		Superior Court of New Jersey
STATE OF NEW JERSEY	*	APPELLATE DIVISION
	*	DOCKET NO. A-002575-24
	*	DOCKET NO. BELOW: MA-17-11-24
Plaintiff- Respondent,	*	
	*	ON APPEAL FROM:
	*	SUPERIOR COURT OF NEW JERSEY—
v.	*	LAW DIVISION, SUSSEX COUNTY
	*	
CHRISTOPHER CARPENTER	*	
	*	SAT BELOW:
	*	HON. MICHAEL C. GAUS, JSC
Defendant-Appellant.	*	
	*	

DEFENDANT-APPELLANT'S APPEAL BRIEF

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PROCEDURAL HISTORY

The trial of this matter took place in the Andover Joint Municipal Court on November 13, 2024[1] (1T) and the Court found Defendant guilty on that date (Da-1). On December 4, 2024[2] (2T), the Hon. Peter Fico, J.M.C. of the Andover Joint Municipal Court heard oral argument on Defendant's request for a new trial and denied the same by Order dated December 9, 2024 (Da-2).

On November 27, 2024, a Notice of Municipal Appeal was filed with the Superior Court of New Jersey, Sussex County (Da-3). The trial *de novo* in that Court before the Hon. Michael C. Gaus, J.S.C. took place on April 16, 2025[3] (3T). Judge Gaus entered an Order on that date denying the same (Da-18).

This notice of appeal followed on April 23, 2025 (Da-22).

STATEMENT OF FACTS

On or about December 24, 2023, the Defendant was cited for the following violations: DWI, refusal to consent to submitting breath samples, and failure to install an interlock ignition device (Da-1). On November 13, 2024, the Defendant was found guilty of all violations referenced herein (Da-1). Defendant then filed a Notice of Appeal with the Superior Court which was heard and denied on April 16, 2025.

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[1] 1T - Transcript of Trial in Andover Joint Municipal Court on 11/13/24;
[2] 2T- Transcript of Motion Hearing in Andover Joint Municipal Court on 12/4/24;
[3] 3T - Transcript of *de novo* hearing in Sussex County Superior Court on 4/16/25;

The beginning of the trial in connection with this case indicates that the State Police arrived at the scene of the suspicious vehicle as a result of a call that had been made (1T; 8:9). And when the troopers arrived, there was a vehicle which was running and parked onto the side of the road (1T; 8:14 to 8:19). In the car was the driver sleeping in the driver's seat (1T; 9:12). The driver was awakened and removed from the vehicle (1T; 10:19). The odor of alcohol was detected (1T; 14:7).

Body-cam videos were played. Counsel for the Appellant makes an objection which is an irrelevant line of inquiry (1T; 55:8) and the Court tells Counsel, "I'm going to ask you to move on" (1T; 55:17). And Counsel is then reminded that it has been the law for 30 years (1T; 55:23).

Then, there is confusion as to the word, "incorrect" or "incorrectly" (1T; p. 58). And then, the Prosecutor objected because the question was "already asked and answered" (1T; p. 59); to which, the Court stated, "I think that's number four now" (1T; 59:4). Then, the Court points out, "You keep asking," and Counsel for the Defendant states, "Oh, okay" (1T; 59:10). The Court then says, "You're asking it three different ways, but it's the same question." And Counsel indicates, "then I'll withdraw it" (1T; 59:13). And the Court says, "You don't have to; it's already been asked and answered." Further, Counsel for the Defendant agrees that the Defendant was intoxicated (1T; 63:17).

A discussion takes place concerning Exhibit 9. The Prosecutor asks, "I didn't give you a copy?" (1T; 72:10). And then, the Prosecutor states, "Mike gave it to you" (1T; 72:15).

There is a discussion concerning the 20-minute observation period (1T; 74 to 75). And the Court stated, "Again, what is the relevance of the 20-minute observation period if he refused? What is the relevance of the 20 minutes if he refused?" (1T; 75:1). Then, the Court states, "He didn't even have to turn the machine on if he refused, but they do it in order to put the input for the refusal" (1T; 75:11). And then, the Court states, "I just don't understand its relevance" (1T; 75:20).

And then, the Court indicates, "We went through all of that for that?" (1T; 76:2). Then, Counsel for the Defendant indicates, "I would suggest that we submit to you a written summation" (1T; 76:18); to which, the Prosecutor responds, "I did not indicate that the State rested" (1T; 76:24). The Prosecutor, in response to Counsel's request for written summations, states, "I don't believe that written summations are necessary in this case. It's not a complicated case. I would ask, if Mr. Daggett and his client, and I understand his client's situation, needs to go tonight" (1T; 77:22). Then, in nine lines, Counsel for the Defendant made a summation (1T; 79:1).

The Court then made findings of guilty and imposed a four-year license suspension.

On November 4, 2024, a hearing was conducted in connection with the ineffective assistance of counsel. Counsel for the Defendant begins an explanation to the Court about why the trial went the way it did (2T; 3:14). Counsel is handicapped (2T; 3:19), and he fell (2T; 3:21) and "I was not all there" (2T; 3:23). As proof of that, he states, "Twice, you had to correct me and once the Prosecutor objected because I was asking the same questions over and over" (2T; 3:24). It was further stated, "What I didn't do in this case is explain to my client what the Prosecutor had offered and because, as I said, I saw the troopers, I just went ahead and tried the case, not realizing all of the consequences" (2T; 4:3). Further, it is stated, "But I did fall down and as the sticker indicates, I am handicapped because I have a fused ankle" (2T; 4:8). Further, "So, it -- it's not easy to admit that you were ineffective, but I believe that I was, and I should never have begun that trial."

The Court believes that Counsel fell (2T; 9:22). Further, the Court remembered that Counsel was going to change the law by bringing it up to an appeal which dealt with a non-fact being that Miranda doesn't apply to the standard statement concerning taking the alcotest (2T; 11:9). The Court points out that, "And then, in your Motion today you mentioned, 'I should have mentioned it to my client that' -- I'm sure you mentioned it, Mr. Daggett, many times to your client

because of the pleas offered to a defense counsel, he has a duty and an obligation to bring that to the client and they know you are a sharp lawyer. You've been around a long time and you do that" (2T; 12:22).

The Prosecutor's Certification (Da-29)

Of significance in this case is that the plea never changed, meaning that it was still offered on the night of the trial. The actual failure to assist this Defendant was, in explaining to him, the consequences of a plea (one-year loss of license) and a trial (four years loss of license).

Both of the Judges below, the trial Judge in Andover Joint Municipal Court and the *de novo* Judge in the Superior Court in Newton, found that counsel fell. The trial Judge found "no doubt you fell because of a fused ankle" (2T; 9:22). The *de novo* Judge stated, "I'm sure Mr. Daggett had a fall" (3T; 9:20).

