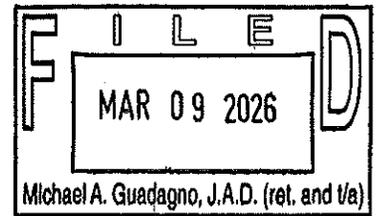


NOT ELIGIBLE FOR PUBLICATION



STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAVID BERGER,

Defendant-Appellant.

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

Municipal Appeal No. 25-042
Millstone Municipal Court (1332)
Complaint - Summons No.: SP6-025955

OPINION

Trial de novo March 9, 2026 – Decided March 9, 2026

John Menzel, Esq., for defendant,

Melinda A. Harrigan, Assistant Prosecutor, Paula Echeverria, Assistant Prosecutor, on the brief, and Jack Williams, Legal Assistant, for the State (Raymond S. Santiago, Monmouth County Prosecutor).

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

In a case of first impression, defendant David Berger seeks de novo review of the October 27, 2025, judgment of the Millstone Municipal Court, finding defendant guilty after trial of unlawfully passing a school bus in violation of N.J.S.A. 39:4-128.1. The unique aspect of this case is that no one was able to identify defendant as the driver of the vehicle that passed the school bus. Instead, the State relied on the rebuttable presumption contained in the above-referenced statute which provides that

the registered owner of the vehicle which was involved in the violation was the person who committed the act. For the reasons that follow, after de novo review, defendant is again found guilty and the sentence imposed by the municipal judge is reimposed.

I.

The following facts are gleaned from the municipal court record. On December 4, 2023, New Jersey State Trooper Daniela Solano Sarmiento issued a summons to defendant for passing a stopped school bus while the bus was engaged in discharging children. For reasons that are not clear on the record, defendant did not make his first appearance before the municipal court until May 20, 2024. Defendant's counsel, Leib Klein, requested an adjournment to review videos. The matter was next heard on September 9, 2024. Mr. Klein explained that he had not obtained all of the discovery and requested another adjournment. Although the judge noted the case was almost one year old, it was not heard again for nine months.

On November 4, 2024, current counsel, John Menzel, filed notice of appearance substituting for Mr. Klein as defendant's counsel. Trial was scheduled for June 23, 2025, but had to be adjourned because defendant had requested a Hebrew interpreter who was not present. The matter was not heard again until October 27, 2025, when trial began, almost two years after the incident.

The State called Michelle Hearon who testified that she was employed as a school bus driver by the Millstone Board of Education. On December 1, 2023, Hearon was driving a "full size" (54 passenger) school bus with children ranging

from kindergarten through high school.

At approximately 3:17 p.m., Hearon made a stop on Millstone Road near Parker Court. Because of a curve in the road, Hearon explained that her practice was to turn her yellow lights on there, “a little bit sooner than I do at any other stop that I make.” When Hearon came to a full stop, she engaged the side arm “STOP” sign on the driver’s side of the bus. As children were getting off the bus, Hearon noticed a car approaching car that did not appear to be stopping. Hearon beeped the horn on her bus, to no avail. Despite the flashing lights, the extended STOP sign, children departing, and the beeping horn, the car continued past the bus without stopping.

Hearon’s bus was equipped with one external and two internal video cameras.¹ The exterior camera is activated when the bus stops to take on or discharge passengers. Hearon viewed the videos and testified that they accurately represented the events that occurred. The municipal prosecutor marked the videos, which are combined and run simultaneously, as S-1, and played them for the court.

The State then called Trooper Sarmiento, who testified that she received the bus video from the Supervisor of Transportation for the Millstone Township School District along with the make, model, and license plate number of the vehicle that passed the school bus. Trooper Sarmiento entered the plate in the police database

¹ Cameras are not required on busses by law in New Jersey, but a recent pilot program by the Woodbridge Township School District has focused attention on this issue. Cameras were placed on 10 school busses and recorded 2,840 instances where drivers illegally passed the buses during the 2024-2025 school year. See Cameras on 10 Woodbridge school buses caught nearly 3,000 illegal passings, <https://nj1015.com/nj-school-bus-cameras>.

and confirmed that it matched the vehicle that appeared in the video: a black, 2022 Honda Pilot, bearing New Jersey license plate G11-PNY. Although the trooper could not identify the driver of the vehicle from the video, she issued a summons to defendant as the registered owner.

After both the State and the defense rested, the judge first found that Ms. Hearon's testimony was "very credible." Specifically, the judge noted that Hearon first engaged her yellow lights before stopping her school bus. She then activated her flashing red lights with a stop sign before discharging students. The judge also found Trooper Sarmiento credible in determining the identity of the registered owner of the vehicle that passed the stopped school bus. The judge observed that the video showed a black vehicle passing the bus while the children were leaving, along with the bus driver honking at the driver of the vehicle. The judge found that the State had proven all of the elements of the statute beyond a reasonable doubt. In imposing sentence, the judge noted that because the video showed "a clear violation of [passing] a school bus," there should be punishment beyond the five points on defendant's driving record. The judge imposed a fine of \$357 with costs.

