

Superior Court of New Jersey  
Appellate Division

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STATE OF NEW JERSEY

### Plaintiff-Respondent

V.

AMBER LYNCH

Defendant-Appellant

Docket No. A-003442-23  
Municipal Appeal: MA24-009

## CRIMINAL ACTION

**Sat Below:**

Honorable Michael A. Guadagno, J.A.D.  
Monmouth County Superior Court  
71 Monument Park  
Freehold, NJ 07728

BRIEF IN SUPPORT OF DEFENDANT'S APPEAL

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## STATEMENT OF PROCEDURAL HISTORY

On December 15, 2023, Ms. Amber Lynch was charged with a violation of N.J.S.A. 39:4-36, failure to observe marked cross walk. Amber Lynch was issued summons number 1328 E23 004748 (Da1).

The trial was conducted on March 14, 2024 in the Marlboro Municipal Court before the Honorable James M. Newman, J.M.C. following testimony and a denied request for an adjournment, Ms. Lynch was found guilty as charged. (<sup>1</sup>T1:48-28) Upon this finding he imposed a minimum fine of \$207 and \$33.00 Court costs. (T1:48-25 to 49-4)

A Notice of Appeal was filed in the Superior Court, Law Division, Monmouth County on March 18, 2023. (Da6). A Decision and Order was filed on June 4, 2023. (Da7). A written Decision was also filed that date. (Da8 – Da14).

A Notice of Appeal was thereafter filed in the New Jersey Superior Court, Appellate Division.

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<sup>1</sup> T1 refers to Transcript of Proceedings of March 14, 2024

### STATEMENT OF FACTS

On December 15, 2023, Ms. Amber Lynch was charged with a violation of N.J.S.A. 39:4-36, failure to observe marked cross walk. Amber Lynch was issued summons number 1328 E23 004748 (Da1). On March 7, 2024 the undersigned attorney entered our appearance in the Marlboro Municipal Court, copying both the municipal prosecutor and the Marlboro Police Department, and requesting discovery (Da2). Along with that letter a Waiver of Arraignment was provided, and it was our understanding that we would be advised of a new date for a hearing of the matter. Despite this request, the Municipal Court Clerk denied this adjournment request, and advised this office that the matter must proceed on March 14, 2023 in the Marlboro Municipal Court.

Discovery was received by the defense on April 3, 2024 (Da3), long after trial concluded. Prior to March 14, 2024 court date, the defense had received no discovery and expected that the matter would readily be adjourned for that reason. On March 14, 2024, the defense again requested an adjournment in person (T: 3-15 to 4-6). Pursuant to this in person request, the Judge was advised that: (A) we had previously requested an adjournment; (B) it was denied by the Court staff, and (C) that we did not have any discovery yet.

Court proceedings were paused on March 14, 2024 for a brief period, at which time the defense renewed our request for an adjournment, stating that we just

entered our appearance in the case one week before and requested discovery. It was also stated that an email was received on March 13, 2024 indicating discovery was available and a check was sent in from my office however we still did not have discovery. (T6-15 to 6-19). The undersigned also once again stated to the Court that it is the State's duty to provide me with discovery and I had been given none at that point. I advised the Court that there were Body Worn Cameras and that it was believed that there was no possibility that the records would have been made available in such a short time and once again asked for an adjournment. (T: 7-11 to 8-6). Despite this, Honorable James M. Newman, J.M.C. insisted that the matter proceed to trial immediately, notwithstanding the fact that there had been no evidence provided to the defense, and we had timely and repeatedly requested an adjournment for that reason.

At trial, Special Officer Bruno testified to the Court that Ms. Lynch told him that she looked left and proceeded to drive and then the pedestrian was right there and hit him by accident. (T12-1 to 12-4). Now that the defense has received the discovery (after trial), it is clear that that statement from Special Officer Bruno is false. In particular, in the NJ Police Crash Investigation Report, he wrote that Amber Lynch stated that she stopped at the Stop Sign, looked left and right, proceeded to make a right turn onto Union Hill Road eastbound. He also stated in his report that P1, the alleged victim, stated that he began to walk through the



intersection after P1 stopped at the stop sign and that as he entered the crosswalk Ms. Lynch's front passenger tire ran over his right ankle.

