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January 9, 2025

Via E-Courts and Federal Express
The Honorable Judges of the Appellate Division
Hughes Justice Complex
25 W. Market Street
PO Box 006
Trenton, NJ 08625

RE: State of NJ, Plaintiff/Respondent v. Roger E. Mejia A/K/A/ Roger Mejia, Defendant/Appellant
Docket No.: A-000823-24
On Appeal from the Trial Court's Order of June 4, 2024 Denying Defendant's Motion to Suppress
Criminal Division Docket No.:23-12-00299-I
Sat Below: Honorable Michael C. Gaus, J.S.C.

Dear Your Honors:

Please accept this letter in lieu of a more formal brief in support of the appeal of Defendant Roger E. Mejia from the denial of his motion to suppress.

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PRELIMINARY STATEMENT

Based upon the record below the State has failed to sustain its burden that Trooper Bowie [hereinafter: "Bowie"] had a reasonable and articulable suspicion that Defendant Roger E. Mejia [hereinafter: "Mejia"] had committed a motor vehicle violation. Initially, Bowie testified that his vehicle was traveling in the opposite

direction of Mejia's vehicle when observing the motor vehicle infraction. Bowie then contradicted himself and swore his vehicle was stationary. Only upon being questioned by the Court did Bowie admit he had perjured himself not once, but twice, conceding he could not recall where he was located when making his alleged observations. There is no credible evidence in the record to justify this motor vehicle stop. The decision of the Court below must be reversed in the interests of justice.

PROCEDURAL HISTORY

On April 24, 2023 Defendant, Roger E. Mejia [hereinafter: "Mejia"], was charged with operating a motor vehicle during a period of license suspension for a second or subsequent violation of N.J.S.A. 39:4-50 contrary to N.J.S.A. 2C:40-26(b). Summons also were issued for driving while suspended (N.J.S.A. 39:3-40) and failure to stop (N.J.S.A. 39:4-144)(Da 1-7). On December 7, 2023 the Defendant was indicted for this 2C violation (Da 8).

On February 22, 2024 Mejia filed a notice of motion to suppress (Da 9-10). A suppression hearing was conducted on June 4, 2024 before the Honorable Michael C. Gaus, J.S.C.. At the conclusion of this hearing Judge Gaus denied this motion, which was memorialized by Order dated June 4, 2024[1] (Da 11).

Thereafter Mejia filed an appeal from the denial of this motion, which was

[1] 1T refers to the transcript of the June 4, 2024 suppression hearing.

dismissed because the appeal was interlocutory (Da 12-15).

On September 24, 2024 Mejia entered a guilty plea to N.J.S.A. 2C:40-26(b). As part of the plea agreement the motor vehicle summons were dismissed(Da 16-20).

On November 8, 2024 Mejia was sentenced to six months incarceration. He was not placed on probation(Da 21-23). The court below on this date also stayed imposition of the custodial sentence to afford Mejia the opportunity to appeal the denial of his suppression motion and also file the appropriate motion to be released on bail pursuant to R. 2:9-4 (Da 21-23).

On November 21, 2024 Mejia filed a Notice of Appeal from the denial of his suppression motion (Da 24-25). A scheduling Order was thereafter entered by this Court(Da 26-27).

On November 26, 2024 Mejia filed a motion to be released on bail pending this appeal (Da 28-29) which was granted by the Honorable Janine M. Allen, J.S.C. by Order dated December 3, 2024 (Da30).

A copy of the MVR is annexed (Da 31).

STATEMENT OF FACTS

On April 24, 2023 Trooper Bowie [hereinafter: "Bowie"] stopped the motor vehicle Mejia was operating allegedly for rolling through a stop sign. At the time of the stop the Defendant's driving privileges had been suspended based upon multiple

DUI infractions. As a result, he was charged with violating N.J.S.A. 2C:40-26(b), operating a motor vehicle during a period of license suspension while having been previously convicted of a second or subsequent violation of N.J.S.A 39:4-50 and two motor vehicle infractions (Da 1-7).

On direct examination during the suppression hearing Bowie testified that his vehicle was traveling in the opposite direction of the Mejia vehicle when he observed the alleged infraction(1T 8-1 through 8-11). On cross-examination he contradicted himself and testified that his vehicle was parked when he observed the alleged violation (1T 11-9 through 12-8). Both alleged observations were fabrications. On cross-examination by the Court he finally admitted that he could not remember where he was when he allegedly observed Mejia's vehicle (1T 29-23 through 30-5).

LEGAL ARGUMENT

POINT I

BECAUSE BOWIE COULD NOT RECALL WHERE HE WAS LOCATED WHEN ALLEGEDLY OBSERVING MEJIA'S ALLEGED MOTOR VEHICLE INFRACTION, THE STATE CANNOT SUSTAIN ITS BURDEN OF PROOF THAT THIS WARRANTLESS STOP WAS LAWFUL(1T 39-23 through 49-17).