Defendant filed a timely notice of appeal and now raises the following points:

I.

Because the State Failed to Prove the Identity of the Driver of the Car that Passed the School Bus, This Court Should Find Defendant Not Guilty

II.

Because the State Failed to Prove the Statutory Requirements for Proper Identification of the Bus as a School Bus, This Court Should Find Defendant Not Guilty

II.

This court must make independent findings of fact and conclusions of law, but must give deference to the municipal court's credibility findings. State v. Robertson, 228 N.J. 138, 147 (2017). The reasons for this deference are obvious, as the municipal judge has the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which [this] court cannot enjoy." State v. Johnson, 42 N.J. 146, 161 (1964). I adopt the findings of the municipal judge that both witnesses called by the State testified credibly. In addition, I note that both witnesses displayed accurate recall of the events and were not challenged on cross examination.

Defendant first argues that he should be found not guilty because he was not identified at trial as the driver of the vehicle that passed the school bus. N.J.S.A. 39:4-128.1 provides in pertinent part:

the driver of a vehicle approaching or overtaking a bus, which is being used for the transportation of children to or from school . . . and which has stopped for the purpose of receiving or discharging any child . . . shall stop such vehicle not less than 25 feet from such school bus and keep such vehicle stationary until such child . . . has entered said bus or has alighted and reached the side of such highway and

until a flashing red light is no longer exhibited by the bus; provided, such bus is designated as a school bus by one sign on the front and one sign on the rear, with each letter on such signs at least four inches in height.

Of significance to this case, the statute also provides: “there shall be a rebuttable presumption that the registered owner of the vehicle which was involved in the violation of this section was the person who committed the act.” As the bus driver was not able to identify the driver of the vehicle that passed her bus, the State relies on this rebuttable presumption and argues that because defendant failed to present any evidence to rebut the presumption, this court should, as the municipal judge did, rely on the presumption to find that defendant was the driver of the vehicle.

Defendant seizes on the municipal judge’s language to argue that she employed the presumption to find “Mr. Berger guilty as the registered owner, not the vehicle operator. . .” A review of the judge’s findings indicates that the judge employed the presumption appropriately to determine that defendant, as the registered owner, was the driver who passed the bus:

The interesting part is that this statute specifically, and most don’t, allow for a rebuttable presumption that -- that the registered owner of the vehicle, which is the owner of the vehicle that commits the offense that I found, “was the person who committed the act.” It makes sense in this type of a case, because often you do have a school bus operator who is focused on their children and is not a law enforcement person.

Even if the municipal judge misapplied the presumption, which she did not, it

would be of no moment. Although this is an “appeal” of the municipal court judgment, this court does not perform “the appellate function.” State v. Cerefice, 335 N.J. Super. 374, 383 (App. Div. 2000). Rather, “[t]he Law Division . . . “gives no deference to a municipal court’s findings of facts or conclusions of law” State v. Zingis, 471 N.J. Super. 590, 601 (App. Div. 2022).

Defendant has failed to rebut the presumption that, as the registered owner, he was the driver of the vehicle that passed the school bus while it was discharging children. Defendant argues that this presumption conflicts with his presumption of innocence. To support this argument, defendant relies on Justice Rehnquist’s concurring opinion in Sandstrom v. Montana, 442 U.S. 510, 527 (1979). That reliance is misplaced. In Sandstrom, defendant was charged in Montana with homicide in that he “purposely or knowingly” caused the death of the victim. Defendant admitted killing the victim but argued that he did not do so purposefully or knowingly. The trial judge instructed the jury that “[t]he law presumes that a person intends the ordinary consequences of his voluntary acts.” The jury found defendant guilty of homicide and his conviction was affirmed by the Supreme Court of Montana.

The United States Supreme Court granted certiorari and reversed the conviction. The majority opinion by Justice Brennan found the jury instruction was unconstitutional as violating the Fourteenth Amendment due process requirement that the state must prove every element of a criminal offense beyond a reasonable doubt. The Court held that the jury might have interpreted the trial judge’s jury

instruction as a conclusive presumption, which would conflict with the overriding presumption of innocence.

In a brief concurrence, Justice Rehnquist cited the Court's opinion in Mullaney v. Wilbur, 421 U.S. 684 (1975), which held that the Fourteenth Amendment prohibits a State from shifting to the defendant the burden of disproving an element of the crime charged. Although he expressed doubts about whether the jury in Sandstrom could divine the difference between "infer" and "presume" in the jury instructions, he deferred to the judgment of the majority that this difference in meaning may have been critical in its effect on the jury. 442 U.S. at 528. This case is distinguishable from Sandstrom as the presumption here was rebuttable and not conclusive.

