

IN THE APPELLATE DIVISION OF THE STATE OF NEW JERSEY

No. A-003621-21

STATE OF NEW JERSEY,

Plaintiffs-Respondents

v.

ALBERT FRENCH,
Defendant-Appellant,

On appeal from the Superior Court of Hunterdon County, Criminal
Division

APPELLANT'S BRIEF IN SUPPORT OF DISMISSING CONVICTIONS FOR
ALLEGEDLY VIOLATING EXECUTIVE ORDER 107 AND WALKING WITH TRAFFIC

Submitted September 19, 2022

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PRELIMINARY STATEMENT

This appeal arises from two separate instances, with nearly identical fact patterns, in which Defendant/Appellant Albert French ("Mr. French") was stopped and detained by Clinton Township police officers for being out walking, allegedly in violation of Executive Order 107 ("EO 107"). However, EO 107 contained categorical exceptions that allowed people to be outside of their homes, at least two, arguably three, of which, Mr. French objectively fit. Residents were allowed to be outside walking, which it is undisputed is what Mr. French was doing when stopped by police. It is undisputed that Mr. French was walking alone. Residents were also allowed to be out for "political reasons." Mr. French was carrying a sign and protesting when he was detained by the police. This was a recognized exception to EO 107 and also is political speech protected by the First Amendment. The facts show that Mr. French was not in violation of EO 107 because he fell within enumerated exceptions. However, he was convicted anyway of violating it in both the municipal and superior courts.

The constitutionality of EO 107 was originally not at issue in this case because Mr. French fit the exceptions. Convicting him *even though* he fit the exceptions, however, raises a number of Constitutional issues. First, the Superior Court's interpretation of the Disaster Control Act and EO 107 is so broad as to be unconstitutionally vague, depriving him of due process under the Fourteenth amendment. Under the Superior Court's reasoning, Mr. French was out walking, but he was not walking in the manner "contemplated" by EO 107. Similarly, Mr. French was out protesting, but the Superior Court reasoned that the manner in which Mr. French was engaged in political activity was not in the spirit of EO 107. In addition to depriving him of due process under the Fourteenth Amendment due to vagueness, this interpretation also violates his First Amendment right to freedom of expression and speech. It is a particularly egregious infringement because the speech the government is intruding upon is political speech, the most highly protected and valued speech. The Court's interpretation of the statute also infringed Mr. French's First Amendment rights because the factual basis for the conviction is entirely his speech and expressive conduct that took place after he was detained by police.

STANDARD OF REVIEW

The standard of review on all constitutional issues and statutory construction is *de novo*. Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014) (stating that a "trial court's

interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference”) (internal citations omitted).

The standard of review on the issue of whether Mr. French violated the statute concerning walking against traffic is clear error as to the factual findings. State v. Locurto, 157 N.J. 463, 474 (1999). With regard to the Superior Court’s interpretation of N.J.S.A. 39:4-34 the standard of review is *de novo*.

PROCEDURAL HISTORY

The April and May incidents were tried without a jury in the municipal court.¹ Mr. French was convicted of violating EO 107 on both days. 1T76:20-77:5; 2T54:10-14. Mr. French was convicted of a disorderly persons arising from behavior where he allegedly grabbed his groin area and shook it at the police officers for three to five seconds. 1T78:11-79:3. Mr. French was convicted of walking the wrong way with traffic. 2T55:22-25.²

On appeal to the Superior Court, Judge Borkowski vacated the conviction for disorderly persons based on Mr. French’s alleged

¹State of New Jersey v. French (March 25, 2021). The Transcript of Record for the April 7, 2020 incident is referred to herein as 1T. The Transcript of Record for the May 6, 2020 incident is referred to herein as 2T. Both transcripts are dated March 25, 2021.

² This summons was not presented by the government on appeal to the Superior Court and is not in Defendant’s possession. It is absent from the summons that Defendant possesses DA40-45.

grabbing of his groin because this is protected expression under the First Amendment. Da34. Judge Borkowski affirmed the convictions for allegedly violating EO 107 and walking with traffic. DA5-6.

