

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PAUL J. RITTER, and
ROBERT F. RUDDY

Defendants-Appellants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CRIMINAL PART
MONMOUTH COUNTY

Municipal Appeals MA25-009 and 25-010
Atlantic Highlands Municipal Court (1305)

Summons Numbers
Ritter: 1305-DFW-133204 and 133205
Ruddy: 1305-DFW-133206 and 133207

OPINION

Trial de novo July 7, 2025 – Decided July 8, 2025

Amamda F. Wolf, Esq. and Randolph H. Wolf, Esq., (Wolf Law), for
defendants,

Melinda A. Harrigan, Assistant Prosecutor, for the State (Raymond S.
Santiago, Monmouth County Prosecutor).

GUADAGNO, J.A.D. (retired and temporarily assigned on recall).

While statutes have been enacted relating to the preservation and harvesting of clams in New Jersey since 1846, Bradford v. De Luca, 90 N.J.L. 434, 437 (1917), this court is presented with a case of first impression and must decide whether a municipal court had jurisdiction over charges that defendants Paul J. Ritter and Robert F. Ruddy harvested clams from prohibited waters off the shoreline of that municipality in violation of N.J.S.A. 58:24-3, while never

setting foot on land there.

Defendants seek de novo review of their February 28, 2025, convictions. By bringing these charges before the Atlantic Highlands Municipal Court, the State, through the municipal prosecutor, expressly and implicitly maintained that the court had jurisdiction. The de novo prosecutor, however, has changed the State's position and now agrees with defendants that the Atlantic Highlands Municipal Court lacked jurisdiction. For the reasons that follow, this court finds that the Atlantic Highlands Municipal Court had jurisdiction and, after trial de novo, both defendants are again found guilty.

I.

The following facts are gleaned from the municipal court record. Trial began on September 24, 2024, before Judge Richard Leahey, Jr. The State called New Jersey State Fish and Wildlife Conservation Officer Dane Bahrle who testified that on January 8, 2024, at approximately 10:30 a.m., he responded to the Atlantic Highlands Municipal Harbor to investigate a complaint that two individuals were harvesting clams inside prohibited waters. When Officer Bahrle arrived, he used a spotting scope to observe two small vessels clamming inside the seawall. He described the seawall as a rock wall that protected vessels in the harbor but also served to separate "prohibited waters," where clams could not be harvested, from "restricted waters," where clams could be harvested for

treatment at a depuration facility.¹

Bahrle identified an aerial photograph of the harbor (J-1).² Judge Leahey described the photo:

This appears to be a photograph, an [aerial] photograph of the Atlantic Highlands Municipal Harbor indicating the harbor basin itself and what the [c]ourt refers to as the breakwater wall, which encloses moored sailboats and such.

Using a marker, Bahrle highlighted the location of the seawall on the photograph, then drew another line from the end of the wall to the shore. He then testified that anything inside the marked area “is considered prohibited due to the possible contamination from the boats pumping, the gas stations there and just the amount of people.” Bahrle estimated the distance within the prohibited area, running from the seawall to the shore, was approximately 300 yards, and defendants were initially harvesting clams 30 yards inside of the seawall. He explained that harvesting clams from the prohibited area poses a public health concern and the clams may cause cross-contamination in the depuration facility which could “possibly shut down the whole entire plant.”

Both defendants had yellow placards on their boats bearing their names.

¹ “Depuration” refers to the process of reducing the pathogenic organisms that may be present in shellfish by using a controlled aquatic environment as the treatment process. N.J.A.C. 7:12-1.2.

² The photo was initially marked as a joint exhibit (J-1) but later referred to by the municipal prosecutor as a State exhibit (S-1). The photo itself bears the marking “Joint 1” with “State” crossed out. I will refer to the photo as J-1.

Bahrle identified a marker in the photo (J-1) and testified that he observed both boats drifting in the area between the marker and the seawall while defendants hauled clams.