In State v. Smith, 251 N.J. 244 (2022), our Supreme Court framed the legal issue presented by this appeal:

> The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution guarantee "[t]he right of the

> people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A motor vehicle stop by a police officer, no matter how brief or limited, is a " 'seizure' of 'persons' " under both the Federal and State Constitutions. State v. Scriven, 226 N.J. 20, 33, 140 A.3d 535 (2016) (quoting State v. Dickey, 152 N.J. 468, 475, 706 A.2d 180 (1998)). To justify such a seizure, "a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense." Id. at 33-34, 140 A.3d 535. "The suspicion necessary to justify a stop must not only be reasonable, but also particularized." Id. at 37, 140 A.3d 535. An investigative stop "may not be based on arbitrary police practices, the officer's subjective good faith, or a mere hunch." State v. Chisum, 236 N.J. 530, 546, 200 A.3d 1279 (2019) (quoting State v. Coles, 218 N.J. 322, 343, 95 A.3d 136 (2014)).
>
> To determine whether reasonable and articulable suspicion exists, a court must evaluate the totality of the circumstances and "assess whether 'the facts available to the officer at the moment of the seizure ... warrant[ed] a [person] of reasonable caution in the belief that the action taken was appropriate.' " State v. Alessi, 240 N.J. 501, 518, 223 A.3d 184 (2020) (alterations and omission in original) (quoting State v. Mann, 203 N.J. 328, 338, 2 A.3d 379 (2010)). A motor vehicle stop that is not based on a "reasonable and articulable suspicion is an 'unlawful seizure,' and evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule." Chisum, 236 N.J. at 546, 200 A.3d 1279 (quoting State v. Elders, 192 N.J. 224, 247, 927 A.2d 1250 (2007)).

Mejia readily acknowledges that this Court's scope of review is limited. This Court is bound to uphold the factual findings underlying the trial court's decision "so long as these findings are supported by sufficient and credible evidence in the record". State v. Ahmad, 246 N.J. 592, 609 (2021), quoting State v. Elders, 192 N.J.

224, 243 (2007). Nevertheless, the trial court's legal conclusions "and the consequences that flow from established facts" are reviewed de novo. State v. Hubbard, 222 N.J. 249, 263 (2015). Moreover:

> A trial court's findings should be disturbed only if they are so clearly mistaken "that the interests of justice demands intervention". In those circumstances solely should an appellate court "apprise the record as if it were deciding the matter at inception and make its own findings and conclusions". State v. Elders, 192 N.J. 224 citing State v. Johnson (2007) 42 N.J. 146 (1964).

This is one of those rare instances where the interests of justice call upon the court to apprise the record de novo. Why? Because Trooper Bowie after perjuring himself not once, but twice, acknowledged he could not remember where he was located when allegedly observing Mejia rolling through a stop sign (1T 29-23 through 30-5).

It is one thing to be unprepared. But it is another to attempt to hide your lack of preparation by lying repeatedly under oath. This is not a case where the Trooper was confused or made an honest mistake. This is a case where the Trooper fabricated his testimony twice in order to justify the motor vehicle stop. That is exactly what happened here. The record speaks for itself[2].

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[2]The maximum *falsus in uno, falsus in omnibus*, although not legally binding on this Court most certainly comes to mind. As for Trooper Bowie's testimony, *the maxim falsus in* ***duo****, falsus in omnibus* is more apropos. Trooper Bowie's perjury is a far more serious crime than that with which Defendant has been accused. Based upon Trooper Bowie's perjury, the Sussex County

Despite Bowie's admitted perjury, the Court below accepted his testimony that he observed a motor vehicle infraction being committed by Mejia and to boot that Bowie's inability to remember where he was located did not matter:

> He could not recall whether he was driving down 206 at the time he observed it, or if he was stationary or parked - I'm not sure there's really a difference - in the fire department parking lot facing south. Facing where the stop sign was. (1T 40-23 through 41-2)

How can this be? What more must be done, what else could have been done to demonstrate that **all** of Bowie's testimony was incredible?

If the trial Court's denial of the suppression motion is not reversed, this case will stand for the following proposition:

> **EVEN IF A TROOPER REPEATEDLY LIES AND ONLY WHEN CONFRONTED WITH HIS LIES CONCEDES THAT HE CANNOT REMEMBER WHERE HE WAS WHEN MAKING THE OBSERVATIONS GIVING RISE TO A MOTOR VEHICLE STOP, IT DOES NOT MATTER, IT DOES NOT MATTER AT ALL. AFTER ALL, THIS IS A NEW JERSEY STATE TROOPER AND EVEN THOUGH THE TROOPER CANNOT REMEMBER WHERE HE WAS WHEN HE MADE THE ALLEGED OBSERVATIONS, HE WOULD NOT HAVE MADE THE STOP UNLESS HE SAW A MOTOR VEHICLE INFRACTION. DESPITE HIS REPEATED LIES WE SHOULD BELIEVE THE TROOPER'S TESTIMONY IN THIS REGARD. AND THAT'S ENOUGH TO OVERCOME A MOTION TO SUPPRESS. WHY BOTHER WITH SUCH MOTIONS? THEY ALWAYS WILL BE**

Prosecutor's Office should have charged Bowie. Having failed to do so, this matter should be referred to the Attorney General's Office. In how many other cases has Trooper Bowie fabricated testimony in order to justify a stop or secure a conviction?

