



STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY CONTE,

Defendant-Appellant.

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

Municipal Appeal MA26-008
Highlands Boro Municipal Court (1317)
Ticket No.: S-2024-000029

ORDER

This matter has been opened to the court by defendant Anthony Conte, moving to dismiss the charges currently pending in the Highlands Borough Municipal Court on the grounds that defendant's conduct was de minimis within the meaning of N.J.S.A. 2C:2-11(b); and for the reasons contained in the attached opinion, **IT IS** on this 13th day of March 2026, **ORDERED:**

1. Defendant's motion for dismissal is **DENIED**; and
2. The matter is **REMANDED** to the Highlands Boro Municipal Court with the direction that this case must be resolved within 60 days of this order; and
3. A copy of this order shall be served electronically to all parties listed below within three days and uploaded to eCourts.

/s/ Marc C. Lemieux

MARC LEMIEUX, A.J.S.C.

Original: Criminal Division Manager
Edward G. Washburne, Esq.
Monmouth County Prosecutor's Office
Highlands Municipal Court
James Butler, Esq., Municipal Prosecutor

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTHONY CONTE,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION – CRIMINAL PART
MONMOUTH COUNTY

Municipal Appeal MA26-008
Highlands Boro Municipal Court (1317)
Ticket No.: S-2024-000029

MEMORANDUM OPINION

Argued March 4, 2026 - Decided March 13, 2026

Edward G. Washburne, Esq, (McKenna, DuPony, Stone & Washburne,
P.C.) for defendant

Alexandra Harrigan, Assistant Prosecutor, and Merissa Shebell, Legal
Assistant, for the State (Raymond S. Santiago, Monmouth County
Prosecutor).

LEMIEUX, A.J.S.C.

I. INTRODUCTION

This matter has been opened to the court by defendant Anthony Conte,
moving to dismiss the charges currently pending in the Highlands Borough
Municipal Court on the grounds that defendant's conduct was de minimis within the

meaning of N.J.S.A. 2C:2-11(b). For the reasons that follow, defendant's motion is denied.

a. Whether Dismissal May Be Sought Pursuant to N.J.S.A. 2C:2-11

Before discussing the merits of this matter, the court must first determine whether this motion is properly before it. Defendant is moving to dismiss pursuant to N.J.S.A. 2C:2-11, which provides:

The assignment judge may dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

- a. Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
- b. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- c. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. The assignment judge shall not dismiss a prosecution under this section without giving the prosecutor notice and an opportunity to be heard. The prosecutor shall have a right to appeal any such dismissal.

At oral argument, defense counsel was asked whether defendant would suffer prejudice by waiting for the resolution of the criminal matter, and in the event of a

conviction, presenting this motion as part of the de novo review. Counsel responded that the statute permits a de minimis motion to be filed while the municipal prosecution is pending and is not limited to post-conviction proceedings. He added that defendant should not be compelled to proceed to trial before filing a de minimis motion.

In light of the increasing number of de minimis motions filed in non-final municipal court matters, the court makes the following observations. Each year our municipal courts resolve almost 6 million cases. New Jersey Courts, Municipal Courts, <https://www.njcourts.gov/courts/municipal>. Rule 3:23-2 permits review of a final post-judgment order of a municipal court by filing a notice of appeal. If review is sought from an interlocutory order, Rule 3:24(a) requires that leave to appeal must be sought from the Law Division. To prevent piecemeal review, leave to appeal an interlocutory order should only be granted in the interest of justice. Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008) (quoting R. 2:2-4).

While the de minimis statute does not require a leave application when seeking dismissal from an ongoing municipal court matter, this appears inconsistent with the intention of Rule 3:24(a) to limit applications to the Law Division from non-final municipal court matters. Moreover, the statute does not appear to contemplate motions filed from litigants in a ongoing municipal court matters and

the reference to “prosecution” can be read as referring to an indictment pending in the Law Division.

It seems clear that allowing unrestricted dismissal motions to be filed from ongoing municipal court cases has the potential to overwhelm the calendars of the assignment judges throughout the State. Moreover, in the event of a conviction, a defendant is entitled to de novo review in the Law Division when the de minimis motion can be filed. See State v. Zarrilli, 216 N.J. Super. 231 (1987). Therefore, there is no prejudice to a defendant who is required to wait until the municipal court matter is resolved before filing a de minimis motion. At a minimum, there should be a showing of good cause as to why the municipal court proceeding should be interrupted and the chief judge of a vicinage with numerous responsibilities¹ should decide the motion when the same relief can be sought post-conviction. Because the statute is ambiguous and does not specifically prohibit direct appeals from the municipal court, this court will decide this matter.

II. PROCEDURAL HISTORY AND RELEVANT FACTS

On May 18, 2024, Sergeant Kevin O’Donnell of the Highlands Police Department responded to a report of someone spray-painting the words “SLOW

¹ Rule 1:33-4(b) designates the assignment judge of each vicinage as the "authorized representative" of the Chief Justice "for the efficient and economic management" of courts within the vicinage, including budget, personnel, and facilities. Rule 1:33-4(c) further provides the assignment judge is "responsible for the supervision and efficient management of all court matters."

