STATE OF NEW JERSEY v. PAUL PFEISTER	: SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION : DOCKET NO. A-002342-23 : CIVIL ACTION : SUPERIOR COURT OF NEW JERSEY LAW DIVISION - CRIMINAL PART : OCEAN COUNTY

BRIEF
ON BEHALF OF
DEFENDANT-APPELLANT PAUL PFEISTER

Sat Below: Honorable Pamela Snyder, J.S.C.
New Jersey Superior Court, Law Division
Ocean County

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Respectfully submitted,
August 20, 2024

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I. PROCEDURAL HISTORY

On or about December 10, 2022, defendant Paul Pfeister was cited by conservation officer Sean McManus for violating N.J.S.A. 23:4-16(d)(1), i.e. having a loaded firearm for the purpose of hunting within 450 feet of an occupied building. Da1-Da2. On September 13, 2023 Mr. Pfeister entered into a conditional guilty plea at the Manchester City municipal court as to his violation of that statute. 2T17-16 to 25, 2T18-1 to 18.

Mr. Pfeister appealed his conditional guilty plea to the Ocean County Superior Court on October 2, 2023. Da5-Da8. A hearing was held virtually on February 23, 2024. 1T1-1T40. The Superior Court upheld Mr. Pfeister's conditional guilty plea on the same day and ordered Mr. Pfeister to pay the same fine and court costs that were

imposed by the Manchester City municipal court on September 13, 2023.1T39-7 to 10.

II. STATEMENT OF FACTS

On September 13, 2023 Mr. Pfeister had a scheduled appearance before the Manchester City municipal court. Before that date, but after the incident that occurred in and around December 10, 2022, Mr. Pfeister's counsel received discovery from the State. Da3-Da4.

Included in that discovery was the ticket citing Mr. Pfeister for a violation of N.J.S.A. 23:4-16(d)(1). On the front of the ticket, the word "complaint" was written. In the front of the ticket there was a section called "Description of offense". Underneath it, the phrase "153 ft" was visible. Da3. On the back of the ticket the word "complaint" was not written anywhere. In addition, on the back of the ticket there was a section entitled "Officer's Comments". In that section, the conservation officer who wrote the ticket, Sean McManus, had written "X street pumphouse 153 ft at 1130 Rt 70" and "213 ft from 121 Woodview Dr". Da4.

At his appearance, his counsel discussed with the municipal prosecutor Bonnie Peterson the citation that Mr. Pfeister received as to his alleged hunting violation on or about December 10, 2022. It was agreed between Mr. Pfeister's counsel and the municipal prosecutor that Mr. Pfeister's matter would be decided by the outcome of a motion to dismiss submitted by defendant.

Mr. Pfeister's counsel explained the basis for the motion to the municipal court judge and the municipal court considered counsel's explanation as an oral application

for a motion to dismiss, i.e. a pump house is not an occupied building that would be within the scope of the statute, N.J.S.A. 23:4-16(d)(3), and hence no violation of the statute for which he was cited. The municipal court disagreed and denied the motion. 2T13-13 to 25, 2T14-2T15, 2T16-1 to 9.

The municipal court gave Mr. Pfeister the option to have a trial. 2T16-9 to 10. Mr. Pfeister's counsel declined to have the matter set for trial. 2T16-11 to 25, 2T17-1 to 8. The municipal court then made a factual finding that a pump house is a structure within the scope of the relevant statute. 2T17-11 to 13. It then gave defendant the alternative option to conditionally plead guilty to the citation and then appeal his conditional guilty plea to the Ocean County Superior Court. 2T17-13 to 15.

Mr. Pfeister's counsel explained to his client what the conditional guilty plea entailed and the potential to appeal it. Mr. Pfeister agreed to conditionally plead guilty as a result. 2T17-16 to 25, 2T18-1 to 18. The court imposed minimum fine and court costs. 2T19-1 to 4.

At the time of the municipal court appeal, defendant addressed the back of the ticket in one sentence in his original brief. There was no mention of the alternative marker in either parties' original briefs to the Superior Court. The Superior Court asked for supplemental briefs as to whether the back of the ticket, with the alternative marker, should be considered part of the record. The State agreed in its supplemental brief that the sole issue on appeal to the Superior Court was the constitutionality of the statute, as applied to Mr. Pfeister, but nonetheless stated that the back of the ticket

was part of the record below.

On February 23, 2024 the Ocean County Superior Court held that Mr. Pfeister's conditional guilty plea was irrelevant because it determined that there was an alternative ground to uphold the conditional guilty plea. 1T37-1 to 5. The Superior Court believed that it had the authority to do this based on its de novo standard of review of the municipal court's factual findings per R. 3:23-8(a). 1T27-17 to 20.

Based on that standard, it took judicial notice of the back of the ticket where officer McManus had written "213 ft from Woodview Dr". It held that the reference to "213 ft from Woodview Dr" on the back of the ticker was an alternative ground for upholding the conditional guilty plea of Mr. Pfeister irrespective of the fact that neither the back nor the front of the ticket was admitted into evidence as an exhibit by either party nor was it referred to by the municipal court judge on the record.

III. ARGUMENTS

1. THE SUPERIOR COURT ERRED WHEN IT DECIDED TO IGNORE THE FACTUAL BASIS OF MR. PFEISTER'S CONDITIONAL GUILTY PLEA AT THE MUNICIPAL COURT IN ORDER TO FIND HIM LIABLE FOR VIOLATING N.J.S.A. 23:4-16(d)(1) ON AN ALTERNATIVE GROUND (1T37-1 to 5)

R. 7:6-2(c) authorizes a municipal court to accept a defendant's conditional guilty plea. If the defendant is successful on appeal to the Superior Court, the defendant reserves the right to withdraw his guilty plea that was entered at the municipal court.

Mr. Pfeister accepted a conditional plea in order to appeal the municipal court's denial of his motion to dismiss the citation. 2T17-13 to 15. The sole issue to be decided in that appeal would be whether the municipal court got it wrong that a pump house is an occupied building under N.J.S.A. 23:4-16(d)(3). 2T17-21 to 25. Conservation officer Sean McManus, on behalf of the State, did not object to the conditional guilty plea being suggested by the municipal court or Mr. Pfeister accepting it. Municipal prosecutor Bonnie Peterson did not make an appearance on the record at the time of the conditional guilty plea being suggested or Mr. Pfeister's acceptance of the conditional guilty plea.