The presumption of innocence is a fundamental principle of due process in the criminal context. See State v. Hill, 199 N.J. 545, 558-59 (2009). Violations of motor vehicle laws are quasi-criminal offenses. State v. Widmaier, 157 N.J. 475, 494 (1999). These are "a class of offenses against the public 'which have not been declared crimes, but wrongful against the general or local public which it is proper should be repressed or punished by forfeitures and penalties.'" Ibid. (quoting State v. Laird, 25 N.J. 298, 302-03 (1957)). While the State has the burden of establishing all elements of these offenses beyond a reasonable doubt, State v. Wenzel, 113 N.J. Super. 215, 217 (App. Div. 1971), a statutory rebuttable presumption of fact for certain offenses may be invoked, provided two criteria are met. First, "there must be a rational connection in terms of logical probability between the proved fact and the

presumed fact,” and second, “the presumption may not be accorded mandatory effect.” State v. McCandless, 190 N.J. Super. 75, 79 (App. Div.), certif. denied, 95 N.J. 210 (1983), petition for habeas corpus denied, 835 F.2d 58 (3d Cir. 1987).

Applying these criteria to the instant facts, there is nothing illogical about linking the owner of a motor vehicle to its operation, subject to rebuttal by the defendant. Even in an age of multiple-car ownership, there is “a rational connection in terms of logical probability” that the owner of a car is usually the driver at the time of a violation. Ibid. While there may be a reasonable presumption that the owner of the vehicle was the driver, the presumption in N.J.S.A. 39:4-128.1 does not result in an irrefutable finding of fact. In other words, the finding that the owner was the driver is not mandatory, but rather, may be presumed until a defendant has come forward with evidence to the contrary. This “does not offend our notions of due process.” State v. Ingram, 98 N.J. 489, 498 (1985). See also State v. Moore, 247 N.J. Super. 129, 137 (App. Div. 1991) (upholding statutory presumption in drunk driving case, as the statute “gives rise to a permissible inference, not a mandatory finding”).

Pursuant to N.J.S.A. 2C:1-13(e), “[w]hen the code or other statute defining an offense establishes a presumption with respect to any fact which is an element of an offense, it has the meaning accorded it by the law of evidence.” This means that a factfinder “may be permitted to infer, until the defendant comes forward with some evidence to the contrary,” that such a presumption is valid. Ingram, 98 N.J. at 498.

Defendant next argues that the municipal court record failed to establish

“statutory elements necessary for conviction,” to wit: flashing red lights, signage on the front and rear designating the vehicle as a school bus, and proof that each letter of that signage was four inches in height.

N.J.S.A. 39:1-1 defines School bus as:

every motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for the transportation of children to or from school for secular or religious education, which complies with the regulations of the New Jersey Motor Vehicle Commission affecting school buses, including “School Vehicle Type I” and “School Vehicle Type II”

N.J.S.A. 39:4-128.1 requires a school bus to be “designated as a school bus by one sign on the front and one sign on the rear, with each letter on such signs at least four inches in height.” The municipal court judge addressed the signage requirement: “I find there’s no question as this was a standard school bus that that [requirement] has been met.” While Ms. Hearon was not asked about the lettering on her bus, this court agrees that there could be no question that she was driving a designated school bus.

Ms. Hearon testified credibly that before stopping, she engaged her yellow (amber) lights well in advance of the intersection where she stopped the bus. After stopping, she extended the side arm stop sign before discharging students. While Hearon was never specifically asked if the red flashing lights were engaged, it is apparent that once the amber lights are engaged and the bus comes to a stop, the red

flashing lights are automatically illuminated once the bus door opens. N.J.A.C.

13:20-50B.23 provides in pertinent part:

Red signal warning lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform other users of the highway that the school bus is stopped on the highway to take on or discharge school children.

- i. Every school bus shall be equipped with two front and two rear red signal warning lamps located approximately six inches below the top of the school bus, as near to the sides as possible, and equidistant from the center.
- ii. The red signal warning lamps shall be activated by an automatic switch on the service door opener. Opening the service door shall automatically cut off the amber signal warning lamps and activate the red signal warning lamps. Closing the service door shall automatically cut off the red signal warning lamps and recycle the signal warning lamp system for the next stop.

* * *

4. The system of red and amber signal warning lamps shall be wired so that the amber signal warning lamps are energized manually, and the red signal warning lamps are automatically energized (with the amber signal warning lamps automatically deenergized) when the stop signal arm is extended and when the school bus service door is opened.

[N.J.A.C. 13:20-50B.23 (emphasis supplied)]

Moreover, the video introduced at trial (S-1), clearly shows the stop arm on the driver's side of the bus in an extended position at the time defendant's car passes at

a moderately high rate of speed. At the same time, two students can be seen walking down the aisle of the bus and exiting the bus through the door. Clearly, the bus had come to a stop, the door had been opened, causing the flashing amber lights to switch to red, and the stop arm was fully extended when defendant's vehicle passed the bus.

After de novo review, this court finds that the State has proven that defendant drove his vehicle past Hearon's school bus while it was discharging students in violation of N.J.S.A. 39:4-128.1. The sentence imposed by the municipal judge will be reimposed.