Counsel for the Defendant is a certified criminal attorney. The trial in this case was not that of a certified attorney. The Prosecutor indicates that there was a conversation in which counsel "cogently" discussed the issues in the trial (Da-29). There were no issues. The Defendant never testified, nor did counsel allow him to speak at the end of the trial.

A number of paragraphs by the Prosecutor deal with events that took place prior to the trial date. Of interest is paragraph 17:

> I spoke to Mr. Daggett prior to the commencement of the trial in my conference room at which time he cogently outlined what he believed to be the issues in this case.

There were no issues in this case. As the Prosecutor indicates in his Certification (Da-29), this case probably should have been resolved prior to the trial date, but it wasn't. This was a case where the Defendant was asleep along side the road and the police found him. He refused to take the Alcotest. As indicated, there were no issues.

Certification of Defense Counsel (Da-26)

Both Judges believe that counsel did fall. In the Certification prepared by counsel (Da-26), there is an indication that he fell and struck his head, but that issue could not be established. Counsel indicated that he thought he had a concussion, but he wasn't sure, but he did indicate that he was not thinking clearly.

Counsel was handicapped (Da-28) and seeing that the trial was imminent, the trial began. As indicated, the Judge had to correct counsel about continuing to ask the same questions. The Prosecutor made the same objection. As to the plea, the trial became the focus point, and the plea was neglected.

Defense counsel admitted that he was ineffective (Da-26). His client was exposed to a four-year loss of license, when the offer by the Prosecutor was one year loss of license.

There is an indication by the trial Judge that he might not accept the plea on the day of trial, but the Prosecutor who appears there regularly wasn't aware of that factor since he made the offer on the trial date.

LEGAL ARGUMENT

POINT I
The Superior Court Erred in Finding that Defense Counsel's Representation of the Defendant was Sufficient Despite Counsel's Fall and Injury Immediately Prior to the Trial (Da- 18).

Without the guiding hand of counsel, an innocent Defendant may lose his freedom because he does not know how to establish his innocence; State v. Sugar, 84 N.J. 1 (1980). Trained counsel is necessary to vindicate fundamental rights that receive protection from Rules of Procedure and Exclusionary Principles; *Id.* at 16.

Because the Constitution requires the assistance of Counsel, and not merely his physical presence, Counsel must be effective as well as available; *Id.* at 17. The circumstances under which a lawyer provides counsel must not "preclude the giving of effective aid in the preparation and trial of the case." Pursuant to Strickland v. Washington, 466 U.S. 668, the Supreme Court distinguished between two classes of right to counsel cases, cases based on actual or constructive denial of the right to counsel altogether, including claims based on State interference with the ability of counsel to render effective assistance to the accused and cases in which Counsel simply failed to render adequate legal assistance for actual

ineffectiveness. The second Strickland requirement is that Counsel's errors were so serious as to deprive the Defendant of a fair trial.

According to United States v. Cronic, 466 U.S. 648 (1984), ineffective assistance may be presumed. In the instant case, according to the *de novo* Judge, this was an opened and closed case. Even Counsel's conduct of the trial revealed that it was in fact open and shut. This case should never have been tried, nor the plea offer abandoned.

The New Jersey Supreme Court has reiterated that matters of trial strategy will not serve to ground a constitutional claim of inadequacy.

The instant case is not one of trial strategy, but rather whether there should have been a trial. The offer of one-year loss of license as opposed to four years after a trial is clearly an issue of effective assistance. The question in this case is, knowing the facts, was it effective assistance to begin a trial where there were no issues?

Counsel's effectiveness should be measured in terms of what happened at the actual trial. While the trial *de novo* had to do with the trial in the municipal court, the actual facts indicating how the matter was tried is not the reason for the appeal. Rather, it's how the matter was tried in terms of deficiencies that indicate that the decision to try the case was ineffective assistance.

The Defendant, by plea bargain, was offered a one-year loss of license for a plea to a second-offense DWI. For reasons unknown to anyone, that was not employed, but rather, the matter went to trial. Trying the case was a mistake in light of the proposed resolution.

Both the trial Court and the *de novo* Court concluded that defense counsel did in fact fall. Once that is established, the next question is, according to Strickland, was there ineffective assistance, and did it compromise the Defendant's rights?

The prosecutor, in his Certification (Da-29), at paragraph 17 indicates:

> I spoke to Mr. Daggett prior to the commencement of the trial in my conference room at which time he cogently outlined what he believed to be the issues in this case.

That statement is proof that counsel's thinking was compromised. To cogently outline issues that don't exist is proof that counsel was ineffective. Clearly, this was a number of charges with absolutely no proof to contradict them. As to that contention, the record of the trial reveals that there was no defense available. During the trial, defense counsel pointed out a number of factors. For example, how long the Defendant had been sitting there and whether the Defendant was actually delivered to the site where his truck was. Counsel pointed out that the State had not established any one of those factors but clearly it was for the defense to establish but, pursuant to counsel's representation, the Defendant never testified.

So, there was a suggestion of a defense but no testimony in connection with it. The Defendant's summation was not in any way based on facts. That was because there were no facts.

Given the *de novo* Judge's review of the facts, it is clear that there was no defense. Instead, Counsel tried the case for the Defendant but because of his fall, never stopped to realize that there was no defense, and that the best possible result for this client was to accept the plea offer which on the day of trial, was again offered by the State.

The advice to try the case was ineffective assistance.

As the *de novo* Judge points out, "It is unusual for Counsel who was ineffective to indicate that he was." So, we have an admission by Counsel that his assistance was ineffective and that was because Counsel had fallen and he was compromised.

The Courts below denied the trial *de novo*. In other words, Counsel has admitted his ineffectiveness and clearly, that has produced a result which satisfies both criteria of the Strickland case.

Clearly, the ineffectiveness has deprived the Movant of pleading to a second offense DWI with a one-year loss of license. As a result of trying the case, the Defendant has been convicted of DWI, refusal and interlock violation. If the plea

was accepted, the penalty would have been a one-year loss of license, instead of the four-year loss of license that counsel's inefficiency caused him.

At the trial, Counsel for the Defendant raised a number of issues, such as how long the car was parked and things of that nature. All of those questions could have been answered by the Defendant, but counsel never called defendant as a witness.

CONCLUSION

For the reasons expressed herein, it is submitted that the Courts below erred in denying post-conviction relief to this Defendant, when all he seeks to do is to enter a plea to a second violation of N.J.S.A. 39:4-50.