DENIED AND THEIR DENIAL WILL BE SUSTAINED ON APPEAL.

We all know that is not how our court system functions. I am proud to be an attorney in this State and have been practicing for forty-eight years. I have never seen or heard anything quite like this, although the State drug testing laboratory debacle bears a faint resemblance. One bad apple can upend what we seek to promote, namely a system of justice that operates above reproach. With all due respect to Judge Gaus, the denial of the motion to suppress is contrary to this goal. And it is for this reason that literally "the interests of justice" require reversal.

The MVR provides no salvation to justify this motor vehicle stop either (Da 31). The MVR could have been relied upon by the State to corroborate the officer's observations, but here there is nothing to corroborate. Standing alone, as it does, the MVR cannot justify the stop and the trial court's apparent reliance upon the MVR is misplaced. While the MVR may be evidence of the Defendant's guilt, that is not the issue here. To repeat, and I apologize to the Court for saying this again, the **stop must be based upon the observations of the officer making the stop**. Absent credible observations by Bowie, the MVR has no probative value[3].

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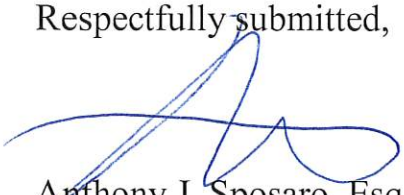
[3]Even if this Court disagrees and holds that the MVR has some probative value, the Court below acknowledged that neither a stop sign nor stop bar are visible in the MVR. Based upon this record, the State offered no proof of the existence of either at the intersection in question.

CONCLUSION

The State has failed to sustain its burden on the record below that the motor vehicle stop in question was lawful. The denial of Mejia's motion to suppress must be reversed. The interests of justice compel nothing less. The integrity of our criminal justice system is being compromised if this Court does not do so.

Respectfully submitted,



Anthony J. Sposaro, Esq.

AJS/js
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LETTER IN LIEU OF REPLY BRIEF
ON BEHALF OF THE RESPONDENT, STATE OF NEW JERSEY

Honorable Judges of the Superior Court
Appellate Division
Richard J. Hughes Justice Complex
CN006
Trenton, New Jersey 08625

Re: State v. Roger E. Mejia A/K/A Roger Mejia
Superior Court of New Jersey
Appellate Division
Docket No. A-000823-24

Criminal Action: On Appeal from an Order in the Superior Court, Law Division, Sussex County

Sat Below: Honorable Michael C. Gaus, J.S.C.

Dear Honorable Judges:

Pursuant to R. 2:6-2(b), please accept this Letter Brief in lieu of a more formal brief in opposition to the Appellant's appeal.

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COUNTER PROCEDURAL HISTORY

On or about June 20, 2023, the Defendant-Appellant, Roger E. Mejia A/K/A Roger Mejia, was charged under Complaint Summons Number S-2023-000084-1902 with fourth degree Operating a Vehicle During a Period of License Suspension for a second/subsequent violation of N.J.S.A. 39:4-50, in violation of N.J.S.A. 2C:40-26(b). (Da1 to Da7). Defendant was also issued the following Motor Vehicle Tickets: (1) E23-000712-1902 charging Driving While Suspended, in violation of N.J.S.A. 39:3-40; and (2) E23-000713-1902 charging Disregard Stop Sign Regulation or Yield Sign, in violation of N.J.S.A. 39:4-144. (Da18).

On December 7, 2023, a Sussex County Grand Jury returned Indictment Number 23-12-00299-I charging the Defendant with one count of fourth degree Operating a Motor Vehicle During a Period of License Suspension for a Second or Subsequent violation of N.J.S.A. 39:4-50 (Driving While Intoxicated), in violation of N.J.S.A. 2C:40-26(b). (Da8).

On or about February 22, 2024, the Defendant, while being represented by Anthony J. Sposaro, Esq., filed a Notice of Motion to Suppress. (Da9 to Da10). Oral argument was scheduled before the Honorable Michael C. Gaus, J.S.C. on June 4, 2024. (1T).[1] At the conclusion of the hearing, the lower court denied the Defendant's

[1] "1T" refers to the Transcript of Motion to Suppress, dated, June 4, 2024.

motion for reasons set forth on the record. (1T 39-23 to 1T 49-18). A conforming was Order was signed that same day. (Da11).

