

STATE OF NEW JERSEY,

- VS -

DEFENDANT

MUNICIPAL COURT
BOROUGH OF
SUMMONS NOS.

This matter having been scheduled for a motion on November 7, 2018, having appeared on behalf of the State of New Jersey and Even Ostrer, Esq. having appeared on behalf of Defendant, and prior to the commencement of trial, counsel for the Defendant filed a motion to suppress in accordance with New Jersey Court Rule 7:5-2, and the Court having held a hearing on the motion; and for good cause shown;

IT IS ON THIS 16TH DAY OF JANUARY, 2017, ORDERED:

1. In accordance with the findings set forth in the rider annexed hereto, Defendant's motion to suppress is hereby granted.
2. Within ten days the municipal court administrator shall provide a copy of the order to all parties and to the county prosecutor.
3. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R 3:24.
4. In the event no appeal is filed by the state, this matter shall be dismissed without further appearance.


J.M.C.

Rider to Order

The above referenced matter arises out of an incident on April 20, 2018. As a result of this incident the Defendant was charged with inter alia, a violation of N.J.S.A 39:4 – 50.

This matter was scheduled for a motion on November 7, 2018. Defendant filed a motion to suppress in accordance with New Jersey Court Rule 7: 5-2. The court entertained the motion of the defense to suppress, and at oral argument the parties have stipulated to the following facts (Exhibit “A” to motion).

On April 20, 2018, [redacted] Police Department received a report indicating that defendant had called “911.” The reason for the report was the defendant was seeking medical assistance as a result of consuming an edible form of marijuana which is been described as a “weed cookie” one hour earlier.

Upon the New Jersey State Police officer's arrival, Trooper [redacted] observed the defendant's vehicle parked with its hazard lights activated. The officer approached the defendant who was seated inside the vehicle. The keys were in the ignition and the engine was running. And the defendant advise she was driving home from a friend's party, and she was, “now really high.” The officer determined to performs field sobriety tests and determined defendant was unable to operate a motor vehicle in a safe manner. At that time, the Defendant was handcuffed and advised of her rights. The officer also conducted a “probable cause search of the vehicle” and one open bottle of José Cuervo was identified. Defendant was transported to the New Jersey State Police Newark Station for processing. The Defendant was read the standard statement for motor vehicle operators and agreed to submit to two (2) breath samples. The officer conducted the appropriate 20-minute observations and administered the Alcotest with two (2) consecutive tests. Each test revealed 0.00% BAC.

A drug recognition expert, Trooper [redacted] was called and evaluated the Defendant, and determined she was on the influence of cannabis and obtain Defendant's consent to a urine test. The results of said tests are irrelevant to the within decision.

The allegation of the defense in connection with the motion to suppress is that the stop of the Defendant's vehicle was improper due to a lack of probable cause for the traffic stop, and there was insufficient probable cause to arrest the Defendant for the charge of driving while intoxicated.

An automobile stop by the police constitutes a seizure within the meaning of the Fourth Amendment and of Article I, Paragraph 7 of the New Jersey Constitution. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *State v. Sloane*, 193 N.J. 423, 430 (2008); *State v. Dickey*, 152 N.J. 468, 475 (1998). When such a seizure occurs without a warrant and evidence is seized, the State must prove that the police did not violate the Defendant's constitutional rights. *State v. Maryland*, 167 N.J. 471, 489 (2001). "As a seizure, a traffic stop is lawful if it is reasonable. That requirement may be met 'where the police have probable cause to believe that a traffic violation has occurred.'" *Sloane, supra*, 193 N.J. at 432 (quoting *Dickey, supra*, 152 N.J. at 475).

It is also undisputed that the Defendant called for emergency assistance and the Trooper did not observe the Defendant driving her motor vehicle. It is undisputed that the Defendant was not under the influence of alcoholic beverages.

It is alleged that the Defendant was under the influence of Marijuana. In *State v. Bealor*, 187 NJ 574 (2006), the Court held that to prove DWI based on marijuana intoxication, the State must show (1) that marijuana was present in the Defendant's system while he was driving, and (2) that the marijuana resulted in a substantial deterioration or diminution of the Defendant's mental faculties or physical capabilities as to make it improper for him to drive.

In order to prove the operation of a vehicle in an intoxicated condition, the motorist must have control of the car with the intention to drive. *State v. Daly*, 64 N.J. 122 (1973). *State v. Sweeney*, 77 N.J. Super. 512 (1962) established the principle that when one in a public place "turns on the ignition, starts and maintains the motor in operation and remains in the driver's seat behind the steering wheel, with the intent to move the vehicle," he "operates" the motor vehicle within the meaning

of *N.J.S.A. 39:4-50*. In *State v. Daly*, "intent" was the principal consideration to determine operation. In fact, in *State v. Daly*, where the driver sat behind the wheel with the engine running for a considerable length of time, using the engine only to power the heater in the car but with no intent to move the vehicle, the court found no violation of the statute.

In the present case it is undisputed that the officer who responded to the emergency call did not witness the Defendant operating the vehicle. The evidence before the court, by way of stipulated facts indicate that the Defendant was in her car which was running. The car was parked and the hazard lights were activated. In addition, Defendant had called "911" seeking emergency assistance. Based upon the facts before the court, the court finds that Defendant did not have any intention to operate the vehicle, and was awaiting medical assistance.

As such, the State cannot prove operation and meet the standard set forth above. Based upon the foregoing findings, the Court grants the Defendant's motion to suppress.