In other words, all of the parties and the municipal court agreed to dispose of Mr. Pfeister's matter by way of a conditional guilty plea with an appeal to the Ocean County Superior Court to decide the sole issue whether a pump house is an occupied building under N.J.S.A. 23:4-16(d)(3). The State met its burden of production and persuasion automatically based on the conditional guilty plea of Mr. Pfeister. The State had an opportunity to make Mr. Pfeister conditionally plead guilty as to the alternative marker mentioned in the back of his ticket, i.e. "213 ft from Woodview Dr" but did not do so. In any case, Mr. Pfeister avoided a trial and the possibility of cross examination by entering into the conditional guilty plea.

But the Superior Court decided to uphold Mr. Pfeister's conditional guilty plea on an alternative ground, i.e. the additional marker referenced in the back of his ticket, that was not addressed and formed no basis of the factual basis for his guilty plea. It

also chose to ignore as irrelevant the reason why he actually did conditionally plead guilty, 1T37-1 to 5. Defendant conditionally pled guilty because of the municipal court's determination that a pump house is an occupied building under N.J.S.A. 23:4-16(d)(3). 2T17-11 to 13. It was an abuse of the Superior Court's discretion to upend the conditional guilty plea based on its de novo standard of review under R. 3:23-8(a). In effect, the State was given a second bite at the apple to maintain Mr. Pfeister's conviction without the Superior Court having to decide the contested issue that formed the sole basis for his conditional guilty plea in the first place, i.e. whether a pumphouse is an occupied building under N.J.S.A. 23:4-16(d)(3).

The fact that Mr. Pfeister was on constructive notice of the alternative marker listed on the back of the ticket, because it was provided in discovery is irrelevant. Mr. Pfeister's reasonable expectation when he entered into the conditional guilty plea was that the issue as to whether a pumphouse is an occupied building would be decided by the Law Division-Superior Court. The fact that the Superior Court made his conditional guilty plea completely irrelevant by convicting on an alternative ground is a serious violation of Mr. Pfeister's rights as a defendant and the fair administration of justice.

While it is true that a Superior Court can make new findings of fact under the de novo standard of review, it cannot come at the expense of a conditional guilty plea that the defendant entered into at the municipal court. Nothing in R. 3:23-8(a) permits and there is no case law that has interpreted that rule to allow for a Superior Court Judge to violate the terms of a conditional guilty plea in order to reach a just result.

The Superior Court judge violated Mr. Pfeister's conditional guilty plea by completely ignoring it. The Superior Court judge cited to State v. Avena, 281 N.J. 327 (App. Div. 1995), State v. Cerefice, 335 N.J. Super 374 (App. Div. 2000), State v. Ciancaglini, 204 N.J. 597 (2011), and State v. Kashi, 180 N.J. 45 (2004) in support of its decision to ignore Mr. Pfeister's conditional guilty plea and find him liable on an alternative ground. None of those cases support the Superior Court's decision to do this.

None of the cases cited by the Superior Court judge involved a conditional guilty plea being entered by the defendant. Out of the cases cited, the closest one to the facts of this case was State v. Ciancaglini, 204 N.J. 597, 10 A.3d 870 (2011). That case did involve a guilty plea by the defendant. State v. Ciancaglini, 10 A.3d at 871. But the issue in that case was a legal one, i.e. "whether a conviction for refusing to submit to a breathalyzer test, *N.J.S.A.* 39:4-50.4a, can be used to enhance a sentence for driving while intoxicated (DWI), *N.J.S.A.* 39:4-50." State v. Ciancaglini, 10 A.3d at 870.

This case is completely different. First, as opposed to the guilty plea that was entered into by the defendant in Ciancaglini, in this case Mr. Pfeister entered into a conditional guilty plea. The municipal court in Ciancaglini stayed the sentence, not defendant's guilty plea/conviction while defendant in that case appealed his enhanced sentence under the DWI statute to the Law Division-Superior Court. State v. Ciancaglini, 986 A.2d 1, 2, 411 N.J. Super. 280 (App. Div. 2010).

Staying a conviction pending appeal to the Law Division is completely different than staying a sentence pending appeal to the same Law Division. A conditional guilty plea at the municipal court compels the Law Division to address the merits of the issue for which the defendant conditionally pled guilty, irrespective of the Law Division's de novo standard of review. A defendant would otherwise be exercising his constitutional rights as a defendant to contest either the facts or the law that formed the basis for his conviction.

No similar restriction is placed on the Law Division when reviewing a sentence that was imposed by the municipal court because the defendant is not giving up any rights in order to appeal a sentence. In this case, Mr. Pfeister did not want a trial after his motion to dismiss was denied by the municipal court. But that does not mean that he would have nonetheless pled guilty if the municipal court did not condition his guilty plea on a potential reversal on appeal.

Second, at no time in Ciancaglini did the Superior Court, even on a de novo standard of review, do what the Superior Court did in this case, i.e. take judicial notice of discovery provided by the State in order to bypass his conditional guilty plea. 1T37-1 to 22. The defendant's prior DWI convictions in Ciancaglini were raised on the record at the municipal court and addressed separately by the Law Division-Superior Court. In other words, the Law Division did not do what the Superior Court did in this case, i.e. sua sponte take judicial notice of the State's discovery that the State did not itself raise in the municipal court as part of the record.

The Superior Court's decision to violate the terms of Mr. Pfesiter's conditional guilty plea by ignoring the factual basis for it and instead uphold his conviction on an alternative basis is an abuse of its de novo discretion and should be the basis for a reversal and remand to the Superior Court to decide the sole issue that formed the basis for his conditional guilty plea, i.e. whether a pumphouse is an occupied building under N.J.S.A. 23:4-16(d)(3).

2. THE SUPERIOR COURT'S DECISION FINDING MR. PFEISTER LIABLE ON AN ALTERNATIVE GROUND THAT WAS NOT ESTABLISHED IN THE RECORD AT THE MUNICIPAL COURT WAS A VIOLATION OF R. 3:23-8(a)(2) (1T37-1 to 5)

R. 3:23-8(a) permits the Law Division to supplement the municipal court's record under two circumstances, 1. If the record at the municipal court is partially or wholly unintelligible or 2. if the municipal court made an error of law based on the record established at the municipal court.