STATEMENT OF FACTS

This appeal arises from two separate incidents that occurred on April 7, 2020 and May 6, 2020 with nearly identical fact patterns. In both cases, Mr. Albert French was walking along a highway carrying signs made out of poster board that said derogatory things about the police. In both instances he was stopped by local law enforcement. In both instances, the reason given for stopping him was that he was suspected of being in violation of Executive Order 107.

The April 7, 2020 Incident

Patrolman William Musacchio was the sole witness for the state. Mr. French did not testify. Officer Musacchio's testimony set forth the following facts.

On April 7, 2020, Defendant Albert French was walking along Route 22 in Clinton Township, NJ. 1T19-20. Officer Musacchio testified that Executive Order 107 ("EO 107") was in effect and that his understanding of EO 107 was that "if you did not have a specific reason for being out then you should have been at home at your residence quarantining and keeping socially distanced." Id. at 14:9-13. Officer Musacchio testified that he saw "out of the

corner of [his] eye, a pedestrian walking westbound in the eastbound lanes" on Route 22. Id. at 17:24-25. Officer Musacchio testified that he was under instructions that "if they [pedestrians] weren't engaged in essential activity that they were in violation of Executive Order 107 and we had designated an assistant prosecutor at the Hunterdon County Prosecutor's Office at the time that we could screen these types of incidences with." Id. at 18:10-15. Officer Musacchio testified that Mr. French was "walking on the highway with a posterboard in his hand" and that this is "what caught [his] eye because on top of the fact that he was a pedestrian on the highway it's during a state of emergency where the governor has enacted that nonessential activity need to come to an end." Id. at 19:25-20:5. Officer Musacchio testified that he witnessed Mr. French "raise the sign toward the motoring public." Id. at 20:8-10. He also testified that he observed Mr. French "grab his genitalia from outside his clothing" and "shake" it in an up and downward motion." Id. at 23:7-10

Officer Musacchio testified that he approached Mr. French, who was masked, and informed him that he was being detained. Id. at 28:21-22. Officer Musacchio testified that his probable cause for stopping Mr. French was threefold: "executive order violation, disorderly conduct, and then his jaywalking across the highway." Officer Musacchio testified that he detained Mr. French because of the state of emergency" and Mr. French was out. Id. at 56:6-9.

Video of the incident shows that Officer Musacchio stated to another responding officer "sure it's freedom of speech but it's in violation of the state of emergency." Id. at 56:23-57:1.

Six summons were issued to Mr. French as a result of the April 7, 2020 incident. Two summons alleged disorderly conduct in violation of N.J.S.A. 2C:33-2A(2) arising from Mr. French's alleged shaking of his groin area toward the police officer. Two summons alleged disorderly conduct in violation of local ordinance 198-10(c). One summons alleged violation of Executive Order 107. The final summons alleged failure to cross within a crosswalk in violation of N.J.S.A. 39:-4-34. The municipal court dismissed the second disorderly persons charge because he found that it arose from the same incident as the first charge. Id. at 79:8-11. The municipal court merged the municipal disorderly conduct charges and dismissed them because they arose from the same incident as the state charges. Id. at 79:11-17. The municipal court acquitted Mr. French of the failure to use a crosswalk charge because the highway in question does not have a medial barrier and the statute applies only to highways with medial barriers. Id. at 79:18-80:5. The municipal court convicted Mr. French of disorderly persons based upon the shaking of the groin and, separately, violating EO 107. On appeal, the Superior Court held that the alleged shaking of his groin area toward the police officer was expressive conduct protected under the First Amendment and dismissed that charge.

DA34. The only conviction that remains from this incident is the conviction under EO 107.

The May 6, 2020 Incident

Sargent Jeffrey Glennon was the sole witness for the state concerning the May 6, 2020 incident. Sgt. Glennon testified that his contact with Mr. French began because Sgt. Glennon was responding to information that an individual was walking in the roadway with a sign. 2T-8:23-9:5. Sgt. Glennon testified that he observed Mr. French walking in the roadway with a sign. Id. at 9:7-12. Sgt. Glennon testified that he got out of his vehicle and approached Mr. French and that Mr. French began "immediately yelling that he was an essential employee" and pointing to his shirt, which was a red Rita's Ice sweatshirt. Id. at 11:23-12:1. Sgt. Glennon testified that Mr. French said "a few times" that he was an essential employee. Id. at 12:16-18. Sgt. Glennon testified that Mr. French told him that "he was protesting and that he has the right to protest and he's an essential employee." Id. at 14:11-12.