After Bahrle observed defendants engaged in “multiple drifts,” he walked down to the pier and took two photos marked (S-3) and (S-4). He testified that Ruddy had “changed his drift” and moved his boat from near the seawall to within 50 yards of the beach where he continued clamming, still within the prohibited area. Bahrle watched both defendants clamming in the prohibited area for nearly one hour.

Bahrle then moved to the shellfish plant on Sandy Hook where he anticipated that defendants would unload their clams. Ritter arrived first and began to unload when Bahrle informed him that he had harvested clams from a prohibited area and they would have to be returned to the bay. Ritter “was not happy” and protested that he had been clamming in the area for five years. When Ruddy came in to unload, he was also instructed to dump the clams he had harvested back into the water.

Four days later, Bahrle met with Ritter and issued him a summons for harvesting clams from prohibited waters and a second for doing so while participating in a hard clam depuration project. Ritter protested that the prohibited area was separated by an “imaginary line” and the officers were

picking on him. Bahrle then met with Ruddy on Saturday January 13, 2024, and issued summonses for the same two violations

During cross-examination, defendants' counsel introduced a document entitled "Designated Hard/Soft Clam Depuration Areas" marked as D-1. Bahrle identified the document as a map designating areas where clamming was permitted and prohibited. Counsel also introduced and played video from Bahrle's body-worn camera.

Trial continued on December 2, 2024. Bahrle was asked by Judge Leahey to identify where he was standing when he took the four photos. Bahrle testified he was next to the pier and placed corresponding numbers for each photo on joint exhibit 1-A. Both sides rested and presented summations. Judge Leahey reserved decision.

Trial continued on January 4, 2025. Judge Leahey rendered a comprehensive oral decision noting that Officer Bahrle's photographs clearly show the vessels of both defendants inside the westerly area of the seawall. The judge found Bahrle's testimony was "unrebutted and uncontroverted" and established that both defendants were engaged in the taking of clams from the prohibited areas. Because the two summonses issued to each defendant were based on the same activity, the judge found that they merged and dismissed summonses 133204 and 133206 but found Ritter guilty on 133205 and Ruddy

guilty on 133207.

Defendants appeared for sentencing on February 25, 2025. Judge Leahey initially addressed a post-trial motion filed by defendants challenging the municipal court's jurisdiction, claiming for the first time that the charged activity occurred outside the geographic border of Atlantic Highlands. Defendants argued that the municipal court's jurisdiction terminated at the mean high water mark of the Raritan Bay. The judge denied the motion and held that the Atlantic Highlands municipal court had jurisdiction to hear both matters.

Defendant Ruddy was sentenced to a fine of \$257, \$33 in court costs, \$50 Violent Crimes Compensation Board (VCCB) penalty, and \$75 Safe Neighborhoods Services Fund (SNSF) assessment. As to Ritter, Judge Leahey noted that he had a prior conviction for the same offense on May 13, 1993. As such, his subsequent violation of the statute would be treated as a disorderly person's offense instead of a petty disorderly person's offense. Ritter was sentenced to a fine of \$507, \$33 in court costs, \$50 VCCB, and \$75 SNSF.

Judge Leahey noted that there may be "further ramifications" by the Department of Environmental Protection (DEP), but took no action as to defendants' fishing licenses, finding that this was solely within the purview of DEP. The judge stayed the sentences pending appeal. In their joint appendix, defendants presented letters addressed to both of them from DEP dated March

11, 2025, suspending their commercial shellfish licenses. During trial de novo, defendants' counsel advised that Judge Comer signed an order on June 2, 2025, temporarily staying the suspensions and reinstating defendants' licenses.

Defendants filed a timely notice of appeal and now raise the following points:

I.

STATE HAS FAILED TO PROVE THAT THE OFFENSES OCCURRED WITHIN THE TERRITORIAL BOUNDARIES OF THE BOROUGH OF ATLANTIC HIGHLANDS

II.

THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE MAP PROVIDED OF THE AREA AS PART OF THE LICENSURE PACKED CLEARLY DEMARKED THE BOUNDARIES OF PROHIBITED VERSUS RESTRICTED WATERS THEREBY FAILED TO PROVIDE DEFENDANT-APPELLANTS WITH REASONABLE NOTICE AS TO THE BOUNDARIES.