On or about June 17, 2024, the Defendant filed a Notice of Appeal with the Appellate Division under Appellate Docket Number A-003197-23. (Da12 to Da14). On July 17, 2024, the appeal was dismissed as interlocutory and for failing to file a motion for leave to appeal. (Da15).

Thereafter, on September 24, 2024, the Defendant pled guilty to Count One of Indictment Number 23-12-00299-I. (Da16 to Da20). Pursuant to the negotiated plea agreement, the State recommended that the Defendant be sentenced to 180 days in the county jail with no probation. (Da18). The State also agreed to recommend that the Defendant's motor vehicle summonses be dismissed. Id.[2]

On November 8, 2024, the Defendant was sentenced by the Honorable Janine M. Allen, J.S.C. as follows: 180 days in the county jail with 180 days of parole ineligibility; $75 Safe Neighborhood Services Fund (SNSF) assessment; $50 Victims of Crime Compensation Office (VCCO) assessment; $30 Law Enforcement Officers Training and Equipment Fund (LEOTEF) assessment; and a $2 transaction fee. (Da21 to Da23). The court also dismissed the Defendant's two (2) motor vehicle

[2] As this appeal is strictly limited to the lower court's decision on the Motion to Suppress, the transcript of plea was not provided in connection with this appeal.

summonses and granted a stay of the jail portion of the sentence for thirty (30) days. (Da21).

Wherein, on November 20, 2024, the Defendant filed the instant Notice of Appeal that is now the subject of the matter before the Court. (Da24 to Da25).

On November 26, 2024, the Defendant filed a Notice of Motion to Admit the Defendant to Bail Pending Appeal Pursuant to R. 2:9-4. (Da28 to Da29). Oral argument was heard on December 3, 2024, at the conclusion of which, the court released the Defendant on his own recognizance and stayed the incarceration portion of his sentence pending the resolution of the appeal. (Da30).

COUNTER STATEMENT OF FACTS

On April 24, 2023, Trooper Alec Bowie of the New Jersey State Police was on patrol in the Borough of Andover, New Jersey. (1T 6-24 to 1T 7-5). At approximately 2:22 p.m., Trooper Bowie observed a gray Dodge Ram fail to stop at a stop sign at the intersection of Route 206 and Route 517. (1T 7-11 to -25). Specifically, Trooper Bowie testified that the vehicle "never came to a complete stop" "disregarded and rolled through the intersection" and made a right hand turn onto Route 206. (1T 8-20 to 9-5). After making this observation, Trooper Bowie positioned his marked troop car behind the vehicle and effectuated a motor vehicle stop. (1T 9-8 to -10; 1T 31-9 to -12). Trooper Bowie approached the driver, later identified as the Defendant, and explained that the basis for the stop was for failing to stop at the stop sign. (1T 9-16 to 10-15).

On cross-examination, Trooper Bowie testified that he was located at the firehouse on Route 206 when he made his observations of the Defendant's vehicle. (1T 12-4). Trooper Bowie, however, could not recall specifically if his vehicle was moving or stationary at the time of the observation. (1T 19-10 to -12; 1T 28-2 to -14; 1T 30-1 to -5). He also testified that there was no foliage or obstruction that would have impacted his ability to see whether the vehicle stopped or not. (1T 16-11 to T17-2). Trooper Bowie explained that he could see the stop sign clearly from where he was situated and that he was familiar with the area and was aware that there

was a stop sign coming from Route 15 south onto Route 206 north. (1T 17-23 to 1T 18-15; 1T 29-16 to -22). He also testified that he utilized the firehouse parking lot to safely turn around after observing the Defendant's vehicle. (1T 28-15 to -25).

Trooper Bowie acknowledged that he did not observe the Motor Vehicle Recorder (MVR) before testifying. (1T 21-12 to -13). Trooper Bowie explained, however, that while the MVR speaks for itself, it is from a different point of view, and would not capture the entirety of the trooper's observations. (1T 23-25 to 1T 25-10). The Trooper's MVR was marked as exhibit D-1 at the Motion to Suppress hearing and was entered into evidence by stipulation, though it was not played at the hearing. (1T 4-12 to -24; Da 31). A review of the MVR depicts the Defendant's motor vehicle failing to come to a complete stop before turning onto Route 206. (Da 31 at 00:00 to 00:14).

Based on the officer's observations and investigation, the Defendant was issued two motor vehicle summonses for Disregarding a Stop Sign and Driving While Suspended that day. (Da18). Through further investigation, it was later determined that the Defendant's license was suspended for a second of subsequent DWI offense. As such, on June 20, 2023, he was charged with the additional indictable offense of Driving During a Period of License Suspension for a Second/Subsequent DWI. (1T 42-2 to 1T 43-6).

LEGAL ARGUMENT

POINT I

THE LOWER COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO SUPPRESS.

