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STATE OF NEW JERSEY,

Plaintiff/Respondent,

-against-

RICHARD BATTAGLIA,

Defendant/Appellant.

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION

CIVIL ACTION

**ON APPEAL FROM ORDERS OF
THE SUPERIOR COURT OF NEW
JERSEY, LAW DIVISION,
CRIMINAL PART, MORRIS
COUNTY**

DOCKET NO.: A-003466-21

SAT BELOW:
HON. RALPH E. AMIRATA, J.S.C.

BRIEF FOR APPELLANT RICHARD BATTAGLIA

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PRELIMINARY STATEMENT

This appeal stems from a series of serious injustices that deprived Richard Battaglia (“Appellant”)—an indigent, unrepresented defendant—of his most basic constitutional protections. At every crucial stage, the trial court failed to protect Appellant’s fundamental right to counsel, neglected to confirm a knowing and voluntary waiver, and imposed a heavy fine without considering his severe financial hardship. Alone and without legal guidance, Appellant was compelled to navigate the complexities of municipal court procedure, unable to mount a meaningful defense or challenge the State’s case. The court’s superficial treatment of his rights, its exclusion of essential defense evidence, and its acceptance of speculative testimony from the prosecution left Appellant defenseless and voiceless—his fate determined not by the strength of the case, but by the denial of due process.

The impact of these errors is not theoretical. For Appellant, who has faced homelessness, unemployment, and daily struggles for survival, the \$500 fine is not merely punitive—it is devastating. The trial court’s disregard for his indigency and its failure to consider alternatives to a lump-sum payment threaten to deepen his hardship, perpetuating a cycle of poverty and punishment. This case is not just about a municipal violation; it concerns the integrity of our

justice system and the obligation to safeguard the vulnerable from its machinery. The errors described here warrant reversal and remand, not only to protect Appellant's rights but also to reaffirm the fundamental principles of fairness and justice for all.

PROCEDURAL HISTORY

Richard Battaglia ("Appellant") was charged in Hanover Township Municipal Court with violating Hanover Township Ordinance Chapter 171, Section 2, which prohibits littering in public places. The incident underlying the charge occurred on May 20, 2020, when Mr. Battaglia was approached by a Hanover Township police officer while parked in the Wegmans parking lot.

The initial municipal court trial was scheduled for December 6, 2021, but was adjourned due to technical issues that prevented Mr. Battaglia from appearing in person or by video. See 1T¹. The matter proceeded to trial on February 22, 2022, before Judge Brian O'Toole. See 2T. At trial, the State presented testimony from Sergeant Anthony Vitanza and introduced video evidence from Wegmans. Ibid. Mr. Battaglia represented himself, cross-examined the State's witnesses, and testified on his own behalf. Ibid. The municipal court found Mr. Battaglia guilty of violating the littering ordinance

¹ 1T = Transcript of Trial, December 6, 2021; 2T = Transcript of Trial, February 22, 2022; T3 = Transcript of Municipal Court Appeal Hearing, July 5, 2022.

and imposed a \$500 fine plus court costs. 1T24 -4 to -15. The sentence was stayed pending appeal. 2T125-16 to -18.

Mr. Battaglia then filed a timely appeal to the Superior Court, Law Division, Morris County, seeking a de novo review on the record. Da16. The appeal was heard on July 5, 2022, by Judge Ralph E. Amirata. See 3T. The Law Division reviewed the evidence and affirmed the municipal court's finding of guilt and the imposed sentence, again staying the fine and costs for a brief period to allow for further appeal. 3T48 to 51.

Following the Law Division's decision, Mr. Battaglia filed an amended notice of appeal to the Superior Court of New Jersey, Appellate Division, on August 8, 2022, challenging the conviction and the sufficiency of the evidence. Da17. The appeal was docketed as A-003466-21. Ibid. Subsequent proceedings in the Appellate Division included motions for fee waivers, transcript preparation at government expense, and the assignment of pro bono appellate counsel due to Mr. Battaglia's indigency. Da11.

STATEMENT OF FACTS

On February 22, 2022, Appellant was convicted of violating a local ordinance prohibiting public littering, Hanover, NJ, Code ch. 171, § 171-2, in the Hanover Township Municipal Court. Da12 at ¶ 1. After his conviction, Appellant filed a motion to extend the time to file his brief by 45 days, which

was granted. Id. at ¶ 3. On April 24, 2023, Appellant submitted an application for municipal appeal indigency, seeking the assignment of counsel, the waiver of the filing fee, and the preparation of the transcript at the government's expense. Da13 at ¶ 6. The court granted his motion and indigency application on May 4, 2023, and assigned Thomas M. Leeney, Esq., as his pro bono Madden counsel. Ibid.

On November 19, 2024, Scott B. McBride, Esq., of Lowenstein Sandler LLP, was appointed to replace Mr. Leeney as Appellant's new pro bono Madden counsel by order of the court. Da14 at ¶ 12. Since the onset of his indigency application, and continuing through the beginning and duration of representation, Appellant has faced considerable medical challenges. Id. at ¶ 13. His medical history includes multiple hospitalizations for heart-related issues, including acute coronary syndrome, myocardial infarctions, and unstable angina. Ibid.

On April 20, 2024, Appellant was admitted to Saint Clare's Denville Hospital for a non-ST elevated myocardial infarction (NSTEMI) and was discharged on April 23, 2024. Id. at ¶ 14. On May 25, 2024, he was seen at the Atlantic Health System's Emergency Department for chest pain and was diagnosed with NSTEMI and unstable angina. Id. at ¶ 15.

The facts, as described and reported in the trial transcript, are as follows.²

At the time of the incident, Hanover Township Police Sergeant Anthony Vitanza was assigned as a special security detail for Wegmans supermarket, located on Sylvan Way in Hanover, New Jersey. 2T13 -3 to -8, -12 to -25. This assignment was organized by the Hanover Township Police Department. 2T13-21 to -25, 2T14-1 to -4.

On May 20, 2020, at approximately 1:45 p.m., Sergeant Vitanza testified that he observed a white 2020 Kia parked near the 24-Hour Fitness Gym, which was not open at the time. 2T15 -1 to -13. This gym shared the same parking lot as Wegmans. Ibid. In his testimony, Sergeant Vitanza noted that, due to an executive order from the governor at the start of the COVID-10 pandemic, loitering was not permitted for shoppers. Ibid. Therefore, Sergeant Vitanza proceeded to approach the white 2020 Kia. 2T9-7 to -25, 2T10-1 to -2. Upon approaching the vehicle, he observed a pizza box underneath the driver's side of the vehicle. 2T15-13 to -17. When first approached by Sergeant Vitanza, Appellant, claimed the box was not his. 2T16-17 to -19.

Sergeant Vitanza further testified that he deduced the pizza box belonged to Appellant because the box was intact, there were crumbs on Appellant's shirt, and there was liquid oil on the bottom of the pizza box, which indicated that the

box had not been there for a long period of time. 2T16 to 18. After repeatedly asking Appellant if the pizza box was his, Sergeant Vitanza referenced the Wegmans security cameras, stating that if the cameras showed Appellant purchasing the pizza, he would send him a summons in the mail for littering. 2T18 to 19-1 to -5.

Upon inquiry regarding his residence, Appellant revealed his address was a P.O. Box. Sergeant Vitanza stated that P.O. boxes were not supposed to be on driver's licenses and asked where he physically lived. 2T52 to 53. Appellant noted 35 Route 46, Parsippany, and paused when revealing his apartment number was 104. 2T53. Sergeant Vitanza noted that if he was lying, he would be charged with hindering service of a complaint. Ibid. After repeated inquiry, Sergeant Vitanza asserted Appellant admitted the pizza box was his. 2T19. However, he did not witness Appellant placing the pizza box under the vehicle. 2T56-57, 61.

Sergeant Vitanza and Appellant had differing testimony. Appellant proclaimed he was going to throw the box out when he was finished. 2T97, 101. His testimony also challenges the position of the pizza box underneath the car, asserting it was on the right side of the vehicle. 2T70–71, 89, 97. Appellant also stated that, since the car was brand new, he put the pizza box—which was leaking oil—temporarily under the car to avoid damaging the interior. 2T101.

He again asserted he had every intention of throwing the box in the garbage. 2T97, 101.

Video footage obtained from Wegmans confirms Appellant purchased the pizza, but Wegmans was unable to provide footage of his car or the incident with Sergeant Vitanza. 2T102–110.