In this case, the record before the municipal court was not unintelligible. It was anything but unintelligible. The record below established the following, a. the municipal court denying Mr. Pfeister's oral motion for dismissal of the citation, b. the municipal court making a factual finding that a pumphouse is an occupied building under the relevant statute (the municipal court used the phrase "dwelling"), c. the municipal court suggesting a conditional guilty plea with the right to appeal the denial of the motion to dismiss, d. Mr. Pfeister accepting the conditional guilty plea, and e. the imposition of the fine and court costs. 2T13-2T19.

In addition, the municipal court did not make an error of law. It had to decide a factual issue, i.e. whether a pumphouse is an occupied building within the scope of the definition provided by N.J.S.A. 23:4-16(d)(3). Even if that is a legal issue, the Law Division-Superior Court expressed no opinion on that issue because that issue was never decided by the Superior Court. Therefore, any attempt by the Superior Court to supplement the record of the municipal court was a clear violation of the relevant court rule.

The Law Division-Superior Court's decision to convict Mr. Pfeister on an alternative ground, by sua sponte taking judicial notice of an alternative marker for his violation of N.J.S.A. 23:4-16(d)(1) based on what written on the back of Mr. Pfeister's ticket, in the section entitled "Officer's Comments", was a supplementing of the municipal court's record.

While the front and back of the ticket was provided to Mr. Pfeister as part of the discovery, and raised briefly in defendant's original brief, for the limited purpose of further substantiating the factual basis of Mr. Pfeister's conditional guilty plea, neither the back nor the front of the ticket was ever mentioned on the record at the municipal court. It formed no part of the factual findings of the municipal court or the plea colloquy between Mr. Pfeister and the municipal court.

What is provided in discovery to a defendant in municipal court does not automatically mean that it forms part of the record in the municipal court. Nothing in the relevant court rules for municipal court permits such discovery to be considered

automatically as part of the record of the municipal court. Short of the pleadings, pretrial hearings, and the trial itself, nothing else is automatically part of the record in a municipal court. R.7:7 and R.7:8.

Under R. 7:7-1, the complaint is the only pleading permitted in the municipal court, short of any motion to dismiss being filed by the defendant. The motion to dismiss was placed on the record on September 13, 2023. The complaint was only the front of the ticket given to Mr. Pfeister on or about December 10, 2022. Nothing in the relevant court rules make it clear that any or all the back of a municipal ticket is part of the complaint. The back of the ticket did not have the word "complaint" stated anywhere as stated clearly on the front. And the back of the ticket had "unintelligible verbiage" in the section entitled "Officer's Comments", a fact admitted by the Superior Court itself on appeal (1T29-17 to 19).

The municipal court was concerned about establishing an adequate record for an appeal. 2T16-19 to 20. If the front or back of the ticket was sufficient for establishing a record for an appeal to the Superior Court, then there would have been no need for the municipal court to make the factual finding on the record that a pumphouse is an occupied building within the scope of the relevant statute, i.e. N.J.S.A. 23:4-16(d)(3).

Discovery provided by the State is not part of the record in the municipal court, other than the pleadings. The complaint is the pleading by the State, in this case the front of the ticket. The back of the ticket was not part of the complaint or at least not the part entitled "Officer's Comments" that included unintelligible verbiage.

CONCLUSION

The Law Division-Superior Court abused its discretion under the de novo standard of review when it ignored as irrelevant Mr. Pfeister's conditional guilty plea and convicted him on an alternative ground never raised on the record in the municipal court, not addressed in the front of his ticket that stated his charge, and not raised by either party in their original briefs on appeal to the Law Division-Superior Court. The Superior Court's decision must be reversed and remanded to the Superior Court to decide the sole issue it should have addressed, i.e. whether a pumphouse is an occupied building for the purposes of N.J.S.A. 23:4-16(d)(3).

Respectfully submitted,
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December 17, 2024

Honorable Judges of the Superior Court of New Jersey
Appellate Division
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Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Respondent) v.
Paul Pfeister (Defendant-Appellant)
Docket No. A-2342-23T4

Criminal Action:
On Appeal from a De Novo order in the Superior Court of New Jersey, Law Division, Ocean County

Defendant is not confined.

Honorable Judges:

Pursuant to R. 2:6-2(b) and R. 2:6-4(a), this letter in lieu of a formal brief is submitted on behalf of the State of New Jersey.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

On December 10, 2022, Defendant Paul Pfeister was cited by Officer Sean McManus of the Department of Environmental Protection, Division of Fish and Wildlife, with possessing a loaded firearm within 450 feet of an occupied building in violation of N.J.S.A. 23:4-16(d).

The statute appears as follows.

> (1) No person, except the owner or lessee of the building and persons specifically authorized by him in writing, which writing shall be in the person's possession, shall, for the purpose of hunting, taking or killing any wildlife, have in his possession a loaded firearm while within 450 feet of any occupied building in this State, or of any school playground.
> N.J. Stat. Ann. § 23:4-16 (West)
>
> . . . .
>
> (3) For the purposes of this subsection, "occupied building" means any building constructed or adapted for overnight accommodation of a person, or for operating a business ***or engaging in an activity*** therein, ***whether or not a person is actually present***.
>
> [N.J. Stat. Ann. § 23:4-16 (West) (emphasis supplied)]

On September 13, 2023 Defendant appeared in the Manchester Township Municipal Court for trial. At that time Defendant entered a

[1] The State is using the table of transcripts set forth in Appellant's brief at p. 2.
1T designates transcript of proceedings dated February 23, 2024. (Superior Court)
2T designates transcript of proceedings dated September 13, 2023 (municipal court)
The procedural history and statement of facts are combined because they are inextricably linked and for purposes of clarity

conditional guilty plea to the charge subject to an attack on the constitutionality of the statute as applied to the facts of the case. (2T13-13 to 13-25) The minimum fine of $100. was imposed. (2T 18-25)

On February 23, 2024 a de novo proceeding was held in the Superior Court, Ocean County, at which time Defendant's plea to the charges was upheld and the same fine was imposed, although the Judge declined to reach the constitutional issue. (1T 39-5)

This appeal follows.