The trial was conducted on March 14, 2024 in the Marlboro Municipal Court before the Honorable James M. Newman, J.M.C. following testimony and a denied request for an adjournment, Ms. Lynch was found guilty as charged. (T48-28) Upon this finding he imposed a minimum fine of \$207 and \$33.00 Court costs. (T48-25 to 49-4)

**LEGAL ARGUMENT**

**POINT I**

**THE COURT’S FAILURE TO ADJOURN TRIAL IN THIS  
MATTER AND ALLOW THE STATE TO PROVIDE  
DISCOVERY WAS AN ABUSE OF DISCRETION**

The undersigned attorney was retained to handle a relatively simple traffic infraction case on March 7, 2024. We immediately entered our appearance by hard copy and facsimile to the Municipal Court, and simultaneously requested discovery by copy of our letter of appearance that same date. We also requested an adjournment of the case which was scheduled for one week later, on March 14, 2024. This adjournment was denied by the court staff. The undersigned attorney appeared for court on March 14, 2024, and renewed my request for discovery and an adjournment. This was denied by Judge Newman. This denial was an outright abuse of discretion, and flies in the face of fundamental fairness.

Rule 7:7-7 - Discovery and Inspection(a)Scope. If the government is represented by the municipal prosecutor or a private prosecutor in a cross complaint case, discovery shall be available to the parties only as provided by this rule, unless the court otherwise orders. All discovery requests by defendant shall be served on the municipal prosecutor, who shall be responsible for making

government discovery available to the defendant. If the matter is, however, not being prosecuted by the municipal prosecutor, the municipal prosecutor shall transmit defendant's discovery requests to the private prosecutor in a cross complaint case, pursuant to R. 7:8-7(b). **(b) Discovery by Defendant.** Unless the defendant agrees to more limited discovery, in all cases, the defendant, on written notice to the municipal prosecutor or private prosecutor in a cross complaint case, shall be provided with copies of all relevant material, including, but not limited to, the following: **(1)** books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form; **(2)** records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded; **(3)** grand jury proceedings recorded pursuant to R. 3:6-6; **(4)** results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney; **(5)** reports or records of defendant's prior convictions; **(6)** books, originals

or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;(7) names, addresses, and birthdates of any persons whom the prosecuting attorney knows to have relevant evidence or information, including a designation by the prosecuting attorney as to which of those persons the prosecuting attorney may call as witnesses;(8) record of statements, signed or unsigned, by the persons described by subsection (7) of this rule or by co-defendants within the possession, custody or control of the prosecuting attorney, and any relevant record of prior conviction of those persons;(9) police reports that are within the possession, custody or control of the prosecuting attorney;(10) warrants, that have been completely executed, and any papers accompanying them, as described by R. 7:5-1(a).(11) the names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this

information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

**(g)Time and Procedure.** A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance and demand for discovery directly to the municipal prosecutor. If the defendant is not represented, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request. Unless otherwise ordered by the judge, the defendant shall provide the prosecutor with discovery, as provided by paragraph (c) of this rule, within 20 days of the prosecuting attorney's compliance with the defendant's discovery request. If any discoverable materials known to a party have not been supplied, the party obligated with providing that discovery shall also provide the opposing party with a listing of the materials that are missing and explain why they have not been supplied. Unless otherwise ordered by the judge, the parties may provide discovery pursuant to paragraphs (a), (b), (c), and (h) of this rule through the use of CD, DVD, e-mail, internet or other electronic means.

In *State v. Stein*.....Our New Jersey Supreme Court remanded a DWI matter for trial after the defense raised the issue of the State's failure to provide videotapes, and or to determine if video tapes requested by the Defense even existed.