III.

THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT-APPELLANTS WERE WITHIN THE BOUNDARIES OF THE RESTRICTED WATERS.

II.

A conviction in municipal court is subject to a trial de novo, at which the State must again prove a defendant's guilt beyond a reasonable doubt. State v. Robertson, 228 N.J. 138, 150 (2017). At a trial de novo, this court makes its own independent review of the matter and findings of fact and conclusions of law as required by State v. Johnson, 42 N.J. 146, 161-62 (1964). I am required to give due deference to the municipal court's credibility findings and must defer to the judge's opportunity to observe the witnesses firsthand. State v. Adubato, 420 N.J. Super. 167, 176 (App. Div. 2011).

As an initial matter, Judge Leahey found Officer Bahrle credible, and this court defers to that finding. I independently conclude that Bahrle had a firm and accurate recollection of the incident, was not challenged in any way on cross-examination and his testimony was thoroughly corroborated by photographs and maps received in evidence.

A.

Defendants argue that the State failed to prove that the offenses occurred within the territorial boundaries of the Borough of Atlantic Highlands. Defendants did not raise this issue before the municipal court until after trial, but that failure is not fatal to this claim, as an objection based on territorial jurisdiction may be raised at any time. State v. Streater, 233 N.J. Super. 537, 541

(App.Div.1989).

While defendants concede that the municipal court had jurisdiction to hear Fish and Game violations pursuant to N.J.S.A. 2B:12-17(d), they claim that jurisdiction is limited under N.J.S.A. 2B:12-16 to “cases arising within the territory of that municipality.” That jurisdiction ends, they argue, at the high-water mark of the Atlantic Highlands shoreline and violations like these, occurring approximately “200 feet out into Sandy Hook Bay” are beyond the municipal court’s jurisdiction.

The State now agrees that the Atlantic Highlands Municipal Court lacked jurisdiction and maintains that while defendants were clamming in waters surrounding the Atlantic Highland harbor, there was no evidence that they were within “the territorial jurisdiction of Atlantic Highlands.”

A municipal court is a court of limited jurisdiction established by statute. State v. Sylvia, 424 N.J. Super. 151, 156 (App. Div. 2012), citing N.J. Const. art. VI, § I, ¶ 1. A municipal court has jurisdiction over the following cases within the territorial jurisdiction of the court:

- a. Violations of county or municipal ordinances;
- b. Violations of the motor vehicle and traffic laws;
- c. Disorderly persons offenses, petty disorderly persons offenses and other non-indictable offenses except where exclusive jurisdiction is given to the Superior Court;

- d. Violations of the fish and game laws;
- e. Proceedings to collect a penalty where jurisdiction is granted by statute;
- f. Violations of laws regulating boating; and
- g. Any other proceedings where jurisdiction is granted by statute.

[N.J.S.A. 2B:12-17 (emphasis supplied)]

N.J.S.A. 2B:12-16(a) provides:

A municipal court of a single municipality shall have jurisdiction over cases arising within the territory of that municipality except as provided in section 10 of P.L.1997, c.357 (C.27:25-5.15). A joint municipal court shall have jurisdiction over cases arising within the territory of any of the municipalities which the court serves. The territory of a municipality includes any premises or property located partly in and partly outside of the municipality. A central municipal court shall have jurisdiction over cases arising within the territorial boundaries of the county. A regional municipal court established pursuant to the pilot program set forth in section 1 of P.L.2021, c.191 (C.2B:12-34) shall have territorial jurisdiction over cases arising within the territory of the municipalities participating in the regional municipal court pilot program.