It should be noted that there were two buildings identified in the officer's comments section on the back of Defendant's complaint/summons. The first was a "pump house." The second was 121 Woodview Drive. The Officer noted Defendant was within 450 feet of both. (See, A1 for a legible copy of the front and back of the complaint as opposed to Da3-4 which is less legible)

When Defendant first appeared in municipal court, he represented to that Court that the only issue in the case was whether the statute was constitutional as applied to his case, and that he would be pleading guilty conditioned on the outcome of his position that the statute is unconstitutional. At that time, the Officer also appeared and was ready to testify at a trial.

The colloquy in municipal court appears as follows – and the law

Division Judge found these facts verbatim at 1T 32-7 to 33-1 and also 1T35-15 to 36-11.

> MR. NAPPEN: I can explain, Your Honor.
> THE COURT: You're going to challenge the constitutionality of the statute.
> MR. NAPPEN: As applied to the facts of Mr. Pfeister, we're seeking a legal determination as to whether this statute, in its scope as -- well, as it is, nonetheless, is still applicable or is too vague in application when it comes to Mr. Pfeister's case. And if . . . if that motion
> doesn't go anywhere, Mr. Pfeister will be pleading guilty to the charge as it is. So it all depends on this particular motion and where it goes. (2T13-10 to 14-2)
>
> . . . .
>
> THE COURT: Well, I'll make the finding that a pump house is a structure, as far as I'm concerned and under the statute. With that being said, do you want to take a conditional guilty plea and take it up? Is
> that what you'd like to do?
>
> . . . .
>
> MR. NAPPEN: . . . . So it's guilty plea for purposes of today with the potential reversal if there's a successful appeal. (2T17-11 to 18-3)

Defendant then plead guilty to the charge set forth on the ticket of having a loaded firearm within 450 feet of a dwelling.

> THE COURT: And, sir, you now are -- you may place your hand down -- you are now admitting that you had possessed a loaded firearm within 450 feet of a dwelling.
> MR:. PFEISTER: Yes. (2T18-13 to 18-25)

In the Law Division, the Judge made comprehensive findings of facts, including as stated above. (1T29-10 to 39-6) In particular, the Judge found that "the only constitutional issue raised was the pump house" and that "this Court is reluctant and loath to ignore the entirety of the ticket on which the violation was based that does include the 121 Woodview Drive." (1T37-8 to 37-12) The Judge, declining to reach the constitutional issue as to whether a pump house falls within the statute, observed,

> A plain reading of the complaint and the plea would seem to indicate that he was not only pleading guilty to the fact that he was within the 450 feet of the pump house, but also that he was within 450 feet from the residence identified as 121 Woodview Drive. So doesn't that essentially make the Court's opinion on whether the pump house is a dwelling – or it falls within the statute – an advisory opinion, because even if this Court were to agree with defendant, we still have the plea to being within a prohibited area of a residence. . . .
> (2T 5-20 to 6-6)

The Judge concluded,

> The defendant entered a guilty plea and that guilty plea was not limited to the defendant being within 450 feet of a pump house, but, rather, that plea was that he was within 450 feet of a dwelling. The Court notes that a residence, in addition to the pump house, is listed on the ticket so, for those reasons, this Court does not find that it even has to get to the issue of whether the pump house falls within 23:4-16(d) because, while there may have been the motion for

> vagueness as applied preceding the plea, the plea itself – the Court views it as there being a separation between the constitutional argument and then the plea itself, which talks about the dwelling. There was no distinction as to whether the defendant was admitting that the pump house or the residence was the dwelling specified. The defendant was certainly on notice that both structures were included.
> (1T 37-18 to 38-11)

Significantly, during argument in the Law Division, the Judge questioned Defense Counsel whether this case could now be viewed as a request for a withdrawal of the plea. Counsel replied that *his client was not seeking to withdraw his guilty plea,* and that "if the appeal is unsuccessful, then the fine stands. That was what Mr. Pfeister agreed to as part of his plea." (1T14-16 to 15-4)

The Judge also found that Defendant was aware of the contents of the ticket – front and back – because Defendant cited to it – including the distances from which Defendant was found from both buildings – not just the pump house. The Judge then, disposing of the case, concluded that "the plea remains." (1T38-18 to 39-6)

It seems significant, given the odd posture of this case, that Defendant claims in his brief before this Court that counsel discussed the conditional plea arrangement with the municipal prosecutor, (Db 4) but that the prosecutor "did

not make an appearance on the record at the time of the conditional guilty plea being suggested. . . .” (Db7)

LEGAL DISCUSSION

The standard of review that applies to this case is whether there is sufficient credible evidence in the record to support the Law Division’s conclusions.” State v. Robertson, 228 N.J. 138, 147-148 (2017). This Court reviews the decision of the Law Division judge, who was required to review the record and make an independent conclusion, and pursuant to State v. Johnson, 42 N.J. 146 (1964).

POINT I

THE LAW DIVISION’S DECISION THAT DEFENDANT PLED GUILTY TO THE CHARGES CONTAINED IN THE TICKET SHOULD BE AFFIRMED INASMUCH AS THERE IS SUFFICIENT CREDIBLE EVIDENCE IN THE RECORD TO SUPPORT IT (Responsive to Points I and II)

On appeal, Defendant’s position seems to be generally that Defendant’s conditional guilty plea in the municipal court was to decide “the sole issue whether a pump house is an occupied building” under the statute. (Db 7) He claims that although there were two structures listed on the ticket which formed the basis of the charges, he only pled guilty to being within 450 feet of the pump house, and not the residence also

listed on the ticket. The Law Division Judge found otherwise, however, as stated above.

The Law Division found that Defendant was indeed on notice of the charges. Defendant admits in his brief to this Court that he was adequately noticed of the contents of the ticket – specifically the two structures at issue which formed the basis of the violation. Nevertheless, Defendant argues, "[t]he fact that Mr. Pfiester was on constructive notice of the alternative marker listed on the back of the ticket, because it was provided in discovery is irrelevant," (Db 8), because presumably, "neither the back nor the front of the ticket was ever mentioned on the record at the municipal court. It formed no part of the plea colloquy between Mr. Pfiester and the municipal court." (Db 12) Further, while Defendant admits to this Court he was provided "the front and back of the ticket" in discovery, (Db 12) he maintains that "[n]othing in the relevant court rules make it clear that any or all the back of a municipal ticket is part of the complaint. The back of the ticket did not have the word 'complaint' stated anywhere as clearly stated on the front." (Db 13)

Defendant's position was pressed before the Law Division which found, "the pleadings include the complaint and nothing has been

presented to the Court that the entirety of the ticket is not the pleading." (1T38-15 to 38-19) The argument, now repeated to this Court, is clearly without merit.