Defense counsel submits that the lower court erred in denying Defendant's Motion to Suppress the stop of his motor vehicle. In support of this argument, defense counsel claims "there is no credible evidence in the record" to justify the stop in this case and argues that the trooper "fabricated his testimony twice" warranting a suppression of the stop. (Db4; Db8). It is the State's position that the lower court properly denied Defendant's Motion as the record reflects that the trooper properly effectuated a motor vehicle stop after observing the Defendant commit a motor vehicle infraction.

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. Ahmad, 246 N.J. 592, 609, (2021) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). As the New Jersey Supreme Court explained, a reviewing court will "defer[ ] to those findings in recognition of the trial court's 'opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Nyema, 249 N.J. 509, 526 (2022)(quoting Elders, 192 N.J. at 244). In contrast, a lower court's interpretation of the law and the legal "consequences that flow from established

facts" are reviewed de novo. State v. Mellody, 479 N.J. Super. 90, 108–09 (App. Div. 2024)(citing State v. Gamble, 218 N.J. 412, 425 (2014)).

Under both the Fourth Amendment and Article I, Paragraph 7 of the New Jersey Constitution, ordinarily, a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense to justify a stop. State v. Scriven, 226 N.J. 20, 33-34 (2016)(citing State v. Locurto, 157 N.J. 463, 470 (1999)). A motor vehicle stop by a police officer, no matter how brief or limited, is a seizure of persons under both the Federal and State Constitutions. State v. Smith, 251 N.J. 244, 258 (2022)(internal citations omitted). The "reasonable suspicion necessary to justify an investigatory stop is a lower standard than the probable cause necessary to sustain an arrest." State v. Amelio, 197 N.J. 207, 211 (2008)(internal citations omitted). "The standard requires 'some minimal level of objective justification for making the stop.'" Id. (citing State v. Nishina, 175 N.J. 502, 511 (2003) (citation omitted)).

"'When determining if the [police] officer's actions were reasonable,' the court must consider the reasonable inferences that the police officer is entitled to draw 'in light of his experience.'" Id. (citing State v. Arthur, 149 N.J. 1, 8 (1997)). Additionally, "the officer 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant

[the] intrusion.'" Id. (internal citations omitted). The State bears the burden of proving that an investigatory stop is valid. State v. Atwood, 232 N.J. 433, 444 (2018). A motor vehicle stop that is not based on a "reasonable and articulable suspicion is an 'unlawful seizure,' and evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule." State v. Smith, 251 N.J. at 258 (quoting State v. Elders, 192 N.J. at 247). To satisfy the articulable and reasonable suspicion standard, the State is not required to prove that the suspected motor-vehicle violation occurred. State v. Locurto, 157 N.J. 463, 470 (1999)(citing State v. Williamson, 138 N.J. 302, 304 (1994)).

In the case at bar, through the testimony of Trooper Bowie, the State established that there was reasonable and articulable suspicion to justify a stop of the Defendant's motor vehicle for a suspected violation of N.J.S.A. 39:4-144 (Failure to Stop at a Stop Sign). This statute provides as follows:

> No driver of a vehicle or street car shall enter upon or cross an intersecting street marked with a "stop" sign unless:
>
> a. The driver has first brought the vehicle or street car to a complete stop at a point within five feet of the nearest crosswalk or stop line marked upon the pavement at the near side of the intersecting street and shall proceed only after yielding the right of way to all vehicular traffic on the intersecting street which is so close as to constitute an immediate hazard.
>
> b. No driver of a vehicle or street car shall enter upon or cross an intersecting street marked with a "yield right of way" sign without first slowing to a reasonable speed for existing conditions and visibility, stopping if necessary, and the driver shall yield the right of way to all

> vehicular traffic on the intersecting street which is so close as to constitute an immediate hazard; unless, in either case, the driver is otherwise directed to proceed by a traffic or police officer or traffic control signal.
>
> c. No driver of a vehicle or street car shall turn right at an intersecting street marked with a "stop" sign or "yield right of way" sign unless the driver stops and remains stopped for pedestrians crossing the roadway within a marked crosswalk, or at an unmarked crosswalk, into which the driver is turning.
>
> [Emphasis added.]

Here, Trooper Bowie testified that he observed the Defendant's vehicle fail to come "to a complete stop" at the stop sign on the intersection of Route 517 and Route 206 north. (1T 8-20 to -24). Trooper Bowie testified that he was familiar with that intersection and was aware that there was a stop sign coming from Route 517 South onto Route 206 North. (1T 29-16 to -22). The trooper described his observations of the Defendant's vehicle, noting that the vehicle "completely just like disregarded and rolled through the intersection, and made that right hand turn." (1T 9-3 to -5). This testimony is corroborated by the MVR that was admitted into evidence at the hearing as D-1. (Da31).

