

FILED

MAY 7, 2026

MICHAEL A. GUADAGNO,
J.A.D. (ret. & t/a)

NOT ELIGIBLE FOR PUBLICATION

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RONALD OSADACZ,

Defendant-Appellant.

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

Municipal Appeal No. 25-047
Freehold Twp. Municipal Court (1316)
Complaint Nos.: SC- 004328 & 004330

**MEMORANDUM OPINION
AND ORDER**

Trial de novo April 27, 2026 – Decided May 7, 2026

Donna O'Brien, Esq. (Alterman & Associates, LLC), for defendant.

Jack Williams, Legal Intern, for the State (Raymond J. Santiago,
Monmouth County Prosecutor).

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

In a case of first impression, defendant Ronald Osadacz, seeks de novo review of the municipal court determination that he violated the New Jersey Smoke-Free Air Act (Act), N.J.S.A. 26:3D-58, by permitting smoking in a prohibited section of his cigar store. Defendant maintains that his customers were not smoking but “sampling” cigars, an activity which under some circumstances is exempted under the Act. For the reasons that follow, after de novo review, this court determines that the sampling exception does not apply, and defendant is again found to have violated the Act on the dates charged.

I.

The following facts are gleaned from the municipal court record. On March 6, 2025, defendant was issued summonses for smoking in a prohibited place, on January 31, and February 19, 2025. Defendant's motion for a change of venue was granted and a "conflict judge," Hon. Scott Basen, J.M.C. was assigned to hear the matter.

Trial began before Judge Basen on December 17, 2025. The State called Todd Brown, the Freehold Township Zoning Officer and Township Planner. Brown testified that on September 9, 2022, defendant applied for a zoning permit for a cigar shop and lounge to be known as Cigar Social, located at 138 Village Center Drive. Brown reviewed and approved the zoning permit that same day with the contingencies that there would be no cannabis sales and defendant would have to obtain a building permit.

Defendant applied for a building permit on November 14, 2022. Brown initially denied the permit, but after a revised construction plan was submitted and reviewed by other departments, a permit was issued on January 19, 2023. Brown identified the construction plan (S-1), and the approval (S-2). Brown noted that S-2 permitted the retail sale of cigar/tobacco and accessories in Unit 1, with a cigar smoking lounge in rear of the premises. He described the layout:

you walk right in. The register is to the left. Straight ahead is the door to go to the lounge, to the left over to the side is their walk-in humidor, which has all of their cigars. And then I believe I recall there is some accessories along the walls.

Brown noted that the front retail section was separated from the lounge by a closed door and that the lounge was “members only.”

The State then called Margaret Bambery-Jahn, a health officer for the Freehold Township Health Department. Bambery-Jahn became familiar with Cigar Social after the application for a zoning permit was filed, and she participated in the process of reviewing and approving the application. She explained that when there is a smoking section shared with a retail area, there must be a separate ventilation system for each, and smoking is confined to the separate section. She noted that there is a Stop & Shop grocery store immediately adjacent to Cigar Social and her department received complaints in 2024 from grocery store customers about the cigar smoke smell. Bambery-Jahn frequently shops at that Stop & Shop and confirmed that a “very, very strong” smell of cigar smoke was present, particularly in the produce area. She spoke with the code enforcement section of her office and expressed her concern that the Cigar Social ventilation system was inadequate.

A consultant was hired who made recommendations for additional work to separately ventilate the cigar smoke. After that work was completed, there were no further complaints until January 2025, when the manager of Stop & Shop called to complain about the smoke smell.

In response, Bambery-Jahn visited Cigar Social on February 19, 2025, and observed three men smoking cigars in the retail section of the store with the door to

the smoking section open. She then informed a Cigar Social employee that a summons would be issued.

During cross-examination, defendant's counsel asked whether the customers were "sampling" the cigars. Bambery-Jahn emphatically denied the customers were sampling. When counsel asked whether the retail and smoking sections had separate ventilation systems, Bambery-Jahn explained that while the smoking section has a separate system, the retail section shares the same system with the rest of the building, which is what caused the infiltration of smoke into the Stop & Shop.

The State then called Jessica Habeck, a registered Environmental Health Specialist with the Freehold Health Department. Habeck responded to the Stop & Shop in January 2025, on a complaint of smoke smell emanating from Cigar Social. She went to the section of Stop & Shop that shares a common wall with Cigar Social and confirmed the smoke smell. She then went to Cigar Social and observed a few people sitting at tables in the retail section, smoking cigars with the door to the smoking lounge open. Habeck spoke with a Cigar Social employee who explained that the smoking lounge was for members only and the front retail section was for non-members. After conferring with her supervisor, it was determined that a summons would be issued.