There was also conflicting testimony regarding Sergeant Vitanza's vehicle recording device. 2T43–44, 100. Appellant asserts that Sergeant Vitanza's vehicle recording device was running, and that Sergeant Vitanza raced up to his vehicle, circling it recklessly. Sergeant Vitanza denies these claims. 2T43–44, 85, 100. However, Appellant maintains that the red light on the dashboard of Sergeant Vitanza's vehicle was on. Ibid. The trial record does not provide further inquiry into whether Sergeant Vitanza's recording system was on, if there may have been film of the incident, or where this additional film may now be located. 1T.

Moreover, the court transcript also reveals that Appellant sought to introduce a written statement and an Internal Affairs complaint he had filed, which described the events at the scene and alleged misconduct by the officer. 1T39-42, 45-46. However, the court did not admit these documents. 1T41-42. The court also sustained repeated objections by the prosecutor when Appellant attempted to question the officer about the content of his report, the

circumstances of the stop, the officer's conduct, the absence of direct observation of the alleged offense, and the officer's investigative methods. 1T35-36, 61-63, 71-72.

While representing himself pro se, Appellant made numerous errors while navigating his representation, including but not limited to attempting to testify during his cross-examination. 1T58. The Court noted that Appellant was rambling and not asking questions, while Appellant asserted he was merely trying to think. Ibid.

After Appellant and the Prosecution rested their cases, Appellant was convicted of violating a local ordinance prohibiting public littering. 2T125. The trial court imposed a \$500 fine (plus \$33 in court costs) without conducting any inquiry into Appellant's ability to pay. Ibid. The record is devoid of any discussion or findings regarding Appellant's income, assets, employment status, or financial obligations. 1T.

The record also demonstrates that Appellant is indigent, that he was granted a waiver of filing fees and transcripts at government expense, and that he applied for the assignment of counsel based on indigency. Da1-2, 11. Appellant has also documented severe financial hardship, including homelessness, unemployment, and reliance on public assistance. See Da12.

I. THE TRIAL COURT’S FAILURE TO SECURE A VALID WAIVER PREJUDICED APPELLANT’S FUNDAMENTAL RIGHT TO COUNSEL AND CONSTITUTES PLAIN ERROR. (SEE (A) (B) (C) AND (D)).

The right to counsel in criminal and quasi-criminal proceedings is a fundamental protection guaranteed by Article I, Paragraph 10, of the New Jersey Constitution. The United States Supreme Court has repeatedly acknowledged that the assistance of counsel is “essential to a fair trial,” and the New Jersey Supreme Court has stressed that an untrained defendant is not in a position to defend himself, even in less complex cases. See United States v. Gonzalez-Lopez, 548 U.S. 140, 147 (2006); State v. Rodriguez, 58 N.J. 281, 295 (1971). Ultimately, “[w]ithout the guiding hand of counsel, an innocent defendant may lose his freedom simply because he does not know how to establish his innocence.” State v. Sugar, 84 N.J. 1, 16 (1980).

A. The Right to Counsel at Trial Is Fundamental and May Only be Waived Knowingly and Voluntarily. (Not Raised Below).

The right to counsel attaches at all critical stages of a criminal proceeding, including municipal court trials for offenses that may result in a loss of liberty or significant fines. See State v. Hermanns, 278 N.J. Super. 19, 29 (App. Div. 1994). To safeguard this right, New Jersey Court Rule 7:3-2(a) requires municipal court judges to inform defendants of their right to retain counsel or, if indigent, to have counsel assigned. This goes beyond just informing the

defendant. The judge must specifically ask the defendant whether legal representation is desired, and the defendant's response must be recorded on the complaint. R. 7:3-2(a); see also State v. Hrycak, 184 N.J. 351, 362 (2005). If the defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court is required to order the defendant to complete an application for assigned counsel and, if indigency is established and the defendant faces a consequence of magnitude, assign the municipal public defender to represent the defendant. R. 7:3-2(b); see State v. Patel, 239 N.J. 424, 428, 436–37 (2019); Hrycak, 184 N.J. at 362.

A defendant may waive the right to counsel, but such a waiver must be made “knowingly, intelligently, and voluntarily.” State v. Crisafi, 128 N.J. 499, 509-10 (1992). The court bears the affirmative duty to ensure that any waiver is clear and unequivocal, and that the defendant is fully apprised of the dangers and disadvantages of self-representation. Id.; see also State v. DuBois, 189 N.J. 454, 468 (2007). The record must reflect a searching inquiry by the court, confirming that the defendant understands the nature of the charges, the range of allowable punishments, and the risks inherent in proceeding without counsel. Crisafi, 128 N.J. at 510-12.

B. The Record Fails to Demonstrate a Knowing and Voluntary Waiver of Counsel. (Not Raised Below).

In Appellant’s case, the record demonstrates that he was indigent and should have been afforded counsel. The court failed to directly ask Appellant if he wished to be represented by counsel or if he understood his rights regarding legal representation. Instead, the right to counsel was mentioned only in passing, buried within a lengthy explanation, and no clear inquiry or waiver was obtained. 2T1-2; 1T6-7. The court’s notice was cursory and did not address the specific factors enumerated in Crisafi, such as the complexity of the case, the possible defenses, or the procedural and evidentiary rules that would govern the proceedings. Nor did the court inquire into Appellant’s education, experience, or capacity to represent himself. The record is devoid of any indication that Appellant was made aware of the “pitfalls of proceeding pro se” or that he affirmatively and unequivocally waived his right to counsel. See State v. Reddish, 181 N.J. 553, 594-95 (2004).

Moreover, under New Jersey law, if a defendant asserts indigency but does not affirmatively state an intention to proceed without counsel, the court is required to order the defendant to complete an application for assigned counsel and, if indigency is established and the defendant faces a consequence of magnitude, assign the municipal public defender to represent the defendant. R. 7:3-2(b); Patel, 239 N.J. at 436–37. Appellant, though indigent and eligible for

assigned counsel on appeal, did not receive the required trial court procedures to ensure he was adequately represented at this critical juncture.

C. The Trial Court’s Failure to Secure a Valid Waiver of Counsel Is a Structural Error Requiring Reversal. (Not Raised Below).

The denial of counsel is considered a structural defect in proceedings and a fundamental error that cannot be subjected to harmless error analysis. Gonzalez-Lopez, 548 U.S. at 148–49. Prejudice is presumed, and a conviction must be reversed if the defendant was not adequately advised of the right to counsel or was denied counsel at a critical stage. State v. Gonzalez, 114 N.J. 592, 608 (1989). A defendant denied the right to counsel does not have to establish actual prejudice on direct appeal; the error is presumed to have affected the outcome. Gonzalez-Lopez, 548 U.S. at 148-49; see also State v. McCombs, 81 N.J. 373, 375 (1979); Patel, 239 N.J. at 436–37. As the New Jersey Supreme Court has made clear, “the absence of counsel at a critical stage of the proceedings is a per se ground for reversal.” State v. Rue, 175 N.J. 1, 18 (2002).

D. Appellant Was Prejudiced by the Lack of Counsel at a Critical Stage and the Trial Court’s Failure to Secure a Valid Waiver. (Not Raised Below).

The consequences of proceeding without counsel were manifest in Appellant’s case. He was required to navigate the complexities of municipal court procedure, cross-examine witnesses, and present legal arguments without the benefit of legal training or guidance. 2T10-12, 81-84. The record reflects

that Appellant struggled to understand the rules of evidence and procedure and repeatedly expressed confusion about his rights and obligations. 2T61,71, 119-120. The absence of counsel deprived him of the opportunity to mount an effective defense and undermined the reliability of the proceedings. “An untrained defendant is in no position to defend himself,” and “without the guiding hand of counsel, an innocent defendant may lose his freedom simply because he does not know how to establish his innocence.” Rodriguez, 58 N.J. at 295; Sugar, 84 N.J. at 16. It is evident that Appellant was not afforded this necessary protection, which directly affected his ability to mount a proper defense, necessitating a reversal to uphold the principles of justice and due process.

Because the trial court failed to ensure that Appellant knowingly and voluntarily waived his right to counsel, and because the record does not reflect a valid waiver, the conviction must be reversed. The denial of counsel at trial is a structural error that cannot be excused or deemed harmless. The matter should be remanded for a new trial at which Appellant is afforded the full protection of his constitutional right to counsel, unless he knowingly, intelligently, and voluntarily waives that right on the record.

II. THE STATE FAILED TO ESTABLISH ALL NECESSARY ELEMENTS TO CONSTITUTE A CONVICTION UNDER § 171-2. (3T34 -22 TO 3T35-4, 3T45 -12 TO -7).

