on him during a search after he was arrested. This Court should thus affirm the Appellate Division's sound decision that the stop was lawful.

A. The plain language of N.J.S.A. 39:3-33 prohibits frames that cover any markings on the license plate, not just the registration number.

The goal of statutory interpretation is to determine the intent of the Legislature and give effect to that intent. State

v. J.V., 242 N.J. 432, 442 (2020) (quoting State v. S.B., 230 N.J. 62, 67 (2017), and State v. Robinson, 217 N.J. 594, 604 (2014)). "To determine the Legislature's intent, we look to the statute's language and give those terms their plain and ordinary meaning, because the best indicator of that intent is the plain language chosen by the Legislature." Ibid. (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)) (internal quotations omitted). If statutory terms are clear from a plain and ordinary reading of the language, the courts must apply the law as written. Id. at 443 (citing Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012)). "A court may neither rewrite a plainly [] written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." Ibid. (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)).

When these fundamentally sound principles of law are applied to the facts of this case, it is clear that the arresting officer had a reasonable-and-articulable suspicion to stop defendant's car. N.J.S.A. 39:3-33 provides, in pertinent part:

> No person shall drive a motor vehicle which has a license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted upon the vehicle's registration plate or any part of any insert which the director, as hereinafter provided, issues to be inserted in and attached to that registration plate or marker.

"'In determining the common meaning of words, it is appropriate to look to dictionary definitions.'" State v. Nicholson, 451 N.J. Super. 534, 544 (App. Div. 2017) (quoting Macysyn v. Hensler, 329 N.J. Super. 476, 485 (App. Div. 2000)). The dictionary definition for "conceal" is "to keep out of sight: HIDE." Webster's II New College Dictionary 232 (Riverside University Ed. 1995). The parties stipulated that defendant's car had a license-plate frame that completely covered the words "Garden State" at the bottom of defendant's license plate to the extent that the words could not be seen. (4T12-17 to 21;4T14-16 to 15-4; see also Da44). According to the dictionary definition of "conceal," this clearly constituted "concealing" the markings on the license plate and thus violated N.J.S.A. 39:3-33.

Relying on State in the Interest of D.K., 360 N.J. Super. 49 (App. Div. 2003), defendant mistakenly argues that "conceals or otherwise obscures" is a single statutory term that cannot be given two separate definitions. In D.K., the Appellate Division applied the statute to a tinted plastic license-plate cover that created a glare that made the plate unreadable even in a well-lit intersection until an officer used a spotlight to illuminate it. Id. at 51-52. The Court interpreted the word "obscure" under N.J.S.A. 39:3-33 to mean to make less legible. Id. at 53. Defendant argues that the Court's interpretation of the word "obscure" in that case requires the same interpretation here.

But "conceals or otherwise obscures" is a phrase containing two separate words that have distinct meanings. Indeed, the

Court in D.K. recognized as much. Ibid. ("The alternative phrasing would be unnecessary if 'obscure' were accorded the same meaning as 'conceal,' as defendant suggests."). "Conceal" means "to keep out of sight: HIDE," while "obscure" means "to make dim or indistinct." Webster's II New College Dictionary 232, 755 (Riverside University Ed. 1995). When the Legislature uses different words, it is presumed that it intended those words to have different meanings. State v. Ferguson, 238 N.J. 78, 102 (2019). Thus, N.J.S.A. 39:3-33 is violated if a license-plate frame or holder either hides any part of any marking on the plate, even if it is still readable, or obscures the marking in other ways, such as by blurring it.

Defendant further misinterprets the term "marking" to mean concealing or obscuring only the registration number and not the words "Garden State." There is no basis in either the broadly worded license-plate-frame provision at issue in this case or in the rest of N.J.S.A. 39:3-33 as a whole to support defendant's argument. To the contrary, the paragraph immediately preceding the provision at issue states that "the identification mark or marks shall contain the number of the registration certificate of the vehicle." N.J.S.A. 39:3-33. And it is clear from the language of the statute that "identification marks" are license plates, not just the car's registration number.[3]

[3] For example, the statute specifies that "identification marks" are to be displayed between twelve and forty-eight inches above the ground on the rear of the automobile, and on the front of

Had the Legislature intended to only prohibit license-plate frames and identification-marker holders that conceal the vehicle's registration number, it could have simply used the precise term "registration number" instead of the broader phrase "any part of any marking." Because the Legislature did not, "marking" plainly means something broader than the registration number. See Ferguson, 238 N.J. at 102.

Defendant is also mistaken that the Legislature did not consider "Garden State" a legally required marking under N.J.S.A. 39:3-33 because many alternative plates do not contain the words "Garden State." See N.J.S.A. 39:3-33.2. Whether the words "Garden State" are mandated by statute is irrelevant because N.J.S.A. 39:3-33 clearly prohibits frames that cover all markings, not just legally required ones. It would have been equally impermissible under the statute for defendant to have had a license-plate frame that covered any of the other words or phrases that are available on alternative plates.

Because the Appellate Division's interpretation of the statute is consistent with the plain language chosen by the Legislature, it should be affirmed by this Court.

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the automobile if there are two marks, and in such a manner so as not to swing. N.J.S.A. 39:3-33.

B. Other provisions of the Motor Vehicle Code support the Appellate Division's interpretation that "Garden State" is a "marking" within the meaning of N.J.S.A. 39:3-33.

Because the plain language of 39:3-33 is not ambiguous, there is no need for this Court to look to surrounding statutes for guidance. J.V., 242 N.J. at 443; Haines v. Taft, 237 N.J. 271, 281 (2019) (looking beyond plain language of no-fault statute only after determining that it was not unambiguous); Cashin v. Bello, 223 N.J. 328, 336–37 (2015) ("The statute's language is not ambiguous, so we need not look to extrinsic sources for guidance"); Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572–73 (2012) (noting that when legislative intent is revealed by statute's plain language – "ascribing to the words used 'their ordinary meaning and significance' – we need look no further" than plain text used) (internal citations omitted); Marino v. Marino, 200 N.J. 315, 330 (2009) ("'Statutes in pari material are to be construed together when helpful in resolving doubts or uncertainties and the ascertainment of legislative intent.'") (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 115 (1997)).

But were this Court to do so, there is ample support for the Appellate Division's conclusion that the phrase "Garden State" is a "marking" within the meaning of N.J.S.A. 39:3-33. Most notably, under N.J.S.A. 39:3-33.2, the Legislature mandated that "Garden State" appear on license plates. In doing so, the Legislature used the following language:

> The Director of the Division of Motor Vehicles in the Department of Law and Public Safety shall, upon the occasion of the next and each subsequent general issue of passenger car motor vehicle registration license plates, cause to be imprinted thereon in addition to other markings which he shall prescribe, the words "Garden State."
>
> [N.J.S.A. 39:3-33.2 (emphasis added).]

Because the Legislature expressly referred to the words "Garden State" as "markings" when mandating that they be included on license plates, there is no question that they are also "markings" for the purposes of N.J.S.A. 39:3-33.

Statutes authorizing specialty plates likewise make clear that the Legislature was not referring only to a registration number when it used the term "any marking." For example, the statute authorizing license plates for Gold Star Families states, "In addition to the registration number and other markings or identification otherwise prescribed by law, the Gold Star Family license plate shall display a gold star and the words "Gold Star Family." N.J.S.A. 39:3-27.141 (emphasis added).

Statutes authorizing other specialty license plates use similar language. See, e.g., N.J.S.A. 39:3-27.13 (New Jersey National Guard license plates); N.J.S.A. 39:3-27.79 (shade tree and community forest preservation license plates); N.J.S.A. 39:3-27.116 ("Promote Agriculture" license plates). It is clear from these other Motor Vehicle Code provisions that "markings" include more than just registration numbers.

Had the Legislature intended to prohibit only license-plate frames that covered registration numbers, it would have used the words "registration number," or "number of the registration certificate," as it did elsewhere in the Motor Vehicle Code. See Ferguson, 238 N.J. at 102 ("[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended."). Instead, it used the broader term "any marking," which, as is clear from the term's use elsewhere in the Motor Vehicle Code, includes both the registration number and other markings on the plate, including the words "Garden State."

In contrast, many other states' license-plate statutes more specifically limit the information they prohibit being covered up on a license plate. Michigan requires that license plates "be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." Mich. Comp. Laws Ann. § 257.225 (emphasis added). Minnesota makes it unlawful to "cover any assigned letters and numbers or the name of the state of origin of a license plate with any material whatever . . . ." Minn. Stat. Ann. § 169.79. And in New Hampshire, "the numbers, characters or identification of the plates as New Hampshire plates shall not be covered up or obscured." N.H. Code Admin. R. Saf-C 3210.03. Had the New Jersey Legislature wished to limit the license-plate-frame restriction only to the assigned

registration number and the issuing jurisdiction, it could have done so, as well. But it did not.

C. The Appellate Division's reading of N.J.S.A. 39:3-33's plain text is actually reasonable not absurd.

Defendant unpersuasively contends that the Appellate and Law Division judges failed to consider common sense in interpreting N.J.S.A. 39:3-33, citing a plethora of cases that courts must do so. Although it is true that courts may "turn to extrinsic guides if a literal reading of the statute would yield an absurd result," Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012), here the plain-text interpretation was reasonable and far from absurd. It therefore would be inappropriate for a court to go beyond the statute's plain text and consider other interpretations based on extrinsic sources.

As previously discussed, the plain-language interpretation found by the trial court and affirmed by the Appellate Division was consistent with both the expressed purpose of the Legislature and language elsewhere in the Motor Vehicle Code. And there are valid reasons why the Legislature would require that all markings on a license plate remain uncovered.

For example, while law-enforcement officers may be able to readily identify a New Jersey license plate at a glance while driving behind it on a roadway despite the state motto being covered, these are not the only circumstances in which someone may need to identify a license plate. A civilian eyewitness to

a motor-vehicle accident or crime may have an obstructed view and not be able to see the top of the plate where the name of the state is written. Or, footage taken from surveillance cameras, often grainy and from an angle, may not show the top of a license plate. In both these circumstances, the visibility of a state motto, combined with a partial license-plate number, may be crucial in identifying the vehicle or the registered owner.

Likewise, given the vast number of plate designs in both New Jersey and other states, it is becoming increasingly difficult to recognize the issuing state of a license plate at a glance. It is therefore important, when a license plate is seen from an angle and the issuing state is unrecognizable, for any marking on a plate, including any cosmetic slogan at the bottom that could be combined with a partial plate number, to be visible to assist in identifying the registered owner.

In fact, so important is the need for clearly visible license plates on our roadways and so important is the need for a clear law to ensure their visibility to those who enforce the law, the Legislature could ban license-plate frames altogether. They are merely decorative and serve no functional purpose. Motorists do not have a constitutional right, nor any other right, to adorn their state-issued license plates with anything, let alone something that risks obstructing the plate or any part of it.

Defendant nonetheless speculates that the Appellate Division’s interpretation could be stretched to include bolts

alone where the bolt heads themselves cover even a small portion of an image on a license plate. But defendant was not stopped here because he had bolts that barely covered part of a picture encircling the bolt hole. He was stopped because he had a frame that completely concealed the words "Garden State." Moreover, N.J.S.A. 39:3-33 specifically addresses frames and holders, not bolts or other hardware. Defendant has presented no evidence that any motorist has ever been stopped in New Jersey because a bolt covered part of a marking. This argument is therefore purely speculative and not supported by either the facts or the statute's language.