Sgt. Glennon testified that he called Rita's Ice to determine if Mr. French was working there and that an employee at Rita's Ice informed him that Mr. French worked that day and that his shift ended at 4:00pm. Id. at 27:6-22. Sgt. Glennon testified that he encountered Mr. French on the highway at 4:21pm. Id. at 29:15-

20. Sgt. Glennon testified that he did not personally know what time Mr. French actually left Rita's. Id. at 36:6-16.

Sgt. Glennon testified that his reason for detaining Mr. French was because "[w]e were still in the midst of the pandemic. The executive order was in effect and for public safety, the governor and the attorney general wanted no people out in public so we were interested to see what was going on." Id. at 32:22-33:3. Sgt. Glennon testified that where he stopped Mr. French was between Rita's Ice, where Mr. French worked, and the car he saw Mr. French enter after Sgt. Glennon detained him. Sgt. Glennon further testified that he had stopped a car for a traffic stop between this area. Id. at 33:21-24.

At the municipal trial, Judge Perkins held that it was appropriate for Sgt. Glennon to stop Mr. French "under the circumstances." Id. at 51:19-22. Judge Perkins stated that "[t]here is no way that Sergeant Glennon would have any way of knowing whether he was going to a medical appointment or going to seek a pizza or whatever else." Id. at 53:18-20. Ultimately, Judge Perkins convicted Mr. French of violating EO 107 because Mr. French was "agitated" after he was detained and that "the sergeant would have been derelict had he not engaged in the conversation he did with Mr. French to determine whether Mr. French was, in fact, safe, for his own personal safety, and to make sure that he was not going

to engage in conduct which would contrary to the public interest because Route 22 is busy.” Id. at 53:23-54:14.

The municipal court dismissed the summons alleging that Mr. French was disorderly because he displayed his middle finger because it is protected speech under the First Amendment. Id. at 54:15-20. The court found that alleged disorderly conduct count merged with the violation of EO 107 because they are a continuing of one event. Id. at 55. Judge Perkins found that the municipal ordinance did not apply under the circumstances. Id. Judge Perkins found that Defendant was guilty of walking the wrong way on the highway when he was not walking backwards. Id. at 55:22-56:3. On appeal to the Superior Court Judge Borkowski found Mr. French guilty of violating EO 107 and walking the wrong way on the highway. DA5-6.

LEGAL ARGUMENT

I. DEFENDANT’S CONDUCT WAS NOT A VIOLATION OF EXECUTIVE ORDER 107 (DA17)

The relevant part of Executive Order 107 stated that all New Jersey residents should stay at home or their places of residence and then lists nine categorical exceptions including:

- 1) obtaining goods or services from essential retail businesses;
- 2) obtaining takeout food;
- 3) seeking medical attention, essential social services;

- 4) visiting family or other people with whom the resident has a close personal relationship;
- 5) **reporting to or performing their job;**
- 6) **walking, running, operating a wheelchair, or engaging in outdoor activities...while following best social distancing practices with other individuals;**
- 7) **leaving the home for an educational, religious, or political reasons;**
- 8) leaving because of a reasonable fear for his or her health or safety; and
- 9) leaving at the direction of law enforcement or other government agency.

DA45 (emphasis added).

Both days that Mr. French was stopped he was undeniably engaged in at least one of these categorical exceptions, and likely three. First and foremost, it is undisputed that he was *walking* alone. Indeed, both officers testified that when they stopped to detain him for alleged violation of EO 107 he was *walking* on the side of the highway alone. Moreover, Officer Glennon testified that Mr. French was wearing a mask and alone. He was practicing "best social distancing" practices by being utterly alone and wearing a mask. He could not have been in violation of EO 107 because all the evidence shows that he was engaged in the expressly permitted activity of walking.