Appellant's conviction under Hanover Township Ordinance 171-2 for littering should not stand, because viewing the evidence in the light most favorable to the State, a reasonable factfinder could not find every element of the offense proven beyond a reasonable doubt. See State v. Reyes, 50 N.J. 454, 458-59 (1967). The ordinance at issue prohibits any person from "throw[ing] or deposit[ing] litter in or upon any street, sidewalk or other public place within the Township, except in public receptacles or in authorized private receptacles for collection or in official Township dumps." Hanover defines "litter" in relevant part as "[g]arbage, refuse and rubbish . . . which, if thrown, deposited or stored as herein prohibited, tends to create a danger to public health, safety and welfare." Hanover, NJ, Code ch. 171, § 171-1(B) (1971). By its plain meaning and context, the language of the ordinance required, for its violation, that Appellant deposited litter in the parking lot such that he created "a danger to public health, safety and welfare," i.e., that he abandoned the rubbish in a public place. The State, therefore, bore the burden to prove beyond a reasonable doubt that Appellant actually "threw or deposited" the pizza box at issue in a public place and that this act was not merely incidental or temporary but constituted an abandonment of the litter as contemplated by the ordinance.

The trial record here failed to establish this. In fact, it established that Appellant was never more than a couple feet away from the pizza box, and that he placed it in his car and drove off with it after his encounter with the officer. Sgt. Vitanza, the State's principal witness, did not observe Appellant discard the pizza box. 2T56-57. Instead, the officer merely spotted a pizza box under Appellant's vehicle after approaching him. Upon questioning him, the officer obtained an admission from Appellant that he had placed the box there, but with the stated intention of picking it up before leaving. 2T19. It is not disputed that, following this encounter, Appellant eventually drove off with the offending pizza box in his car. Ibid.

The State's case rested entirely on an inference that Appellant placed the pizza box under his car with the purpose of abandoning it as litter. The mere presence of the box under his car, even with an acknowledgment that it belonged to him, is insufficient to establish the required act beyond a reasonable doubt where Appellant voluntarily removed the rubbish and carried it off with him. The New Jersey appellate courts have repeatedly reversed convictions where the evidence failed to establish every element of the charged offense. See, e.g., State v. Richardson, No. A-5810-12T2, 2017 N.J. Super. Unpub. LEXIS 1234 (App. Div. July 12, 2017) (reversing conviction where State failed to prove identity of controlled substance); State v. Attavane, No. 6-2008, 2009 WL

4793952, at *6 (N.J. Super. Ct. App. Div. Dec. 15, 2009) (concluding that the State failed to prove beyond a reasonable doubt that defendant violated municipal ordinance by operating her premises for a non-permitted use, reversing her conviction, and remanding matter for entry of a judgment of acquittal).

The trial record here conclusively demonstrated that the State failed to prove beyond a reasonable doubt that Appellant “threw or deposited” litter such that he abandoned it and created “a danger to public health, safety and welfare.” Therefore, the conviction must be reversed and a judgment of acquittal entered.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN ITS EVIDENCE RULINGS, PREJUDICING APPELLANT’S ABILITY TO DEFEND HIMSELF. (SEE (A) (B) AND (C)).

A trial court’s evidentiary rulings are reviewed for abuse of discretion. While trial judges are afforded broad latitude in determining the admissibility of evidence, that discretion is not unlimited. The court must apply the rules of evidence fairly and consistently and must ensure that the proceedings are fundamentally fair. An abuse of discretion occurs when the court’s ruling is “so wide off the mark that a manifest denial of justice resulted.” State v. Carter, 91 N.J. 86, 106 (1982); State v. J.A.C., 210 N.J. 281, 295 (2012). The trial court’s discretion is further constrained by the defendant’s constitutional rights,

including the right to present a defense and to confront adverse witnesses. N.J. Const. art. I, ¶ 10.

A. The Trial Court Excluded Relevant Defense Evidence. (Not Raised Below).

The trial court repeatedly excluded or limited the introduction of evidence that was directly relevant to Appellant’s initial defense and to the credibility of the State’s key witness, Sergeant Vitanza. The transcript reveals that Appellant sought to introduce a written statement and an Internal Affairs complaint he had filed, which described the events at the scene and alleged misconduct by the officer. 2T39-42, 45-46. The court, however, refused to admit these documents, characterizing them as irrelevant or as “Internal Affairs” matters not appropriate for the municipal trial. 2T41-42. The court also sustained repeated objections by the prosecutor when Appellant attempted to question the officer about the content of his report, the circumstances of the stop, and the officer’s conduct. 2T35, 61, 71-72.

This exclusion of evidence was not a mere technicality. Appellant’s written statement and complaint were not offered for the truth of the matters asserted in the Internal Affairs process, but rather to demonstrate his contemporaneous account of the incident, to impeach the officer’s credibility, and to support his claim of police overreach and lack of probable cause. The court’s refusal to consider this evidence deprived Appellant of the opportunity

to present a complete defense and to challenge the State’s narrative. See State v. Garron, 177 N.J. 147, 169 (2003) (the right to present a defense is a fundamental element of due process).

B. The Trial Court Improperly Limited Appellant’s Cross-Examination and Confrontation Rights. (Not Raised Below).

The right to cross-examine adverse witnesses is a core component of the Sixth Amendment and is essential to a fair trial. Delaware v. Van Arsdall, 475 U.S. 673, 678 (1986); State v. Castagna, 187 N.J. 293, 309 (2006). While the court may impose reasonable limits to avoid harassment or confusion, it may not “cut off in limine all inquiry on a subject” that is relevant to the defense. Van Arsdall, 475 U.S. at 679. Here, the court’s repeated curtailment of cross-examination prevented Appellant from exposing potential bias, inconsistencies, and the lack of direct evidence, thereby undermining the reliability of the verdict.

The trial court also abused its discretion by unduly restricting Appellant’s cross-examination of Sergeant Vitanza. The record shows that Appellant was repeatedly interrupted and prevented from probing the officer’s basis for the stop, the absence of direct observation of the alleged offense, and the officer’s investigative methods. 2T35-36, 61-63, 71-72. The court sustained objections to questions that went to the heart of the defense—whether the officer had probable cause, whether he actually witnessed the alleged littering, and whether his report

was consistent with the physical evidence and video footage. Consequently, the constraints imposed on Appellant's defense warrant a reversal of the conviction to ensure a just and fair trial.

C. The Trial Court Improperly Admitted Speculative and Unreliable Testimony. (3T43 to 46).

Conversely, the trial court permitted the State's witness to offer speculative and conclusory testimony regarding the condition of the pizza box, the likelihood that it had been recently placed, and the supposed admission by Appellant. 2T62, 72; 1T23-24, 45-46. The officer was allowed to opine, without scientific or factual basis, that the oil on the box was "fresh," that the box "wasn't soiled, wasn't dirty, wasn't crushed," and that "there's only one conclusion, you put it there and you admitted to putting it there." 2T62. These statements were not based on personal observation of the alleged act of littering, but on after-the-fact conjecture and circumstantial inference.

The admission of such speculative testimony, particularly when coupled with the exclusion of Appellant's own account and the limitation of cross-examination, tipped the evidentiary balance unfairly in favor of the State. The court's failure to require a proper foundation for the officer's opinions and its willingness to accept conclusory statements as proof beyond a reasonable doubt constituted an abuse of discretion. See State v. McLean, 205 N.J. 438, 460

(2011) (police officers may not offer lay opinion on matters requiring specialized knowledge or on the ultimate issue of guilt).

The cumulative effect of the trial court's evidentiary errors deprived Appellant of a fair opportunity to present his defense, to confront the State's evidence, and to challenge the credibility of the prosecution's sole eyewitness. The court's rulings were not isolated or harmless, but pervaded the trial and directly affected the outcome. "An error in the admission or exclusion of evidence is grounds for reversal if it is clearly capable of producing an unjust result." State v. Macon, 57 N.J. 325, 337 (1971); R. 2:10-2. The trial court's evidentiary rulings in this case were not merely erroneous but constituted an abuse of discretion that resulted in a manifest denial of justice. Therefore, the conviction must be reversed and the matter remanded for a new trial at which the rules of evidence and Appellant's constitutional rights are scrupulously observed.