Respectfully submitted,
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Dated: 7/7/25

Superior Court of New Jersey

Appellate Division
Docket No. A-002575-24

STATE OF NEW JERSEY,	:	**CRIMINAL ACTION**
Plaintiff - Respondent,	:	
v.	:	On Appeal from a Final Order of the New Jersey Superior Court, Law Division.
CHRISTOPHER CARPENTER,	:	SAT BELOW:
Defendant-Appellant.	:	Hon. Michael C. Gaus, J.S.C.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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PRELIMINARY STATEMENT

The sole argument being set forth by Christopher Carpenter ("Defendant") in this appeal is that his counsel Mr. George T. Daggett, Esq. was ineffective in his representation of the Defendant. This claim in this case is somewhat unusual, in that it is Defense Counsel's own assertion that he was ineffective in his representation of the Defendant. However, the facts speak entirely to the contrary; Defense Counsel's representation was competent and there is no evidence that any errors were made by counsel that would have changed the outcome of the case. The State contends that the Municipal Court properly found the Defendant guilty of Driving While Intoxicated, Refusal to Submit to a Breath Test, Failure to Install an Interlock Device and the Law Division properly rejected the Defendant's claims of ineffective assistance of counsel on de novo review. Wherefore, the State respectfully requests that this Court affirm the Defendant's convictions and sentence.

COUNTER PROCEDURAL HISTORY

On December 24, 2023, the Defendant was charged with the following motor vehicle offenses out of Hampton Township: Driving While Intoxicated ("DWI"), pursuant to N.J.S.A. 39:4-50; Refusal to Submit to Breath Testing, pursuant to N.J.S.A. 39: 4-50.2; and Failure to Install an Interlock Device, pursuant to N.J.S.A. 39: 4-50.19a.

After the charges were initiated, George T. Daggett, Esq. (Referred interchangeably throughout this brief as "Mr. Daggett" or "Counsel") was retained as counsel to represent the Defendant. Complete discovery in this matter was provided to Mr. Daggett on January 8, 2024. (Da 29 to Da31).[1] On or about February 26, 2024, this case was adjourned at Mr. Daggett's request for him to complete his discovery review. (Da29). On April 30, 2024, a plea offer to resolve this matter was submitted to Mr. Daggett in anticipation of the upcoming Case Management Conference by Mr. Arbore. (Da29). This plea offer was not accepted at that Case Management Conference. (Da30).

On June 8, 2024, the plea offer was repeated to Mr. Daggett in anticipation of the upcoming Case Management Conference. (Da30). On that subsequent Case Management Conference, Mr. Daggett advised the Court that he had lost his file. (Da30). A complete additional copy of all discovery was thereafter provided to Mr. Daggett by Mr. Arbore. (Da30).

On July 7, 2024, in anticipation of the Case Management Conference of July 8, 2024, Mr. Daggett was advised that the plea offer in this matter "still stands" and Mr. Arbore further inquired if he was ready to resolve the case. (Da30). The plea offer was not accepted at the Case Management Conference of July 8, 2024. (Da30).

[1] The State has assembled portions of the procedural history through a Certification provided by the Andover Municipal Prosecutor, Anthony M. Arbore, Esq. dated December 2, 2024 which details the relevant history as it pertains to this matter and was made an Exhibit by the Defendant as Da 29-31.

On August 12, 2024, the plea offer was again reiterated by Mr. Arbore to Mr. Daggett in anticipation of the then-upcoming Case Management Conference. (Da30). In response, Mr. Daggett advised that he was home with COVID and not thinking about Court. (Da30).

On September 18, 2024, Mr. Daggett and his client were summoned to Court on a final Case Management Conference. (Da30). At that time, Mr. Daggett advised Mr. Arbore that there were many issues in the case and his client was proceeding to trial. (Da30). The Defendant was then released from court to return to work at Mr. Daggett's request. (Da30). This matter was thereafter scheduled for an in-person trial date of November 13, 2024. (Da30).

On November 13, 2024, Mr. Arbore communicated with Mr. Daggett prior to the commencement of the trial in his conference room. At that time, Mr. Daggett outlined what he believed to be the issues in this case. (Da30). At that time, Mr. Arbore also repeated the plea offer to Mr. Daggett which was once again declined. (Da31). The matter thereafter proceeded to trial. (Da31). Mr. Arbore stated that at no time prior to the commencement of trial did Mr. Daggett indicate that he was not physically or mentally able to proceed to trial nor did he request an adjournment for any such professed reason. (Da31).

After trial, the Defendant was convicted of all of the charges and sentenced as follows: On the DWI charge, a fine of $757.00, $33.00 costs, $50.00 violent crimes

compensation penalty, $75 Safe Neighborhood penalty, $225 DWI surcharge, 48 hours in the IDRC, 30 days community service and a license suspension of 2 years and a requirement that the interlock device be installed for 2 years. (1T[2] 97-23 to -25; 1T 102-16 to -24; Da8). On the Refusal charge, a fine of $507.00, $33.00 costs, $100.00 Drunk Driving Enforcement Fund, and a license suspension of an additional 1 year. (1T 97-23 to -25; 1T 98-1 to -3; Da8). On the charge of Failing to Install an Interlock Device, a fine of $207.00, $33 costs, a consecutive 1-year driver's license suspension and a requirement that the interlock device be installed for 2 years concurrent with the DWI sentence. (1T 99-14 to -17).

On November 19, 2024, a motion was filed by Mr. Daggett for a new trial, which was supported by a Certification, claiming ineffective assistance of counsel for reasons relating to allegations of mental and physical disabilities of himself [3]. (Da 26 to Da27).

On December 2, 2024, Mr. Arbore filed a response. (Da 29 to Da31) A motion hearing occurred on December 4, 2024, in which the Honorable Peter J. Fico, J.M.C. denied the motion. (2T 12-18 to -21).

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[2] The State herby adopts the transcript citations as set forth on Page 1 of the Defendant's brief.

[3] The allegation of ineffective assistance of counsel is somewhat unique in this case because the claim appears to be made by Defense Counsel himself rather than by the Defendant against Defense Counsel. For the purpose of this brief, the State is assuming that his claim is being made by Defense Counsel on behalf of the Defendant.

On November 27, 2024, a municipal appeal was filed by the Defendant. On April 16, 2025, the Honorable Michael C. Gaus, J.S.C. conducted a trial de novo finding the Defendant guilty of the charges and imposing the same sentence as previously imposed by the municipal court. (Da18 to Da21)

Wherein, on April 23, 2025, the Defendant filed the instant appeal with the Appellate Division. (Da22 to Da25).