Defendant argues that the State cannot meet its burden in establishing reasonable and articulable suspicion to justify the stop because "the stop must be based upon the observations of the officer making the stop" and that the trooper "perjur[ed] himself not once, but twice" because he "could not remember where he

was located when allegedly observing [the Defendant] rolling through a stop sign." (Db10; Db8).

While the state concedes that the trooper initially testified that he was moving at the time that he made the observation of Defendant's vehicle, he later explained that he could not recall exactly where he was when he observed the Defendant's car, whether he was moving or stationary, and that the MVR speaks for itself. (1T 7-14 to -15; 1T 8-3 to -6; 1T 11-17 to -18; 1T 12-4 to -8; 1T 19-2 to -17; 1T 20-16 to -19; 1T 21-12 to -13; 1T 28-12 to -14; 1T 30-1 to -5; 1T 24-2).

In denying the Defendant's Motion, the lower court noted as follows:

> Although the bar is low, it is a bar nonetheless, and the State must provide evidence to support the reasonableness of the suspicion that led to the stop, that can be tested through the adversarial process.
>
> . . .
>
> The defense did have the opportunity to challenge the trooper's testimony.
>
> As the Court indicated, there are certainly differences based on the trooper's testimony and the evidence that is clearly visible in the motor vehicle recording.
>
> The trooper did testify that there is a better view of things with the natural eye, as compared to trying to discern what one is seeing on an MVR. At least that's -- in the experience that he testified that he's been through himself.
>
> The Court finds that to be a credible statement. That sitting there, when you're looking at something and the vertical height that you're looking at is from ground up, maybe easily 10 feet before you get to the top of the vegetation that was there.

> It's easier to see through that vegetation with the natural eye than it is on the 3 or 4 inch screen on the MVR recording one [sic] ones computer screen.
>
> But I let -- as I indicated, even on the computer screen, the Court was able to see the vehicle continuing to move as it approached where the two roads intersected, and then continue to make the right hand turn from 517 onto 206 without coming to a stop.
>
> So the Court is satisfied that the trooper's recollection as it relates to the vehicle not stopping, as well as what can be seen in -- in the MVR, meets the low threshold as described in Atwood for the Court to find by a preponderance of the evidence that there is reasonable and articulable suspicion for the stop to have taken place.
>
> [1T 48-2 to 1T 49-13][Emphasis added.]

In so ruling, the lower court did acknowledge that the trooper did not appear to be prepared for the hearing, having admitted to not reviewing the MVR before testifying. (1T 40-8 to -17). The lower court also acknowledged that the trooper could not recall whether he was driving at the time he made the observations of the Defendant's vehicle or if he was stationary at the time. (1T 40-23 to 1T 41-5). Still, the lower court determined that while the trooper's testimony was "less than accurate" he was not prevaricating in any way. (1T 41-3 to -6). The lower court also relied heavily on the MVR evidence that was admitted by way of stipulation as D-1, noting that "the MVR clearly supports the testimony that the vehicle continued to move as it went through the intersection." (1T 43-15 to 1T 44-15).

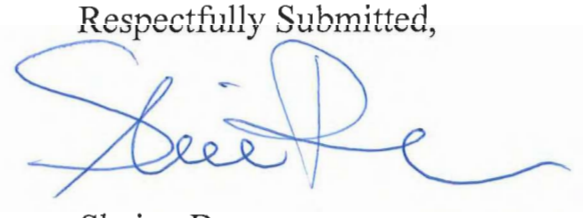
The State submits that these factual findings by the court were supported by sufficient credible evidence in the record, including the MVR. While Defendant argues that the lower court's reliance on the MVR is "misplaced" the State submits that the lower court properly considered the MVR evidence as it was stipulated by all parties and admitted into evidence at the hearing.

Moreover, the State disagrees with the defense's characterization of the trooper's testimony as perjury or as fabricated in order to justify a stop. There is nothing in the record to suggest that the trooper knowingly gave a false statement that he did not believe to be true. Rather, the trooper testified on direct that he was moving when he made the observation of the Defendant rolling through the stop sign and later indicated that he did not recall if he was in fact moving or stationary when he made such observation. There is nothing in the record to suggest that this testimony was made in bad faith, and as the lower court noted, appeared to be the result of failing to review the MVR footage or preparing prior to the hearing. (1T 21-12 to -13; 1T 40-8 to -17). The trooper's testimony as to his observation of the Defendant actually committing a motor vehicle infraction, however, was consistent with the MVR footage. As such, the fact that the trooper could not recall exactly where he was positioned while he made such observation does not warrant a suppression of the stop. The State, thus, respectfully requests that this Court affirm the decision of the lower court and deny Defendant's appeal in its entirety.

CONCLUSION

In light of the foregoing, the State respectfully requests that the instant appeal be denied in its entirety and that the judgment of the lower court be affirmed.