IV. THE TRIAL COURT IMPOSED AN EXCESSIVE FINE ON AN INDIGENT DEFENDANT. (SEE (A) AND (B)).

The Eighth Amendment to the United States Constitution, as incorporated against the states by the Fourteenth Amendment, provides that "[e]xcessive fines [shall not be] imposed." This protection against excessive fines is mirrored in Article I, Paragraph 12, of the New Jersey Constitution, reinforced by the New Jersey Supreme Court. These constitutional provisions serve as a critical check

on the government’s power to punish by monetary sanction, ensuring that fines are not “grossly disproportional to the gravity of the offense” or to the circumstances of the offender. United States v. Bajakajian, 524 U.S. 321, 334 (1998). The law is clear: a fine must fit both the crime and the individual, and a court may not impose a financial penalty on an indigent defendant that is out of proportion to the offense. See State v. Newman, 238 N.J. 81, 99-100 (2019) (holding that a sentencing court must consider the defendant’s ability to pay and that a fine grossly disproportionate to the offense or the defendant’s financial circumstances is constitutionally excessive); N.J.S.A. 2C:44-2(c)(1) (requiring the court to “take into account the financial resources of the defendant and the nature of the burden that its payment will impose”).

New Jersey statutory law reinforces these constitutional principles. Under N.J.S.A. 2C:44-2(a)(2), a court may impose a fine only if “[t]he defendant is able, or given a fair opportunity to do so, will be able to pay the fine.” N.J.S.A. 2C:44-2(c)(1) further requires that “the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.” These provisions mandate a pre-sentence inquiry into the defendant’s financial ability, including income, assets, debts, and dependents, to ensure that a fine does not punish a defendant simply for being poor. See State v. Newman, 132 N.J. 159, 169–70 (1993) (reversed and remanded for

further proceedings regarding the imposition of a fine and consideration of the defendant's ability to pay, after finding the trial court failed to adequately evaluate ability to pay before imposing restitution); State v. Ferguson, 273 N.J. Super. 486, 499–500 (App. Div. 1994) (reversed and remanded for resentencing where the trial court imposed a fine without stating reasons or considering the defendant's ability to pay, and failed to give the defendant an opportunity to be heard regarding ability to pay or the method of payment).; cf. Bearden v. Georgia, 461 U.S. 660, 667-68 (1983) (holding that a state may not punish a defendant for inability to pay a fine without first considering alternatives and making findings regarding the defendant's financial capacity).

A. The Trial Court Failed to Consider Appellant's Ability to Pay Before Imposing the Fine. (Not Raised Below).

The trial court imposed a \$500 fine (plus \$33 in court costs) for a municipal littering violation without conducting any inquiry into his ability to pay. The record is devoid of any discussion or findings regarding Appellant's income, assets, employment status, or financial obligations. This omission is not a mere technicality; it is a violation of both constitutional and statutory requirements. As the New Jersey Supreme Court made clear in Newman, and as codified in N.J.S.A. 2C:44-2, a sentencing court must evaluate a defendant's ability to pay before imposing a fine. The absence of any such inquiry or finding in the record renders the fine procedurally improper and constitutionally

suspect. State v. Bolvito, 217 N.J. 221, 234–35 (2014) (reversed and remanded for resentencing because the sentencing court failed to consider the defendant’s ability to pay and did not provide a statement of reasons for the amount imposed).

The record demonstrates that Appellant is indigent. He was granted a waiver of filing fees and transcripts at government expense, and he applied for the assignment of counsel based on indigency. See Da1-2, 11. He has also documented severe financial hardship, including homelessness, unemployment, and reliance on public assistance. See Da12. Despite this, the trial court imposed a \$500 fine without any meaningful assessment of his financial circumstances.

Moreover, the court failed to consider alternatives to a lump-sum fine, such as installment payments, community service, or a reduction in the fine amount. The imposition of a substantial fine on an indigent defendant, without consideration of alternatives or the defendant’s ability to pay, is precisely the scenario the Excessive Fines Clause and N.J.S.A. 2C:44-2 are designed to prevent.

B. The \$500 Fine is Grossly Disproportionate and Constitutionally Excessive. (Not Raised Below).

The \$500 fine imposed on Appellant is grossly disproportionate to both the gravity of the offense—a municipal littering violation—and to his personal circumstances as an indigent defendant. For a person with little or no income

who has experienced homelessness, a \$500 fine is not merely punitive; it may force the choice between paying the fine and meeting basic needs such as food, shelter, or medical care. The New Jersey Supreme Court in Newman and the Appellate Division in State v. Zimm, 321 N.J. Super. 92 (App. Div. 1999), have both held that a fine that is unaffordable to an indigent defendant, and imposed without a record of ability to pay, is excessive and thus unconstitutional.

The trial court's failure to conduct a financial ability-to-pay analysis, to make findings on the record, or to consider alternatives to a lump-sum fine renders the \$500 fine both procedurally and constitutionally infirm. The fine is excessive—not in the abstract—but as applied to Appellant's particular circumstances. The imposition of such a fine creates a potential cascade of negative consequences—late fees, warrants, license suspensions, or even incarceration for nonpayment—that far exceeds the gravity of the original offense. In light of the constitutional and statutory violations outlined above, the \$500 fine imposed on Appellant should be vacated or substantially reduced. The proper remedy is for the court to remand for a new hearing at which the trial court must conduct a meaningful inquiry into Appellant's financial circumstances, make findings on the record, and consider alternatives to a lump-sum fine.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the conviction, vacate the imposed fine, and remand this matter for new proceedings consistent with constitutional and statutory requirements.

Dated: June 27, 2025

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STATE OF NEW JERSEY,

Plaintiff/Respondent,

-against-

RICHARD BATTAGLIA,

Defendant/Appellant.

SUPERIOR COURT OF NEW
JERSEY

APPELLATE DIVISION

CIVIL ACTION

**ON APPEAL FROM ORDERS OF
THE SUPERIOR COURT OF NEW
JERSEY, LAW DIVISION,
CRIMINAL PART, MORRIS
COUNTY**

DOCKET NO.:A-003466-21

SAT BELOW:

HON. RALPH E. AMIRATA, J.M.C.

BRIEF OF PLAINTIFF/RESPONDENT, STATE OF NEW JERSEY

Of Counsel and on the Brief:

John E. Horan, Esq. (040212001)

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PRELIMINARY STATEMENT

This is an appeal from a conviction in the Township of Hanover Municipal Court in which the appellant, Richard Battaglia (“Appellant”), represented himself on a local municipal ordinance that the Appellant littered in a public place by placing a pizza box under his automobile while in a public parking lot. Mr. Battaglia, despite being unfamiliar with the judicial process, voluntarily chose to represent himself and was given significant leeway during the municipal court trial, which is customary in the Township of Hanover's Municipal Court and in all municipal courts throughout New Jersey. At the conclusion of the Municipal Court hearing, the Appellant was found guilty and issued a monetary fine.

The Appellant appealed the conviction to the Superior Court of New Jersey, Law Division, which was affirmed. The Appellant now raises arguments that are without merit, most of which were not raised below. The Appellant may be dissatisfied with the result of his hearing, but he was afforded the opportunity to be heard and present his defense. He was convicted based upon the credible evidence presented to the Court.

Despite many new arguments from the Appellant in this appeal, his conviction must remain undisturbed as his guilt was proven beyond a reasonable doubt after a full hearing before the Hanover Township Municipal Court.

PROCEDURAL HISTORY

The Appellant was charged with a municipal ordinance violation in the Township of Hanover, specifically with littering in a public place in violation of Chapter 171 Section 2 of the Township of Hanover's Municipal Code. Specifically, Appellant, was charged with littering in a public place by placing his pizza box underneath his vehicle in a public parking lot.

The matter was initially scheduled for trial on December 6, 2021, in which the Appellant appeared via video for the Appellant's convenience. The trial was quickly adjourned because the State's witness, Sergeant Anthony Vitanza, could not identify the appellant on the video. 1T¹. The trial was then resumed in person on February 22, 2022. 2T. At the trial, the State called its sole witness, Sergeant Anthony Vitanza, to provide testimony. Ibid. The Appellant, who was appearing pro se, cross-examined Sergeant Vitanza. 2T31-78. The Appellant also testified on his own behalf, and he produced testimony of a witness, Sean Brett, on his behalf. 2T83-90. The Appellant's witness was cross-examined by the State. Ibid. At the conclusion of the hearing, the Appellant was found guilty on violating Chapter 171 Section 2 of the Township of Hanover's Municipal Code and was issued a fine of \$500 plus \$33 cost of court. 2T125, 12-16. The Municipal Court

¹ 1T is the transcript of the trial of December 6, 2021. 2T is the transcript of the trial February 22 2022 and 3T is the transcript of the municipal court appeal hearing on July 5 2022. The transcripts were supplied to the Court by Appellant in the Appellant Submission.

at the request of the Appellant stayed the sentence pending appeal. 2T126, 13-15.