There is a rational basis for requiring that all official markings on a New Jersey license plate remain uncovered. And the Legislature was on sound footing in concluding that any marking may assist in identifying a license plate. The Appellate Division's decision interpreting the statute, far from being absurd, was correct.

In extolling this Court to look to the legislative history to determine the purpose of N.J.S.A. 39:3-33, defendant and the amici point solely to State v. Donis, in which this Court stated that the purpose of the statute was "to identify the owner of a car should the need arise from his or her license plate." 157 N.J. 44, 55 (1998). But the issue in Donis was the constitutionality of random checks of license-plate numbers using mobile-data terminals. Id. at 46. The purpose of N.J.S.A. 39:3-33 was not an issue in Donis, and its brief

discussion of the purpose of license plates does not constitute legislative history of the provision at issue in this case.

The actual legislative history, although sparse, supports the Appellate Division's reading of the statute. When Assembly Bill 1254 was introduced proposing the addition of the disputed license-plate-frame provision to N.J.S.A. 39:3-33, the sponsor's statement explained that, "[u]nder the provisions of the bill, the operator of a motor vehicle that has a license plate frame or holder that conceals or obscures any of the information on the plate is subject to a fine of $25.00." Sponsor's Statement to A. 1245 8-11 (L. 1989, c. 132) (emphasis added). (Rsa9). Thus, in addition to the plain language, legislative history also proves that the original sponsor of the bill intended the term "any marking" to encompass any information on the plate, not just the registration number. The Legislature was thus well within its law-making powers to prevent even the risk of having the plate obstructed by frame.

The ACLU argues in its amicus brief that members of the Legislature have tried to "clarify" its intent multiple times by proposing bills that would amend N.J.S.A. 39:3-33 to prohibit only frames that obscure identifying information. Although these three different proposed amendments — Assembly Bills 5079, 4631, and 2136 — were introduced in the 2018-2019 legislative session, none of them passed the 2018-2019 session. And although two of them were reintroduced in the current legislative session, they also have yet to pass. Indeed, the

fact that all three of these bills failed to pass during the last session is telling: it suggests that, contrary to the ACLU's suggestion, they are not an accurate reflection of the Legislature's intent. And any amendment that has yet to pass (and may not pass) certainly would have no bearing on the constitutionality of the stop in this case under the existing statute. Quite to the contrary, rejected or stalled bills prove that the existing statute is sound and the unmistakable law of the state. Furthermore, any newly proposed bill would only affect future cases, and would be irrelevant to the legislative intent of the existing law when it had been enacted or at the time the police stopped defendant's car.

The differences in the bills themselves are also instructive. Assembly Bill 5079 would have prohibited any frame or identification-marker holder that "conceals or obscures the numbers or letters of the registration certificate of the vehicle imprinted upon the vehicle's registration plate or identifying information set forth on any insert." A. 5079 31-38 (2018); see also A. 1531 31-38 (2020).

Assembly Bill 4631 would have left the existing language intact and clarified that the "provision shall not apply to any license plate frame or identification marker holder provided that the frame or holder does not conceal, obscure or in any way encroach upon the registration numbers and letters set forth on the motor vehicle's license plates." A. 4631 36-40 (2018).

Finally, Assembly Bill 2136 would have left the existing language intact but carved out an exception for license-plate frames and holders issued to the vehicle owner or lessee from an authorized vehicle dealer "provided that the frame or holder does not conceal, obscure or in any way encroach upon the registration numbers and letters set forth on the motor vehicle's license plates." A. 2136 36-44 (2018); see also A. 4099 36-44 (2020).

While the proposed amendments in Assembly Bills 5079 and 4631 are consistent with defendant's proffered interpretation in the statute, those in Assembly Bill 2136 are not. To the contrary, by carving out an exception only for license-plate frames issued by authorized dealers as long as the registration numbers are visible, Assembly Bill 2136 confirms the sponsors' agreement with the Appellate Division that the statute as currently written does not apply just to registration numbers and letters, and generally should not do so.

The Appellate Division's plain-language interpretation of N.J.S.A. 39:3-33 is thus consistent with surrounding statutory language and legislative intent. The Legislature has a rational basis for prohibiting frames that conceal or obscure any markings, not just the registration number. For these reasons, the Appellate Division's decision should be affirmed.

POINT II

N.J.S.A. 39:3-33 IS CONSTITUTIONALLY SOUND.

Defendant's constitutional challenges to the Appellate Division's interpretation of the license-plate-frame provision, raised in his brief for the first time before this Court, are unavailing. Because he did not present these constitutional claims to the lower courts or in his petition for certification, they are not properly before this Court. The claims also are meritless.

A. Defendant's constitutional claims are not properly before this Court.

In his motion to suppress, defendant claimed only that the license-plate frame on his car did not provide reasonable and articulable suspicion of a violation of N.J.S.A. 39:3-33. (4T6-17 TO 7-3). He did not argue that any other interpretation would be constitutionally infirm.

"Generally, 'the points of divergence developed in proceedings before a trial court define the metes and bounds of appellate review.'" State v. Witt, 223 N.J. 409, 419 (2015) (quoting State v. Robinson, 200 N.J. 1, 19 (2009)); R. 1:7-2 (a party must "make known to the court specifically . . . the party's objection to the action taken and grounds therefor" in order to preserve the question for review on appeal). Parties, thus, "must make known their positions at the suppression hearing so that the trial court can rule on the issues before it." Witt, 223 N.J. at 419. If parties do not do so,

"appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available." Ibid. (quoting Robinson, 200 N.J. at 20). Defendant did not raise any constitutional challenges to N.J.S.A. 39:3-33 in the trial court or the Appellate Division, and his current challenges are therefore waived.

B. N.J.S.A. 39:3-33 is not overbroad or vague so as to allow for arbitrary or capricious enforcement.

N.J.S.A. 39:3-33 is neither overbroad nor vague. Like all statutes, it is presumed constitutional. See Whirlpool Properties v. Dir., Div. of Taxation, 208 N.J. 141, 175 (2011). Indeed, "[o]ur courts have demonstrated a steadfast adherence to the principle 'that every possible presumption favors the validity of an act of the Legislature.'" State v. Trump Hotels & Casino Resorts, 160 N.J. 505, 527 (1999) (quoting N.J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972), appeal dismissed, 409 U.S. 943 (1972)). The judiciary's power to invalidate a legislative act "has always been exercised with extreme self restraint, and with a deep awareness that the challenged enactment represents the considered action of a body composed of popularly elected representatives." Ibid. Consistent with this policy of restraint, "a legislative act will not be declared void unless its repugnancy to the Constitution is clear beyond a reasonable doubt." Harvey v. Bd. of Chosen Freeholders, 30 N.J. 381, 388 (1959); Gangemi v.

Berry, 25 N.J. 1, 10 (1957). The party challenging the statute bears the "heavy burden" of demonstrating its invalidity. Trump Hotels, 106 N.J. at 526.

Here, defendant has failed to meet his heavy burden of demonstrating that N.J.S.A. 39:3-33 is unconstitutionally overbroad or vague. A statute is invalid for overbreadth only when it "reaches a substantial amount of constitutionally protected conduct." State v. Burkert, 231 N.J. 257, 276 (2017) (quoting State v. Mortimer, 135 N.J. 517, 530 (1994) (quoting Houston v. Hill, 482 U.S. 451, 458-59 (1987))). "[P]articularly where conduct and not merely speech is involved, . . . the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973). There must be a "realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds." Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 801 (1984); accord New Jersey State Chamber of Commerce v. New Jersey Election Law Enf't Comm'n, 82 N.J. 57, 66 (1980).

Indeed, facial invalidation of a statute is "manifestly[] strong medicine [that] has been employed by the Court sparingly and only as a last resort." Broadrick, 413 U.S. at 613. It is an exception to traditional rules of practice. To prevail, one must "demonstrate a substantial risk that application of the

provision will lead to the suppression of speech." Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 580 (1998). And as the behavior at issue "moves from 'pure speech' toward conduct . . . even if expressive," the exception attenuates. Broadrick, 413 U.S. at 615.

"Although such laws, if too broadly worded, may deter protected [conduct] to some unknown extent, there comes a point where that effect — at best a prediction — cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct[.]" Ibid. Thus, the overbreadth doctrine stands for the proposition that courts should not examine the constitutionality of a statute in the abstract without reference to specific conduct sought to be proscribed. State v. Norflett, 67 N.J. 268, 284-85 (1975); State v. Colon, 186 N.J. Super. 355, 358 (App. Div. 1982).

"The overbreadth doctrine" involves substantive due process considerations concerning excessive governmental intrusion into protected areas. Karins v. Atlantic City, 152 N.J. 532, 544 (1998). As this Court has explained, "[t]he evil of an overbroad law is that in proscribing constitutionally protected activity, it may reach farther than is permitted or necessary to fulfill the state's interests." Town Tobacconist v. Kimmelman, 94 N.J. 85, 103 (1983). Thus, "[t]he standard is not whether the law's meaning is sufficiently clear, but whether the reach of the law extends too far in fulfilling the state's interest."

Karins, 152 N.J. at 544 (quoting In re Petition of Soto, 236 N.J. Super. 303, 324 (App. Div. 1989), certif. denied, 121 N.J. 608 (1989), cert. denied, 496 U.S. 937 (1990)).

Far from meeting this standard, defendant has not even identified the constitutionally protected conduct N.J.S.A. 39:3-33 supposedly intrudes upon. He merely argues that, because so many people violate this particular statute, it is impossible for the police to enforce it against everyone, resulting in arbitrary and discriminatory enforcement. If the Court were to adopt that standard for overbreadth, every speed-limit statute in the state would be invalidated as overbroad. Indeed, the prevalence of an activity that the Legislature deems dangerous or undesirable is often the very reason a law against it is enacted in the first place.

Defendant's argument is in reality a claim that N.J.S.A. 39:3-33 is unconstitutionally vague. The cases cited by defendant in support of his overbreadth argument were all decided on the grounds of vagueness, not overbreadth. See City of Chicago v. Morales, 527 U.S. 41, 51 (1999) (finding gang-loitering statute unconstitutionally vague); Kolender v. Lawson, 461 U.S. 352, 362 (1983) (invalidating loitering statute requiring individuals to produce "credible and reliable" identification as unconstitutionally vague); Winters v. New York, 333 U.S. 507, 519-20 (1948) (striking down indecency law as void for vagueness); Papachristou v. Jacksonville, 405 U.S. 156, 162 (1972) (striking down vagrancy law as void for

vagueness); Thornhill v Alabama, 310 U.S. 88, 99-103 (1940) (finding loitering and picketing law vague and infringement on freedom of speech); Lanzetta v. New Jersey, 306 U.S. 451, 458 (1939) (striking down RICO law as void for vagueness); Herndon v. Lowry, 301 U.S. 242, 263-64 (1937) (finding inciting insurrection statute so vague that it violated freedom of speech). Defendant's overbreadth argument is thus meritless.