It must be observed that the Law Division Judge asked of Defense Counsel whether "this Court [should] ignore the listing of the residence on the ticket." Counsel replied, "It's not to ignore it, but the fact is that that was not a factual finding made by the judge. . . ." (1T7-17) Further, the Judge asked defense counsel whether the verbiage of the plea colloquy matters in this case, "meaning that in the plea colloquy it's admitted that the defendant was within 450 feet of a dwelling. . . ." (1T16-1 to 16-5) Defense Counsel maintained the position that, "[s]o the colloquy in important, of course. It's necessary but it's - the - it's not sufficient just based on that one or two sentences by the judge about whether he was within 450 feet within a dwelling." (1T 16-10 to 16-14)

Defendant's position on appeal is meritless. He certainly has not shown that there is no sufficient credible evidence in the record to support the Judge's decision – therefore, it must be affirmed.

Defendant is somehow trying to attack the record made in the municipal court in this case – apparently in the absence of the municipal prosecutor. He admits on appeal (Db 5), that the municipal court offered him the option of a

trial so that a record could be established for his "as applied" constitutional attack on the statute in question. The municipal court was quite concerned about the record with which Defendant would proceed to the Law Division. The Law Division found as fact that the municipal court requested multiple times whether Defendant wished to make an adequate record for appeal. (See, 1T 34-24 to 35-7)

Defendant is now attempting, as he did in the Law Division, to hold the courts hostage to a record he refused to make, and to a plea he had the opportunity to withdraw. Officer McManus was in court willing to proceed on the contents of the ticket – that is, that Defendant was within 450 feet of two structures, a residence and a pump house, as reflected by the ticket. Defendant claims before this Court that the only issue now is whether the pump house falls within the scope of the statute – and not the other residence listed on the ticket. He claims that the pump house was the only structure to which he pled guilty – while the Law Division Judge found he pled guilty to being within 450 feet of a structure, and that there was "no distinction" between the two buildings, and that "both structures were included." (1T 38-7 to 38-11) Indeed, there was never a doubt in the municipal court that the prohibition was having a loaded weapon within 450 feet of "a structure." The municipal judge stated about Defendant's constitutional argument, "I just don't see the merit in it. I

think that the statute's clear on its face. You can't have a loaded weapon within 450 feet of a structure." (2T15-14 to 15-18)

While Defendant rejected the opportunity for a trial in the municipal court, and in the Law Division rejected the opportunity to seek withdrawal of his plea, he wants nothing except a reversal and remand to the Superior Court to decide what he claims is the sole issue – whether the pumphouse is an "occupied building" under the statute. (Db 11)

The rejection of the opportunity offered for a trial, as well as the rejection of the opportunity to withdraw his guilty plea goes far in resolving this case. There was certainly no unfairness present in either the municipal court or Law Division, and Defendant has not shown that the Law Division Judge's decision lacks sufficient credible evidence in the record to support it.

Defendant argues that taking notice of the complaint – specifically the back of it - was an improper supplementation of the record by the Law Division Judge. (Db 12) His position is bolstered by the statement, "Nothing in the relevant court rules make it clear that any or all the back of a municipal ticket is part of the complaint." (Db 13)

It cannot be seriously maintained that a pleading in a case is not part of the record. Nevertheless, apparently Defendant wishes to use part of the complaint to support his position but exclude the other part from the Courts'

consideration. The position is completely without merit as the following reveals.

Municipal appeals are taken in accordance with Rule 7:13-1 which, in turn, refers to Rule 3:23. Per Rule 3:23-4(a), the municipal court clerk "shall" deliver the complaint and judgment of conviction to the Law Division. Pleadings in municipal court actions "shall consist only of the complaint." Rule 7:7-1. A failure of this Court to consider it is reversible error. See, State v. Emmett, 108 N.J. Super. 322, 325–26, (App. Div. 1970) (The Law Division acquitted the defendant because it was not supplied with the complaint and judgement of conviction. On appeal to the Appellate Division rejected defendant's double jeopardy argument – in the face of an acquittal - and reversed the acquittal calling the Law Division's decision a "perversion of justice.")

Indeed, the record on appeal includes the entire complaint - the very instrument that commenced the prosecution in this case - inasmuch as it is required by our Court Rules. See Rule 7:13-1 which refers to Rule 2:5-4(a) and Rule 2:6-1 (a) 1(b) which reflects the following: "Required Contents. The appendix ***prepared by the appellant***. . .***shall contain***. . . ***the complaint*** and all docket entries in the proceedings below." (emphasis supplied) The Rules foist a clear duty upon the appellant to supply the complaint in his appendix.

Defendant cannot seriously argue that this Court should not consider a part of the record he himself has a duty to supply. Further, illustrating the importance of the pleadings in any action, Defendant's duty to supply the complaint in his appendix is independent of the duty of the municipal clerk to forward the complaint to this Court. It is therefore axiomatic that a trial de novo in the Law Division on appeal from Municipal Court conviction nullifies the proceedings before Municipal Court, including the judgment, but *excepting the initiating proceedings of complaint* and warrant. State v. Joas, 34 N.J. 179, 189 (1961)

The complaint, being part of the record on appeal, any argument that only part of the complaint be considered in this case is entirely without merit.

In any case, a Court can "amend" the complaint to give more specificity if it finds that necessary.

> The rules concerning municipal court proceedings in quasi-criminal matters, with power in that court to amend . . . specifically providing for waiver of defects and the liberal right to amend at the trial De novo in the County Court, are designed to minimize the possible impairment of the processes of law enforcement which would result in cases where complaints are drawn by policemen and cases sometimes tried by lay municipal judges. The trial De novo is primarily a protection for the defendant, State v. Menke, above, 25 N.J. (66) at page 70, 135 A.2d (180) at page 182; the right to freely amend the complaint in the County Court is the other side of the coin. A defendant is not prejudiced thereby because the proceeding is a completely new one, and he has

> full opportunity to present whatever defenses he may have to the amended complaint.'