The Appellant filed an appeal with the Superior Court of New Jersey, Law Division. Da16. On July 5, 2022, after a hearing oral argument on the appeal the Honorable Ralph E Amirata, J.S.C. affirmed the conviction of the Township of Hanover Municipal Court. 3T. Judge Amirata further affirmed the \$500 fine and \$33 cost of court. 3T48, 1-3.

The Appellant then filed the within appeal and was assigned pro bono counsel. Da11.

STATEMENT OF FACTS

On May 20, 2020, the Appellant was in the parking lot of the Wegmans supermarket and 24-Hour Fitness Gym in the Township of Hanover. 2T14-15,17-5. No other vehicles were in the parking lot. 2T33,2. While the Appellant was in his vehicle in the parking lot, Sergeant Anthony Vitanza approached the vehicle as there was no loitering allowed at that time due to the pandemic. 2T15,6-10. When Sergeant Vitanza arrives at the vehicle, he observes a pizza box underneath the vehicle. 2T15, 13-15. Sergeant Vitanza inquired from the Appellant whether the pizza box was his and initially the Appellant denied it. 2T16, 14-20. Sergeant Vitanza believed that the pizza box did belong to the Appellant because there were crumbs on the Appellant's shirt and the box was not crushed and there was fresh oil at the bottom of the pizza box. 2T16-17, 22-10. Eventually, the Appellant

admitted that the pizza box belonged to him. 2T18-19, 24-6. Appellant advised that he was intending to throw the pizza box out. 2T19, 4-6. The Appellant cross-examined Sergeant Vitanza. 2T31. The Appellant was also able to testify on his own behalf and was able to call his own witness. 2T83, 3-5. The Appellant sought to introduce into evidence an Internal Affairs complaint that he had filed against Sergeant Vitanza. 2T40, 5-17. The Court did not allow the Internal Affairs complaint to be entered into evidence as finding it to not be relevant. 2T42, 17-24. At the conclusion of the trial the Appellant was convicted of violating Section 171 -2 of the Hanover Township Municipal Code. Appellant was ordered to pay a violation fine of \$500 plus \$33 court costs. 2T126, 10-12. However, the fine was stayed at the Appellant's request pending an appeal by the Appellant. 2T126, 13-16. The appellant filed an appeal to the Superior Court of New Jersey which was affirmed by the Superior Court. 3T.

LEGAL ARGUMENT

I. THE APPELLANT HAS FAILED TO ESTABLISH THAT HE WAS DENIED HIS RIGHT TO LEGAL COUNSEL AND FURTHERMORE APPELLANT VOLUNTARILY WAIVED HIS RIGHT TO LEGAL COUNSEL.

A. Appellant has not Submitted any Evidence he was Denied his Right to Legal Counsel.

The Appellant argues that he was denied his right to legal counsel and that the trial court failed to secure a valid waiver by the Appellant of his right to legal counsel. A defendant in Municipal Court in New Jersey is entitled to legal

counsel at all times, and is entitled to apply for the services of a Municipal Public Defender whenever the defendant faces a “sentence of magnitude.” State v. Hermanns, 278 N.J. Super. 19 (App. Div. 1994). Pursuant to New Jersey Rules of Court, a sentence of magnitude is any sentence in which the defendant faces potential jail sentence, a suspension of his or her driver's license, or monetary fines in the amount of \$800.00 or greater.² Here, the Appellant was charged with a violation of a municipal ordinance which carried with it the potential fine of up to \$1,000.00.

Pursuant to R. 7:3-2(a), the defendant at every first appearance in the Municipal Court is to be advised of the nature of the charges against him or her, the potential sentencing that the defendant faces, and his or her right to counsel or to apply for the services of the Municipal Public Defender. This generally occurs at the defendant's first appearance on the charges that have been lodged against him or her.

In the Appellant's brief, he argues through counsel that he was denied his right to legal counsel during the Municipal Court proceedings, and was denied the right to protections against injustice. Appellant, however, does not provide a copy of the transcript of the Appellant's first appearance before the Municipal Court, in which presumably the Appellant was advised of his right to remain

² At the time of the Appellant's Municipal Court matter in 2021 the monetary threshold amount was \$750.00.

silent, the nature of the charge against him, the potential sentencing he faced if convicted and his right to be represented by counsel. There is nothing in anything that is submitted on behalf on the Appellant to suggest that that did not happen. Appellant, therefore, fails to satisfy his burden to establish that he was denied his right to legal counsel or that the Court failed to advise him of his rights and did not obtain a valid waiver from the Appellant as to his right to legal counsel. Instead a review of the back of the complaint in this matter indicates that the Appellant was advised of his rights on 6/15 and indicated he didn't wish to have counsel represent him. Pa1.

In New Jersey, the burden of proof in an appeal always rests with the Appellant. The Appellant, however, merely states in his brief that he was denied the right to counsel which he bases solely upon a review of the transcripts of the trial proceedings on December 6, 2021 and February 22, 2022. He does not submit anything surrounding his first appearance and/or arraignment which again appears to indicate he did not desire counsel. Pa1. Again, it is generally at the first appearance in which a defendant is advised of the nature of the charges against him and his right to counsel, not at the trial proceeding.

Appellant also argues that if a defendant in a Municipal Court proceeding asserts indigency, but does not affirmatively state an intention to proceed without counsel, the court is required to order the defendant to complete an application for the services of the municipal public defender. State v. Patel, 239 N.J. 424, 428

(2019). In this regard, the Appellant has not demonstrated any credible evidence that he indicated to the court that he was indigent. A review of the documents that were provided by the Appellant in his Appendix indicate that the first time his indigency was raised was when he was seeking assistance of counsel with this appeal. It was not raised in the Municipal Court level or in the Law Division.

B. Defendant Was Advised of his Right to Legal Counsel and Voluntarily Waived his Right.

In Addition to the back of the complaint indicating that Appellant was advised of his rights and indicated that he didn't desire counsel on June 15, 2020 the Appellant was also advised at trial of his right to proceed with legal counsel on December 6, 2021. Based upon a copy of the transcripts that were supplied by the Appellant in this appeal, it is clear that he was advised of his right to legal counsel and voluntarily and knowingly waived that right. At the first trial date on December 6, 2021, the Appellant indicated very clearly when asked to state his name for the record, he stated, "yes, Richard Battaglia, appearing for myself 1T4, 8-10. Furthermore, and more importantly, it must be noted that at the trial date of February 22, 2022, the Appellant was advised of his right for the services of the public defender. Specifically, the Honorable Brian O'Toole, J.M.C. advised the Appellant as follows:

You have the right to the services of the public defender, but it is not unlimited. I note that the defendant is, is not represented by the public defender in this instance. If the public defender is available, if your potential penalties are in the following area, one, a \$750 fine or more, two, a substantial loss of driving privileges, three,

any jail term one day or obviously more. There is also, incidentally, a \$200 statutory fee, for the services of the public defender, and this doesn't go to the attorney, it goes to the township to administer the program. This \$200 fee can be waived in situations of hardship. So if you want to seek a waiver, you need to do that before we start the case and I'll give you the opportunity to. 2T3-4; 21-10

When Judge O' Toole was finished giving the Appellant all of his various rights, he asked the Appellant if he had any questions and the Appellant advised he had one question, which was that he would like to add a document to the case file. 2T8, 8-10. Appellant did not indicate he wanted legal counsel. As a matter of fact, at the December 6, 2021, or February 22, 2022 trial dates does the Appellant ever indicate that he wishes to be represented by counsel or seek the services of a public defender. Rather, the Appellant engages in lengthy dialogue about various injustices that he believes the Hanover Township police performed in this matter, and that he believes that discovery is incomplete and he would like to add documents. This dialogue is consistent with the Appellant's clear intention to represent himself pro-se. Accordingly, the Appellant in this matter had clearly and voluntarily waived his right to legal counsel.

Appellant argues that the right to a council and the waiver of such right must be knowingly, intelligently and voluntarily given. State v. Crisafi, 128 N.J. 499, 509-510 (1992). Again, Appellant sets forth his entire argument that he was denied his right to counsel on the fact that the Appellant appeared pro-se at the Municipal Court trials. There is a total absence of any transcript or other document supporting the Appellant's claim. Appellant essentially requests that

we assume that he was denied his right to legal counsel, despite all evidence indicating he was advised of his right to counsel and voluntarily and knowingly proceeded to represent himself.