C. The statute is not unconstitutionally vague, as it provides clear notice of the conduct it prohibits.

There is nothing vague about the language of N.J.S.A. 39:3-33 either. The void-for-vagueness doctrine recognizes that a law must be clear enough to provide fair notice of the conduct forbidden. In re C.V.S. Pharm. Wayne, 116 N.J. 490, 500 (1989), cert. denied sub nom. Consumer Value Stores v. Bd. of Pharm. of New Jersey, 493 U.S. 1045 (1990); Norflett, 67 N.J. at 283. It "is essentially a procedural due process concept grounded in notions of fair play." State v. Lashinsky, 81 N.J. 1, 17 (1979).

The test is thus whether the statute is so vague that a person could not reasonably understand that his conduct was prohibited. Palmer v. City of Euclid, 402 U.S. 544, 545 (1971); State v.Cameron, 100 N.J. 586, 593 (1985). And a statute is only unconstitutionally vague on its face if "it is so vague that persons of common intelligence must necessarily guess its meaning and differ as to its application." State v. Lenihan, 219 N.J. 251, 267 (2014) (internal quotations omitted) (quoting

Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 279-80 (1998), cert. denied, 527 U.S. 1021 (1999)).

The conduct prohibited by N.J.S.A. 39:3-33, however, is clear — a license-plate frame or holder cannot cover any part of any marking on the plate. Because the statute gives a person fair notice of what conduct it prohibits, it is not unconstitutionally vague. In fact, the phrase "any part of any marking" is the epitome of clarity; anything less emphatic would actually introduce the very vagueness defendant belatedly bemoans.

The very specific language of N.J.S.A. 39:3-33 is preferable to the vague statutory language used in other states' license-plate laws, which only require that the plates be visible and legible. See, e.g., Alaska Stat. Ann. § 28.10.171 (plate shall be "maintained in a location and condition so as to be clearly legible"); Ariz. Rev. Stat. Ann. § 28-2354(B)(3) (plate shall be "in a position to be clearly visible"); Ark. Code Ann. § 27-14-716 (plates shall be "clearly visible" and "clearly legible"); Colo. Rev. Stat. Ann. § 42-3-202(2)(a)(II) (plates shall be "clearly visible" and "clearly legible"); Ga. Code Ann. § 40-2-41 (plate "shall be at all times plainly visible;" prohibits "apparatus" that "hinders the clear display and legibility" of the plate); Kan. Stat. Ann. § 8-133 (plates shall be "clearly visible" and "clearly legible"); La. Rev. Stat. Ann. § 32:53(3) (plates shall be "clearly visible" and "clearly legible"); N.M. Stat. Ann. §66-3-18 (plates shall be

"clearly visible" and "clearly legible"); Okla. Stat. Ann. tit. 47, § 1113 ("The license plate, decal and all letters and numbers shall be clearly visible at all times."); Or. Rev. Stat. Ann. § 803.540 ("The plates must be in plain view and so as to be read easily by the public.").

Unlike New Jersey, the vague language of these out-of-state statutes leaves the interpretation of the statute to individuals. The precise language of New Jersey's statute, in contrast, leaves nothing up to individual interpretation – it explicitly directs that a license-plate frame should not cover any part of any marking on the license plate. Because a person of common intelligence does not need to guess at the meaning of the statute, it is not unconstitutionally vague. Lenihan, 219 N.J. at 267.

D. Neither the plain language of N.J.S.A. 39:3-33 nor the Appellate Division's interpretation of the statute encourages racial profiling.

Defendant and amici also argue that the license-plate frame provision as interpreted by the Appellate Division encourages selective enforcement. Defendant, however, has provided no specific evidence whatsoever that the enforcement of the license-plate-frame provision encourages discriminatory enforcement. He has not even alleged that Pemberton Township has enacted an official, or de facto, policy of selective enforcement of the provision, or that his stop was racially motivated. Instead, defendant attempts to raise a belated

selective-enforcement claim by relying on reports regarding State Police enforcement of N.J.S.A. 39:3-33 as a whole. Defendant simply has not made any showing of selective enforcement, let alone a colorable basis for the claim.

To be sure, "[t]he right to be free from discrimination is firmly supported by the Fourteenth Amendment to the United States Constitution and the protections of . . . the New Jersey Constitution . . . ." State v. Soto, 324 N.J. Super. 66, 83 (Law Div. 1996). "It is indisputable, therefore, that the police may not stop a motorist based on race or any other invidious classification." Ibid. But while the subjective motives of the arresting or searching officer are beyond the appropriate bounds of judicial inquiry, discriminatory enforcement by a police agency that can be proven by objective evidence can be a basis for exclusion of evidence. State v. Segars, 172 N.J. 481, 492-93 (2002) (citing State v. Kennedy, 247 N.J. Super. 21, 29-30 (App. Div. 1991)); see also State v. Gonzales, 227 N.J. 77, 104 (2016) ("An objectively reasonable search or seizure is constitutional despite an officer's questionable motives.")

In order to do so, however, defendant bears the burden of proving discriminatory enforcement. Segars, 172 N.J. at 495 (citing Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981)). Statistics may be used to make a case of

selective enforcement "provided the comparison is between the racial composition of the motorist population violating the traffic laws and the racial composition of those arrested for traffic infractions on the relevant roadway patrolled by the police agency." Soto, 324 N.J. Super. at 83-84. In fact, in most cases, a selective-enforcement claim cannot be proven without extensive discovery of police records, which are usually in the control of the police agency.

But in order to obtain these records, given the burdensome discovery that is an inevitable by-product of selective-enforcement cases, a defendant must first establish a colorable basis for a claim of selective prosecution. Kennedy, 247 N.J. Super. at 31-32. To do so, "a defendant must present 'some evidence tending to show the existence of the essential elements of the defense and that the documents in the government's possession would indeed be probative of these elements.'" Id. at 32 (quoting United States v. Barrios, 501 F.2d 1207, 1211-12 (2d Cir. 1974)). Among those necessary elements is "a colorable claim that a police agency has an officially sanctioned or de facto policy of selective enforcement against minorities." State v. Ballard, 331 N.J. Super. 529, 542 (App. Div. 2000) (quoting State v. Smith, 306 N.J. Super. 377, 378 (App. Div. 1997)).

And to prevail on the claim, the defendant must also establish that he was the victim of purposeful discrimination. Specifically, "in order for a defendant to prevail on an equal protection challenge, he must demonstrate that the decision to prosecute him and not others was 'deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.'" State v. Sutton, 80 N.J. 110, 121 (1979) (emphasis added). A defendant's burden of showing selective enforcement has been repeatedly described as "demanding" and "rigorous," a burden defendant has not come close to satisfying here. See Ballard, 331 N.J. Super. at 539, 542 (quoting United States v. Armstrong, 517 U.S. 456, 468 (1996)); State v. Halsey, 340 N.J. Super. 492, 501 (App. Div. 2001), certif. denied, 171 N.J. 443 (2002).

As an initial matter, defendant did not raise the issue of arbitrary and discriminatory enforcement. The issue was raised for the first time by this Court in a letter dated December 6, 2019, requesting supplemental-letter briefs from the parties addressing the issue. (Dsa2). The claim was never raised in the trial court, and defendant has never alleged that he was targeted on any discriminatory or arbitrary basis. Defendant does not even allege that the officer was aware of his race before the traffic stop.

Because defendant never raised a claim of selective enforcement before the trial court when he had an opportunity to do so, the court and the State never had an opportunity to address it and develop a record. For this reason alone, defendant's belated and unspecific racial-profiling claim, without any basis in the record, should be deemed waived.

Moreover, defendant has failed to point to any evidence, or even any allegations, that the Pemberton Township Police Department has a policy of selective enforcement of N.J.S.A. 39:3-33, or of any Motor Vehicle Code violations for that matter. Instead, he relies on statistics from the State Police Office of Law Enforcement Professional Standards (OLEPS) from 2016. (Dsa5). But because defendant was stopped by a police agency other than the State Police, he cannot rely on statistics relating to that agency to establish the existence of a racial-profiling or selective-enforcement defense. See Halsey, 340 N.J. Super. at 494.

Defendant also erroneously cites to an Attorney General online publication — Eradicating Racial Profile Companion Guide (A.G. Guide)[4] — that does not support his argument that law enforcement in New Jersey uses minor Title 39 violations as pretexts to violate the Constitution. To the contrary, the A.G.

[4] This guide is available at https://www.nj.gov/oag/dcj/agguide/directives/racial-profiling/pdfs/ripcompanion-guide.pdf.

Guide instructs that Title 39 violations can be used as a pretext for a stop where officers have an ulterior motive, such as a tip that does not rise to the level of reasonable-and-articulable suspicion, without running afoul of the Constitution so long as the ulterior motive was not unlawful. A.G. Guide at 104. The Guide also stresses that these stops must be race-neutral, and that any stops that are race-based would violate the motorist's Fourteenth Amendment rights. Id. at 108-09.

Defendant further relies on cases and studies that discuss racial injustices in the judicial system, jail populations, and traffic stops generally, both in New Jersey and nationwide, that are even more attenuated from the actual circumstances of defendant's stop. While racial disparity in the criminal justice system is a concern, these general reports are insufficient to meet defendant's burden of showing racial profiling or selective enforcement by the Pemberton Police Department as to himself.

Moreover, defendant's statistical evidence regarding stops involving N.J.S.A. 39:3-33 ignores that the statute does not just proscribe license-plate frames that cover any markings. It also dictates the number and placement of license plates depending on the type of vehicle; requires that plates be "kept clear and distinct and free from grease, dust or other blurring matter, so as to be plainly visible at all times of the day and night;" requires that vehicles must be properly registered; and

prohibits vehicles from displaying fictitious plates or advertising plates that resemble registration plates. N.J.S.A. 39:3-33. Thus, the statistics presented by defendant do not cast any light on the number of stops, of either white motorists or non-white motorists, for license-plate-frame violations per se.

Defendant's discussion about national statistics of escalation during traffic stops also is irrelevant. This case did not involve a search or alleged obstruction. Rather, defendant was arrested because he was driving without a license and had two outstanding warrants — facts that would have resulted in the arrest of any driver regardless of his or her race.

In sum, defendant never presented his selective-enforcement claim to the trial court and even now has presented no evidence to meet the demanding burden needed to support such a claim. This Court should not exercise discretion to decide issues not raised in a petition for certification, especially in cases such as this where the trial court made no factual findings and the matter was not briefed in the Appellate Division. State v. Maltese, 222 N.J. 525, 543 (2015); Pfenninger v. Hunterdon Cent. Reg'l High Sch., 167 N.J. 230, 235 (2001). This is particularly true where, as here, defendant is even now not claiming that there was racial discrimination in his specific case.

E. N.J.S.A. 39:3-33 does not violate defendant's freedom of speech.

Defendant's final constitutional claim is that N.J.S.A. 39:3-33 violates the First Amendment's free-speech clause because it prohibits the covering of the state motto on a license plate. This claim is meritless and rests on a misreading of the United States Supreme Court's opinion in Wooley v. Maynard, 430 U.S. 705 (1977).[5]

In Wooley, Maynard was a Jehovah's Witness who covered the New Hampshire motto, "Live Free or Die," on his license plate because it was offensive to his moral, religious, and political beliefs that his life was more precious than his freedom. Id. at 707-08. After being charged with three violations of a state statute requiring the display of the state motto on license plates and serving fifteen days in jail, he sought injunctive and declaratory relief in federal court to prevent further enforcement of the provision against him. Id. at 708-09.