The discovery rules governing the municipal court and Criminal Part of the Law Division are almost identical; both mandate the disclosure of the same categories of information. Compare R. 7:7-7, with R. 3:13-3(b). Indeed, the municipal court discovery rules are patterned from the criminal discovery rules. See Verniero & Pressler, Current N.J. Court Rules, comment 7 on R. 7:7-7 (2016) ( This rule restates the discovery provision of [Rule] 3:13-3. ).

Broad discovery and the open-file approach apply in criminal cases to ensure fair and just trials. *Hernandez*, supra, \_\_\_ N.J. at \_\_\_ (slip op. at 1); *State v. Scoles*, 214 N.J. 236, 252 (2013) ( [A] defendant has a right to automatic and broad discovery of the evidence the State has gathered in support of its charges. ). Criminal cases and quasi-criminal cases, such as DWI, which are tried in municipal court, share many of the same procedural protections -- the State bears the burden of proving guilt beyond a reasonable doubt and the defendant has the right to counsel, to present and cross-examine witnesses, and not to testify, to name a few. See *State v. Widmaier*, 157 N.J. 475, 494-95 (1999). In light of the similarity



between criminal and municipal court cases and their discovery rules, the liberal approach to discovery in criminal cases is applicable in municipal court cases.

Rule 7:7-7(b) sets forth a defendant's right to discovery in municipal court. The discovery rule states that in all cases the defendant, on written notice to the municipal prosecutor . . . shall be provided with copies of all relevant material, including but not limited to the information set forth in eleven discrete categories.

Rule 7:7-7(b)(1)-(11).<sup>7</sup> Only two categories are germane to this case.

The first applicable rule states that the municipal prosecutor is required to provide the names, addresses, and birthdates of any persons whom the prosecuting attorney knows to have relevant evidence or information. R. 7:7-7(b)(7). This subsection does not distinguish between relevant evidence possessed by police officers in the municipality in which the local prosecutor has jurisdiction and relevant evidence possessed by police officers from a neighboring municipality. Provided that the municipal prosecutor knows that police officers from an adjoining jurisdiction have relevant information pertaining to a DWI case, the names of those officers must be disclosed to a defendant.

The second applicable rule provides that the municipal prosecutor must provide all relevant. . . books, originals or copies of papers and documents, or tangible objects, . . . including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, [and] images. R. 7:7-7(b)(6)

(emphasis added).<sup>8</sup> Relevancy is the hallmark of admissibility of evidence. *State v. Darby*, 174 N.J. 509, 519 (2002). Evidence is relevant if it ha[s] a tendency in reason to prove or disprove any fact of consequence to the determination of the action. N.J.R.E. 401.<sup>9</sup>

In the instant matter, the Defense immediately requested Discovery on March 7, 2024, and cc'd both the Municipal Prosecutor and the Police Department. At the time of trial, ONE week later, discovery still had not been provided, and this was acknowledged by the Municipal Prosecutor. Discovery was not received by the Defense until 20 days AFTER trial, and in it, there were significant and important discrepancies between the Special Officer's Reports and the Testimony he gave at trial.

### **7:8-3. Adjournment**

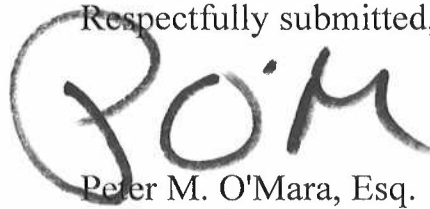
On or before the first scheduled trial date, the court may adjourn the trial for not more than fourteen days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the trial to be reasonably necessary in the interest of justice. In contested matters, the court shall specify the new trial date in granting the adjournment and shall cause the complaining witness, all defendants, and all other known witnesses to be notified of the adjournment and of the new trial date.



CONCLUSION

For all the foregoing reasons and on the basis of the authorities cited in support thereof, the defense respectfully urges this court to enter a finding of Not Guilty following this Trial De Novo.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "POM", is written over the typed name. The signature is stylized, with a large "P" and "O" and a smaller "M".

Peter M. O'Mara, Esq.