C. Appellant did not Raise the Issue of Right to Counsel Below

The first time that the Appellant has raised his argument that he was denied the right to counsel is during this appeal. The issue was not raised before the Municipal Court and was not raised in his appeal before the Law Division and the Honorable Ralph E. Amirata, J.S.C. on July 5, 2022. Issues that are not raised below are generally not considered during appeal. State v. Lawless 214 N.J. 594 (2013). The court may consider issues not raised below if it meets the plain error standard pursuant to R. 2:10-2. Under the plain error standard, the Appellant bears the burden to show that there was an error, that the error was clearly capable of producing an unjust result and that there is a reasonable doubt as to whether the error led to a result that might not otherwise have been reached. State v. Dunbrack, 245 N.J. 531 (2021). Here, the Appellant never once during Municipal Court proceedings or during the Law Division appeal raised a desire to be represented by legal counsel. Clearly, if the Appellant desired the services of counsel, it would be common sense to expect him to have raised it either at the Municipal Court or Law Division level. This is true especially when a party does not raise the issue before the trial court when doing so could have easily cured

the issue, and then the defendant is subsequently rewarded with the opportunity to rerun a trial. State v. Santamaria, 236 N.J. 390, (2019).

For all of these reasons, the Appellant has failed to satisfy the Appellant's burden of demonstrating that he was denied his right to legal counsel and that his waiver of counsel was not knowingly, voluntarily and intelligently given.

II. APPELLANT'S GUILT WAS ESTABLISHED BEYOND A REASONABLE DOUBT.

The Appellant argues that the State failed to prove beyond a reasonable doubt each and every element of the charge that was lodged against the Appellant. The Appellant's position is erroneous and without merit.

The State called at trial Sergeant Anthony Vitanza to provide testimony. Sergeant Vitanza was the officer who issued the citation to the Appellant. Sergeant Vitanza testified that on May 20, 2022, he observed the defendant's motor vehicle parked in the Wegman's parking lot facing the 24-Hour Fitness Gym. 2T15,1-5. It was during the COVID pandemic. 2T15, 7. There were no other vehicles in the parking lot. 2T33,1-2. Sergeant Vitanza testified that he approached the vehicle to perform a community caretaking function and located cardboard box underneath the vehicle. 2T15,11-15. Sergeant Vitanza eventually discovered that it was a pizza box and that the oil in the pizza box was fresh and the pizza box was not crushed or otherwise damaged. 2T17,1-9. Sergeant Vitanza also noticed crumbs on the Appellant's shirt. 2T17, 21-23. Sergeant Vitanza testified that the Appellant was located in the driver's seat of the motor vehicle.

There was no one else in the vehicle with the Appellant. 2T15, 15-21. Sergeant Vitanza asked the Appellant if the pizza box belonged to him. The Appellant initially denied it. 2T17, 16-17. Sergeant Vitanza told the Appellant that he could take the pizza box and put it in one of the many garbage cans located in the parking lot. 2T17, 18-20. Appellant continued to deny that the pizza box was his and would not put the pizza box in a garbage can. 2T17, 21-25.

After Sergeant Vitanza notified the Appellant that Sergeant Vitanza could check the security cameras of the parking lot, the Appellant for the first time admitted that the pizza box belonged to him 2T18-19; 24-5. Sergeant Vitanza again advised the Appellant that he could have put the pizza box in a garbage can, and the Appellant then exited his vehicle and picked up the pizza box and put it in the passenger side of Appellant's motor vehicle. 2T19, 21-25. The State also introduced a video from Wegmans showing the Appellant purchasing the pizza and leaving the store with the cardboard box roughly 10 to 15 minutes prior to Sergeant Vitanza arriving at the scene. 2T29, 3-23.

The Appellant cross-examined Sergeant Vitanza, but his cross-examination focused more on questions surrounding an Internal Affairs investigation complaint that the Appellant lodged against Sergeant Vitanza and a Government Council Records complaint. There was also some cross-examination as to whether the pizza box was underneath the driver's side of the vehicle or underneath the passenger side of the vehicle. The Appellant testified on his own

behalf, and he also produced a witness who was employed with Wegman's, although the witness ultimately proved to be equally helpful to the State.

At the conclusion of the testimony, Judge O'Toole, as the ultimate finder of fact, found Sergeant Vitanza be credible and believed that the State satisfied its burden beyond a reasonable doubt in accordance with State v. Locurto, 157 N.J. 463 (1999). Judge O' Toole sentenced the Appellant to a \$500 fine plus cost of court. The ordinance violation carried with it the potential fine of up to \$1,000, but Judge O' Toole only issued five \$500 as a fine which was within his sole discretion.

Appellant argues in this appeal that the State failed to show that the Appellant deposited the litter in such a manner that he abandoned it, or that he intended to abandon the pizza box and create a public health, safety or welfare issue. In this regard, the Appellant overlooks that he was advised by Sergeant Vitanza initially that he could put the pizza box in a garbage receptacle and the Appellant initially denied that the box belonged to him. He only admitted it after he found out that there may be security footage of the parking lot. Clearly, if the Appellant had not intended to abandon the pizza box under his motor vehicle, he would have accepted ownership of it and disposed of it when Sergeant Vitanza gave him the opportunity.

Again, these issues were trial issues that were determined based upon credibility determination by Judge O'Toole. The only defense the Appellant

raised during trial was that he intended to take the pizza box with him, which was in direct conflict with the testimony of Sergeant Vitanza. However, a Municipal Court Judge is able to resolve the issue of conflicting testimony or positions on the basis of a credibility assessment alone, and is not required to make independent reasonings that support the court's decision. Locurto, supra. at 454. State v. Federico, 414 N.J. Super. 321, 324 (App. Div. 2010)

Based upon the above, the State proved beyond a reasonable doubt that the Appellant, by his own admission, placed the pizza box under his motor vehicle. The public parking lot is a public place despite the Appellant's argument at trial that it was a private parking lot. A public parking lot is a quasi-public property for purposes of municipal court offenses. State v. Sisti, 62 N.J. Super. 84, 87 (App. Div. 1960).

Judge Amirata affirmed the findings of Judge O'Toole and also found that the State had proved the Appellant's guilt beyond a reasonable doubt. The determinations of the Hanover Township Municipal Court and the Law Division should remain undisturbed.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ITS EVIDENTIARY RULINGS DURING TRIAL.

The Appellant argues that the trial court erred in its evidential rulings by not allowing the Appellant to introduce certain documents, by limiting the Appellant's cross-examination rights, and by improperly admitting speculative and unreliable testimony. Once again these are issues that were not raised below,

and therefore, should not be considered because neither the Municipal Court nor the Law Division were provided with the opportunity to review the rulings. Furthermore, none of the objections or issues were preserved for appeal during Municipal Court proceedings. Nevertheless, the Appellant's arguments on the evidentiary issues are without merit.

A. The Internal Affairs Complaint is not Relevant

New Jersey Rules of Evidence apply to Municipal Court trials. State v. Gibson, 219 N.J. 227, 240 (2014). The conduct of any trial is “in the hands of the Judge.” State v. Menke, 25 N.J. 66, 70 (1957) State v. Loce, 267 N.J. Super. 102, 108 (Law Div. 1991) State v. Prickett, 240 N.J. Super. 139, 147 (App. Div. 1990).

Here, the Appellant sought to introduce, during cross-examination of Sergeant Vitanza, an Internal Affairs investigation complaint that the Appellant lodged against Sergeant Vitanza. The court ultimately did not allow the handwritten Internal Affairs complaint that was written by the Appellant into evidence. The trial court found that the Internal Affairs complaint was irrelevant. Pursuant to N.J.R.E. 402 only relevant evidence is admissible. Pursuant to N.J.R.E. 401 relevant evidence is any evidence that has a tendency to prove or disprove any fact or consequence to the determination of the action. In this matter, the charge that was lodged against the Appellant was that he littered in a public place. That requires the State to prove that the Appellant placed litter in a public place with the intention to abandon it and that it would have an effect on

the public safety, health, or welfare. The content of an Internal Affairs complaint written by the Appellant is not relevant to the charge.

Additionally, the Appellant had the right to testify at the trial and that right is constitutionally protected. State v. Hishmeh, 266 N.J. Super. 162, 166 (App. Div. 1993). If the Appellant chose not to testify the Court would have drawn no negative inference. State v. Grant, 196 N.J. Super. 477 (App. Div. 1984).