The United States Supreme Court held that New Hampshire's statute could not be enforced against Maynard because it required him to use his private property as a "mobile billboard" to display an ideological message with which he disagreed. Id. at 713. Specifically, the Court framed the question as follows:

[5] Although defendant cited Wooley in the trial court and Appellate Division for the proposition that states cannot prohibit motorists from covering the state motto on license plates, he did not mention the First Amendment in either of those courts. In any event, this is a misreading of the United States Supreme Court's opinion in Wooley.

"[W]hether the State may constitutionally require an individual to participate in the dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public. We hold that the State may not do so." Ibid. (emphasis added).

Importantly, the United States Supreme Court did not find that New Hampshire's statute prohibiting the covering of the state motto on its license plates was unconstitutional. The Court merely held that it could not be enforced against a motorist who articulated an ideological objection to displaying the motto. And it did not hold, as defendant implies, that no state may require a motorist to display its motto on a license plate regardless of what that motto is. Id. at 715-16 (affirming judgment of District Court enjoining New Hampshire from future prosecution of the Maynards for covering "Live Free or Die" on license plate).

The phrase "Garden State," unlike "Live Free or Die," does not express any ideological message. It simply acknowledges the fact that New Jersey has many farms and has long supplied produce to our neighboring states. See N.J.S.A. 52:9A-12 (Committee Statement) (discussing New Jersey's long agricultural history and the origin of the State's nickname).

Moreover, the United States Supreme Court noted that the "essence of [Wooley's] objection" to displaying the state motto on his license plate was summarized in an affidavit that stated that he "refuse[d] to be coerced by the State into advertising a

slogan which [he] f[ou]nd morally, ethically, religiously and politically abhorrent." 430 U.S. at 713. But defendant here did not provide such an affidavit or otherwise object to the "Garden State" motto on his license plate. In fact, he suggests the car he was driving was not even his. (Dsb5 n.7). Rather, his claim below was merely that the license-plate frame on the car that he was driving was not a violation of the plain language of N.J.S.A. 39:3-33. Thus, even if New Jersey's motto did express an ideological message, it is not one that defendant has ever objected to displaying on First Amendment grounds.

Defendant's reliance on Ortiz v. State, 749 P.2d 80 (N.M. 1988), also is misplaced. Ortiz was convicted of using an altered license plate, but the New Mexico Supreme Court reversed his conviction because the trial court had failed to instruct the jury that defendant could only be convicted if he knew that the plate had been altered with fraudulent intent. Id. at 82-83. The opinion merely references Wooley in dicta as an example of how a license plate could be altered without fraudulent intent. Id. at 82. The question of whether covering New Mexico's state motto would be unconstitutional was not before the court.

Berube v. Secretary of State, No. CV-82-435, 1983 Me. Super. LEXIS 238 (Me. Super. Ct., Dec. 5 1983), is even less compelling, as it is an out-of-state, unpublished trial court opinion that is not even available on Westlaw. Furthermore, the court in that case expressly stated that its decision was based

on the interpretation of a state statute and not on First Amendment grounds. (Rsa15).

Finally, in the only case to directly apply Wooley, Cressman v. Thompson, 719 F.3d 1139 (10th Cir. 2019), a motorist objected to the standard Oklahoma license plate depicting a Native American sculpture – "Sacred Rain Arrow" – on the grounds that it was contrary to his Christian beliefs. Id. at 1141-42. Applying Wooley, the Tenth Circuit held that compelling him to display the plates violated his First Amendment rights. Id. at 1156. But, again, the Court did not find it unconstitutional per se to prohibit covering the image. It only found a violation as applied to Cressman because he had expressed a specific, ideological objection, unlike defendant here.

Defendant thus has failed to establish that N.J.S.A. 39:3-33 is unconstitutional, and his reliance on the doctrine of constitutional avoidance is misplaced. Pursuant to that doctrine, where a statute is susceptible to two reasonable interpretations, one constitutional and one not, courts will opt for the constitutional interpretation to avoid rendering the statute unconstitutional. State v. Pomianek, 221 N.J. 66, 91 (2015). The doctrine, however, does not permit a court to rewrite a statute as defendant is asking this Court to do. See ibid. And N.J.S.A. 39:3-33 is not unconstitutional as written.

There is thus no reason for this Court to ignore the plain language of the statute in favor of another interpretation. The decision of the Appellate Division should be affirmed.

POINT III

THE POLICE HAD REASONABLE AND ARTICULABLE SUSPICION JUSTIFYING THE STOP OF DEFENDANT'S VEHICLE BASED ON A VIOLATION OF NEW JERSEY'S LICENSE-PLATE-FRAME PROVISION.

Because "Garden State" is a "marking" under the plain language of the license-plate-frame provision, the officers lawfully stopped defendant's car since the vehicle's rear license-plate frame completely concealed those markings. And regardless of the arresting officers' reasonable interpretation of N.J.S.A. 39:3-33 was mistaken, this Court should still hold that the stop was lawful, as the United States Supreme Court did in Heien.

An appellate court reviewing a motion to suppress "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Elders, 192 N.J. 224, 243 (2007) (internal quotation marks omitted). But a trial court's interpretation of the law and its application to the facts is not entitled to any special deference. State v. Lamb, 218 N.J. 300, 313 (2014) (citing State v. K.W., 214 N.J. 499, 507 (2013)). Thus, a trial court's legal conclusions are reviewed de novo. Ibid. (citing State v. Gandhi, 201 N.J. 161, 176 (2010)).

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution guarantee the right of people to be secure against unreasonable searches

and seizures. U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. The touchstone of the Fourth Amendment is reasonableness. Florida v. Jimeno, 500 U.S. 248, 250 (1991) (citing Katz v. United States, 389 U.S. 347, 360 (1967)). A traffic stop for a suspected violation of law is a seizure of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809-10 (1996) (citing Delaware v. Prouse, 440 U.S. 648 (1979)); State v. Dickey, 152 N.J. 468, 475 (1998).

In determining whether a traffic stop is justified in the first place, the New Jersey Constitution affords identical, not greater, protection than the Fourth Amendment, and uses the same standards to assess the reasonableness of the stop. See State v. Valentine, 134 N.J. 536, 541 (1994)); State v. Davis, 104 N.J. 490, 502-05 (1986). To justify a motor-vehicle stop under both New Jersey and federal constitutional standards, police officers need only "articulable and reasonable suspicion that the driver has committed a motor vehicle offense." Prouse, 440 U.S. at 663; State v. Locurto, 157 N.J. 463, 470 (1999).

This standard requires only "'some minimal level of objective justification for making the stop.'" State v. Nishina, 175 N.J. 502, 511 (2003) (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)). This is because reasonable suspicion is a "rather lenient test." United States v. Santana, 485 F.2d 365, 368 (2d Cir. 1973), cert. denied, 415 U.S. 931 (1974). It requires "a significantly lower degree of objective

evidentiary justification than does the probable cause test[,]" Davis, 104 N.J. at 501, which itself does not require that such a belief be more likely true than false, Texas v. Brown, 460 U.S. 730, 742 (1983). And reasonable suspicion "'requires a showing considerably less than preponderance of the evidence.'" State v. Stovall, 170 N.J. 346, 370 (2002) (citations omitted).

The reasonable-suspicion standard looks not at subjective motivations, but at whether, under the totality of the circumstances, the officer had "a particularized and objective basis for suspecting the particular person stopped of criminal activity." United States v. Cortez, 449 U.S. 411, 417-18 (1981); see also Gonzales, 227 N.J. at 81 (holding our state constitution "has eschewed any consideration of the subjective motivations of a police officer in determining the constitutionality of a search or seizure") (quoting State v. Edmonds, 211 N.J. 117, 133 (2012)) (emphasis added). It is a "commonsense, nontechnical conception[] that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Ornelas v. United States, 517 U.S. 690, 695 (1996) (internal quotation marks omitted).

Consistent with these principles, this Court has held that "[t]o satisfy the articulable and reasonable suspicion standard, the State is not required to prove that the suspected motor-vehicle violation occurred." Locurto, 157 N.J. at 470 (citing State v. Williamson, 138 N.J. 302, 304 (1994)). Rather, "the

State need prove only that the police lawfully stopped the car, not that it could convict the driver of the motor-vehicle offense." Williamson, 138 N.J. at 304.

Here, the license-plate frame on defendant's car completely concealed the markings at the bottom of the plate. This provided the officers with reasonable suspicion to believe that defendant had violated the Motor Vehicle Code's strict license-plate-frame provision. Because the officers therefore had reasonable and articulable suspicion to stop defendant's vehicle for a violation of the license-plate-frame statute, the stop was lawful.

A. This Court should adopt the United States Supreme Court's holding in Heien v. North Carolina.

Regardless of whether this Court decides that the officers' reasonable interpretation of N.J.S.A. 39:3-33 was mistaken, it still constitutional when conducted. This is because the Constitution requires only reasonableness from the police; it does not require perfection. Williamson, 138 N.J. at 304. Indeed, the Fourth Amendment allows for some mistakes by government officials, giving them "fair leeway for enforcing the law in the community's protection." Brinegar v. United States, 338 U.S. 160, 176 (1949).

The United States Supreme Court recently affirmed this concept in Heien by holding that "reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law." 574 U.S. at 61, 66

("[T]hose mistakes – whether of fact or of law – must be objectively reasonable.").

This Court has considered Heien twice before – in State v. Scriven, 226 N.J. 20 (2016), and State v. Sutherland, 231 N.J. 429 (2018). In both cases, the Court determined that the officers' interpretations of the statutes at issue were unreasonable based on a plain reading of the statute's clear and unambiguous text, and thus declined to reach the issue of whether Heien should be adopted in New Jersey. Sutherland, 231 N.J. at 431-32, 445; Scriven, 226 N.J. at 36-37. There are, however, sound policy reasons for this Court to follow the reasoning of Heien here.

In Heien, a police officer stopped a vehicle after noticing that only one of the vehicle's brake lights was functioning. Id. at 57. He believed that having even one non-operational brake light violated North Carolina's motor-vehicle laws. Ibid. While issuing a written warning for the broken brake light, the officer became suspicious of the behavior of the car's occupants and their conflicting answers to his questions. Id. at 58. The officer asked for and received consent to search the vehicle, where he found a bag containing cocaine. Ibid. Heien was later arrested and charged with a drug offense. Ibid.

The North Carolina Court of Appeals held that, under N.C. Gen. Stat. § 20-129(g), driving with only one working brake light was not actually a violation of North Carolina law.

Heien, 574 U.S. at 59. The statute provided that motor vehicles:

> shall be equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps.
>
> [N.C. Gen. Stat. § 20-129(g).]

The Court of Appeals thus held that the justification for the stop was "objectively unreasonable" and that the stop violated the Fourth Amendment. Heien, 574 U.S. at 59.

On appeal, the State did not challenge the appellate court's interpretation of the vehicle code. Ibid. The North Carolina Supreme Court therefore assumed, for purposes of its decision, that the faulty brake light was not a violation of the code. It nevertheless reversed the Court of Appeals, reasoning that the stop was still constitutional because the officer's understanding of the vehicle code, although mistaken, was reasonable. Ibid. The court's decision was based, in part, on a nearby code provision requiring that "all originally equipped rear lamps" be functional. Ibid.