COUNTER STATEMENT OF FACTS

Driving While Intoxicated Investigation

On December 24, 2023, Trooper Alec Bowie of the New Jersey State Police was on duty. (1T 5-11 to -14). In the early morning hours, he responded to a suspicious vehicle call at 56 Maria Jones Road in Hampton Township. (1T 6-4 to -14). As a result of the call, Trooper Bowie came into contact with a black pickup truck that was on the side of the road with the engine running. (1T 8-14 to -17). Upon approach of the vehicle, the Trooper observed the driver sitting in the driver's seat sleeping. (1T 9-10 to -13). Trooper Bowie knocked on the vehicle's window in an attempt to wake up the sole occupant of the vehicle, but was unsuccessful. (1T 9-22 to -25). Eventually the occupant, who was later identified as the Defendant, woke up and was removed from the vehicle. (1T 10-19 to -22; 1T 20-12 to -14). Once the Defendant woke up, Trooper Bowie observed that the Defendant had watery and bloodshot eyes and smelled of an odor of an alcoholic beverage. (1T 11-2 to -7).

After making these observations, Trooper Bowie conducted a series of field sobriety tests. (1T 15-22 to -24). Trooper Bowie testified that he is trained in the administration of field sobriety tests and has been involved in over 100 investigations relating to people being under the influence of intoxicating beverages. (1T 21-3 to -18).

The first test administered by Trooper Bowie was the walk and turn test. (1T 16-2 to -3). Trooper Bowie explained and demonstrated the test to the Defendant, and then asked the Defendant to perform the test. (1T 16-14 to -22). The Defendant then attempted to perform the test. (1T 16-23 to -24). Trooper Bowie observed that the Defendant was unable to follow directions or perform the test satisfactorily. (1T 25-1 to -3).

The second test administered by Trooper Bowie was the one-leg stand. (1T 17-5 to -7). Trooper Bowie explained the test to the Defendant and then asked the Defendant to perform the test. (1T 16-14 to -22). The Defendant then performed the test. (1T 17-5 to -23). Trooper Bowie testified that the Defendant was unable to follow directions or perform the test satisfactorily. (1T 25:9-10; 1T 44:19-25; 1T 45:1-4.).

While administering the field sobriety tests, Trooper Bowie observed the Defendant to have slow movements of his hands, swayed his body, staggered when he walked, had bloodshot watery eyes, droopy eyelids, and was leaning for balance.

(1T 27-18 to -23). Based on Trooper Bowie's training and experience, as well as the observations he made of the Defendant while he performed the field sobriety tests, he concluded that the Defendant was intoxicated.[4] (1T 24-7 to -10; 1T 37-5 to -7). The Defendant was subsequently transported back to the barracks for further testing. (1T 28-16 to -18). Trooper Bowie testified that he made similar observations of the Defendant's intoxication at the barracks as well. (1T 25-5 to -8).

Trooper Jeffrey Pruden of the New Jersey State Police also assisted in the investigation. Trooper Pruden assisted with the investigation in regards to the processing of the Defendant. (1T 66:22-25) Specifically, Trooper Pruden read the Attorney General Standard Statement ("Standard Statement") form to the Defendant, in its entirety – word-for-word to the Defendant. (1T 69-1 to -6). After being read the first 9 paragraphs of the Standard Statement, the Defendant did not set forth an affirmative "yes" answer. (1T 70-2 to -5). As such, Trooper Pruden read the remaining paragraphs of the Standard Statement – which was another warning of the penalty of refusing the provide breath samples. (1T 70-11 to -15). Again, the Defendant did not provide an affirmative answer, but rather stated "I'm not trying to give you guys a hard time." (1T 71-4 to -12).

[4] The issue of whether or not the Defendant was intoxicated is not disputed. Specifically, it was stipulated to by Defense counsel in a colloquy with the Court. (1T 63-20 to -22.)

As a result of the Defendant's responses to Trooper Pruden, Trooper Bowie – a certified Alcotest Operator – submitted a refusal into the Alcotest instrument as part of protocol. (1T 29-19 to -25). Subsequently thereafter, the Defendant was charged with DWI and Refusal.

Later in the night, Trooper Bowie ran a lookup of the Defendant's driving credentials through the New Jersey Motor Vehicle Commission ("MVC") after obtaining the Defendant's driver's license. (1T 40-14 to -23). Upon review of the Defendant's certified driving abstract, it indicated that the Defendant was required to have an interlock device installed starting on November 14, 2023. (1T 42-1 to -7). Trooper Bowie confirmed that there was not an interlock device in the vehicle that the Defendant was operating. (1T 42-8 to -12). Thus, the Defendant was also charged with failing to Install an Interlock as required. As set forth above, the Defendant was ultimately found guilty of these three offenses and was sentenced accordingly.

Motion for New Trial

On December 4, 2024, Judge Fico heard Defense Counsel's motion for a new trial on his claim of his own ineffective assistance of counsel. In denying the Defendant's motion, Judge Fico placed on the record numerous observations that he made of Counsel while the trial was being conducted. Specifically, Judge Fico made the following observations of Counsel:

1. "You did ask questions at trial that I believe were competent and not ineffective." (2T 10-16 to -19).

2. "I didn't see any intellectual difficulty or reasoning or - - problems with cognition." (2T 10-23 to -25).

3. "And you indicated, quite intelligently, that you - - it was your intention that you were gonna [sic] bring that up on appeal and you wanted to change New Jersey law with regard to that. So, that was a level of thinking that goes beyond that day." (2T 11-9 to -14).

In addition, when discussing Counsel's inquiry of the Defendant as to his right to testify at trial, Judge Fico observed as follows:

> So, even at that point you were still advising, had a handle on your case. Let's see. There's no showing at all that you made that your performance was deficient. That your – and that your deficient performance prejudiced Mr. Carpenter's defense.
>
> [2T 10-12 to -17.]

Wherefore, Judge Fico denied the Motion.

Trial De Novo

At the trial de novo hearing conducted on April 16, 2025 before Judge Gaus, the thrust of the hearing centered around Counsel's continued insistence that he deprived the Defendant of effective assistance of counsel, citing a fall that Counsel had on the date in which the case went to trial. (3T 3-23 to -24). Counsel's theory to support this claim was that the case should not have gone to trial – but rather, the Defendant should have been advised to accept the Municipal Prosecutor's Plea Agreement which recommended the minimum penalties under the law for a Second

Offense DWI charge including a one (1) year license suspension. (3T 5-2 to -5; 3T 5-4 to -10). It was conceded at the hearing the Counsel did not have a diagnosis of a concussion or anything else based upon the fall he had endured at the trial date. (3T 6-15 to -17). The Court also noted for the record that the Municipal Prosecutor had offered the same plea agreement to the Defendant five (5) previous times in the case before trial commenced. (3T 6-23 to -25).