The New Jersey DEP identifies bodies of water suitable and unsuitable for harvesting shellfish, in accordance with the National Shellfish Sanitation Program's Guide for the Control of Molluscan Shellfish (Model Ordinance). N.J. Admin. Code §7:12-1.3. The DEP classifies waters as “Approved, Conditionally

Approved, Restricted, Conditionally Restricted, or Prohibited.” Ibid. Everything but “approved” waters are deemed “condemned,” and clams in “condemned” waters may not be harvested, distributed, or sold, N.J.S.A. 58:24-3; N.J. Admin. Code. §8:13-1.3(a). A person who harvests, distributes, or sells such clams is guilty of a petty disorderly persons offense; a person convicted of a subsequent offense is guilty of a disorderly persons offense. N.J.S.A. 58:24-9.

N.J.S.A. 23:10-2 addresses jurisdiction for violations of Title 23, regulating the Fish and Game Code:

The Superior Court and municipal court, hereinafter in this chapter referred to as the “court,” shall, except as otherwise specifically provided, have jurisdiction to try and punish any person violating any provision of this Title, any provision of any law supplementary thereto or any provision of the State Fish and Game Code, and every penalty prescribed for such violation may be enforced and recovered before such court in a summary proceeding in accordance with “the penalty enforcement law” (N.J.S. 2A:58-1 et seq.) either in the county or municipality where the offense is committed or where the offender is first apprehended or where he may reside.

[(emphasis supplied).]

The State contends that defendants were “apprehended” in Highlands, where Officer Bahrle ordered them to dump the clams they had harvested, and now urges this court to vacate the convictions as the proceedings were void ab initio, and remand for a new trial before the Highlands Municipal Court.

In denying defendants’ motion to dismiss for lack of jurisdiction, Judge

Leahey relied on State v. Oliver, 320 N.J. Super. 405 (App. Div.), certif. denied, 161 N.J. 332 (1999). In Oliver, the Appellate Division affirmed convictions for disorderly conduct where surfers defied a Spring Lake ordinance by surfing in the ocean waters after a tropical storm. The surfers had already entered the ocean when police officers arrived and ordered them out because of the dangerous conditions. Id. at 416. Defendants argued that the Spring Lake Municipal Court “lacked territorial jurisdiction over acts which occurred beyond the boundaries of the town.” Like the defendants here, the Oliver defendants argued that “the Public Trust Doctrine defines the territorial limits of municipal court jurisdiction . . . [and] applies to lands seaward of the mean high water mark which are held by the State in fee simple for the trust of its citizens.” Id. at 415. They maintained “that since ‘title’ ends at the mean high water mark, municipal court jurisdiction ends at that same point.” Ibid.

The appellate panel found this argument “flawed” and explained

Defendants were within a legitimate zone of concern of the police and lifeguard units entrusted with the safety of bathers, swimmers, boaters, surfers and anyone else utilizing the recreational facilities secured and maintained by Spring Lake. The same obligation placed on the police and lifeguards to protect defendants dismantles defendants' argument that their territorial obligation somehow ends at an arbitrary line.

[Id. at 416.]

Here, the activity defendants were charged with occurred within a few

hundred feet of the Atlantic Highlands shoreline. The facts supporting jurisdiction are far more compelling here than in Oliver, which involved “bounding” uncertainty, i.e., how far into the ocean Spring Lake’s territorial jurisdiction extended. Id. at 418. Here, the prohibited clamming area or “legitimate zone of concern” was specifically demarcated, beginning at the shoreline and extending for only a few hundred yards to the seawall. Because the prohibited area included the Atlantic Highlands shoreline lapped by bay waters, the subject area was “located partly in and partly outside of the municipality” and, pursuant to N.J.S.A. 2B:12-16(a), was within the jurisdiction of the Atlantic Highlands Municipal Court. As in Oliver, the enforcement actions here constituted a “legitimate exercise of police power” designed to prevent human consumption of shellfish harvested from a prohibited area. See Oliver, 320 N.J. Super. at 416.

Additionally, this violation began in the waters off Atlantic Highlands and continued into Highlands, where the boats docked and defendants were ordered to dump the illegally harvested clams. The State’s position that these charges can only be prosecuted in Highlands ignores the fact that these violations were “continuing” and when a violation “commenced in one municipality and ended in another,” they can be prosecuted in either municipality. State v. Sylvia, 424 N.J. Super. 151, 156 (App. Div. 2012), quoting State v. Potts, 186 N.J. Super.

