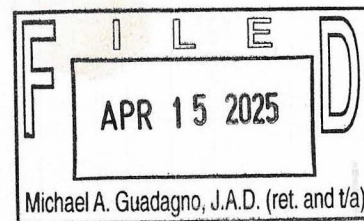


NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION



STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

HERBERT E. STEPHENS,

Defendant-Appellant.

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

Municipal Appeal MA25-006
Red Bank Municipal Court (1340)
Summons No. E24-012591

**MEMORANDUM OPINION
AND ORDER**

Argued April 7, 2025 – Decided April 15, 2025

Herbert E. Stephens, self-represented.

Michael Nair, Legal Assistant, for the State (Raymond S. Santiago,
Monmouth County Prosecutor).

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

In 2024, there were 223 pedestrians killed in New Jersey traffic accidents,
the highest number in 36 years and a 30% increase from 2023. New Jersey State
Police Fatal Crash Statistics. <https://www.nj.gov/njsp/info/fatalacc/index.shtml>.

One of the ways our Legislature has tried to protect pedestrians is by enacting
legislation requiring drivers to stop when a pedestrian is crossing a roadway within
a marked crosswalk. N.J.S.A. 39:4-36 provides in pertinent part:

- (1) The driver of a vehicle shall stop and remain stopped to allow a pedestrian to cross the roadway within a marked crosswalk, when the pedestrian is upon, or within one lane of, the half of the roadway, upon which the vehicle is traveling or onto which it is turning. . . .

Traditional enforcement of this statute can occur when a police officer observes a driver who fails to stop for a pedestrian within a marked crosswalk. See e.g., State v. Loalbo, No. A-4776-17T4 (App. Div. Apr. 22, 2019).

This case involves a novel enforcement technique utilized by the Red Bank Police Department (RBPD), whereby a plainclothes police officer, acting as a decoy pedestrian, enters a marked crosswalk while other officers nearby watch for motorists who fail to stop for the decoy. The RBPD refers to this enforcement technique as a “Pedestrian Safety Detail.”

Defendant Herbert E. Stephens was convicted after trial of failing to yield to a pedestrian in a crosswalk, N.J.S.A. 39:4-36, during a Pedestrian Safety Detail and now seeks de novo review of that conviction.

The following facts are gleaned from the record. Defendant’s trial was held before Judge Frank LaRocca on January 16, 2025. The State called Red Bank Police Officer Eliot Ramos, Jr., who testified that on September 16, 2024, he was assigned to a Pedestrian Safety Detail, identifying vehicles that failed to stop for a pedestrian in a crosswalk. Ramos explained:

So, we have certain officers at certain streets. And our sergeant or one sergeant is the decoy. He steps across . . .

into the crosswalk. And he calls out for cars that stop for him. And we also stand on the corner to observe which cars aren't stopping.

Officer Ramos was standing near his police vehicle at the corner of Maple Avenue and Reckless Place, while Sgt. Ashton Lovick, in plainclothes, was crossing Maple Avenue at the intersection of Waverly Place, two blocks from where Ramos was stationed. When Ramos observed that defendant's vehicle failed to stop for Lovick, Ramos stepped into Maple Avenue and directed defendant to pull into a nearby parking lot.

Ramos spoke with defendant and because defendant was "being nice about the situation," Ramos offered to issue a ticket for a seatbelt violation, which carried a lower fine with no points. Defendant refused this offer, claiming he was wearing a seatbelt and insisted that he be issued a ticket for the violation he was stopped for. Ramos issued defendant a ticket for the crosswalk violation.

On cross-examination, defendant, who was self-represented, asked Ramos why he offered to charge him with a seatbelt violation when he was actually wearing a seatbelt. Ramos responded that he was trying to give defendant a "break" so he would not have to pay a \$231 fine and have points added to his driving record.

After the State rested, defendant testified that, after he was pulled over, Ramos informed him that he failed to stop for a pedestrian who was in the crosswalk when he drove by. When defendant responded that he did not see anyone in the crosswalk,

Ramos offered to “cut [him] a break” and issue a \$50 seatbelt ticket. Defendant refused because he was wearing his seatbelt and told Ramos, “You need to write me the ticket If I’m guilty of something, write me the ticket.”

During cross-examination, the municipal prosecutor asked defendant if anyone was in the crosswalk when he drove by. Defendant responded that he did not see anyone in the crosswalk when he drove through it, but did see someone after he was stopped.

In rendering his decision, Judge LaRocca first described the purpose of the Pedestrian Safety Detail:

I also must note that the intention of the program within which the police operate these, conduct these operations is to raise awareness. It’s for the public to hear that there’s random stops at these crosswalks. There’s random staging at the crosswalks so that when they’re driving in the town, they pay more attention to the crosswalks.

The judge then found that both Officer Ramos and defendant testified credibly: Officer Ramos was credible when he testified that he observed defendant’s vehicle fail to stop while Sgt. Lovick was in the crosswalk, and defendant testified credibly that he did not see Lovick. Finding that failure to notice a pedestrian in a crosswalk is not a defense to the charge, the judge concluded that the State had proven defendant’s guilt beyond a reasonable doubt. Defendant was fined \$157 and assessed \$33 in court costs. Defendant filed a timely notice of appeal.

LEGAL STANDARD

A defendant convicted in municipal court “may appeal . . . to the Law Division and is entitled to a trial de novo.” State v. Robertson, 228 N.J. 138, 147 (2017). At the trial de novo the State must carry the burden of proof beyond a reasonable doubt. Ibid. If the court finds the defendant guilty, the court must sentence the defendant anew, as provided by law, unconstrained by the sentence imposed in the municipal court. R. 3:23-8(e).