Judge Gaus ultimately agreed with the conclusions that Judge Fico made regarding Counsel's performance. Judge Gaus stated the following:

> I agree with Judge Fico that Mr. Daggett's performance that day was above any objective standard of reasonableness. He was competent, he was effective, he asked appropriate questions, he explored issues. He had expressed an intent to seek to change the law. He was at tune with his client's - - his client's due process rights as well as counseling his client on the right to testify.
>
> [3T 20-13 to -22.]

Ultimately, Judge Gaus concluded that there was nothing about Counsel's performance in the trial itself that reflected adversely on his performance. (3T 21-16 to -18). Judge Gaus reviewed the allegations made by Counsel that he himself was ineffective using the standard set forth in Strickland v. Washington 466 U.S. 668 (1984) and State v. Fritz 105 N.J. 42 (1987) concluding that Counsel's performance was not deficient and that there was not a reasonable probability that but for counsel's unprofessional errors, the result would have been different. (3T 21-16 to -18).

LEGAL ARGUMENT

The standard of review of a de novo verdict after a municipal court trial is "[t]o determine whether the findings made could reasonably have been reached on sufficient credible evidence present in the record." State v. Johnson, 42 N.J. 146, 162 (1964). On review, it is "[t]he action of the [Law Division] and not that of the municipal court" that is to be questioned. State v. Joas, 34 N.J. 179, 184 (1961). In doing so, the Appellate Court should defer to the prior credibility findings, which are "[o]ften influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999); Johnson, 42 N.J. at 161.

Should the Appellate Court be "[t]horoughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction," it can "[a]ppraise the record as if it were deciding the matter at inception" and "[m]ake its own findings and conclusions." Johnson, 42 N.J. at 162 (citations omitted); State v. Segars, 172 N.J. 481, 500-501 (2002) (internal citations omitted). Put another way, the Court should have "[a] definite conviction that the [lower court] went so wide of the mark" and a mistake was made based on a "[m]anifest lack of inherently credible evidence to support the finding, obvious overlooking or under evaluation of crucial evidence." Id.

In the instant case, Defense Counsel himself states in his brief to this Court that there were "no issues in the case" meaning there were no disputed facts relating to the charges instituted against the Defendant. Counsel acknowledges, "This was a case where the Defendant was asleep alongside the road and the police found him. He refused to take the Alcotest. As indicated, there were no issues." (Db6). Thus, in respect to the actual convictions themselves, the State submits that a review of the record below reveals that the lower court's decision was not "clearly mistaken" and the interests of justice do not demand intervention and correction.

In respect to the allegations that Counsel himself was ineffective in his representation of the Defendant, the State again argues that the determinations made of Counsel's performance by Judge Fico and ultimately adopted by Judge Gaus are clearly supported by credible evidence and do not meet the prongs to support a claim of ineffective assistance of counsel under Strickland v. Washington 466 U.S. 668 (1984).

Wherefore, the State submits that the lower court did not err in its rulings and respectfully requests that this Court affirm.

POINT I

THE STATE MET ITS BURDEN ON THE DWI CHARGE BEYOND A REASONABLE DOUBT

The State submits that with respect to the DWI, it met its burden of proof beyond a reasonable doubt. According to N.J.S.A. 39:4-50, a person is guilty of

driving while intoxicated when they operate a motor vehicle, "i) while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug" or, ii) "with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood." (emphasis added). The State must prove beyond a reasonable doubt that the Defendant was operating a motor vehicle while under the influence of alcohol. State v. Fearon, 56 N.J. 61 (1970). Here, the State clearly established beyond a reasonable doubt that the Defendant was under the influence at the time he operated his vehicle.

To meet the element of "under the influence," the State must show an impairment of an individual's mental or physical condition. More specifically, the State must establish that the defendant had "[a] substantial deterioration or diminution of the mental faculties or physical capabilities of a person whether it be due to intoxicating liquor, narcotic, hallucinogenic or habit inducing drugs." State v. Bealor, 187 N.J. 574, 589 (2006). The New Jersey Supreme Court has explained that term to mean a condition which so effects the judgment or control of a motor vehicle operator as to make it improper for him to drive on the highway. Id. at 589. In State v. Nemish, 228 N.J. Super. 597 (App. Div. 1988), the Court stated that the DWI statute does not require as a prerequisite to conviction that the accused be absolutely drunk in the sense of being sodden with alcohol. Id. at 608. Rather, it is sufficient if

the presumed offender is imbibed to the extent that his physical coordination or mental faculties are deleteriously affected. Id.

Driving While Intoxicated is a "[u]nified offense under which a Defendant can be found guilty on alternate bases." State v. Kashi, 180 N.J. 45, 48 (2004). Either of two alternative evidential methods suffice to prove guilt beyond a reasonable doubt: Proof of a Defendant's physical condition (the observation standard) or proof of a Defendant's blood alcohol level (the *per se* violation). Id. at 545; See State v. Howard, 383 N.J. Super. 538, 548 (App. Div.), cert. denied, 187 N.J. 80 (2006). "A failure of proof on one aspect is not, by any measure, an acquittal." Kashi, 360 N.J. Super. at 545.

A motorist may be convicted of DWI if an officer determines, based on his own observations, or based on the balance and coordination tests that the defendant has driven while under the influence of alcohol. State v. Cleverley, 348 N.J. Super. 455, 465 (App. Div. 2002). "[O]bserved physical reactions to such tests are on the same plane as other common factual indicia that a person is under the influence of intoxicating liquor which always may be testified to by a layman." State v. Morton, 39 N.J. 512, 515 (1963). The observation standard allows for a Driving While Intoxicated conviction to "[b]e sustained on proofs of the fact of intoxication-a defendant's demeanor and physical appearance-coupled with proofs as to the cause of intoxication- *i.e.,* the smell of alcohol, an admission of the consumption of

alcohol, or a lay opinion of alcohol intoxication." State v. Bealor, 187 N.J. 574, 588 (2006); See State v. Cryan, 363 N.J. Super. 442, 454-55 (App. Div. 2003) (sustaining conviction for driving while intoxicated based on proofs of defendant's bloodshot eyes, hostility and strong odor of alcohol). Certainly, a police officer is permitted to give lay opinion testimony as to whether a defendant was under the influence of alcohol. State v. Bealor, 187 N.J. at 585. Therefore, testimony of an officer who observes signs of a defendant's intoxication is sufficient to prove guilt of DWI beyond a reasonable doubt. See Johnson, 42 N.J. at 166. All that is required is the State show that the "[a]ggregate of those proofs was more than sufficient to permit the fact-finder to conclude, beyond a reasonable doubt, that defendant violated the driving while intoxicated statute." Bealor, 187 N.J. at 590.