He was also engaged in political protest, which was permitted under EO 107 and is also protected under the First Amendment. Both officers testified that at the time they stopped Mr. French, he was carrying a poster board. Officer Musacchio testified that he observed Defendant holding up his poster board to the public. 1T:19-20. This corroborates with Sgt. Glennon's testimony and police report that Mr. French was carrying a sign that said "p-h-u-c-k" on it. 2T14:11-13. Sgt. Glennon's Investigation Report indicates that the signs stated "PHUCK #Thin Blue...," and "Slow Down Police Ahead." DA59, DA61. This was protected political activity under the First Amendment *and* an exception recognized by EO 107 because it was a political reason for him to be out *walking* and protesting. Moreover, Mr. French stated to Sgt. Glennon that he was protesting.

Finally, both officers testified that Mr. French either explicitly stated that he was engaged in an essential activity or alluded to the fact that he was involved in the essential activity commuting from his job. Indeed, Sgt. Glennon confirmed that Mr. French's shift at Rita's Ice ended at 4pm, just 20 minutes before he encountered him walking on the highway. 2T:36.

All of the evidence shows that Mr. French was engaged in activity expressly allowed by EO 107: walking, political activity, and commuting from his job.

II. THE SUPERIOR COURT'S INTERPRETATION OF EO 107 RENDERS THE EXECUTIVE ORDER UNCONSTITUTIONALLY VAGUE UNDER THE

FOURTEENTH AMENDMENT (not raised below; was not at issue until Superior Court's interpretation of executive order 107)

The Fourteenth Amendment prohibits the government from depriving a person of life, liberty, or property without due process of law. A government "violates the Due Process Clause when it takes away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement. Johnson v. United States, 576 U.S. 591, 591 (2015). When it comes to defining a crime, "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Kolender v. Lawson, 461 U.S. 352, 357 (1983). A law that vests too much discretion in law enforcement or the courts is unconstitutionally vague. See Id. at 361 (holding that a statute was "unconstitutionally vague on its face because it encourages arbitrary enforcement by failing to describe with sufficient particularity what a suspect must do in order to satisfy the statute").

In Johnson, the Supreme Court was called upon to decide whether the "residual clause" in a sentencing statute was so vague as to be unconstitutional. The residual clause provided for a sentencing enhancement if the person had previously been convicted

of a crime that “involves conduct that presents a serious potential risk of physical injury to another.” Id. at 594 (citing statute). The Supreme Court held that the clause was unconstitutionally vague because “the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges.” Id. at 597. Indeed, New Jersey recognized the difficulty with selective enforcement and on March 21, 2020, an administrative order was issued that “clarified” EO 107, stating that gatherings of 10 people or fewer are presumptively permitted.³

Here, the Superior Court held that Mr. French was in violation of EO 107 because he was “not engaged in a traditional recreational activity.” DA32. The Court stated that Mr. French’s protesting and walking, in an area where there is no dispute he was permitted to walk, was a “high-conflict activity with a much greater chance of resulting in interpersonal activity than jogging around one’s neighborhood or taking a solitary walk.” *Id.* Ultimately, the court held that “while the appellant was outside, he was not engaged in the sort of outdoor recreational activity contemplated by a broad interpretation of Executive Order 107 and a consideration of the purpose behind that order.” *Id.*

³ A copy of Administrative Order 2020-4 is available at <https://www.nj.gov/governor/news/ao/docs/AO%202020-4%20Gatherings.pdf> (last accessed September 19, 2022).

The Court further found that the protesting in which Mr. French was engaged was not permitted under EO 107 because "[w]hen read with the purpose of the act in mind, it is clear that individuals were to leave their residences, perform the educational, religious, or political purpose of their leaving in as efficient and socially-distanced a manner as possible, and then go home." DA33. The judge stated that "voting" would be permitted, appellant's "public, high-conflict activity of an indefinite duration" did not and "could have waited until the emergency subsided." DA33-34.

This interpretation of EO 107 renders the EO unconstitutionally vague. The Court's conviction of Mr. French is based on an "underlying purpose" of a statute instead of the executive order's plain language. It required Defendant to read the EO "with the purpose of the act in mind" rather than the plain language of the EO. Walking and political activity were expressly permitted by the plain language of the statute. Contriving an interpretation of the EO and Disaster Control Act to convict Mr. French for engaging in these activities renders the statute unconstitutionally vague because there was no way for Mr. French to have been on notice that was not walking in a manner or protesting in a manner "contemplated" by the purpose of the EO. Indeed, this may be the reason the EO exempted political activity and walking from its scope.