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Honorable Judges of the  
Superior Court of New Jersey  
Appellate Division  
Richard J. Hughes Justice Complex  
Post Office Box 006  
Trenton, New Jersey 08626

Re: State of New Jersey (Plaintiff-Respondent)

v. Amber Lynch (Defendant-Appellant)

Appellate Division Docket No. A-3442-23T4

Municipal Appeal No. MA24-009

Miscellaneous Case No. ML-24-03-00051

Criminal Action: On Appeal from a Final Judgment of Conviction in  
the Superior Court of New Jersey, Law Division  
(Criminal), Monmouth County

Sat Below: The Honorable Michael A. Guadagno J.A.D. (Ret. & t/a)

Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of  
a more formal brief submitted on behalf of the State of New Jersey.

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COUNTERSTATEMENT OF PROCEDURAL HISTORY

On December 15, 2023, the Marlboro Police Department issued a summons to the defendant, Amber D. Lynch, charging her with failing to yield to a pedestrian crossing within a marked crosswalk, contrary to N.J.S.A. 39:4-36(a)(1). Da1.

Defendant was scheduled for a first appearance on December 29, 2023, before the Marlboro Municipal Court, but failed to appear. Da11. On January 18, 2024, defendant appeared pro se and entered a plea of not guilty. Ibid. During a February 7, 2024 pro se appearance, the Honorable James Newman, P.J.M.C., scheduled trial on this summons for March 14, 2024. Da12. Defendant was given a notice to appear in March for trial. Ibid.

On or about March 7, 2024, defendant retained counsel, who authored a letter on that date providing notice of his appearance on this case and requesting discovery; this letter was received on or about March 11, 2024. Da2, 12. In the notice, counsel also presumed that the March 14 trial date would be adjourned due to his recent entry into the case; it was his “understanding that [the court] will advise me of the new date for the hearing of this matter.” Da2. Counsel was informed by the court that the now-month’s

old March 14, 2024 trial date, would not be adjourned. Db2; (1T:4-2 to 4-4).<sup>1</sup>

On March 13, 2024, counsel was advised by way email that discovery was now available for him to obtain, consistent with R. 7:7-7(a),(g). Db3; (1T:6-16 to 6-19). The next day, defendant appeared with counsel before Judge Newman. (1T:4-4 to 4-5). Counsel advised the court that his prior request for an adjournment of trial had been denied and advised the court that the adjournment was necessary because he had not yet collected discovery from the court-adjacent police department. (1T:4-3 to 4-6). Nonetheless, counsel concurrently told the court, “But I’m here. I’ll try the case.” (1T:4-4 to 4-5). The court offered counsel time to obtain and review discovery while it was in recess to attend to other matters and indicated its intention to try the matter that day, as the victim, Bernard Sokal, was present. (1T:4-7 to 4-23).

Counsel expressed displeasure with the fact that his assumption that the late entry of his appearance would automatically entitle him to the requested adjournment was not being met: “I would never have imagined that when I entered my appearance that the date wouldn’t have gotten moved so that I could get discovery, review it with my client.” (1T:5-3 to 5-6). Counsel pushed back on the court’s suggestion that he collect and review discovery during the

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<sup>1</sup> 1T refers to Transcript of Proceedings, March 14, 2024.

2T refers to Transcript of Proceedings, June 3, 2024.

court's upcoming recess, claiming that he should not have to go to the adjacent police department to retrieve discovery, but was entitled by Rule to have discovery hand delivered by the municipal prosecutor. (1T:5-17 to 5-19). Judge Newman subsequently recessed court, providing over an hour for counsel obtain and review discovery. (1T:4-7 to 4-9; 6-4 to 6-10; 7-5 to 7-9). Counsel chose not to do so. (1T:6-15 to 8-6).