Lastly, an intoxicated person, sleeping behind the wheel of a parked car with its engine running, can be convicted of N.J.S.A. 39:4-50(a). See State v. Thompson, 462 N.J. Super. 370 (App. Div. 2020)(Defendant was "operating" vehicle within meaning of DWI statute; even though vehicle was not observed in motion, defendant was observed sleeping behind wheel of vehicle in convenience store parking lot, car's engine was running while defendant was asleep behind the wheel, and defendant admitted that he had been asleep for 30 to 40 minutes but had two drinks within three-hour period).

Here, the State submits that sufficient evidence was presented to establish, beyond a reasonable doubt, that the Defendant is guilty of DWI under the observational standard. As set forth above, on December 24, 2023, Trooper Alec Bowie came onto contact with a black pickup truck that was on the side of the road with the engine running. (1T 8-14 to -17). After approaching the vehicle, the Trooper observed the Defendant sitting in the driver's seat sleeping. (1T 9-10 to -13). Trooper Bowie knocked on the vehicle's window in an attempt to wake up the Defendant, which was initially unsuccessful. (1T 9-22 to -25). Eventually the Defendant woke up and was removed from the vehicle. (1T 10-19 to -22; 1T 20-12 to -14). Trooper Bowie observed that the Defendant had watery and bloodshot eyes and smelled the odor of an alcoholic beverage. (1T 11-2 to -7). After making these observations, Trooper Bowie conducted a series of field sobriety tests. (1T 15-22 to -24).

Trooper Bowie put the Defendant through the walk and turn test as well as the one-leg stand test. While the Defendant performed these tests, Trooper Bowie observed significant indicia that the Defendant was under the influence of intoxicating liquor including slow movements of his hands, swaying, staggering when he walking, bloodshot and watery eyes, droopy eyelids, and he was leaning for balance. (1T 27-18 to -23). After attempting the standardized field sobriety tests, Trooper Bowie observed that the Defendant was unable to successfully perform

either of the tests because he could not follow the directions nor perform the tests as instructed. (1T 25-1 to -3).

Trooper Bowie explained that he was trained in the administration of field sobriety tests and has been involved on over 100 investigations relating to people being under the influence of intoxicating beverages. (1T 21-3 to -18). Based on Trooper Bowie's training and experience, as well as the observations he made of the Defendant while he performed the field sobriety tests, he concluded that the Defendant was intoxicated. (1T 24-7 to -10; 1T 37-5 to -7). There is no dispute as to the Defendant being intoxicated in this case based upon the observations made by Trooper Bowie as well as the stipulation that he was intoxicated made by the Defense. (1T 63-20 to -22).

In respect to the operational element of the DWI statute, the State has met its burden on that element as a matter of law. Despite that fact that the Defendant was found sleeping behind the wheel in the car when Trooper Bowie first came into contact with him, the car was running, and the Trooper observed indicia of intoxication including bloodshot and watery eyes and he detected the odor of alcohol. The Defendant also failed the standardized the field sobriety tests and refused to submit to breath testing. Accordingly, the State has met the operational element of the DWI statute as well. See State v. Thompson, 462 N.J. Super. 370 (App. Div. 2020)

Based upon the forgoing, the State submits that it has proved behind a reasonable doubt that the Defendant operating his motor vehicle under the influence and the Superior Court correctly found the Defendant guilty of this charge de novo.

POINT II

THE STATE MET ITS BURDEN ON THE REFUSAL CHARGE BEYOND A REASONABLE DOUBT

The State next submits that it met its burden of proof that the Defendant refused to submit to the Alcotest beyond a reasonable doubt. Pursuant to N.J.S.A 39:4-50.2, a driver must submit to breath testing when requested to do so by a law enforcement officer. The State must prove beyond a reasonable doubt that the police officer had probable cause to believe the defendant was operating a motor vehicle on a public road under the influence; that the defendant was placed under arrest; and that the defendant refused to submit to a breath test after the officer requested one. State v. Cummings, 184 N.J. 84 (2005).

In the case at hand, Trooper Bowie had probable cause to believe the Defendant operated a motor vehicle under the influence. As set forth above, the Defendant was directly observed sleeping in his pickup truck on the side of the road in Hampton Township with the engine running. (1T 8-14 to -17). Once the Defendant woke up, Trooper Bowie observed that the Defendant had watery and bloodshot eyes and smelled of an odor of an alcoholic beverage. (1T 11-2 to -7). Based upon Trooper Bowie's initial observations, he put the Defendant through the

walk and turn test as well as the one-leg stand test. While the Defendant performed these tests, Trooper Bowie observed significant indicia that the Defendant was under the influence of intoxicating liquor which were slow movements of his hands, swaying, staggering when walking, bloodshot and watery eyes, droopy eyelids, and he was leaning for balance. (1T 27:18-23). Thus, finding the Defendant in the vehicle sleeping with the engine running, coupled with the Defendant's inability to complete the field sobriety tests and his physical state further support the determination that the Defendant had operated his vehicle under the influence. (1T 24-7 to -10; 1T 37-5 to -7). Based upon the foregoing, the State submits that there was clearly probable cause to arrest the Defendant and request a breath sample. State v. Pavao, 239 N.J. Super. 206 (App. Div. 1990), certif. denied, 122 N.J. 138 (1990), cert. denied, 498 U.S. 898 (1990); State v. Grant, 196 N.J. Super. 470 (App. Div. 1984); State v. Weber, 220 N.J. Super. 421 (App. Div. 1987), certif. denied, 109 N.J. 39 (1987).

The Defendant was subsequently arrested and driven to the State Police Barracks. At the Barracks, Trooper Pruden read him the Standard Statement word-for-word and asked whether the Defendant would provide breath samples. (1T 69-1 to -6). After being read the first 9 paragraphs of the Standard Statement, the Defendant did not set forth an affirmative "yes" answer. (1T 70-2 to -5). As such, Trooper Pruden then read the remaining paragraphs of the Standard Statement – which was another warning of the penalty of refusing the provide breath samples.

(1T 70-11 to -15). Again, the Defendant did not provide an affirmative answer, but rather stated, "I'm not trying to give you guys a hard time." (1T 71-4 to -12). The Defendant failed to respond in the affirmative whatsoever with his answers to the Standard Statement. The second part of the Standard Statement explicitly indicates that a person would be charged with refusal if he or she fails to answer: "with anything other than a 'yes'" in submitting to breath testing. Despite this warning, the Defendant did not affirmatively respond. Based on the foregoing, the State submits that all elements of Refusal are met beyond a reasonable doubt and the Superior Court correctly found the Defendant guilty of this charge de novo.