The United States Supreme Court affirmed the North Carolina Supreme Court. Id. at 60. Chief Justice Roberts, writing for seven other justices, held that an objectively reasonable mistake of law may give rise to reasonable suspicion, and therefore the stop was lawful under the Fourth Amendment. Ibid.

The Court explained that because the standard of reasonable suspicion "arises from the combination of an officer's understanding of the facts and his understanding of the relevant law[,] . . . [t]he officer may be reasonably mistaken on either ground." Id. at 61. Accordingly, the Court found no reason to reach a different result under the Fourth Amendment based on whether there is a reasonable mistake of fact or a similarly reasonable mistake of law. Ibid.

Because only "objectively reasonable" mistakes are tolerated, the United States Supreme Court held that the subjective understanding or motivation of the officer is irrelevant. Id. at 66. Thus, an officer unaware or untrained in the law cannot gain a Fourth Amendment advantage. Id. at 67. And officers still have an obligation to understand the laws they are entrusted to enforce, at least to a level that is objectively reasonable. Ibid.

Heien simply applied cases interpreting the reasonable-suspicion standard that this Court has long followed, such as Brendlin v. California, 551 U.S. 249, 251 (2007) (adopted by this Court in State v. Sloane, 193 N.J. 423, 431-32 (2008)), Navarette v. California, 572 U.S. 393, 396 (2014), and Ornelas, 517 U.S. at 696 (adopted in Stovall, 170 N.J. at 356-57). See Heien, 574 U.S. at 60. The United States Supreme Court did not base its decision on the federal good-faith exception, as explained below. Thus, a rejection of Heien would be a

rejection of this Court's prior precedent and the reasonable-suspicion standard itself.

As Justice Kagan explained in her concurrence in Heien – joined by Justice Ginsberg – statutes that pose a "really difficult" or "very hard question of statutory interpretation" lend credence to the conclusion that an officer made a reasonable mistake of law. 574 U.S. at 70 (Kagan, J., concurring). Thus, in deciding whether an officer's mistake of law can support a seizure, a court "faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not." Ibid.

Equally important, Justice Kagan clarified that "one kind of mistaken legal judgment – an error about the contours of the Fourth Amendment itself – can never support a search or seizure." Id. at 70 n.1. Accordingly, no matter how reasonable, mistakes about the requirements of the Fourth Amendment still violate the Fourth Amendment. Ibid.

The United States Supreme Court in Heien also distinguished between a constitutional violation and the appropriate remedy for such a violation. The Court explained that the mistake of law in Heien "relate[d] to the antecedent question of whether it was reasonable for an officer to suspect that the defendant's conduct was illegal." Id. at 66. "If so, there was no violation of the Fourth Amendment in the first place." Ibid.;

see also Michigan v. DeFillippo, 443 U.S. 31, 37-38 (1979) (holding that arrest was based on probable cause and did not violate Fourth Amendment despite being made under criminal law later declared unconstitutional).

The United States Supreme Court distinguished suppression cases like Davis v. United States, 564 U.S. 229, 239 (2011), in which the Court was deciding the "reasonableness of an officer's legal error in the course of considering the appropriate remedy for a constitutional violation" and not whether there was a violation in the first place. Heien, 574 U.S. at 65. Even Justice Sotomayor in her dissent in Heien understood that there is a "sharp analytical distinction" between the existence of a Fourth Amendment violation and the remedy for that violation. Heien, 574 U.S. at 75 (Sotomayor, J., dissenting) (quoting Davis, 564 U.S. at 238-39).

Therefore, although New Jersey has not embraced the federal good-faith exception to the exclusionary rule, see State v. Novembrino, 105 N.J. 95, 157-58 (1987), that is not a reason for this Court to reject Heien. Novembrino pertains only to the question of the remedy for a Fourth Amendment violation. Heien deals with the antecedent question of whether there was a violation in the first place.

New Jersey courts have recognized the distinction between Fourth Amendment violations and the remedy for such violations in other contexts. For example, in State v. Diloreto, 180 N.J. 264, 271-74, 282 (2004), this Court found no constitutional

violation, and thus did not apply the exclusionary rule, where officers relied in part on misinformation from the National Crime Information Center (NCIC) database in questioning, detaining, and conducting a pat-down search of the defendant. In so doing, this Court acknowledged that Novembrino was irrelevant, finding that an NCIC error under the community-caretaking doctrine was distinct from an officer's good-faith reliance on a warrant issued on evidence insufficient to support a finding of probable cause. Id. at 280.

For similar reasons, the Appellate Division in State v. Pitcher rejected Pitcher's argument that evidence acquired as a result of a motor-vehicle stop based on erroneous license-suspension data should have been suppressed because New Jersey does not recognize a good-faith exception to the exclusionary rule. 379 N.J. Super. 308, 311 (App. Div. 2005), certif. denied, 186 N.J. 242 (2006). Like this Court in Diloreto, the panel concluded that, because the officer's reliance on the DMV database was objectively reasonable and his actions were consistent with the Fourth Amendment's restrictions, the good-faith exception was irrelevant. Ibid. The same reasoning is equally applicable here.

Diloreto and Pitcher did not take place "within the framework of an intended prosecution;" nor did they find justification for an arrest absent probable cause or a valid warrant. See Diloreto, 180 N.J. at 280; Pitcher, 379 N.J. Super. at 320. The same is true here. See also State v.

Shannon, 222 N.J. 576, 592 n.2 (2015) (LaVecchia, J., concurring) (noting that Heien dealt with law enforcement's objective reasonableness in effectuating a stop and did not find justification for arrest absent probable cause or warrant).

This Court has never applied the exclusionary rule to the predicate question of whether the Fourth Amendment was violated. This Court's decisions concerning the good-faith exception do not, and should not, alter the Fourth Amendment's requirements because the distinction between the violation question and remedy question is significant. And here, as in Heien, there is no need to even reach the remedy question where there is no constitutional violation in the first place.

Significantly, for these reasons, three other states — New York, Illinois, and Vermont — that, like New Jersey, have rejected the federal good-faith exception to the exclusionary rule, have all declined to diverge from Heien on state constitutional grounds. See People v. Gaytan, 32 N.E.3d 641, 652-53 (Ill. 2015) (concluding that, under Heien, it was objectively reasonable for officers to have believed a trailer hitch was in violation of statute); People v. Guthrie, 30 N.E.3d 880, 886-88 (N.Y. 2015) (following Heien, concluding that stop was justified based on officer's reasonable belief that defendant failed to stop at valid stop sign, and rejecting invitation to diverge under state constitution); State v. Hurley, 117 A.3d 433, 441 (Vt. 2015) (concluding that although

officer's stop was based on misapprehension of law, it was objectively reasonable under totality of circumstances).

Two of these states' high courts — Illinois and New York — made clear that their repudiation of the good-faith exception had no bearing on whether Heien should be followed as a matter of state law. See Gaytan, 32 N.E.3d at 653-54; Guthrie, 30 N.E.3d at 883. As the Illinois Supreme Court explained in rejecting the invitation to depart from Heien, "Heien held that the seizure, itself, was reasonable because the police officer initiated the vehicle stop based on an objectively reasonable, though mistaken, belief that the defendant's conduct was illegal. Thus, there was no constitutional violation to begin with." Gaytan, 32 N.E.3d at 653.

Because Heien is about the contours of reasonable and articulable suspicion, an objectively reasonable mistake of law is permitted in the context of an investigative detention. New Jersey has consistently followed Terry and its reasonable-suspicion standard for over half-a-century. See State v. Campbell, 53 N.J. 230, 232-33 (1969) (applying Terry v. Ohio, 392 U.S. 1 (1968)). It should continue to do so here.

Indeed, there is no reason to depart from federal precedent under Article I, Paragraph 7 of the New Jersey Constitution. See State v. Hunt, 91 N.J. 338, 364-67 (1982) (Handler, J., concurring) (discussing factors to consider in determining whether to diverge from federal jurisprudence on state constitutional grounds). Stare decisis instead requires that we

stay the course as charted by the United States Supreme Court and as expressly adhered to by this Court under the New Jersey Constitution. This Court should follow these well-reasoned decisions and likewise decline to diverge from Heien on state constitutional grounds notwithstanding this Court's rejection of the good-faith exception, especially in light of its own reasonable-suspicion precedent.

An officer in the field may have great difficulty in interpreting complex state laws, especially when those laws are not the subject of any judicial interpretation. See Virginia v. Moore, 553 U.S. 164, 175 (2008) (noting that "state law can be complicated indeed"). With new and oft-changing laws, officers cannot and should not be expected to be "legal technicians." See Illinois v. Gates, 462 U.S. 213, 231 (1983); State v. Sullivan, 169 N.J. 204, 211 (2001). There "must be an awareness" that police officers do not have the formal legal training that attorneys receive. State v. Kasabucki, 52 N.J. 110, 117 (1968). Nor should officers be expected "to interpret the traffic laws with the subtlety and expertise of a criminal defense attorney." United States v. Sanders, 196 F.3d 910, 913 (8th Cir. 1999).

It is unrealistic to demand that a police officer always seek clarification before enforcing a confusing or ambiguous statute he or she is duty-bound to enforce. A professionally trained, effective, law-abiding officer should not necessarily be a timid one.

Indeed, Terry recognized that officers on the beat must take "swift action predicated upon . . . on-the-spot observations" if there is to be "effective crime prevention and detection." 392 U.S. at 20, 22. Officers often do not have the time to call an attorney or other "legal technician" whenever they believe they have observed a traffic violation. See Witt, 223 N.J. at 414 (finding that multi-factor exigency formula under State v. Pena-Flores, 198 N.J. 6 (2009), is too complex and difficult for reasonable police officer to apply to fast-moving and evolving events that require prompt action). The Fourth Amendment simply requires that officers' actions be reasonable. And an officer adheres to that standard and does not act unlawfully by trying to enforce a law based on his or her objectively reasonable understanding of it.

Moreover, Heien provides no disincentive for police officers to know the law. As the United States Supreme Court explained in Heien, an officer's subjective failure to understand a clear statute is not a valid basis to conduct an investigative detention. See 574 U.S. at 66. And an officer's belief also would be unreasonable if it was contrary to an earlier court decision, or unsupported by plain statutory language.

On the other side of the same coin, a rule that traffic stops based on objectively reasonable mistakes of law violated the Fourth Amendment would do little to encourage officers to learn the law. The most conscientious efforts to learn the law

will not eliminate uncertainty as to the meaning of certain legal provisions. When a provision has not yet been authoritatively construed, uncertainty as to its meaning may remain no matter how much an officer is trained, studies, and consults legal counsel.

This is not to say that objectively reasonable mistakes of law will be anything more than exceedingly rare. Most Title 39 offenses, for instance, are well understood and clearly established. And once a court construes a traffic offense contrary to an officer's prior interpretation, all officers will then abide by that construction. But where there is a confusing and unsettled law, and a misunderstanding of that law is objectively reasonable, there is no reason why the mistake should be treated differently from an objectively reasonable mistake of fact.