616, 620 (Law Div.1982).

The State's attempt to distinguish Oliver by arguing that it dealt only "with issues of ingress and egress," misperceives the facts and the holding in that case. The Oliver defendants were charged with two disorderly persons violations--creating a hazardous or physically dangerous condition by an act which serves no legitimate purpose of the actor, N.J.S.A. 2C:33-2a(2), and obstructing the administration of law, N.J.S.A. 2C:29-1a; and two municipal violations--Municipal Ordinance 14-2.10, authorizing the closing of beaches, and Municipal Ordinance 14-2.1, prohibiting bathing under certain conditions. 320 N.J. Super. at 410-11.

The three surfers had already entered the water when several officers from the Spring Lake Police Department (SLPD) activated flashing lights, blew whistles and waived their arms in an attempt to get the surfers to come to shore. When those efforts failed, the SLPD contacted the United States Coast Guard who responded and ordered the surfers out of the water. The issue in Oliver was not simply ingress and egress, it was whether the Spring Lake Municipal Court had jurisdiction over the surfers while they were in the ocean, surfing. Id. at 414-15.

The Atlantic Highlands Municipal Court had jurisdiction to hear these charges as they occurred in a defined area contiguous to the shoreline of the

municipality, within the legitimate zone of concern of the Fish and Wildlife officers entrusted with the protection of the public.

B.

Defendants next argue that the State failed to prove that the map they received as part of the licensure packet (D-1) clearly demarked the boundaries of the restricted areas from the prohibited area. During her cross-examination of Officer Bahrle, defendant's counsel identified D-1 as the map defendants received "as part of their licensure." At counsel's direction Bahrle highlighted in red the prohibited area on D-1. The prohibited area can be clearly seen on D-1 as the area from the Atlantic Highlands shoreline to the seawall, which also appears on the map.

There was no evidence at trial to indicate that either defendant was unaware that they were clamming in a prohibited area. At the time Officer Bahrle asked Ritter why he was clamming in the prohibited area Ritter explained that "he did not want to get the shit beat out of him." Bahrle testified that this was a reference to the high winds and defendant's attempt to avoid those conditions by staying in the shelter of the harbor behind the seawall. Not only did Ritter not deny that he was in the prohibited area, but he asked Bahrle to "make sure you get the other guy," an apparent reference to Ruddy. Similarly, when Bahrle approached Ruddy he never denied knowledge that he was clamming in the

prohibited area.

Exhibit D-1 clearly identifies the prohibited and restricted areas and there is no evidence that either defendant was unaware that they were clamming in the prohibited area. Licensed clammers, like defendants, are given a detailed map showing where they could and could not harvest clams; it is the clammers' responsibility to know where they are prohibited from harvesting clams.

C.

Finally, defendants claim that the State failed to prove beyond a reasonable doubt that they were clamming within the restricted area. The credible and uncontested testimony of Officer Bahrle, corroborated by the photographs and maps he identified, demonstrated beyond a reasonable doubt that both defendants harvested clams from the prohibited area. The claim by defendants that there are inconsistencies in Bahrle's testimony about the distances and locations where he observed defendants clamming do not affect his unchallenged testimony that both defendants were observed harvesting clams in the prohibited area.

D.

In spite of its claim that the municipal court lacked jurisdiction, the State has nevertheless proven the guilt of both defendants beyond a reasonable doubt. The sentences imposed by the municipal court will be reimposed. Because both the State and the defendants maintain that the municipal court and, by extension,

this court lacked jurisdiction to hear this matter, the sentences will be stayed pending appeal. This should not be viewed as an indication by this court that a meritorious issue has been presented or that there is a likelihood of success on appeal. Crowe v. De Gioia, 90 N.J. 126, 133 (1982).

As the sentences are being stayed, this court will continue Judge Comer's June 2, 2025 order staying the March 11, 2025, DEP order suspending defendants' commercial shellfish licenses and temporarily reinstating those licenses pending appeal.