[State v. Joas, 34 N.J. 179, 184, 168 A.2d 27, 29–30 (1961)]

Further,

> The power of that court to amend extends, as we have observed, to 'making the charge more specific, definite or certain, or in any other manner, including the substitution of any charge growing out of the act or acts complained of or the surrounding circumstances * * *.' This last clause, beginning with the word 'including,' clearly authorizes the amendment of a complaint so as to charge an act not charged in the complaint as originally drawn. The only limiting requirement is that the newly charged offense must have grown out of— i.e., be related to —the offense originally charged. This limitation is obviously designed to prevent the charging of a new offense, completely unrelated to the acts which were originally alleged as constituting a violation.

[State v. Henry, 56 N.J. Super. 1, 13–14, (App. Div. 1959)]

Finally, if the Court should get this far in the analysis the Law Division has the duty not to dismiss or remand the matter to the municipal court, but to simply amend the complaint – especially under these circumstances - where Defendant has relied upon the very complaint now at issue.

Alternatively, a Court can supplement the record to correct a legal error in the proceedings below per Rule 3:23-8(a)(2). Further, a Court can take judicial notice of the complaint – front and back. N.J.R.E. 201(b)(4) permits judicial notice of facts including court records.

Records of the courts of this State, particularly *records of the court in*

which the action is pending are always part of the record. See, e.g., Matter of Liss' Will, 184 N.J. Super. 184, at 192, (Law. Div. 1981) stating a "court takes judicial notice of its own files." See also, In re Phipps Family Trusts, 147 N.J. Super. 331, (Ch. Div. 1976), affirmed Bessemer Trust Co. v. Boegner, 165 N.J. Super. 76, (App. Div. 1979). See also N.J.R.E. 201 (b) (4). Any argument that all or part of the complaint should be ignored in these circumstances is without merit.

POINT II

THE STATUTE IN QUESTION IS CONSTITUTIONAL

It is unclear on appeal whether Defendant is abandoning his argument that the statute is unconstitutional. Nevertheless, this Court's obligation in ascertaining a statute's reach is to "discern and effectuate" the legislative intent. Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592, (2012). The "best indicator of that intent is the statutory language," which must be given its "ordinary meaning and significance." DiProspero v. Penn, 183 N.J. 477, 492, 874 A.2d 1039 (2005). "The interpretive process is not an invitation to find and employ loopholes or exceptions not plainly expressed, nor an opportunity to engraft elements or considerations not plainly revealed in or fairly implicated by the words used." State v. O'Donnell, 471 N.J. Super. 360, 368, (App. Div. 2022), aff'd, 255 N.J. 60, (2023)

The statute at issue is clear in its purpose and language and admits of no ambiguity, facially or as applied. Its constitutionality has not been questioned and it should not be declared unconstitutional now. Indeed, the vital regulatory interest the State has in the manner of use of dangerous weapons in the State cannot be questioned. Further, if the Legislature intended to limit or qualify the reach of this statute, it certainly would have known how to do so.

This statute is obviously a protective statute. It regulates a particularly dangerous instrumentality – loaded firearms designed and meant for killing – and it regulates them at a particular time – during hunting season when killing is expected. The statute serves to shield the public not from potential mere injury – but also from potential death. It must be construed accordingly. Hence, its reach should not be curtailed in an unnecessary manner. Rather, the protective purpose behind the statute should be given its full reach.

> The general purpose of prohibiting the discharge of firearms across roads and the possession of loaded guns within specified distances of occupied dwellings and school playgrounds while engaged in hunting is quite evidently to try to protect, to some extent, certain segments of the local citizenry from personal injury caused by hunters. The evil is well known. During the relatively short upland game season and the much shorter deer season, open spaces in suburban areas and open country in rural sections are literally swarmed over by thousands of licensed hunters from all sectors of the state, seeking to shoot, for sport and

> recreation, a limited supply of game on a limited amount of available land. Unfortunately, many of these hunters are inept or careless in the handling and use of shotguns and a goodly number blatantly disregard signs forbidding trespassing (See N.J.S.A. 23:7—1 and —2; N.J.S.A. 2A:170—31). All of this has resulted in hunting too close to places ***where members of the local populace live or are***, subjecting them and, we may say, domestic animals in rural areas as well, to possible personal injury. ***It cannot be disputed that protection from such harmful results represents a most substantial local interest*** in those municipalities where the evil is prevalent.
>
> [Chester Twp. v. Panicucci, 62 N.J. 94, 100, 299 A.2d 385, 388 (1973) (emphasis supplied)]

The Legislative purpose of the statute was to protect persons wherever reasonably they might be. Courts are not required to decide such fact-sensitive questions as to whether people are in the pump house frequently enough to trigger the protection of the statute. Nor does the statute require hunters to assess whether a building they come upon could be used for "an activity" or "any activity." Indeed, a pump house is "required to be built above ground for ease of ***inspection and maintenance.*** N.J.A.C. §7:10-11.9(a)." (emphasis supplied) There is therefore a specific Legislative recognition that people would be ***required to be on the premises*** at times for inspection and maintenance. Inspection and maintenance of the machinery inside the pump house is "an activity" for which the pump house is used and falls within the

statute. If the Legislature intended that hunters in the field and judges in a courtroom assess the frequency and intensity of activity of any given structure, it would have said so, and would have provided guidance as to how to evaluate the frequency of activity at the structure. Instead, the Legislature provided persons in the field and in the courtroom an easily understood and applied bright-line rule which would avoid fact-sensitive litigation and provide fairness to hunters and safety to any persons who might be on or in the property. More importantly, the rule would not require hunters in the field to engage in a legal fact-sensitive analysis when deciding to pull the trigger of a loaded gun.

Further, the word "occupied" as used in the statute has an exceedingly broad meaning. The word "occupy" means "to take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take hold or possession. Actual use, possession, cultivation. Black's Law Dictionary p 974 (Fifth Ed. 1979).

That the statute has been broadened over the years reflects the Legislature's continuing concern with the safety of its citizens – especially because this State is the most densely populated State in the Union. In 1990 the Legislature broadened the statute as follows.