After the State rested, defendant testified that he opened Cigar Social in March 2023 with a business partner, Anthony Marone. He described the business as a cigar

retail establishment with a lounge area in the rear. After the initial cigar smoke complaint, defendant spent “a decent amount of money” to upgrade the ventilation system. He stated there was a “firewall” between Cigar Social and Stop & Shop and understood its purpose to prevent fires and anything from “seeping through.” He explained that the front retail area was a “sampling room” where a customer could try out a cigar before deciding to buy a larger amount.

After receiving the first violation, defendant instructed his employees to limit cigar smoking to the rear lounge, however some customers had “grown accustomed” to smoking in the retail area and it was a “challenge” for his employees to move them to the lounge. Defendant explained that he had a full-time job and considered Cigar Social a “hobby” and was only there an average of once a week.

The State did not cross-examine defendant, and both sides rested. Defendant’s counsel urged the judge to “infer” an exemption to the Act to permit retail tobacco establishments to allow customers to sample cigars before purchasing them as they can be “costly, exotic and/or luxury items.”

Judge Basen found the statute, N.J.S.A. 26:3D-58 and its exceptions, N.J.S.A. 26:3D-59, were “quite clear” and applied only to making, manufacturing or importing cigars and did not apply to retail establishments. The judge also found that Mr. Brown, Ms. Bambery-Jahn, and Ms. Habeck testified credibly, but defendant was “less than credible.” Defendant was found to have committed both violations and

was assessed the minimum civil penalties of \$250 on the first and \$500 on the second.

Defendant filed a timely notice of appeal and now presents the following arguments:

I.
STANDARD OF REVIEW

II.
THE STATE FAILED TO CARRY ITS BURDEN OF PROOF THAT THERE WAS A VIOLATION OF THE NEW JERSEY SMOKE FREE AIR ACT, N.J.Stat. §26:3D-55, AS THERE ARE EXCEPTIONS THAT APPLY

III.
THE MUNICIPAL COURT BARRED THE DEFENSE FROM ELICITING TESTIMONY ON THE NEW JERSEY SMOKE FREE AIR ACT AND THE EXEMPTIONS WHICH ARE RELEVANT AND PROBATIVE

IV.
THE MUNICIPAL COURT MISINTERPRETED AND MISAPPLIED THE PROVISIONS OF THE NEW JERSEY SMOKE FREE AIR ACT AND THE EXEMPTIONS.

V.
THE BORO OF FREEHOLD INAPPROPRIATELY TARGETED MR. OSADACZ BY ISSUING THE COMPLAINTS AGAINST HIM PERSONALLY INSTEAD OF THE BUSINESS, THE CIGAR SOCIAL, WHICH THE BORO KNEW TO BE A JOINTLY OWNED ENTERPRISE.

II.

At a trial de novo, this court must make independent findings of fact and conclusions of law based entirely on the record made before the municipal court, 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). This court agrees with and adopts Judge Basen's credibility findings as to all of the witnesses.

The New Jersey Smoke-Free Air Act, enacted in 2006, "generally prohibits smoking in indoor public places and workplaces . . ." UAW v. Murphy, 483 N.J. Super. 414, 422 (App. Div. 2026). "Indoor public place" is defined as "a structurally enclosed place of business, commerce or other service-related activity, whether publicly or privately owned or operated on a for-profit or nonprofit basis, which is generally accessible to the public[.]" N.J.S.A. 26:3D-57.

Exceptions

Defendant maintains that Cigar Social customers were permitted to smoke in the retail section of the store if they were "sampling" cigars. Although defendant has presented no evidence to support his claim that the customers were sampling as opposed to smoking, he now urges this court to find that they were sampling, and that

activity is exempted under the Act.

The exceptions to the Act are contained in N.J.S.A. 26:3D-59, and provide in pertinent part that the provisions shall not apply to “any cigar bar or cigar lounge[.]”

“Cigar lounge” is defined as

any establishment, or area within an establishment, designated specifically for the smoking of tobacco products, purchased on the premises or elsewhere; except that a cigar lounge that is in an area within an establishment shall be an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas.

[N.J.S.A. 26:3D-57]

This exemption clearly applies to smoking in the Cigar Social lounge area as it was equipped with a separate ventilation system and a door which separated the lounge from the retail section. As to smoking in the retail section, defendant relies on N.J.S.A. 26:3D-59 (c), which provides an exemption to “any tobacco business when the testing of a cigar or pipe tobacco by heating, burning or smoking is a necessary and integral part of the process of making, manufacturing, importing or distributing cigars or pipe tobacco[.]”