When a law-enforcement officer reasonably believes that an offense has been committed, but uncertainties of fact or law remain, the Fourth Amendment allows the officer to investigate, perhaps conducting an investigatory stop, which starts the judicial process. This ensures that contested questions of fact and unsettled questions of law are decided after full and fair proceedings in a court of law. By allowing such encounters to start the judicial process in cases of uncertainty — even if an officer's reasonable judgments are later deemed incorrect — these standards ensure that uncertain cases are brought before the courts to be decided based on fact-finding and legal

briefing rather than predetermined by officers in the field. And it ensures that when the police are ultimately correct, criminal activity and other dangerous conditions are appropriately addressed.

In contrast, a rule finding police officers to have acted unconstitutionally when their reasonable beliefs concerning the law later turn out to be incorrect would unduly hamper law enforcement by deterring officers from starting the judicial process in the face of any uncertainty. Because of the strong public interest in bringing suspects into court when criminal conduct is suspected but not certain, a rule that allows for reasonable mistakes "afford[s] the best compromise that has been found for accommodating" public and private interests. See Brinegar, 338 U.S. at 176. Ultimately, an officer who makes a mistake of law when conducting a stop bears the burden of proving to the reviewing court — through the prosecutor — that his mistake was objectively reasonable. This tolerance for reasonable mistakes represents the important balance "between the individual's right to liberty and the State's duty to control crime." See Gerstein v. Pugh, 420 U.S. 103, 112 (1975).

In sum, Heien is a simple and limited rule that promotes precision and predictability, and is easy to apply. The cornerstone of Heien — that the officer's mistake be objectively reasonable — provides constitutional safeguards circumscribing the exercise of police discretion. Accordingly, Heien is controlling as to the reasonable-suspicion standard, allowing

for objective, reasonable mistakes of law. There is no basis in New Jersey law or policy to depart from our own precedent or diverge from Heien on state constitutional grounds.

B. Even if this Court decides that the arresting officers' reasonable interpretation of N.J.S.A. 39:3-33 was mistaken, the stop was still lawful.

Thus, even if the arresting officers' reasonable interpretation of N.J.S.A. 39:3-33 was mistaken, this Court should still find the stop constitutional.

At the time the officers stopped defendant's car, no published case had answered whether a "marking" under the license-plate-frame provision was limited to the registration number. As a result, the only guidance that the officers had was from the statute's plain language and an unpublished Appellate Division opinion — State v. DeVincentis, No. A-4820-09T1, 2011 WL 2672012 (App. Div. July 11, 2011) — that held the license-plate-frame provision applied to the words "Garden State."[6]

In that case, DeVincentis was stopped for an obstructed license plate because his license-plate frame almost completely obscured the words "Garden State" and minimally obscured the words "New Jersey." DeVincentis argued that the statute only

[6] The State is unaware of any opinions to the contrary prior to the Appellate Division decision in State v. Roman-Rosado, in which the panel held that a license-plate frame violates N.J.S.A. 39:3-33 only if it makes "critical identifying information" undecipherable. 462 N.J. Super. 183, certif. granted, 241 N.J. 501 (2020); R. 1:36-3. Roman-Rosado is currently pending before this Court.

applied to the identifying letters and numbers on the license plate because the words "New Jersey" and "Garden State" were not embossed. The Appellate Division rejected that argument, finding that the plain language of the statute applied to any part of any marking that was imprinted on the license plate, including "Garden State." (Rsa16 to 17).

Given the plain language of the statute and the absence of any case law directing law enforcement otherwise, this Court should not fault the officers for accepting the words of the statute at face value. To the contrary, they were duty-bound to enforce the statute as written. See State v. Zito, 54 N.J. 206, 210–11 (1969) (stating that it would be presumptuous of police to sit in judgment of a statute). The officers' belief that N.J.S.A. 39:3-33 prohibited frames that concealed "any part of any marking imprinted upon the vehicle's registration plate," even if a mistake of law, was reasonable and thus provided reasonable suspicion to lawfully stop defendant's car. Heien, 574 U.S. at 66.

This approach is consistent with this Court's long history of following the federal standard for determining whether there is reasonable suspicion for a traffic stop. Accordingly, as to this question, this Court should adopt Heien and allow for objectively reasonable mistakes in the interpretation of unsettled and confusing laws. Surely, if a motion judge and an Appellate Division panel unanimously find the police in a given

case to have been reasonable, that is strong indication that the police were at least objectively reasonable, if not correct.

The United States Supreme Court could not have been clearer that the mistake-of-law question "relates to the antecedent question of whether it was reasonable for an officer to suspect that the defendant's conduct was illegal." Heien, 574 U.S. at 66. Only once this antecedent question is answered does a court then consider the separate question of whether the exclusionary rule applies as a remedy or whether there is an exception to the exclusionary rule, such as good faith. When an officer has reasonable and articulable suspicion to conduct an investigatory stop — as the officers here had — there is no constitutional violation. This Court should thus affirm the decision of the Appellate Division.

CONCLUSION

For the foregoing reasons, the State asks this Court to affirm the decision of the Appellate Division. The officers in this case had reasonable and articulable suspicion to believe that defendant had violated the Motor Vehicle Code based on the unambiguous, plain language of the license-plate-frame provision. But if this Court determines that the officer's objectively reasonable interpretation of the statute was ultimately mistaken, the State urges this Court to follow Heien v. North Carolina and uphold the constitutionality of the stop.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR PLAINTIFF-RESPONDENT

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APPELLATE BUREAU

OF COUNSEL AND ON THE SUPPLEMENTAL BRIEF

DATED: MARCH 10, 2021

39:3-33

LEGISLATIVE HISTORY CHECKLIST

NJSA:	39:3-33	(License plate holders-- prohibit obscure plate)
LAWS OF:	1989	**CHAPTER:** 132
BILL NO:	A57/1254	
SPONSOR(S):	Albohn and Rooney	
Date Introduced:	Pre-field	
Committee:	**Assembly:** Law, Public Safety and Corrections	
	Senate: Law, Public Safety and Defense	
Amended during passage:	Yes	Assembly Committee substitute (1st reprint) enacted.
Date of Passage:	**Assembly:** June 2, 1988	
	Senate: June 19, 1989	
Date of Approval:	August 2, 1989	

Following statements are attached if available:

Sponsor statement:		Yes
Committee statement:	**Assembly**	Yes
	Senate	Yes
Fiscal Note:		No
Veto Message:		No
Message on Signing:		No

Following were printed:

Reports:	No
Hearings:	No

[FIRST REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 57 and 1254

STATE OF NEW JERSEY

ADOPTED FEBRUARY 1, 1988

By Assemblymen ALBOHN and ROONEY

AN ACT concerning the displaying of motor vehicle license plates and amending R.S.39:3-33.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S.39:3-33 is amended to read as follows:

39:3-33. The owner of an automobile which is driven on the public highways of this State shall display not less than 12 inches nor more than 48 inches from the ground in a horizontal position, and in such a way as not to swing, an identification mark or marks to be furnished by the division; provided, that if two marks are issued they shall be displayed on the front and rear of the vehicle; and provided, further, that if only one mark is issued it shall be displayed on the rear of the vehicle; and provided, further, that the rear identification mark may be displayed more than 48 inches from the ground on tank trucks, trailers and other commercial vehicles carrying inflammable liquids and on sanitation vehicles which are used to collect, transport and dispose of garbage, solid wastes and refuse. Motorcycles shall also display an identification mark or marks; provided, that if two marks are issued they shall be displayed on the front and rear of the motorcycle; and provided, further, that if only one mark is issued it shall be displayed on the rear of the motorcycle.

The identification mark or marks shall contain the number of the registration certificate of the vehicle and shall be of such design and material as the director prescribes. All registration plates issued by the division after January 1, 1982 shall be of a permanent nature and shall be fully treated with a reflectorized material designed to increase the nighttime visibility and legibility thereof, according to specifications prescribed by the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows.
1 Senate floor amendments adopted March 20, 1989.

division, except that the division shall first use any existing supplies of nonreflectorized plates which it ordered prior to that date. Whenever reflectorized registration plates are issued for any vehicle for which a registration fee is normally charged, the division may charge an additional fee not to exceed $0.05 above actual costs. All identification marks shall be kept clear and distinct and free from grease, dust or other blurring matter, so as to be plainly visible at all times of the day and night.

No person shall drive a motor vehicle which has a license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted upon the vehicle's registration plate or any part of any insert which the director, as hereinafter provided, issues to be inserted in and attached to that registration plate or marker.

The director is authorized and empowered to issue registration plate inserts, to be inserted in and attached to the registration plates or markers described herein. They may be issued in the place of new registration plates or markers; and inscribed thereon, in numerals, shall be the year in which registration of the vehicle has been granted.

No person shall drive a motor vehicle the owner of which has not complied with the provisions of this subtitle concerning the proper registration and identification thereof, nor drive a motor vehicle which displays a fictitious number, or a number other than that designated for the motor vehicle in its registration certificate. [1]During the period of time between the application for motor vehicle registration and the receipt of registration plates from the division, no person shall affix a plate or marker for the purpose of advertisement in the position on a motor vehicle normally reserved for the display of the registration plates required by this section if the plate or marker is designed with a combination of letters, numbers, colors, or words to resemble the registration plates required by this section.[1]

A person convicted of displaying a fictitious number, as prohibited herein, shall be subject to a fine not exceeding $500.00 or imprisonment in the county jail for not more than 60 days.

A person violating any other provision of this section shall be subject to a fine not exceeding $100.00. In default of the

payment thereof, there shall be imposed an imprisonment in the county jail for a period not exceeding 10 days. A person convicted of a second offense of the same violation may be fined in double the amount herein prescribed for the first offense and may, in default of the payment thereof, be punished by imprisonment in the county jail for a period not exceeding 20 days. These penalties shall not apply to the display of a fictitious number.

(cf: P.L.1983, c.428, s.1)

2. This act shall take effect on the 120th day after the day of enactment.

MOTOR VEHICLES

Motor Vehicle - License and Registration

Prohibits use of license plate holders which conceal or obscure markings on plate; prohibits use of advertising plates resembling registration plates.

ASSEMBLY, No. 57

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman ALBOHN

AN ACT concerning the displaying of motor vehicle license plates and amending R.S. 39:3-33.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. R.S. 39:3-33 is amended to read as follows:

39:3-33. The owner of an automobile which is driven on the public highways of this State shall display not less than 12 inches nor more than 48 inches from the ground in a horizontal position, and in such a way as not to swing, an identification mark or marks to be furnished by the division; provided, that if two marks are issued they shall be displayed on the front and rear of the vehicle; and provided, further, that if only one mark is issued it shall be displayed on the rear of the vehicle; and provided, further, that the rear identification mark may be displayed more than 48 inches from the ground on tank trucks, trailers and other commercial vehicles carrying inflammable liquids and on sanitation vehicles which are used to collect, transport and dispose of garbage, solid wastes and refuse. Motorcycles shall also display an identification mark or marks; provided, that if two marks are issued they shall be displayed on the front and rear of the motorcycle; and provided, further, that if only one mark is issued it shall be displayed on the rear of the motorcycle.