DOWN” in the middle of the Linden Avenue roadway. As Officer O’Donnell was taking photographs of the painted roadway, defendant approached him. O’Donnell asked defendant if he knew who painted the road, and defendant admitted that he had done it. Defendant was arrested and issued a summons charging criminal mischief, N.J.S.A. 2C:17-3A(1), and disorderly conduct, N.J.S.A. 2C:33-2A(2), for spray painting the words “SLOW DOWN” multiple times on the Linden Avenue roadway and on a construction sign.

Defendant was self-represented when he made his first appearance before the municipal court on June 7, 2024, and entered a plea of not guilty. No transcripts were provided to this court, but municipal court records indicate there were numerous court dates throughout 2024 and 2025 with adjournments for discovery, hearings and defendant’s medical issues.

On March 18, 2025, defendant filed a pro se motion to dismiss, claiming that, as the owner of property at 212 Linden Avenue, his ownership rights extended into the roadway and the Borough did not have an “ownership interest” in the roadway. Defendant attached a copy of his deed which defined his property boundaries as “BEGINNING at a point on the R.O.W. centerline of Linden Avenue (40’ R.O.W.), said point being a distance of 100.00 feet from its intersection with the westerly R.O.W. like of Ralph Street” On March 17, 2025, the municipal prosecutor

filed a response asking the court to deny the motion to dismiss. The municipal judge denied the motion on April 1, 2025.

On October 31, 2025, current counsel, Edward G. Washburne, Esq. filed a notice of appearance. On December 4, 2025, Mr. Washburne wrote to the municipal court advising that he was filing the instant motion in Superior Court seeking a de minimis dismissal pursuant to N.J.S.A. 2C:2-11(b). Mr. Washburne sought and was granted a sixty-day adjournment for the resolution of the motion. On that same day, Mr. Washburne filed this motion raising the following points:

POINT I

THE COURT SHOULD DISMISS THE COMPLAINT-SUMMONS AS DE MINIMIS BECAUSE DEFENDANT'S CONDUCT "DID NOT ACTUALLY CAUSE OR THREATEN THE HARM OR EVIL SOUGHT TO BE PREVENTED BY THE LAW DEFINING THE OFFENSE."

POINT II

THE COURT SHOULD DISMISS THE COMPLAINT-SUMMONS AS DE MINIMIS BECAUSE DEFENDANT'S CONDUCT WAS "TOO TRIVIAL TO WARRANT THE CONDEMNATION OF CONVICTION."

III. LEGAL STANDARD AND ANALYSIS

The touchstone for dismissal under the de minimis statute is “the prevention of absurd applications of the Criminal Code.” State v. Sorge, 249 N.J. Super. 144, 148 (Law Div.1991). In Sorge the defendants were charged with distribution of clean hypodermic needles to intravenous drug users. In denying the defendant's request to dismiss the charges as de minimis, the judge concluded that the State has a zero-tolerance drug policy which “refuses to treat as trivial the possession of even the most minuscule amounts of a controlled dangerous substance.” Id. at 149, 591. State policy makes it clear that “the unlawful use, manufacture and distribution of controlled dangerous substances continues to pose a serious and pervasive threat to the health, safety and welfare of the citizens of this State.” N.J.S.A. 2C:35-1.1(b).

In deciding de minimis motions, the assignment judge must accept as true the allegations made and view the facts in the light most favorable to the State. Zarrilli, 216 N.J. Super. at 236; State v. Brown, 188 N.J. Super. 656, 671 (Law Div. 1983). “When a de minimis motion is addressed it must be assumed that the conduct charged actually occurred.” Ibid. Here, defendant has admitted committing the acts charged.

“The purpose of the de minimis statute is to provide assignment judges with discretion similar to that exercised by the police, prosecutors and grand jurors who constantly make decisions as to whether it is appropriate to prosecute under certain

circumstances.” State v. Wells, 336 N.J. Super. 139, 141 (Law Div. 2000); State v. Hegyi, 185 N.J. Super. 229, 232 (Law Div. 1982). Specifically, the de minimis legislation seeks to avoid injustice “in a case of technical but trivial guilt.” State v. Hoffman, 149 N.J. 564, 587 (1997) (quoting State v. Smith, 195 N.J. Super. 468, 477 (Law Div. 1984)).

To determine triviality, a court should consider all relevant circumstances, though, the most important factor is the risk of harm the defendant's conduct posed to society. See State v. Evans, 340 N.J. Super. 244, 253 (App. Div. 2001) (citing Zarrilli, 216 N.J. Super. at 239). Applying this standard of review, this court concludes that the violations defendant is charged with are neither trivial nor would the prosecution of those charges under the circumstances be absurd. See Brown, 188 N.J. Super. at 674.

N.J.S.A. 39:4-98 empowers the Commissioner of Transportation to erect and maintain “signs or billboards at such points of entrance to the State as are deemed advisable, setting forth the lawful rates of speed, the wording of which shall be within the commissioner’s discretion.” That statute also provides that county, and municipal authorities have the right to designate “reasonable and safe speed limits” for roads under their jurisdiction. When an individual, however well-meaning, takes it upon himself to paint notices or warnings on those roadways and signs, that conduct is strictly prohibited by law and may pose a dangerous distraction to drivers.

Defendant has failed to establish that his conduct was trivial and his motion for dismissal will be denied. Because this matter has been pending for almost two years it will be remanded to the municipal court with instruction to resolve within sixty days.

IV. CONCLUSION

For the foregoing reasons, defendant's motion to dismiss is **DENIED**, and the matter is remanded to Highlands Borough Municipal Court for trial within 60 days.