DISCUSSION

Defendant complains that he was not informed prior to the municipal court trial that he had to request discovery in writing. Defendant claims he would have requested bodycam video from the incident had he been informed of this requirement. When defendant raised this issue before Judge LaRocca, the judge explained that, as a layperson representing himself, defendant is bound by court rules and is required to make a written request for discovery.¹ Rule 7:7-7 requires that all discovery requests by defendant shall be served on the municipal prosecutor.

Even though defendant acknowledged that the trial de novo is limited to the record made before the municipal court, he continued to argue that this court should request production of any bodycam video, claiming this would demonstrate that

¹ When defendant appeared in court, the public defender offered to assist him, but defendant rejected the offer.

Officer Ramos committed “perjury” when he testified that he observed Sgt. Lovick in the crosswalk.

This court first notes that there is nothing in the record to suggest that any of the officers involved in this operation recorded the proceedings on bodycam. Even if bodycam video existed and was still available, Rule 3:23-8 “permits the record to be supplemented for the limited purpose of correcting a legal error in the proceedings below.” No such error has been established here.

Judge LaRocca found that both Officer Ramos and defendant testified credibly. While this court must give deference to those findings, that deference is not controlling, and there must be independent findings of fact and conclusions of law. Robertson at 148. In that regard, this court finds that defendant was evasive during portions of his testimony. When asked on cross-examination by the municipal prosecutor how fast he was going, defendant curtly responded, “the speed limit.” When asked what the speed limit was, defendant was dismissive: “Doesn’t matter. I always do the speed limit. I’ve been driving for 50 years.” When the prosecutor continued to press the issue, defendant was evasive and unresponsive to the questions. The testimony of Officer Ramos was far more credible, demonstrating a strong recollection of the facts.

At the trial de novo, defendant’s primary argument was that it was “impossible” for Officer Ramos to see Sgt. Lovick crossing Maple Avenue from his

vantage point two blocks away. Ramos estimated that he was less than 300 yards from Sgt. Lovick when he crossed Maple Avenue. However, the distance is of little consequence, as Ramos was not identifying defendant from that distance, only his car, which continued toward him until he pulled it over. Officer Ramos described the area in detail and gave no indication that his view of Sgt. Lovick was obstructed in any way. This court rejects defendant's claim that Officer Ramos was "lying" when he testified that he observed Sgt Lovick in the crosswalk, and that it was "impossible" for Ramos to see Lovick from two blocks away. It is also irrelevant that Ramos offered to give defendant a "break" by issuing a summons for failure to wear a seatbelt, which defendant refused.

Although defendant has not raised the defense of entrapment here, it was raised and discussed by the municipal prosecutor and Judge LaRocca. For the sake of completeness and because this enforcement practice may be employed in other municipalities, this court will address the issue.

The defense of entrapment, which serves to excuse the defendant from criminal responsibility, can arise whenever a defendant introduces evidence of the government's involvement in the crime through initiation, solicitation, or active participation. State v. Johnson, 127 N.J. 458, 464 (1992). N.J.S.A. 2C:2-12 requires a defendant to prove by a preponderance of the evidence that he was entrapped, although a defendant may raise an entrapment defense "based on standards of due

process” even where all of the requirements of N.J.S.A. 2C:2-12 are not met. Johnson at 469. This “due process entrapment,” which is an issue of law to be resolved by the court, “concentrates exclusively on government conduct and the extent of the government’s involvement in commission of the crime.” State v. Florez, 134 N.J. 570, 584 (1994). The “essence” of this defense is that the government has engaged in “egregious or blatant” wrongful conduct that has induced and increased crime rather than detecting or deterring it. Johnson, 127 N.J. at 470-71.

“Nothing prohibits the police from creating characters to conduct undercover investigations.” State v. Davis, 390 N.J. Super. 573, 593 (App. Div. 2007). Decoys, traps, and deceptions properly may be used to apprehend those engaged in crime or to obtain evidence of the commission of crime. State v. Rockholt, 96 N.J. 570, 575 (1984). As Judge LaRocca observed:

With respect to the entrapment . . . this is not entrapment. Because in order to have entrapment, . . . you have to convince or entice somebody to commit a crime. So, there’s nothing under the factual assertions here that you’ve indicated in any way, shape or form that Officer Lovick was involved in some operation to entice you to not stop in the crosswalk. It doesn’t make any factual sense.

This court agrees. The Red Bank Police did not induce defendant to commit the offense but merely presented a situation where he had the opportunity to either

stop for a pedestrian in a crosswalk, in compliance with the law, or proceed through it unlawfully. He chose the latter.

The State's evidence that defendant failed to stop while Sgt. Lovick was in the crosswalk is unrefuted and this court finds that the State has proven this charge beyond a reasonable doubt.

ORDER

For the reasons addressed above, it is hereby **ORDERED** that defendant is found **GUILTY** of failure to yield to a pedestrian in a crosswalk; and it is further **ORDERED** that the sentence imposed by the municipal court, to wit: a \$157 fine and \$33 in court costs, is reimposed.

Michael A. Guadagno
MICHAEL A. GUADAGNO, J.A.D.
(retired and temporarily assigned)

Date: April 15, 2025
Original: Criminal Division Manager
Copy: Herbert E. Stephens, pro se defendant
Monmouth County Prosecutors Office\
Red Bank Municipal Court