Here, the Appellant could have cross-examined Sgt. Vitanza as to the content that was contained within the Internal Affairs complaint and could have used any facts contained in that complaint, which the Appellant wrote himself, to attempt to impeach the testimony of Sergeant Vitanza. There is nothing to indicate that the Internal Affairs investigation complaint needed to be entered into evidence. It appears to be facially irrelevant to the charge of littering and it was simply an attempt by the Appellant to continue to harass Sergeant Vitanza because the Appellant was dissatisfied that he received a citation from Sergeant Vitanza as to the littering charge.

B. The Appellant's Cross-Examination was not Improperly Limited

Appellant argues that his cross-examination was improperly limited and it negatively effected his ability to challenge whether Sergeant Vitanza had probable cause and whether he witnessed the littering. Appellant or counsel, however, does not point to any specific objection or any ruling that improperly

limited his cross-examination. Rather, Appellant merely indicates the Court improperly limited his cross-examination by sustaining numerous objections.

A review of the transcript indicates that the Court sustained objections when the Appellant asked questions that had already been asked numerous times or sought to make statements that were more appropriate for direct examination or simply accused Sergeant Vitanza of lying. Appellant fails to establish how any of these proper objections limited to his right to present a defense. Furthermore, none of these objections were raised during trial or in the Law Division appeal.

C. The Trial Admitted Relevant and Reliable Evidence

Appellant argues that the trial court erred in allowing Sgt. Vitanza to testify about certain issues without scientific or factual basis, such as the oil on the pizza box being fresh, or that the box wasn't crushed, and Sergeant Vitanza's belief that, the only conclusion is that the Appellant placed the box under the vehicle. This overlooks the fact that the Appellant admitted that the pizza box was his and that he placed the box under the vehicle.

Again, the trial court is permitted to hear all testimony and to attach whatever weight the trial court feels is appropriate to the testimony. Locurto, supra. Furthermore, the Municipal Court Judge is the only individual who is allowed to hear all testimony and make determinations as there are no jury trials in Municipal Court. The Judge is the ultimate finder of fact and determines issues of credibility. Sergeant Vitanza was permitted to testify as to his

observations, and it is ultimately up to the Judge to decide whether or not the evidence establishes the Appellant's guilt beyond a reasonable doubt.

The Appellant also appears to argue that none of Sgt. Vitanza's observations occurred during the actual act of littering, but were rather after-the-fact conjecture. However, in many municipal court trials, the officer testifies as to after-the-fact observations. This is akin to a police officer arriving at the scene of a motor vehicle accident and then making determinations as to what happened based upon the location of the vehicle, the presence of skid marks, and any statements made or other circumstantial evidence. Appellant's position that Sgt. Vitanza should only have been allowed to testify as to his direct observations are simply without merit and impractical.

IV. THE \$500 FINE WAS NOT EXCESSIVE OR UNCONSTITUTIONAL

Appellant argues that the \$500 fine plus cost of court that was issued by the Municipal Court was excessive and violates the United States Constitution. Appellant argues that he was indigent and that the court imposed the fine without any assessment as to the appellant's financial circumstances. Appellant also argues that the court failed to consider alternatives to the fine, such as an installment payment plan or community service.

The Appellant overlooks that the ordinance violation that the Appellant was convicted of allows for a fine up to \$1,000. After the court advised the Appellant that the fine was going to be \$500 plus \$33 cost of court, the Appellant

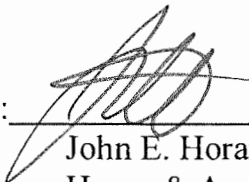
did not indicate an inability to pay the fine. Rather, the Appellant argued that he was requesting a stay of the fine pending an appeal, which the court granted to the Appellant. 2T125-126;12-13. At no point did the Appellant allow the Court to address payment of fine because he immediately requested a stay. The Township of Hanover Municipal Court almost always afford defendants the opportunity to be placed on a payment plan for any and all fines which is also common practice in all Municipal Courts. Here, however, the Appellant immediately requested a stay of the fine and never indicated that he was indigent or had the inability to pay it or needed a payment plan or other arrangement.

Lastly, Appellant argues that the Court's imposition of a fine that is unaffordable to an indigent defendant and imposed without a record of an ability to pay is unconstitutional. State v. Zimm, 321 N.J. Super. 92 (App. Div. 1999). However, again, the Court never had the opportunity to discuss a payment arrangement or even address payment because the Appellant immediately requested a stay. Furthermore, to accept Appellant's position would essentially mean that any defendant who was indigent in Municipal Court would not have to pay a fine which is not the rule or practice.

CONCLUSION

For all of the foregoing reasons, the State requests that the appeal be denied and findings of the lower courts remain undisturbed.

Dated: August 11, 2025

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STATE OF NEW JERSEY,

Plaintiff/Respondent,

-against-

RICHARD BATTAGLIA,

Defendant/Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

CIVIL ACTION

**ON APPEAL FROM ORDERS OF
THE SUPERIOR COURT OF NEW
JERSEY, LAW DIVISION,
CRIMINAL PART, MORRIS
COUNTY**

DOCKET NO.: A-003466-21

SAT BELOW:
HON. RALPH E. AMIRATA, J.S.C.

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PRELIMINARY STATEMENT

The State's opposition rests on three brittle pillars. First, it contends that the trial court performed a proper inquiry into Appellant's waiver of his right to counsel, and that a simple check-box notation, coupled with a surface-level inquiry, suffices to demonstrate compliance with the waiver-of-counsel requirements established in State v. Crisafi and State v. Patel. Second, the State maintains that any missteps by the trial court were merely harmless, ignoring the well-established principle that depriving a defendant of the right to counsel constitutes plain error. Furthermore, the court's erroneous evidentiary rulings significantly affected a trial in which the outcome hinged entirely on witness credibility. Third, the State argues that the trial court's fine avoids running afoul of the Excessive Fines Clause merely by staying under the statutory maximum, ignoring the critical requirement that the court must assess the defendant's ability to pay *before* imposing any financial penalties.

None of these arguments holds water. The record demonstrates that Appellant did not make an informed decision to give up his right to counsel. In none of the trial proceedings did the court undertake a proper inquiry to establish his desire to proceed without counsel and his knowing and intelligent understanding of the ramifications of that decision. Furthermore, the trial court's broad evidence exclusions cannot be dismissed as harmless when the case turned entirely on the credibility of a single officer. Finally, the State fails to address the constitutional

requirement that the trial court consider a defendant's financial situation *before* imposing fines. For these reasons, the judgment should be overturned and the case remanded for a new trial or (at the very least) a new sentencing hearing.

I. THE STATE'S RELIANCE ON A CHECK-BOX "WAIVER" AND BOILERPLATE COLLOQUY ARE MISPLACED, AS THESE CANNOT CURE THE TRIAL COURT'S FAILURE TO CONDUCT A PROPER INQUIRY.

In this case, the only references to a waiver of the right to counsel were a conclusory notation on the reverse side of the complaint and the trial court's generic recitation of rights and surface-level inquiry into whether the Appellant wanted a lawyer.

The State's argument that Appellant bore the burden to request counsel or to object to the lack of a waiver inquiry runs contrary to law. As the Appellate Division held in State v. Guerin, "[d]etermination as to whether a waiver of the right to counsel has occurred must be based upon the particular facts and circumstances of each case, including the background, experience, and conduct of the defendant." 208 N.J. Super. 527, 533 (App. Div. 1986). Critically, courts "will indulge every reasonable presumption against the waiver of fundamental constitutional rights and will not presume their loss by acquiescence." Ibid.; see also State v. Coon, 314 N.J. Super. 426, 439 (App. Div. 1998) (holding that "[b]efore permitting a defendant to waive his right to appellate counsel, there must be an inquiry of the defendant in

order to be assured that his waiver of the valuable right to counsel is voluntary, knowing, and intelligent”).

At Appellant’s initial municipal hearing on June 15, 2020, the trial court conducted only a cursory waiver inquiry. The entirety of the exchange was as follows:

Court: So, are you going to seek an attorney in this matter or not?

Appellant: Oh no.

Court: So, you are going to represent yourself?

Appellant: Yes.

Court: Alright.

See State v. Battaglia, No. 1412SC005578 (Hanover Twp. Mun. Ct. June 15, 2020) at 00:02:31 – 00:02:44.

