

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4806-14T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JASON C. ZITTER,

Defendant-Appellant.

Submitted June 28, 2016 – Decided July 8, 2016

Before Judges Fisher and Fasciale.

On appeal from the Superior Court of New Jersey, Law Division, Cape May County, Municipal Appeal No. 09-03-15.

Law Office of John M. Walsh, PC, attorneys for appellant (John M. Walsh, on the brief).

Robert L. Taylor, Cape May County Prosecutor, attorney for respondent (Gretchen A. Pickering, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

After unsuccessfully seeking the suppression of evidence obtained as a result of a motor vehicle stop, defendant entered a conditional guilty plea to driving while under the influence, N.J.S.A. 39:4-50, and pursued, by way of an appeal to the Law Division, his contention that the arresting officer lacked

reasonable suspicion to stop his vehicle. The Law Division judge rejected defendant's argument, and defendant appeals, reprising his contention that the officer lacked reasonable suspicion. We agree with that argument and reverse.

At a hearing in municipal court, the officer testified the sole ground for the stop arose from his belief that defendant made a right turn without signaling as prohibited by N.J.S.A. 39:4-126, which declares: "[n]o person shall [turn at an intersection or as otherwise defined] without giving an appropriate signal . . . provided in the event any other traffic may be affected by such movement." There being no dispute that defendant made a turn without signaling, we focus on whether there was evidence to support a finding that the un-signaled turn "affected" "any other traffic." Ibid.

In municipal court, the arresting officer testified he observed defendant and his companions depart a pizza restaurant in Avalon at 2:34 a.m., on July 18, 2014. Defendant's vehicle proceeded onto Dune Drive; while following, the officer observed the vehicle turn right onto 22nd Street. From a distance of approximately twenty to twenty-five feet, the officer next observed defendant's vehicle make a right turn onto Ocean Drive; the officer did not see defendant signal in advance of that turn. A short distance later, defendant signaled for and made a

left turn onto 21st Street, and the officer activated his overhead lights. Defendant turned left and then into the driveway of his Harbor Drive residence. In the events that followed, defendant was arrested for driving while under the influence.


As mentioned, the sole rationale for the vehicle stop was defendant's un-signalized right turn onto Ocean Drive. We start with the premise that not every turn of a vehicle must be preceded by a signal. In State v. Williamson, 138 N.J. 302, 304 (1994), the Court interpreted N.J.S.A. 39:4-126 as prohibiting only un-signalized turns that "have an effect on traffic." The arresting officer, who observed defendant's vehicle travel from the pizzeria to his driveway, testified there was no other traffic on the streets in question. And the officer never testified the operation of his own vehicle was impacted by defendant's un-signalized right turn onto Ocean Drive.

To be sure, to prove the officer possessed an articulable and reasonable suspicion for making the vehicle stop, State v. Locurto, 157 N.J. 463, 470 (1999), the prosecution was not required to prove a violation of N.J.S.A. 39:4-126 beyond a reasonable doubt. And, in considering defendant's contentions we must accept – although he never said – that the municipal

judge found the officer credible.¹ But those circumstances only distract us from the rather simple set of facts before us. There being no other vehicles in sight when the turn was made, the only "other traffic" that could have been affected, ibid., consisted of the arresting officer's vehicle, and he never testified the operation of his vehicle was impacted by defendant's actions. Consequently, the officer could not have possessed a reasonable suspicion that defendant had committed a motor vehicle violation. There being no other articulated ground for the motor vehicle stop, its fruits must be suppressed.

We, thus, reverse the order denying suppression, vacate the judgment of conviction, and remand for further proceedings in conformity with this opinion. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION

¹ The Law Division judge, who never saw the officer testify, found him credible.