Trial commenced after the court returned from an over-hour recess. (1T:8-7 to 8-15). Officer Bruno was called by the State. (1T:8-16 to 8-22). Officer Bruno testified neither his body, nor his vehicle camera video captured defendant's conduct because he arrived after the motor vehicle violation had taken place. (1T:10-24 to 11-5; 14-13 to 14-24). Officer Bruno stated that following his arrival on scene he spoke with the victim and the defendant; he was informed by the victim and defendant that defendant hit the victim with the side of her car as he crossed the crosswalk. (1T:11-6 to 12-24; 14-25 to 18-21). Mr. Sokal's testimony followed Officer Bruno's. (1T:19-1 to 19-10). During cross examination of Mr. Sokal, counsel introduced two exhibits (photographs) that were provided by defendant and taken by one of her clients and used them to question the victim. (1T:26-5 to 29-25; 38-1 to 38-19). Defendant testified on her own behalf. (1T:35-5 to 35-10).

Defense counsel's summation encompassed several points. Counsel recited the case's facts, stated defendant looked both ways while she was stopped, and described the surrounding area and roadway where the hit occurred. (1T:42-1 to 43-6). Counsel questioned whether Mr. Sokal walked into defendant's car and if defendant even hit Mr. Sokal because "there's no damage to her car. . . So it seems that he might have waked into her car actually because he hit the right passenger side of her car." (1T:43-9 to 43-18). Counsel asserted his client did not recklessly or purposefully hit Mr. Sokal. (1T:43-19 to 43-21). Counsel shifted blame for the incident to the victim: "almost looks like he walked into the car, seemingly almost purposely . . . maybe if he was a little bit more heads up, he could have avoided it." (1T:44-2 to 45-11).

Judge Newman found defendant guilty of violating N.J.S.A. 39:4-36(a)(1), and sentenced her to a fine of \$207 and \$33 costs. (1T:48-22 to 49-2). Defendant thereafter filed a timely appeal. Da10. A trial de novo was held on June 3, 2024, before the Honorable Michael A. Guadagno, J.A.D. (ret. & t/a). Da8.

During argument on this appeal, defense counsel admitted defendant had personally known about the pending prosecution for several months, secured his services only one week before trial, and that counsel had chosen not to

heed the municipal court's advice to obtain and review discovery during the court's recess. (2T:5-15 to 6-5; 7-6 to 7-14). Defense counsel argued his client's actions were valid because defendant was entitled to the personal delivery of discovery by the State. (2T:6-6 to 6-16). Defense counsel claimed he had no evidence and no "basis to prepare the case" and that "it was a procedural error to force [defendant] to . . . trial without discovery." (2T:7-14 to 7-19).

During argument on the appeal, Judge Guadagno questioned counsel about this claimed prejudice, noting that "[t]he prosecutor only got [defendant's exhibits] the day of trial" and that any police video would have only recorded after the motor vehicle violation occurred. (2T:8-7 to 8-13). Defendant claimed prejudice was inherent in the failure of personal delivery of the available discovery because it deprived him and defendant of an ability to review the victim's injuries. (2T:8-14 to 8-17). Counsel further speculated that there could be statements by victim and the officer on the video that may have differed from their testimony or reports. (2T:8-20 to 9-2). Counsel conceded that he could not "point exactly to how . . . I was prejudiced, but certainly wasn't fully prepared for trial." (2T:9-4 to 9-6).

On June 4, 2024, Judge Guadagno re-found defendant guilty. Da13. Relying upon Judge Newman's credibility assessments, Judge Guadagno found



that the facts were that “Mr. Sokal was waiting to cross at the crosswalk; defendant came to a full stop and Sokal entered the crosswalk when defendant accelerated and struck him.” Da13. Judge Guadagno found defendant’s contrary arguments “untethered to any evidence in the record and ignore[d] the fact the injury is not an element of this offense.” Da13. Judge Guadagno also found defendant was not unreasonably prejudiced by the lower court’s denial of her request for an adjournment. Ibid. After conducting a fact-sensitive inquiry, Judge Guadagno concluded that defendant failed to demonstrate she was prejudiced by the municipal court’s decision. Da13-14.

On July 8, 2024, defendant filed an appeal with this Court. Da16. The State opposes defendant’s appeal and submits the following in support of its opposition.