The identification mark or marks shall contain the number of the registration certificate of the vehicle and shall be of such design and material as the director prescribes. All registration plates issued by the division after January 1, 1982 shall be of a permanent nature and shall be fully treated

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

with a reflectorized material designed to increase the nighttime visibility and legibility thereof, according to specifications prescribed by the division, except that the division shall first use any existing supplies of nonreflectorized plates which it ordered prior to that date. Whenever reflectorized registration plates are issued for any vehicle for which a registration fee is normally charged, the division may charge an additional fee not to exceed $0.05 above actual costs. All identification marks shall be kept clear and distinct and free from grease, dust or other blurring matter, so as to be plainly visible at all times of the day and night.

The director is authorized and empowered to issue registration plate inserts, to be inserted in and attached to the registration plates or markers described herein. They may be issued in the place of new registration plates or markers; and inscribed thereon, in numerals, shall be the year in which registration of the vehicle has been granted.

No person shall drive a motor vehicle which has a license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted on that plate or any part of any plate insert which, at the direction of the director, is attached thereto or affixed thereon.

No person shall drive a motor vehicle the owner of which has not complied with the provisions of this subtitle concerning the proper registration and identification thereof, nor drive a motor vehicle which displays a fictitious number, or a number other than that designated for the motor vehicle in its registration certificate.

A person convicted of displaying a fictitious number, as prohibited herein, shall be subject to a fine not exceeding $500.00 or imprisonment in the county jail for not more than 60 days.

A person violating any other provision of this section shall be subject to a fine not exceeding $100.00. In default of the payment thereof, there shall be imposed an imprisonment in the county jail for a period not exceeding 10 days. A person convicted of a second offense of the same violation may be fined in double the amount herein prescribed

for the first offense and may, in default of the payment thereof, be punished by imprisonment in the county jail for a period not exceeding 20 days. These penalties shall not apply to the display of a fictitious number.

2. This act shall take effect immediately.

STATEMENT

This bill prohibits the use of any license plate holder or frame which conceals or otherwise obscures any of the markings imprinted on a motor vehicle license plate or any insert or sticker which is required to be attached to or affixed on that license plate by the Director of the Division of Motor Vehicles.

MOTOR VEHICLES

Motor Vehicle- License and Registration

Prohibits use of license plate holders which conceal or obscure markings on plate.

ASSEMBLY, No. 1254

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman ROONEY

AN ACT concerning the displaying of motor vehicle license plates and supplementing chapter 3 of Title 39 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. No person shall drive a motor vehicle which has a license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted upon that vehicle's registration plate or any part of any insert which, at the direction of the director, is attached thereto or affixed thereon.

Any operator violating the provisions of this act shall be subject to a fine of $25.00.

b. Any new or used car dealer who places upon a vehicle any license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted upon a vehicle's registration plate or any part of any insert which, at the direction of the director, is attached thereto or affixed thereon shall be subject to a fine of $50.00.

c. No motor vehicle which has a license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking imprinted upon its registration plate or any part of any insert which, at the direction of the director, is attached thereto or affixed thereon shall be certified as approved by any official inspection station or any licensed private inspection center.

2. This act shall take effect immediately.

STATEMENT

This bill prohibits the use of any license plate holder or frame which conceals or otherwise obscures any of the markings imprinted on a motor vehicle license plate or any insert or sticker which is required to be attached to or affixed on that license plate by the Director of the Division of Motor Vehicles.

Under the provisions of the bill, the operator of a motor vehicle that has a license plate frame or holder which conceals or obscures any of the information on the plate is subject to a fine of $25.00. If a new or used car dealer installs or places any such frame or holder on a motor vehicle, he is subject to a fine of $50.00.

Finally, the bill provides that no motor vehicle that has a license plate frame or holder which conceals or obscures any of the information on its license plate shall be certified as approved by an official inspection station or a licensed private inspection center.

MOTOR VEHICLES

Motor Vehicle - License and Registration

Prohibits use of license plate holders which conceal or obscure markings on plate.

ASSEMBLY LAW, PUBLIC SAFETY AND CORRECTIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 57and 1254

STATE OF NEW JERSEY

DATED: FEBRUARY 1, 1988

The Assembly Law, Public Safety and Corrections Committee favorably reports a Committee Substitute for Assembly Bill 57 and Assembly Bill 1254.

The Assembly Committee Substitute for Assembly Bill 57 and Assembly Bill 1254 amends R.S. 39:3-33 to prohibit the use of any license plate holder or frame which conceals or otherwise obscures any of the markings imprinted on a motor vehicle license plate or any insert or sticker which is required to be attached to or affixed on that license plate by the Director of the Division of Motor Vehicles.

The Committee notes that the provisions of the Committee Substitute take effect on the 120th day following the day of its enactment.

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 57 and 1254

STATE OF NEW JERSEY

DATED: JANUARY 12, 1989

The Senate Law, Public Safety and Defense Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 57 and 1254.

The committee substitute amends R.S.39:3-33 to prohibit the use of any license plate holder or frame which conceals or otherwise obscures any of the markings imprinted on a motor vehicle license plate or any insert or sticker which is required by the Director of the Division of Motor Vehicles to be attached to or affixed on that license plate .

BERUBE v. SECRETARY OF STATE

Superior Court of Maine, Kennebec County

December 5, 1983, Decided

CIVIL ACTION Docket No. CV-82-435

Reporter
1983 Me. Super. LEXIS 238 *

WILLIAM BERUBE, JR., Plaintiff vs. SECRETARY OF STATE, State of Maine, Defendant

Disposition: [*1] Appeal SUSTAINED. Decision REVERSED. REMANDED.

Core Terms

plate, registration, letters, number plate, tape, criminal statute, obscuring, display, registration certificate, suspended, figures, slogan, rights

Judges: DONALD G. ALEXANDER, Justice, Superior Court.

Opinion by: ALEXANDER

Opinion

OPINION and ORDER

This matter is before the Court on appeal from the Secretary of State's decision suspending Petitioner's registration certificate and his number plate "NO-U235." The Secretary of State based his suspension determination upon an alleged violation of 29 M.R.S.A. § 2183 [1] committed by the Petitioner when, with a small piece of tape and four small printed letters he changed the word "Vacationland" on his registration plate to "Radiationland".

From that determination, Mr. Berube brings this appeal pursuant to Rule 80B, M.R.Civ. P. (now Rule 80C) and *5 M.R.S.A. § 11001, et seq.*. Mr. Berube also makes a claim for violation of constitutional rights under *42 U.S.C. § 1983*, and he seeks attorneys fees and costs should he prevail as authorized by *42 U.S.C. § 1988*. **[*2]** On appeal, Mr. Berube asserts that 29 M.R.S.A. § 2183 was improperly applied to the "Vacationland" lettering and that, as applied, his rights secured under the *First Amendment of the United States Constitution* were violated. Additionally, Mr. Berube asserts that he was denied equal protection of the laws, secured by the *Fifth* and *Fourteenth Amendments of the United States Constitution* and *Article I § 6-A of the Maine Constitution*, because of discriminatory enforcement of Section 2183 against him. However, by pretrial order that claim was deferred pending resolution of the statutory application and First Amendment issues. Because resolution of those issues resolves the case, the equal protection claim is not addressed further in this opinion.

The facts leading to this action are not contested:

William Berube obtained a "vanity" plate bearing the message "NO-U235". Sometime after receiving this vanity plate from the Secretary of State he altered the plate by placing a piece of lettered tape over the first three letters of "Vacationland" to change this word to "Radiationland" on his registration plate. He then regularly operated his vehicle with the registration **[*3]** plate so amended for approximately two years with no apparent public attention or official complaint. This changed in July of 1982 when the Motor Vehicle

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[1] For text of § 2183 see page 4 *infra*.

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Division of the Secretary of State's Office accepted a complaint from an unnamed citizen and commenced an investigation. During the investigation, in which Mr. Berube cooperated fully, he was visited by a representative of the Secretary of State and his plate, as amended, was photographed on his vehicle.

After the investigation was completed, Mr. Berube was summoned to a hearing before a hearing officer of the Motor Vehicle Division. The purpose of this hearing was to determine whether Mr. Berube's registration certificate should be suspended as provided by 29 M.R.S.A. § 2241-1 for violation of 29 M.R.S.A. § 2183. The hearing was held on August 20, 1982 with the facts as outlined above being developed, without significant contest, in the record. On the contested issues the hearing officer ruled as follows:

> "I find that Mr. Berube, in changing "Vacationland" to "Radiationland", has failed to properly display on a vehicle the number plate and registration number duly issued **[*4]** therefor which constitutes violation of 29 M.R.S.A. Section 2183.
>
> I therefore find that there is sufficient cause to suspend the registration certificate and number plate NO-U235 per *29 M.R.S.A. 2241*, subsection 1, 1st sentence.
> It is hereby ordered that the registration certificate and number plate NO-U235 are suspended effective September 7, 1982, unless Mr. Berube demonstrates satisfactorily to the undersigned hearing officer prior to the effective date of suspension that he has removed the reflective tape bearing the letters "RADI" from number plate NO-U235."

Mr. Berube did not comply with the hearing officer's directive within the time allotted. Instead he filed a timely appeal with this Court.

DISCUSSION

In their briefs, both parties devote considerable attention to the United States Supreme Court decision in *Wooley v. Maynard, 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977)*. That case involved First Amendment issues where a person, because of sincerely held religious beliefs, placed blank tape over what the Supreme Court determined to be a political slogan, "Live Free or Die" on New Hampshire **[*5]** license plates. There the Supreme Court held that the plaintiff's rights secured by the First Amendment were violated by enforcement of a New Hampshire statute construed by the New Hampshire courts to prohibit obscuring the "Live Free or Die" slogan. But other than the fact that the issue here involves tape over a portion of a license plate slogan, the issues diverge considerably from those presented in *Wooley v. Maynard*.

According to a written statement filed in the course of the hearing before the Secretary of State, Mr. Berube has no serious religious or political objection to the "Vacationland" slogan. Rather, he believes that vacationers and citizens alike should be warned of the risks arising from operation of a nuclear power plant, and he amended his license plate in an effort to provide that warning and, presumably, to make a personal political comment. However, before addressing the issue of whether protected First Amendment rights are violated by application of the terms of a statute which are clearly established by precedent, as was the case in New Hampshire, we must first examine whether Mr. Berube's conduct was indeed prohibited by statute. The prohibitory statute, **[*6]** 29 M.R.S.A. § 2183, reads as follows:

> No person shall attach or permit to be attached to a vehicle a number plate assigned to another vehicle, or obscure or permit to be obscured the figures of any number plate attached to any vehicle, or fail to properly display on a vehicle the number plates and registration number duly issued therefor.
> Whoever violates this section shall be guilty of a misdemeanor.

Reviewing this statute it will be noted first that while this statute was applied, in this instance, in a civil administrative proceeding, the statute is in fact a criminal statute, since violation of the statute is a misdemeanor. Thus, doctrines of law applicable to interpretation of criminal statutes must apply. One of the preeminent doctrines applicable to the criminal law is that penal statutes will be "strictly" or "narrowly" construed and that where significant doubts as to application of those statutes arise, those doubts would be resolved against application of the statute; *State v. Goyette, 407 A.2d 1104 (Me. 1979)*; *State v. Millett, 392 A.2d 521 (Me. 1978)*; *State v. Porter, 384 A.2d 429 (Me. 1978)*; **[*7]** *State v. Snow, 383 A.2d 1385 (Me. 1978)*. This doctrine of strict construction applies with particular importance in those cases where the criminal statute may affect rights protected by the First Amendment, *State v. John W., 418 A.2d 1097, 1101 (Me. 1980)*; *State v. Sondergaard, 316 A.2d 367 (Me. 1974)*.