> <<+d. No+>> person, except the owner or lessee of the <<- property->> <<+building+>> and persons specifically authorized by him in writing, <<+which writing shall be in the person's possession,+>> shall, for the purpose of hunting, taking or killing any <<- bird or animal->> <<+wildlife+>>, have in his possession a loaded <<- gun->> <<+firearm or nocked arrow+>> while within 450 feet of any occupied ***<<- dwelling->> <<+building+>>*** in this State, or of <<- a->> <<+any+>> school playground <<-, under a penalty of not less than $50.00 and not more than $100.00 for each offense->>. <<+For the purposes of this section, "occupied building" means any building constructed or adapted for overnight accommodation of a person, or for operating a business or engaging in an activity therein, whether or not a person is actually present.+>>
>
> [1990 NJ Sess. Law Serv. 29 (West)
> Approved May 24, 1990.
> Effective May 24, 1990. (emphasis supplied)]

The word "building" which the Legislature added to the statute as above is of very broad meaning. It means a "structure designed for habitation, shelter, storage, trade, manufacture, religion, business, education, and the like. A structure or edifice inclosing a space within its walls, and usually, but not necessarily, covered with a roof. Black's Law Dictionary, p 176 (Fifth Ed. 1979).

The Legislature also added the clause concerning any activity within a building "whether or not a person is actually present," thus further expanding the reach of the statute. It might be argued that the statute is broad enough to

encompass storage facilities, churches, or even buildings under construction. The point is that the assessment of whether a building qualifies under the statute was not intended to be subject to vastly differing opinions but rather is subject to an easily applied bright line rule.

While the Law Division did not reach the question of the constitutionality of the statute, the municipal court did,

> THE COURT: . . . . How is it in any way unconstitutional?
> MR. NAPPEN: Well, in terms of the void for vagueness argument, Your Honor, it says that any occupied building -- it can't -- within 450 feet it can -- cannot have a loaded firearm for the purpose of hunting. And the question is that the marker that was used for this particular incident was a pump house for -- to measure that 450 feet. And the question is whether or not the pump house qualifies as a business as understood --
> THE COURT: ***Or as a dwelling, is what --***
> MR. NAPPEN: Dwelling is usually the -- a residential dwelling is the usual basis for a marker, but it also, ***in the alternative, indicates language in that statute, or a building used for a business.*** So the question is whether a pump house qualifies as a business, so that this marker that was used to measure the 450 feet, is that a legitimate basis for this particular violation for Mr. Pfeister.
>
> THE COURT: ***It's a structure***. The idea is people might occupy it. And as I said, these things come before me all the time.
> MR. NAPPEN: I don't know if this -- you've ever had a pump house used as a marker for --
> THE COURT: Well, **any structure, really,** has

> been brought before me in the past. . . .
> So it very well may be something you want to
> take up on appeal. I just don't see the merit in it.
> ***I think that the statute's clear on its face. You can't have a loaded weapon within 450 feet of a structure.***
> (2T14-6 to 15-18)

The municipal court's reasoning is correct – the statute is constitutional and clear on its face and as applied.

CONCLUSION

For these reasons, Defendant's position on appeal should be rejected and the Law Division's decision affirmed.

Respectfully submitted,

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Date submitted: December 17, 2024

STATE OF NEW JERSEY v. PAUL PFEISTER	: SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION : DOCKET NO. A-002342-23 : CIVIL ACTION : SUPERIOR COURT OF NEW JERSEY LAW DIVISION - CRIMINAL PART : OCEAN COUNTY

REPLY BRIEF
ON BEHALF OF
DEFENDANT-APPELLANT PAUL PFEISTER

Sat Below: Honorable Pamela Snyder, J.S.C.
New Jersey Superior Court, Law Division
Ocean County

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January 11, 2025

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I. PROCEDURAL HISTORY

On or about December 10, 2022, defendant Paul Pfeister was cited by conservation officer Sean McManus for violating N.J.S.A. 23:4-16(d)(1), i.e. having a loaded firearm for the purpose of hunting within 450 feet of an occupied building. Da1-Da2. On September 13, 2023 Mr. Pfeister entered into a conditional guilty plea at the Manchester City municipal court as to his violation of that statute. 2T17-16 to 25, 2T18-1 to 18.

Mr. Pfeister appealed his conditional guilty plea to the Ocean County Superior Court on October 2, 2023. Da5-Da8. A hearing was held virtually on February 23, 2024. 1T1-1T40. The Superior Court upheld Mr. Pfeister's conditional guilty plea on the same day and ordered Mr. Pfeister to pay the same fine and court costs that were imposed by the Manchester City municipal court on September 13, 2023.1T39-7 to 10.

II. ADDITIONAL STATEMENT OF FACTS

No trial was scheduled for Mr. Pfeister at the time of his appearance on September 13, 2023, if he did not reach a plea agreement with the State. As the municipal court stated on the record, "Did you want to come back on a trial?" 2T16-9 to 10. Fish and Game conversation officer Sean McManus's appearance on September 13, 2023 was requested by the municipal prosecutor in order for the prosecutor to evaluate his opinion regarding defendant's argument as to whether the Fish and Game citation could be downgraded to a municipal ordinance. Mr. Pfeister through his attorney and the municipal prosecutor agreed to an adjournment so that defendant's counsel could file a motion to dismiss the Fish and Game citation either at the Manchester municipal court or in a different venue.

The municipal prosecutor chose not to go on the record on September 13, 2023 regarding Mr. Pfeister's matter. The municipal prosecutor spent the time that Mr. Pfeister was on the record with the municipal court to negotiate with other defendants potential plea agreements.

The municipal court suggested to Mr. Pfeister a conditional guilty plea when Mr. Pfeister did not want a trial to challenge the distance measured between the pumphouse and where Mr. Pfeister was cited. 2T17-4 to 15. Mr. Pfeister, through his counsel's explanation, accepted the municipal court's suggestion. 2T17-16 to 25, 2T18-1 to 9.

III. ARGUMENTS

1. THE STATE'S MISREPRESENTATION OF THE RECORD AS TO WHAT OCCURRED BOTH AT THE MUNICIPAL COURT AND AT THE SUPERIOR

COURT IS AN EFFORT TO JUSTIFY THE SUPERIOR COURT'S DECISION TO IGNORE THE FACTUAL BASIS FOR MR. PFEISTER'S CONDITIONAL GUILTY PLEA

In its brief, the State in several instances misrepresents both the record developed at the municipal court and Mr. Pfeister's motives for why the record was made the way it was. Such misrepresentation directly relates to the weakness of the State's argument that the Ocean County Superior Court can ignore Mr. Pfeister's conditional guilty plea.