### COUNTERSTATEMENT OF FACTS

On December 15, 2023, Bernard Sokal and his wife were looking forward to babysitting their granddaughter in New York City. (1T:19-18 to 20-7). Mr. Sokal and his wife decided to make the commute to the city by bus. (1T:19-18 to 19-23). As a 40-year resident of Marlboro, Mr. Sokal was familiar with the bus stop, so he dropped his wife off there, parked his car in his usual spot, and then walked to the bus stop. (1T:19-20 to 20-7).

During his walk to the bus stop, Mr. Sokal had to enter a crosswalk with a concrete median. (1T:15-3 to 15-5; 21-4 to 21-6). The crosswalk Mr. Sokal planned to walk through was clearly marked. (1T:21-4 to 21-5). As Mr. Sokal arrived at the crosswalk, he noticed defendant's car was stopped at a stop sign. (1T:20-15 to 20-20).

Believing defendant stopped her vehicle to allow him to cross, Mr. Sokal began walking into the crosswalk. (1T:20-15 to 20-20; 24-12 to 24-23). Suddenly, defendant accelerated her car into Mr. Sokal while he was crossing, which threw him to the ground. (1T:30-10 to 30-14). During the collision, Mr. Sokal's leg was struck, his toes were hit, and his hands were bruised from his fall. (1T:33-4 to 34-5). The police and an ambulance subsequently arrived on scene. (1T:10-12 to 10-16; 21-14 to 21-22). Emergency responders treated Mr. Sokal and then transported him to the hospital. (1T:21-23 to 21-25).

## LEGAL ARGUMENT

### POINT I

DEFENDANT FAILS TO  
DEMONSTRATE JUDGE GUADAGNO  
WAS INCORRECT IN NOT FINDING  
JUDGE NEWMAN ABUSED HIS  
DISCRETION BY DENYING HER A  
TRIAL ADJOURNMENT

Defendant asks this Court to find that which Judge Guadagno could not – that Judge Newman’s refusal to grant her an adjournment on the date of trial, necessitated by her late hiring of counsel on for this motor vehicle violation, constituted an “abuse of discretion.” Db5. Defendant claims that unlike Judges Newman and Guadagno, this Court can and should find prejudice because the municipal prosecutor had not personally hand-delivered the discovery that was made available to counsel within days of entry of his appearance. According to defendant, this denied her the ability to review her victim’s injuries and any post-incident police videos.

This Court can and should reject defendant’s attempts to pin her failures onto the State and the lower courts. Defendant acted at the 11<sup>th</sup> hour, assumed that an adjournment would nonetheless be granted, and then refused to engage in any self-help actions in order to create an abuse of discretion out of a wholly reasonable determination by the municipal court. The municipal court’s

denial of an adjournment was not unreasonable, was not prejudicial, and was not an abuse of discretion. Judge Guadagno's affirmance of the municipal court's decision should be affirmed by this Court.

On appeal from trial de novo, “appellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error.” State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Locurto, 157 N.J. 463, 474 (1999)). However, “trial court’s legal rulings are considered de novo.” Robertson, 228 N.J. at 148 (citing State v. Kuropchak, 221 N.J. 368, 383 (2015)).

“The granting of trial adjournments rests within the sound discretion of the trial court. Absent an abuse of discretion, denial of a request for an adjournment does not constitute reversible error.” State v. D’Orsi, 113 N.J. Super. 527, 533 (App. Div. 1971), certif. denied, 58 N.J. 335 (1971) (quoting State v. Smith, 87 N.J. Super. 98, 105 (App. Div. 1965)); State v. Hayes, 205 N.J. 522, 537 (2011) (quoting State v. Doro, 103 N.J.L. 88, 93 (1926)) (“New Jersey long has embraced the notion that ‘[a] motion for an adjournment is addressed to the discretion of the court, and its denial will not lead to reversal unless it appears from the record that the defendant suffered manifest wrong or injury’”). To demonstrate a court abused its discretion, the defendant “must”

show “[f]irst, ‘the judicial action [was] clearly unreasonable in the light of the accompanying and surrounding circumstances’ [and] [s]econd, [that] the ruling . . . prejudiced the complaining party.” State v. Miller, 216 N.J. 40, 66 (2013), cert. denied 571 U.S. 1220 (2014) (citations omitted).