POINT III

THE STATE MET ITS BURDEN ON THE FAILURE TO HAVE AN INTERLOCK DEVICE CHARGE BEYOND A REASONABLE DOUBT

Pursuant to N.J.S.A. 39:4-50.19(a), "A person who fails to install an interlock device ordered by the court in a motor vehicle owned, leased or regularly operated by him shall have his driver's license suspended for one year, in addition to any other suspension or revocation imposed under R.S.39:4-50, unless the court determines a valid reason exists for the failure to comply."

In this case, it is indisputable that the Defendant failed to install an interlock device as ordered by a court. After running a lookup of the Defendant's driving credentials through the MVC, Trooper Bowie determined that the Defendant was required to have an interlock device installed. (1T 40-14 to -23). Upon review of

the Defendant's certified driving abstract, it also indicated that the Defendant was required to have an interlock device installed starting on November 14, 2023. (1T 42-1 to -7). Trooper Bowie then confirmed that there was not an interlock device in the vehicle that the Defendant was operating. (1T 42-8 to -12). Defendant did not provide any valid reason for the failure to comply. Based on the foregoing, the State submits that all elements of Failing to Install an Interlock Device are met beyond a reasonable doubt and the Superior Court correctly found the Defendant guilty of this charge de novo.

POINT IV

COUNSEL HAS FAILED TO ESTABLISH THAT THE LOWER COURT ERRED IN DENYING COUNSEL'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL

The thrust of this appeal centers on the allegation that Counsel for the Defendant was ineffective as counsel should have advised the client to accept the previously proposed plea offer. (Da 26 to Da27). The State argues that this claim of ineffective assistance of counsel is wholly unsupported by either the facts or the law and is nothing more than a weak attempt by the Defendant to get a "re-do" of a trial due to the adverse outcome. The State contends that the credibility findings placed on the record by Judge Fico simply do not support the allegations that Counsel was ineffective and requests this Court to adopt those findings.

A defendant must prove two elements to establish a PCR claim that trial counsel was constitutionally ineffective: first, "counsel's performance was deficient[,]" that is, "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment"; and second, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); accord State v. Fritz, 105 N.J. 42, 52, 60-61 (1987).

Under the first prong, a defendant must demonstrate "counsel's representation fell below an objective standard of reasonableness." Strickland, 466 U.S. at 688. Thus, "th[e] test requires [a] defendant to identify specific acts or omissions that are outside the wide range of reasonable professional assistance." State v. Jack, 144 N.J. 240, 249 (1996) (citation and internal quotation marks omitted). "'Reasonable competence' does not require the best of attorneys, but certainly not one so ineffective as to make the idea of a fair trial meaningless." State v. Davis, 116 N.J. 341, 351 (1989). A defendant must "overcome a 'strong presumption' that counsel exercised 'reasonable professional judgment' and 'sound trial strategy' in fulfilling his responsibilities." State v. Nash, 212 N.J. 518, 542 (2013) (quoting State v. Hess, 207 N.J. 123 (2011) (internal quotations omitted)).

To meet the second prong, "[a] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694 (emphasis added). A defendant must demonstrate "how specific errors of counsel undermined the reliability of the finding of guilt." United States v. Cronic, 466 U.S. 648, 659 n.26 (1984).

"A petitioner must establish the right to [post-conviction] relief by a preponderance of the credible evidence." State v. Preciose, 129 N.J. 451, 459 (1992) (citing State v. Mitchell, 126 N.J. 565, 579 (1992)). To sustain that burden, the petitioner must set forth specific facts that "provide the court with an adequate basis on which to rest its decision." Mitchell, 126 N.J. at 579.

PCR courts are not required to conduct evidentiary hearings unless the defendant establishes a prima facie case and "there are material issues of disputed fact that cannot be resolved by reference to the existing record." R. 3:22-10(b). "To establish such a prima facie case, the defendant must demonstrate a reasonable likelihood that his or her claim will ultimately succeed on the merits." State v. Marshall, 148 N.J. 89 (1997). Bald assertions are insufficient to establish a prima facie case of ineffective assistance of counsel. State v. Cummings, 321 N.J. Super. 154, 170 (App. Div. 1999).

Here, this matter comes before the court not on appeal of a Petition for Post-Conviction Relief filed by the Defendant. Rather, this an appeal of a denial of a Motion for a New Trial that was initially filed in the municipal court and the Motion was again denied in the Superior Court after de novo review. The basis for that Motion is a claim made by Counsel coining himself "ineffective" in his representation of his client. In support of this argument, Counsel details a fall that he had that impacted his mental well-being on November 13, 2024 when this matter went to trial. (Da26 to Da27). He claims that "Trying the case was a mistake in light of the proposed resolution." (Db9). Counsel elaborates that "because of his fall, [Counsel] never stopped to realize that there was no defense, and that the best possible result for this client was to accept the plea offer." (Db10)(emphasis added). However, as set forth below, this claim is wholly unsupported by the record in this case. It should also be noted that no PCR Petition has been filed.

First and foremost, the plea offer that was made by the State was made *5 times* (emphasis added) before the trial commenced on November 13, 2024. It was made on April 30, 2024, June 8, 2024, July 7, 2024, August 12, 2024 and right before trial on November 13, 2024[5]. (Da 29 to Da31) Most notably, on September 18, 2024,

[5] New Jersey Rule of Professional Conduct ("RPC") 1.2(a) states as follows: "In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify." Based upon this rule, a lawyer is required to consult with the client on the plea that is offered by the State. Although the record does not explicitly indicate whether the plea agreement was actually conveyed by Counsel to the Defendant, the State can only assume that Counsel adhered to the ethical standard set forth by RPC 1.2(a) and conveyed the plea offer to the Defendant each time it was offered.

months before his fall, counsel for the Defendant advised the State that he would be proceeding to trial. (Da 29 to Da31). Thus, there were significant discussions with the State by Defense counsel about this case on at least on 5 occasions when a plea offer was conveyed. Those discussions spanned over many months – prior to his alleged medical problem. For Defense counsel to claim in his certification that he was "not thinking clearly" on November 13, 2024 about the offer – but had numerous discussions with the State where this offer was conveyed to him on at least 4 prior occasions - simply contradicts his claim that he was negatively affected by an alleged medical issue that affected his legal judgment in his representation of the Defendant. The record, thus, reflects that Counsel's fall did not form the basis for his rejection of the State's plea offer, for the fifth time, on the date of trial, and Defense's argument to the contrary is meritless.

Secondly, the State urges this Court to adopt the implicit credibility determinations of Judge Fico in respect to Counsel's claim of ineffective assistance of counsel, and submits that Counsel has failed to establish that he attorney was "ineffective" in accordance with the criteria established by the United States and New Jersey Supreme Courts. See State v. Johnson, 42 N.J. 146 (1964). Rather, it appears Counsel is displeased with the trial results and is exploring avenues to vacate the Defendant's conviction.