Respectfully Submitted,



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February 11, 2025

Via E-Courts and Federal Express
The Honorable Judges of the Appellate Division
Hughes Justice Complex
25 W. Market Street
PO Box 006
Trenton, NJ 08625

RE: State of NJ, Plaintiff/Respondent v. Roger E. Mejia A/K/A/ Roger Mejia, Defendant/Appellant
Docket No.: A-000823-24
On Appeal from the Trial Court's Order of June 4, 2024 Denying Defendant's Motion to Suppress
Criminal Division Docket No.:23-12-00299-I
Sat Below: Honorable Michael C. Gaus, J.S.C.

Dear Your Honors:

Please accept this letter in lieu of a more formal reply brief in support of the appeal of Defendant Roger E. Mejia from the denial of his motion to suppress.

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PRELIMINARY STATEMENT

Trooper Bowie twice fabricated his testimony before finally admitting that he could not recall where he was located when observing the alleged violation in question. And his fabrications were without qualification or explanation. Simply stated, Bowie lied not once, but twice. These lies render all of Bowie's testimony incredible.

Making matters worse, the State has completely mischaracterized Bowie's testimony and in doing so has failed to turn square corners. For all of these reasons, the trial court's denial of Mejia's motion to suppress must be reversed.

LEGAL ARGUMENT

POINT I

BECAUSE BOWIE TWICE FABRICATED HIS TESTIMONY, ONLY TO FINALLY ADMIT THAT HE COULD NOT RECALL WHERE HE WAS LOCATED WHEN OBSERVING MEJIA'S ALLEGED MOTOR VEHICLE INFRACTION, ALL OF HIS TESTIMONY IS INCREDIBLE AND THE STATE CANNOT SUSTAIN ITS BURDEN OF PROOF THAT THIS WARRANTLESS STOP WAS LAWFUL (1T 7-11 through 30-5).

This case turns on the testimony of Trooper Bowie. The State's Counterstatement of Facts provides in relevant part:

> On cross-examination, Trooper Bowie testified that he was located at the firehouse on Route 206 when he made his observations of the Defendant's vehicle. (1T 12-4). Trooper Bowie, however, could not recall specifically if his vehicle was moving or stationary at the time of the observation. (1T 19-10 to -12; 1T 28-2 to - 14; 1T 30-1 to -5). He also testified that there was no foliage or obstruction that would have impacted his ability to see whether the vehicle stopped or not. (1T 16- 11 to Tl 7-2). Trooper Bowie explained that he could see the stop sign clearly from where he was situated and that he was familiar with the area and was aware that there was a stop sign coming from Route 15 south onto Route 206 north. (1T 17-23 to 1T 18-15; 1T 29-16 to -22). He also testified that he utilized the firehouse parking lot to safely turn around after observing the Defendant's vehicle. (1T 28-15 to -25). (Db 4-5)

As part of its legal argument the State also posits:

> Moreover, the State disagrees with the defense's characterization of the trooper's testimony as perjury or as fabricated in order to justify a stop. There is nothing in the record to suggest that the trooper knowingly gave a false statement that he did not believe to be true. Rather, the trooper testified on direct that he was moving when he made the observation of the Defendant rolling through the stop sign

> and later indicated that he did not recall if he was in fact moving or stationary when he made such observation. There is nothing in the record to suggest that this testimony was made in bad faith, and as the lower court noted, appeared to be the result of failing to review the MVR footage or preparing prior to the hearing. (1T 21-12 to -13; 1T 40-8 to -17). The trooper's testimony as to his observation of the Defendant actually committing a motor vehicle infraction, however, was consistent with the MVR footage[1]. (Db 12)

The State's Counterstatment of Facts and Legal Argument completely mischaracterize Trooper's Bowie's testimony and evince a serious failure to acknowledge that one of its own twice lied under oath. In so doing the State has failed to "turn square corners".

Make no doubt about it, Bowie **lied** when he first testified that he was operating his vehicle in the opposite lane of travel when observing the alleged infraction (1T 7-11 through 9-5). He did not qualify his testimony by saying for example "I am not completely sure", or "as best I can recall", or even " I do not have an independent recollection, but based upon the review of my reports". No

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[1]The State clings to the notion that despite Bowie's incredible testimony, justification for the motor vehicle stop can be found in the MVR. Although the MVR may depict the manner in which Mejia operated his motor vehicle, it in no way can serve as a basis for the motor vehicle stop because the stop must be based on the officer's observations, not what the MVR depicts. Otherwise stated, because Bowie ultimately admitted he could not recall where he was located when allegedly observing the Mejia vehicle (1T 29-23 through 30-5), the MVR cannot be relied upon by the State to corroborate Bowie's testimony.

such qualification was offered. Then on cross-examination Bowie testified that his vehicle was parked when making his observations (1T 11-9 through 12-8). Again, Bowie did not qualify his testimony.