Margaret Bambery-Jahn flatly rejected defense counsel’s suggestion that the customers she observed smoking cigars in the retail area were “sampling,” stating they were “sitting on the sofas socializing.” Although defendant testified that the

front, retail area was initially intended to be used as a “sampling area,” it is equally clear from his testimony that he understood that smoking was to be confined to the lounge and, after the first complaint, he instructed his employees “that if people were smoking, they were to go to the rear.” Defendant’s testimony that the two occasions when investigators observed customers smoking in the retail area came after the customers were advised not to smoke there but did so anyway because it “was a challenge to move them,” is simply not credible. Rather, it is apparent from the credible testimony of the two witnesses who observed the retail area of Cigar Social, that no effort was made to prevent customers from smoking in the retail area where a couch and chairs were provided to accommodate them for this purpose.

While the Act does not specifically define sampling, the one New Jersey case that mentions sampling involves a West Caldwell smoking ordinance¹ that limits “pre-purchase sampling . . . to no more than 3 minutes prior to making a multi-unit purchase from the [tobacco retail establishment].” Sparroween, LLC v. Tp. of W. Caldwell, 452 N.J. Super. 329, 333 (App. Div. 2017). This is not the type of activity witnessed by the investigators who observed customers smoking in the retail section of Cigar Social.

N.J.S.A. 26:3D-57 provides “a cigar lounge that is in an area within an

¹ N.J.S.A. 26:3D-65(b) permits municipalities to adopt municipal ordinances to impose civil penalties for smoking in a public place as an alternative to liability under the Act.

establishment shall be an area enclosed by solid walls or windows, a ceiling and a solid door and equipped with a ventilation system which is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas.”

Moreover, N.J.S.A. 26:3D-62(a) provides in pertinent part: “The person having control of an indoor public place or workplace shall order any person smoking in violation of this act to comply with the provisions of this act.” Defendant, as an owner of Cigar Social, was obligated to enforce the law and cannot blame his employees or customers for his failure to do so.

Defendant has failed to establish that the customers in the retail area were sampling as opposed to simply smoking the cigars. Moreover, this court agrees with Judge Basen that the exception does not apply to the business conducted by Cigar Social. There has been no showing that Cigar Social was engaged in “making, manufacturing, importing or distributing cigars” as defined by the statute.

Charging defendant personally

Although not raised before the municipal court, defendant now maintains that he was “inappropriately targeted” because he was personally named in the summons, while his partner and the business entity were not. During trial, defendant’s counsel questioned Bamberg-Jahn as to why the summonses were issued to defendant when

he had a partner in the business. She responded: “I guess, because he was our contact. I never had contact with his other partner.”

In defendant’s brief, counsel states that Cigar Social was a partnership, but no evidence of the business structure of Cigar Social was presented at trial and this court is strictly limited to the record made before the municipal court. Johnson, 42 N.J. at 157.

N.J.S.A. 26:D-62(b) permits the local board of health to “advise the person having control of the place” of the violation. In 2022, defendant submitted zoning and construction applications. From the time of the initial complaint, defendant has held himself out as the point of contact for local officials and the investigators. He was named in the notices of violation and never suggested that his partner or the business should have been charged either, instead of, or in addition to him. N.J.S.A. 23:3D-57 provides the following definition: “Person having control of an indoor public place or workplace” means the owner or operator of a commercial or other office building or other indoor public place from whom a workplace or space within the building or indoor public place is leased.

Additionally, there is no basis to conclude that the Legislature intended to limit enforcement of the Act to the business entity and “thereby shield the individual from any liability.” See Allen v. V & A Bros., Inc., 208 N.J. 114, 131 (2011) (individuals can be held liable for violations of the Consumer Fraud Act). In Sparroween, which

involved a violation of the Act, both the cigar store entity and the owner were charged. 452 N.J. Super. 329.

There is no evidence to support defendant's claim that he was targeted; the investigators merely served the person who held himself out as a representative of the business. Nor is it accurate for counsel to refer to the municipal court's finding as a "conviction," as counsel does in her brief. As Judge Basen made clear, "[t]his is not a criminal charge." Indeed, N.J.S.A. 26:3D-65, which proscribes the penalties for violating the Act is entitled "Civil penalty for smoking in unauthorized place." Defendant was assessed a civil penalty.

ORDER

For these reasons, **IT IS** on this 7th day of May 2026, **ORDERED:**

1. The State has proven that defendant willfully and knowingly violated the charged provisions of the Act; and
2. As the Act mandates civil penalties and Judge Basen imposed the mandatory minimums of \$250 for the first violation and \$500 for the second, this court is compelled to impose the same penalties; and
3. Because this trial de novo is being disposed of by written opinion, and defendant has not challenged the amount of the fines imposed by the municipal court, defendant is expressly advised of his right to appeal under Rule 3:21-4(h); and defendant's notice of appeal must be filed within 45 days of the date of this Memorandum Opinion and Order; and
4. A copy of this Memorandum Opinion and Order shall be served within three days to all parties listed below and uploaded to eCourts.

Michael A. Guadagno

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

Original: Criminal Division Manager

Copy: Donna O'Brien, Esq. (Alterman & Associates, LLC)
Monmouth County Prosecutor's Office