Here, neither Judge Newman, nor Judge Guadagno abused their discretion because Judge Newman’s denial of an adjournment was reasonable in light of the totality of the facts and circumstances. Miller, 216 N.J. at 65. Despite having appeared (and failed to appear) several times on this matter, and despite being personally provided a month’s notice as to her March 14<sup>th</sup> trial date, defendant did not act to obtain counsel until approximately one week before that scheduled trial date. In fact, counsel’s notice of appearance, with accompanying request for discovery, see R. 7:7-7(g), was dated exactly one week before trial (March 7<sup>th</sup>) and not received by Marlboro until three days before trial, on March 11<sup>th</sup>. Thus, the lower courts did not abuse any discretion by finding that defendant’s own delayed actions had put her in this precarious position.

Pursuant to R. 7:7-7(a) and (g), the municipal prosecutor had 10 days from receipt of defense counsel’s notice of appearance and request for discovery to “mak[e] ... discovery available to the defendant.” Nonetheless, and by defense counsel’s own admission, the State more than met this

mandate, advising defense counsel that discovery was available for him to obtain on March 13<sup>th</sup>, the day before trial and only two days after receipt of counsel's request. While the State acted more than reasonably, defendant did not. Counsel did not act to obtain discovery or make arrangements for its delivery, and instead sought an adjournment counsel assumed would be granted.

Even when given an opportunity to obtain and review discovery during a court recess, defendant refused to do so. While such a brief period of time would be unreasonable in another case, it was not so here, where the one summons was not on a complex motor vehicle violation and the universe of facts were limited to the versions of events told to the officer by the victim and defendant herself. This was, as defendant admits, a "relatively simple traffic infraction." Db5.

Instead of obtaining and reviewing discovery, as suggested by the municipal court, counsel instead chose to focus pretrial efforts on suggesting that a discovery violation on the part of the State, supported by an interpretation of the discovery Rules not supported by its plain language. Contrary to defendant's repeated content, the Rules do not require the municipal prosecutor to hand-deliver discovery. The prosecutor must only make discovery "available" and can do so "through use of CD, DVD, e-mail,

internet or other electronic means.” R. 7:7-7(a), (g). It was not unreasonable for the lower courts’ to reject defendant’s unsupported contention and maintain a long-standing trial date, on a long-pending and single motor vehicle violation, where the other witnesses – victim and officer – were present and ready.

Defendant also cannot show Judges Newman and Guadagno’s decision to not grant an adjournment prejudiced her. Despite not being granted the adjournment, defense counsel ably represented defendant. Defendant was prepared with two photo exhibits, which counsel used to cross-examine the victim – the only other actual witness to the violation. Counsel was also able to cross examine the officer. Defendant was prepared and able to present testimony in her defense. Finally, defense counsel was prepared on the date of trial to make several, fact-based argument in support of a finding of reasonable doubt and entry of a not-guilty finding. That these arguments proved unsuccessful is not indicative of prejudice.

Defendant’s claims of prejudice were rightly rejected by the lower court’s as unsupported by the record. While defendant claimed prejudice because of an inability to review – and possibly challenge – the victim’s injuries, as the lower courts’ rightly noted, injury by the victim was not an element of the offense with which defendant was charged. See N.J.S.A. 39:4-

36(a)(1). Moreover, while defendant speculated that review of the police video would have presented evidence supportive of her defense, as the lower courts' rightly noted, no video recorded the violation at issue here as the police officer only arrived on scene after its commission. While defendant further speculated regarding the potential for inconsistent statements, nothing to which the officer, the victim or the defendant testified appeared inconsistent. Mere speculation was rightly found by the lower courts not to equate with prejudice.

Because defendant failed to establish that the denial of her trial-date request for an adjournment was an abuse of discretion, this Court can and should affirm the lower courts' findings and affirmed defendant's conviction.




CONCLUSION

For the above-mentioned reasons and authorities cited in support thereof, the State respectfully requests this Court deny defendant's appeal and affirm the order entered by the lower court.

Respectfully submitted,

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