Standing alone, this testimony is irreconcilable, rendering the balance of Bowie's testimony **incredible** (that word is overused, but applies with pinpoint accuracy here). It is hard to imagine that any fact finder could conclude otherwise.

But it gets worse. Perhaps sensing that no one was buying his conflicting and irreconcilable testimony, upon being questioned by the trial court, Bowie ultimately conceded that he could not recall where he was when allegedly making his observations (1T 29-12 through 30-5). The State can try and candy coat Bowie's testimony all it wants, but what we have here is a Trooper who **fabricated** his testimony, not once, but twice. And I do not use that term lightly.

Webster's Dictionary defines "fabrication":

> 1 (a) invent, create
> (b) **to make up for the purpose of deception** [Emphasis added.]

Synonyms of fabricate include fable, falsehood, fib, story, taradiddle, untruth, fairytale, lie, prevarication and whopper. There is no nice way to say it. Bowie twice fabricated his testimony in order to deceive the Court below. Yet incredibly

the court below concluded that there was sufficient evidence in the record to justify this stop (1T 32-3 through 49-17). That, your Honors is incredible.

The court below acknowledged that Bowie was unprepared for the suppression hearing (1T 40-8 to 17). Talk about being kind and differential to the testimony of a witness! Bowie's testimony goes far beyond the "lack of preparation". Perhaps it would be different if Bowie had acknowledged up-front that he could not recall his observations. Doubtlessly, that would have been embarrassing and Bowie had to have known that. Instead, Bowie shot from the hip and matter of factly testified that his vehicle was traveling in the opposite direction of travel when he observed the alleged infraction (1T 7-11 through 9-5). Unfortunately for Bowie and the State, he guessed wrong. When confronted with what was depicted in the MVR he reversed course, but by that time it was too late, way too late (1T 11-9 through 12-8). Hopelessly conflicted, he ultimately spilled the beans, tacitly acknowledging that his prior testimony had been fabricated (1T 29-12 through 30-5).

Now Bowie did not use that word, but he did not need to. "A rose by any other name would smell as sweet". Shakespeare, Romeo and Juliet. But this is no Shakespearean play and the Defendant's freedom is at stake. To justify this stop based upon this record runs counter to the most basic principles of our criminal

justice system.

Left unchecked, Bowie and perhaps others either out of laziness or lacking moral fiber will continue to fabricate testimony in order to justify stops and secure convictions. And the Sussex County Prosecutor's Office appears willing to readily oblige such conduct. If ever there was a time for this Court to send an unambiguous message to the New Jersey State Police and the Sussex County Prosecutor's Office, that fabricating testimony to justify motor vehicle stops or convictions such as this will not be tolerated, the time is now.

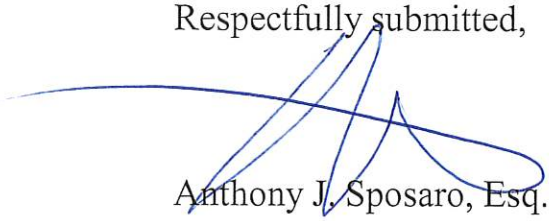
A governmental entity has an obligation to "turn square corners". F.M.C. Stores, Co. v. Borough of Morris Plains, 100 N.J. 418, 426 (1985) (quoting Gruber v. Mayor of Raritan Twp., 73 N.J. Super. 120, 227 (App.Div.), aff'd, 39 N.J. 1 (1962)). It has "an overriding obligation to deal forthrightly and fairly with property owners". Ibid.; Jersey City Redevelopment Agency v. Costell, 252 N.J. Super. 247, 257 (app. Div. 1991); see also State v. Siris, 191 N.J. Super. 261 (App. Div. 1983); Rockaway v. Donofrio, 186 N.J. Super. 344 (app. Div 1982). Additionally, "government must 'turn square corners' rather than exploit litigational or bargaining advantages." W.V. Pangborne Co. v. New Jersey Dep't of Transp., 116 N.J. 543, 561, (1989) (quoting F.M.C. Stores Co., supra, 100 N.J. 425 (1985).

The Sussex County Prosecutor's Office for once and for all needs to acknowledge that Trooper Bowie **lied** and accept the consequences of those lies. That is turning square corners. What it is doing here is not.

I have been practicing law for forty-eight years. Perhaps I am getting too old, too crotchety, but what happened here gets under my skin. I have advocated zealously on behalf of Mr. Mejia, but have done so within the bounds of my ethical obligations. Will the Sussex County Prosecutor's Office be able to stand before this Court at oral argument and say that it has done the same thing, that it has turned square corners? In good conscience, I do not believe that it can.

The decision below denying Roger Mejia's motion to suppress must be reveresed.

Respectfully submitted,



Anthony J. Sposaro, Esq.

AJS/js
cc: Roger E. Mejia
Jennifer E. Kmieciak, Esq.