Although the judge asked Appellant if he wished to have counsel, this exchange fell far short of a substantive, individualized discussion. The judge did not engage Appellant in a meaningful dialogue about the nature of the charges, the potential range of penalties—including the imposition of a substantial fine—the inherent risks and disadvantages of proceeding without legal representation, or Appellant’s background, education, experience, and mental capacity. As a result, the record fails to demonstrate that Appellant’s waiver of counsel was made knowingly, voluntarily, and intelligently, as required by law.

Similarly, in later proceedings, Judge O'Toole also failed to engage Appellant in any meaningful dialogue about the nature of the charge, the range of penalties (including the possibility of a substantial fine), the risks and disadvantages of self-representation, or Appellant's education, experience, and mental capacity. 2T1-2; 1T6-7. Instead, the court delivered a 90-second monologue that immediately pivoted to scheduling matters, never pausing to ask the dispositive question: "Do you still wish to proceed without counsel?" This falls woefully short of the searching, individualized inquiry required. State v. Crisafi, 128 N.J. 499, 510 (1992) (holding that a constitutionally valid waiver of counsel "necessitates an on-the-record inquiry of defendant by the trial court to ensure that the waiver is made knowingly and voluntarily"). The absence of any such inquiry is especially troubling given Appellant's documented indigency and medical challenges, which were known to the trial court through his filings and requests for appointed counsel, free transcripts, and court assistance. The record, therefore, cannot support a conviction.

The State's fallback position—that Appellant did not raise the waiver issue below—fails because denial of counsel is a structural error. The transcript and filings demonstrate that Appellant, an indigent defendant, was left to navigate the complexities of municipal court procedure without the benefit of legal guidance. Under United States v. Gonzalez-Lopez and New Jersey Supreme Court precedent, structural errors require reversal without a showing of prejudice. 548 U.S. 140, 147

(2006) (“[O]f the singular importance of the right to counsel, the denial of counsel is deemed a structural defect in the framework of the proceedings—a defect that cannot be quantitatively assessed and therefore defies a harmless error analysis.”); see also State v. Patel, 239 N.J. 424, 437 (2019) (“A defendant denied the right to counsel does not have to establish prejudice on direct appeal; prejudice is presumed.”).

No objection was needed; the error is plain. The State’s suggestion that Appellant implicitly waived counsel by proceeding *pro se* and not specifically requesting counsel during the 2022 municipal trial is also unavailing. Neither silence nor acquiescence can constitute a waiver, and the responsibility to safeguard the right to counsel rests with the court. State v. Kordower, 229 N.J. Super. 566, 577 (App. Div. 1989) (stating that “whether a defendant’s waiver of this right has been made knowingly and intelligently can be determined only after the trial court has conducted a penetrating and comprehensive inquiry of the defendant”). Here, the trial court failed to ensure a valid waiver was obtained before proceeding.

II. THE COURT’S EVIDENTIARY ERRORS WERE NEITHER JUSTIFIED NOR HARMLESS.

The evidentiary rulings in this case were not harmless; they struck at the heart of the defense, leaving the factfinder with a one-sided story. The State labels the Internal Affairs complaint “irrelevant” and “collateral,” but bias, motivation, and credibility are never collateral when, as here, the prosecution’s case rested entirely

on the testimony of Sergeant Vitanza, with no physical evidence or video footage showing Appellant littering. The Internal Affairs complaint documented specific allegations that Sergeant Vitanza threatened Appellant, attempted to coerce a false confession, and falsified public documents. Excluding this proffer deprived Appellant of the opportunity to impeach the credibility of the only eyewitness and to present a complete defense.

The trial court's refusal to admit this evidence and its repeated sustaining of objections to questions about the officer's conduct and investigative methods left the court with an unchallenged narrative, undermining the reliability of the verdict. Similarly, the State characterizes defense questions as "repetitive" or "argumentative," but the transcript reveals that the trial court cut off entire lines of inquiry after a single objection, including critical topics such as why no bodycam or patrol-car footage existed, inconsistencies between the officer's report and trial testimony, and whether the officer in fact observed any littering at all. 3T4, 6-8, 10-11, 24-25, 27. In a case where the prosecution's theory rests exclusively on the testimony of a single officer, as it did here, limiting impeachment and cross-examination cannot be harmless.

The State contends Appellant would have been convicted anyway, citing Appellant's statements and the pizza-purchase video. However, the record shows that Appellant consistently maintained he intended to dispose of the pizza box

properly and only placed it temporarily under his car to avoid damaging the interior. The video evidence merely confirms he purchased pizza; it does not show any act of littering. Only the officer's speculation elevated the temporary placement of the pizza box to the level of littering. Evidentiary errors in cases where credibility is decisive, and the defense was prevented from presenting evidence and properly cross-examining and impeaching the sole State witness, cannot be dismissed as harmless. The cumulative effect of these errors deprived Appellant of a fair trial.

III. THE TRIAL COURT'S IMPOSITION OF A SUBSTANTIAL FINE WITHOUT ANY INQUIRY INTO APPELLANT'S ABILITY TO PAY WAS IMPERMISSIBLE.

The fine imposed in this case was unconstitutional because the trial court made no finding regarding the ability to pay, and the State cannot cure that omission on appeal. The record demonstrates that Appellant was indigent, as evidenced by his successful application for waiver of filing fees, appointment of pro bono counsel, and preparation of transcripts at government expense. The State argues that the \$500 fine is below the \$1,000 ordinance cap and is therefore unassailable; however, this premise is unsupported. See State v. Newman, 132 N.J. 159, 169 (1993) (citing *N.J.S.A. 2C:44-2b*) ("At the time of defendant's sentencing, the court was required, before imposing a fine or restitution, to determine 'if the defendant is able, or given a fair opportunity to do so, will be able to pay the fine or make restitution, or both.'"). A fine may be unconstitutionally excessive even within statutory limits if it is grossly

disproportionate to the offense or Appellant's means. United States v. Bajakajian, 524 U.S. 321, 337 (1998). Here, the trial court imposed a substantial fine without inquiring into Appellant's income, assets, employment status, or financial obligations, despite being aware of his indigency.

N.J.S.A. 2C:44-2(c)(1) imposes an affirmative duty on the sentencing court to consider the defendant's resources, and the burden that payment will cause before imposing any fine. Courts have vacated fines imposed without an ability-to-pay inquiry. State v. Bolvito, 217 N.J. 221, 232–33 (2014) (holding that sentencing courts must consider a defendant's ability to pay when imposing SCVTF penalties and must provide a statement of reasons for the amount imposed); Fant v. City of Ferguson, No. 4:15-CV-00253-AGF, 2017 WL 5953296, at *2–3 (E.D. Mo. Nov. 30, 2017) (holding that jailing individuals for unpaid fines without conducting an ability-to-pay inquiry violated the Fourteenth Amendment's Due Process and Equal Protection Clauses). The record is devoid of findings regarding Appellant's financial circumstances, even though his indigency was apparent and documented. At his initial hearing on June 15, 2020, Appellant informed the court that he did not own a laptop, that he owned only a "flip phone," and that his address at the time was a post office box. See State v. Battaglia, No. 1412SC005578 (Hanover Twp. Mun. Ct. June 15, 2020) at 00:00:44 – 00:02:38.

The State's assertion that Appellant "never asked for a payment plan" is irrelevant. The obligation to explore alternatives and assess ability to pay lies with the trial court, not the defendant. The court's failure to conduct this inquiry resulted in a fine that was not only excessive but also unenforceable. The State's harmless-error argument ignores the cascading consequences of an unconstitutional fine. Because Appellant lacks resources, the \$500 assessment exposes him to escalating late fees, possible warrants, and even license suspension—outcomes the Excessive Fines Clause exists to prevent. The imposition of such a fine on an indigent defendant perpetuates a cycle of poverty and punishment. The trial court's failure to conduct an ability to pay analysis before imposing a substantial fine in this case requires reversal or, at minimum, a remand for proper resentencing.

CONCLUSION

The record conclusively demonstrates that Appellant was denied the basic protections of due process at every critical stage of the prosecution, from the trial court's failure to secure a valid waiver of counsel, to its exclusion of essential defense evidence, to its imposition of a fine that Appellant could not possibly afford. A defendant's constitutional rights do not disappear simply because the charge may be minimal; fundamental protections apply regardless of the severity of the alleged offense. For the foregoing reasons, Appellant respectfully requests that this

Court reverse the conviction, vacate the imposed fine, and remand this matter for new proceedings consistent with constitutional and statutory requirements.

Dated: October 30, 2025

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