The State claims that defendant's refusal at the municipal court to have a trial and his refusal to withdraw his conditional guilty plea at the Superior Court was an attempt by the defendant to hold the courts "hostage" to the record developed at the municipal court. (State's brief, page 9, first full paragraph). This is quite strange, since taking the courts as hostage would mean that an illegal demand is being made by the defendant on the courts. But Mr. Pfeister was represented both at the municipal court and at the Superior Court by an officer of the court, i.e. a lawyer, who is bound by the relevant court rules and rules of evidence.

The State does not explain how Mr. Pfeister exercising his legal right not to have a trial by entering into a conditional guilty plea under the relevant rule in municipal court (R.7:6-2(c)), is somehow him holding either the municipal as hostage. The State does not explain how Mr. Pfeister exercising his legal right not to withdraw his conditional guilty plea and the court not exercising its legal discretion to order a withdrawal of that

plea at the Ocean County Superior Court (R.3:9-3(e)), somehow means that he was holding the Ocean County Superior Court "hostage".

Mr. Pfeister conditionally pled guilty for one reason and one reason only, i.e. whether a pumphouse is a structure contemplated with the relevant fish and game statute for which he was cited. The Ocean County Superior Court ignored, without a proper legal justification, the factual basis for the conditional plea and did not reach the issue for which the appeal was made. The State's attempt to get around that fact by misrepresenting to this Court the record at the municipal court and questioning Mr. Pfeister's motives for why the record was developed the way it was only shows the weakness of the State's response.

The municipal court judge, contrary to the State's unsupported assertion, did not encompass the alternative marker (the residence cited at the back of the ticket) in determining that Mr. Pfeister violated the statute. That is a clear misrepresentation of the record developed at the municipal court. The only factual findings that the municipal court made related to the pumphouse.

The State wants to assert that the alternative marker on the back of the ticket was part of the record as well, even though the municipal court did not make an explicit factual finding as to that alternative marker. The State in its brief freely interchanges its use of

the words, "record", "complaint" and "pleadings". But not once did the State in its opposition refer to the municipal courts' explicit factual findings, which was limited to a pumphouse only.

The municipal prosecutor had an opportunity to be present and expand the factual findings to include the alternative marker. The prosecutor instead chose to engage in continued plea negotiations with other defendants. The municipal court had an opportunity to demand the municipal prosecutor's presence for the conditional guilty plea.

The municipal court did not demand the prosecutor's presence for the conditional guilty plea. Nonetheless, the State wants to blame Mr. Pfeister for holding the courts "hostage", while asking this Court to ignore the factual finding that formed the factual basis for Mr. Pfeister's conditional guilty plea, by judicially noticing the alternative marker on the back of the ticket, because the latter was part of the "record". Certainly, it was not part of the "record" for which Mr. Pfeister agreed to conditionally plea to.

This assertion, if accepted by this Court, would mean that the factual findings made by a municipal court are not necessary for a superior court to engage in a de novo review. There is no other logical conclusion that can be made from the State's assertion. But that assertion has no legs to stand on either in the case law or relevant court rules. If

the Ocean County Superior Court did not believe that the conditional guilty plea was in the interest of justice because there was an inaccurate or incomplete factual basis, (there was not) it had the legal discretion to withdraw that plea itself. But it did not. Mr. Pfeister in no way forced the Superior Court not to withdraw his plea. He only exercised his legal right to appeal based on that plea.

The State also wrongly claims that Mr. Pfeister's reference to the back of the ticket in his municipal appeal to the Superior Court somehow waives his right to stand by the factual basis for his conditional guilty plea. While the back of the ticket did mention the alternative marker for measuring the distance between Mr. Pfeister and the residence, that was not the reason why he referred to the back of the ticket. His reason why he referred to the back of the ticket matters.

He referred to the back of the ticket only to substantiate the factual basis for his guilty conditional guilty plea in the municipal court. That was the only place where there was any reference in the ticket to a "pumphouse". That reason for referring to the back of the ticket is obvious. If there was another place in the discovery or the ticket where that reference was made, he would have no need to refer to the back of the ticket. But referring to the back of the ticket did not somehow open the doors for the factual basis for Mr. Pfeister's conditional guilty plea in the municipal court to be ignored by then taking judicial notice of the alternative marker also cited in the back of the ticket. This is

a legal sleight of hand by the State and nothing more in order to get past the limited factual finding for his conditional guilty plea in municipal court.

2. THE STATE IS OBFUSCATING THE CONSITUTIONALITY OF MR. PFEISTER'S PROSECUTION BY WRONGLY STATING THAT HE IS CHALLENGING THE CONSTITUTIONALITY OF THE STATUTE ITSELF

If this Court decides not to reverse and remand, it must then decide the actual issue for which Mr. Pfeister conditionally pled guilty. Mr. Pfeister never challenged the constitutional basis for passing the statute that limits hunters within 450 feet of an occupied dwelling. That is why the State's extensive reference to the legislative intent for passing the statute is completely irrelevant to this case.

The relevant part of the statute as to its scope, i.e. N.J.S.A. 23:4-16(d)(3), reads "For the purposes of this subsection, "occupied building" means any building constructed or adapted for overnight accommodation of a person, or for operating a business or engaging in an activity therein, whether or not a person is actually present." Read in the context of the entire subsection, as a court must under relevant statutory interpretation, i.e. ejusdem generis canon of statutory construction (applied in State v. Hoffman, 149 N.J. 564, 584, 695 A.2d 236 (1997)), it is far from clear that a pumphouse is an occupied building.

Overnight accommodations for guests and operating a business involves constant ingress and egress of individuals, pumphouses do not, even though they may at some

point have an individual occupy it. Based on the rule of lenity, there is sufficient ambiguity in that subsection as applied to Mr. Pfeister for this prosecution against him to be overturned. State v. Gelman, 950 A.2d 879, 883, 886, 195 N.J. 475 (2008).

CONCLUSION

The State's efforts at obfuscation of both the record below and the legal justification for Mr. Pfeister's appeal cannot be permitted to override the factual basis of his conditional guilty plea and the lack of merit in his continued prosecution for this offense.

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