At the hearing on Defendant's Motion for a New Trial, Judge Fico placed on the record numerous observations that he made of Counsel while the trial was conducted. Specifically, Judge Fico made the following precise observations of Counsel and his performance:

1. "You did ask questions at trial that I believe were competent and not ineffective." (2T 10-16 to -19).

2. "I didn't see any intellectual difficulty or reasoning or - - problems with cognition. (2T 10-23 to -25).

3. "And you indicated, quite intelligently, that you - - it was your intention that you were gonna [sic] bring that up on appeal and you wanted to change New Jersey law with regard to that. So, that was a level of thinking that goes beyond that day." (2T 11-9 to -14).

4. "There's no showing at all that you made that your performance was deficient. That your – and that your deficient performance prejudiced Mr. Carpenter's defense." (2T 10-12 to -17).

Based upon the observations made by Judge Fico, the Defendant simply does not meet the first prong of an ineffective assistance of counsel claim.[6] There has been no demonstration that counsel's representation fell below an objective standard of reasonableness whatsoever. Actually, quite the opposite is true – counsel demonstrated at trial that his representation was well above an objective standard of reasonableness. Counsel asked competent and effective questions at trial; counsel explored issues that with the intent to change the law in the State; and even showed

[6] Based upon not meeting the first prong of the analysis for an ineffective assistance of counsel claim, there is no need to address the second prong.

his astute knowledge of due process rights and counseling his client on his right to testify.

The only specific act that counsel identifies as being outside the wide range of reasonable professional assistance is the claim that he never really addressed the State's reasonable resolution with the Defendant. This is a bald assertion that is insufficient to establish a prima facie case of ineffective assistance of counsel pursuant to Cummings. This is especially true in light of his comments at trial that he intended to challenge the law[7]. Further, without repeating what has been already addressed above, defense's claim as to the reason for rejecting the plea is simply not supported by the record. Namely, that the plea offer in this case was offered to Counsel at least 5 times prior to trial and thus, clearly supports the notion that the Defendant was well aware of this offer, had time to consider its terms, and in rejecting the offer, believed he could win the case.

Finally, it should be noted, as to the defense's claim regarding his fall and how it impacted him, the record reveals that counsel never mentioned that he had fallen even once on November 13, 2024 or indicate in any way that he would not able to commence with a trial. In rejecting the defense's motion, Judge Fico noted this, specifically stating as follows:

> At no time during that session did you tell me, Mr. Daggett, that you were not physically or mentally able to proceed to trial. You

[7] The record is not entirely clear on what "law" exactly Counsel was going to change, but there is some indication that it involved Miranda issues. (See 2T 11-4 to - 8)

never requested an adjournment. You were never diagnosed with a concussion. You never sought medical treatment for it.

[2T 10-7 to -12]

Not only did counsel not make an adjournment request due to his condition, he actually spoke with the Prosecutor and cogently outlined what he believed to be the issues in the case before the trial commenced. (Da29 to Da31). Again, this speaks contrary to somebody who suffered an injury that would have affected his mental well-being.

Based upon the aforementioned, the State argues that the facts of this case do not support a claim for ineffective assistance of counsel. The allegation that counsel was ineffective is being used as nothing more than a weak attempt to obtain a "second bite of the apple" after obtaining an undesirable result. Rather, the record reflects that the trial and de novo courts appropriately found the Defendant guilty of all charges and properly denied the Defendant's request for a new trial. These findings were well supported by sufficient credible evidence in the record, wherefore there is no basis to grant the Defendant the relief requested.

CONCLUSION

Based upon the foregoing, the State submits that it met all of the elements to sustain the Defendant's convictions of Driving While Intoxicated, pursuant to N.J.S.A. 39:4-50; Refusal to Submit to Breath Testing, pursuant to N.J.S.A. 39:4-50.2; and Failure to Install an Interlock Device, pursuant to N.J.S.A. 39: 4-50.19a

thus, submits that the finding of the Law Division is not clearly a mistaken one and that the interests of justice do not demand intervention and correction. The State respectfully requests this court affirm the decision of the lower court and reject Counsel's argument that he was ineffective as counsel in the handling of this case.

Respectfully submitted,

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SDAG/Acting Assistant Prosecutor
Attorney ID No. 022292003

cc: George T. Daggett, Esq.

		Superior Court of New Jersey
STATE OF NEW JERSEY	*	APPELLATE DIVISION
	*	DOCKET NO. A-002575-24
	*	DOCKET NO. BELOW: MA-17-11-24
Plaintiff- Respondent,	*	
	*	ON APPEAL FROM:
	*	SUPERIOR COURT OF NEW JERSEY—
v.	*	LAW DIVISION, SUSSEX COUNTY
	*	
CHRISTOPHER CARPENTER	*	
	*	SAT BELOW:
	*	HON. MICHAEL C. GAUS, JSC
Defendant-Appellant.	*	
	*	

DEFENDANT-APPELLANT'S REPLY BRIEF

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Date Submitted: 10/3/25

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REPLY TO RESPONDENT'S SUBMISSION

Please accept this Reply in response to Respondent's Brief in this matter.

As to Point IV, first of all, the first three Counts demonstrate the ineffective assistance of Counsel. There were no issues. This case should never have been tried. It was, because of Counsel's inefficiency caused by an accident.

On p. 23, the Prosecution cites U.S. v. Cronic, 466 U.S. 648, 659 (1984). There, the State argues that a "Defendant must demonstrate 'how specific errors of counsel undermine the reliability of the finding of guilt.'" We are not talking about "specific errors of counsel." Because Counsel was compromised, the case was tried and it should not have been.

Actually, considering all of the facts set forth in the Appellant's original brief, and the facts set forth in the State's brief, the reality is that Christopher Carpenter was actually denied his day in Court; Kosmowski v. Atlantic City Med. Ctr., 178 N.J. 368; and Escobar-Barrera v. Kissim, 404 N.J. Super. 224 (2020).

It was not that Counsel made legal mistakes. It was that Counsel was compromised because of a fall which was recognized by both Courts below. The consequences of a trial was the result of Counsel's inability to represent his client.

The ineffective assistance of Counsel under the circumstances of this case, as indicated, amount to Defendant's not having his day in Court because of a fall which was recognized by both Judges below. The consequences of that fall is the

ineffective assistance of Counsel which, in this case, is admitted by the Counsel who was ineffective.

CONCLUSION

For the reasons expressed herein, it is submitted that the Courts below erred in denying post-conviction relief to this Defendant, when all he seeks to do is to enter a plea to a second violation of N.J.S.A. 39:4-50.

Respectfully submitted,
Law Offices of George T. Daggett
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George T. Daggett, Esq.

Date of Reply Brief Submission: 10/3/25