While the burden of proof necessary to find that

someone has committed a violation of a statute may be different when that statute is applied in a civil or a criminal proceeding, the meaning of the statute obviously cannot vary depending on the nature of the proceeding implicating the statute, since the purpose of criminal statutes is to give notice to the populace, in advance, of that conduct which is proscribed. Thus, the rules of strict construction applicable to criminal statutes will govern, even when those statutes are applied in a non-criminal proceeding.

Registration plates are not placed on vehicles as advertising. Their purpose is to facilitate singular identification of that vehicle by letters, or numbers, or a combination of both unique to the vehicle within the state where the plate is issued and to determine if the registration **[*8]** is presently valid (State's Brief p. 13-14). To avoid obstruction of this purpose for registration plates, Section 2183 directs that no person shall "obscure or permit to be obscured the *figures* of any number plate attached to any vehicle." (emphasis added) Applying the doctrine that words in statutes are to be given their common and everyday meaning where appropriate, this statement in Section 2183 may reasonably be construed to proscribe coverage or alteration of the unique numbers or letters or combination assigned to a vehicle. These are the "figures" essential to the purposes for which the plate was issued.

On this point, the Maine statute and the New Hampshire statute at issue in *Wooley v. Maynard, supra* differs significantly. The New Hampshire statute prohibited interference with "figures or letters" on number plates, *97 S. Ct. at 1431*. Further, the term "letters" in the New Hampshire statute - a term absent from the Maine statute - had been construed by the New Hampshire Supreme Court to include the "Live Free or Die" slogan, *State v. Hoskin, 112 N.H. 332, 295 A.2d 454 (N.H. 1972)*. Absent more explicit legislative direction, **[*9]** this term "figures" in a criminal statute cannot be construed to also encompass the letters "Vacationland" on the plate, as this word is not essential to specific identification of the vehicle and is not, in fact, included on many registration plates issued by the State. [2]

The State also has a legitimate interest in assuring that plates, in addition to having clear figures, be displayed in a manner which permits ready notice and identification. To promote this end, Section 2183 also prohibits the failure "to properly display on a vehicle the number plates and registration number duly issued therefor." Here there is no suggestion that Mr. Berube displayed his plate in any manner which compromised ready identification of his particular vehicle registration number -- Maine plate NO-U235. **[*10]** The display of the plate is not in any way compromised by the small piece of tape Mr. Berube attached to the plate.

Since 29 M.R.S.A. § 2183 does not explicitly prohibit obscuring the word "Vacationland" and since the question of whether the statute may be construed to prohibit obscuring the word "Vacationland" by implication is at best ambiguous, doctrines regularly applicable in the criminal law to govern construction of criminal statutes apply and require this Court to hold that Mr. Berube's action in placing a piece of tape over the letters "VAC" is not of itself in violation of Section 2183. The question then becomes whether, beyond the matter of placing a small piece of tape over three letters, any violation of statute is committed by adding the letters "RADI" to the tape. This issue was not addressed separately at the administrative proceeding. However, at this point, on appeal, the State asserts for the first time that adding the letters "RADI" to create the word "Radiationland" is a violation of *21 M.R.S.A. § 1575-A* which prohibits political advertisement being displayed or distributed in or on state-owned property. **[*11]** Arguing that registration plates are and remain state property, the State urges that this separate section also prohibits any political statement on a registration plate. That point is disposed of easily. First, there was no notice before this appeal that *section 1575-A* of Title 21 was being used as a justification for suspending petitioner's registration plate. Such justification, even if used, would be arguably improper since there would be serious question as to whether registration certificates could be suspended pursuant to *29 M.R.S.A. § 2241* for violations of state laws outside of the Motor Vehicle Code. Further, it appears undisputed that the State does allow what some people may construe to be political statements on license plates. After all, the record demonstrates that Mr. Berube only sought the NO-U235 registration certificate after he found that the Secretary of State had all ready issued a "NO-NUKE" plate to someone else. And we must remember, it is not the "NO-U235" or "NO-NUKE" statements to which the State objects, although these statements have the same political significance as "Radiationland".

In sum, the Court holds that Mr. Berube's **[*12]** conduct

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[2] "Vacationland" does not appear on plates issued to municipal governments, law enforcement agencies, the University of Maine, Maine Legislators and some other special categories of registrations (Hearing Transcript at 8).

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in placing tape over the three letters in the Vacationland slogan at the bottom of his registration plate and writing on that tape was not explicitly prohibited by statute when the words of the statute are given their plain meaning. The Court further holds that the question of whether Mr. Berube's conduct may be prohibited by implication is ambiguous and being ambiguous must be construed against application to Mr. Berube in the context of application of a criminal statute. In holding this, the Court does not suggest that the Legislature, if it chose to be explicit, could not prohibit alteration of the word "Vacationland".

Because the Court is deciding this case as a matter of State statutory interpretation, applying State doctrines of statutory construction, the Court does not address the question of whether the State's action violated any rights of Mr. Berube which are protected by the *First Amendment of the United States Constitution*.

Therefore, the Court ORDERS and the entry shall be:

1. Appeal SUSTAINED.

2. Decision of the Secretary of State is REVERSED.

3. REMANDED to the Secretary of State with direction that the Secretary of State shall reinstate and return to Mr. **[*13]** Berube his registration plate number NO-U235.

Dated: 12-5-83

DONALD G. ALEXANDER

Justice, Superior Court

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2011 WL 2672012
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

STATE of New Jersey, Plaintiff–Respondent,
v.
Marcus **DEVINCENTIS**, Defendant–Appellant.

Submitted June 21, 2011.
|
Decided July 11, 2011.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Municipal Appeal No. 02–10.

Attorneys and Law Firms

John Menzel, attorney for appellant.

Marlene Lynch Ford, Ocean County Prosecutor, attorney for respondent (Meghan M. Clark, Assistant Prosecutor, on the brief).

Before Judges CARCHMAN and PARRILLO.

Opinion

PER CURIAM.

***1** Following denial of his motion to suppress, defendant Marcus **DeVincentis** was found guilty in municipal court of a motor vehicle violation, *N.J.S.A.* 39:3–33—obstructing a license plate—and subsequently pled guilty to refusal to submit to a breath test, *N.J.S.A.* 39:4–50.2, offenses stemming from the same incident. On de novo review, the Law Division affirmed the denial of the motion to suppress and upheld defendant's guilty plea, imposing his municipal court sentence of a $36 fine and $33 court costs on the *N.J.S.A.* 39:3–33 violation, and on the breathalyzer refusal, a $306 fine; $33 court costs; $100 drunk driving enforcement fund surcharge; attendance at an Intoxicated Driver Resource Center; and a seven-month forfeiture of driving privilege, the latter of which was stayed pending appeal. Defendant appeals, and we affirm.

According to the State's proofs, on April 25, 2009, defendant was operating his motor vehicle on Route 70 in Lakehurst Borough, when he was pulled over by a police officer. The officer stopped defendant's vehicle because of the condition of his rear license plate. The words "Garden State" were almost wholly obscured by the license plate frame and the words "New Jersey" were obstructed in a "minimal way." As a result, defendant was issued a citation for violating *N.J.S.A.* 39:3–33, prohibiting obstruction of "any marking imprinted" on a vehicle license plate. Once pulled over, the officer suspected defendant was driving under the influence. At police headquarters, defendant refused to submit to a breathalyzer test and was also charged with a violation of *N.J.S.A.* 39:4–50.2 and *N.J.S.A.* 39:4–50.

Defendant filed a motion to suppress, which the municipal court judge denied. Following a hearing based on stipulated facts and photographs, the judge found defendant guilty of *N.J.S.A.* 39:3–33, and accepted defendant's guilty plea to *N.J.S.A.* 39:4–50.2. On de novo review, the Law Division found that the language of *N.J.S.A.* 39:3–33 was "clear and unambiguous on its face" and that the words "Garden State" were "imprinted" and thus could not be obscured under the statute: "that nothing can be done or nothing can be mounted around a plate that would conceal or otherwise obscure any part of a marking imprinted upon the plate." Consequently, the court found the police officer had a reasonable and articulable basis to stop defendant's vehicle and therefore denied the motion to suppress. Because the words "Garden State" were wholly obscured, the judge found defendant guilty of *N.J.S.A.* 39:3–33 and imposed the municipal court's sentence.

On appeal, defendant argues that the court, as did the police officer, misconstrued *N.J.S.A.* 39:3–33, in that the term "imprinted" only applies to the "embossed letters and numbers assigned to the automobile on which the license plate is affixed." Because there was no objectively reasonable basis for believing that a violation of *N.J.S.A.* 39:3–33 had occurred, defendant argues that the investigatory stop was unconstitutional and the fruits thereof should be suppressed. We disagree.

***2** In order to justify a motor vehicle stop, a police officer need only have an articulable and reasonable suspicion that

the driver has committed a motor vehicle violation. *State v. Locurto,* 157 *N.J.* 463, 470–71 (1999); *State v. Puzio,* 379 *N.J.Super.* 378, 381 (App.Div.2005); *State v. Smith,* 306 *N.J.Super.* 370, 380 (App.Div.1997). The issue here is whether the officer correctly interpreted *N.J.S.A.* 39:3–33, for if he had, he clearly had an articulable and reasonable basis for the stop.

The statute, which identifies various violations relating to the display of identification marks and registration plates, reads in pertinent part:

> No person shall drive a motor vehicle which has a license plate frame or identification marker holder that conceals or otherwise obscures any part of any marking *imprinted* upon the vehicle's registration plate or any part of any insert which the director, as hereinafter provided, issues to be inserted in and attached to that registration plate or marker.
>
> [(Emphasis added).]

Contrary to defendant's argument, we read the statute to expressly prohibit even the partial obscuring of the writings or markings on a license plate. By its plain and unambiguous terms, *N.J.S.A.* 39:3–33 prohibits a license plate frame or identification marker "that conceals or otherwise obscures any part of any marking imprinted" on the license plate.

We disagree with defendant's constricted construction of the word "imprinted." That term is not limited, as defendant suggests, to the "embossed" identifying letters and numbers on the license plate. Rather, the term "imprint" is much broader by ordinary definition and connotes to "make or impress (a mark or design) on a surface." *Webster's II New College Dictionary,* 557 (1st ed.1995). Defendant has referred to nothing in the plain language of the statute or its legislative history to warrant a more restrictive meaning or to preclude its application to the lettering at issue here. Indeed, that the officer's interpretation of the statute is correct is demonstrated by the passage in 1954 of a wholly separate legislative enactment requiring the words "Garden State" to be "imprinted" on New Jersey license plates. *N.J.S.A.* 39:3–33.2.

We conclude that the officer had an objectively reasonable basis to support his conclusion that defendant's car was being operated in violation of *N.J.S.A.* 39:33–3. As a result, his stop of the vehicle was lawful and defendant's motion to suppress the fruits of that stop was properly denied.

Affirmed.

All Citations

Not Reported in A.3d, 2011 WL 2672012

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