III. AS APPLIED, THE EXECUTIVE ORDER AND DISASTER CONTROL ACT IMPINGE ON MR. FRENCH'S FIRST AMENDMENT RIGHT TO PROTEST (not raised below; this was not at issue until Superior Court's interpretation of executive order 107)

It is indisputable that Mr. French was out walking alone on the highway carrying a political sign, which is political speech. The Superior Court engaged in no First Amendment analysis as to whether the state's conviction of Mr. French for engaging in political protest was a violation of his constitutional rights. The Court presumed that the state had a right to prohibit Mr. French's political protest. There is *no precedent* for the state to completely ban political protest and no precedent was cited by the Superior Court or the state. Mr. French was engaged in protected political speech and convicting him for engaging in protected political speech is a violation of his First Amendment rights.

IV. AS APPLIED, THE EXECUTIVE ORDER AND DISASTER CONTROL ACT UNCONSTITUTIONALLY INFRINGED ON MR. FRENCH'S RIGHT TO FREEDOM OF MOVEMENT AND FOURTH AMENDMENT RIGHT BECAUSE THE STATE LACKED REASONABLE SUSPICION OR PROBABLE CAUSE TO STOP AND DETAIN MR. FRENCH (not raised below; this was not at issue until Superior Court's interpretation of executive order 107)

"The right to travel is a part of the liberty of which the citizen cannot be deprived without the due process of law." Kent v. Dulles, 357 U.S. 116, 125 (1958) (internal citations omitted). This is a fundamental right protected under the Fourteenth Amendment because it is deeply rooted in our national history and tradition. *Id.* at 126 (stating that "[f]reedom of movement across

frontiers in either direction, and inside frontiers as well, was a part of our heritage"). Political protest is also a fundamental right, protected by the First Amendment.

Mr. French was engaged in travel and political speech when he was stopped and detained by the police. Indeed, the fact that the right to travel is a fundamental right may be one of the reasons that EO 107 specifically allowed walking as a permitted activity. There is no precedent, and neither the Court nor the government, cited any precedent, that allows the State to blanket prohibit all citizens from walking outside of their homes. As applied, this is an impermissible infringement on Mr. French's constitutionally protected right to travel.

The Superior Court held that the initial stop was proper because Mr. French was out walking. Defendant maintained below, and maintains now, that stopping him *at all* was a violation of his constitutional rights. The Superior Court essentially held that police had the right to stop anyone they saw outside of their homes. DA31. This also violated Mr. French's fundamental right to travel and the Fourth Amendment. Simply being outside of one's home is not reasonable suspicion or probable cause of a crime.

V. THE COURT IMPERMISSIBLY SHIFTED THE BURDEN TO DEFENDANT TO PROVE HE WAS OUT FOR A REASON PERMITTED UNDER EO 107 (DA 18)

Even if the evidence did not show that Mr. French was engaged in permissible activity pursuant to EO 107, the state did not show

that he was *not* engaged in permissible activity. The burden was on the state to prove every element of its charge beyond a reasonable doubt. This would have required the state to show that Mr. French was engaged in activity that was not permitted under EO 107. In short, the Officers would have had to ascertain that Mr. French was *not* engaged in any of the permitted activities. To hold otherwise would impermissibly shift the burden of proof to the Defendant to show that he was engaged in a permissible activity, and that is exactly what happened here. 1T77:1-5 (Judge Perkins stating that Mr. French "should not have been there under the executive order. And there's no good reason cited for him being there. That, in and of itself, in the Court's mind, is enough to establish a violation of the executive order"). Burden shifting like this is not permitted in a criminal case because it violates a defendant's right to due process requiring him to prove that he was out of his house for one of the enumerated exceptions.

VI. MR. FRENCH'S SPEECH AFTER BEING STOPPED AND DETAINED BY THE POLICE IS PROTECTED SPEECH THAT CANNOT BE USED A BASIS UPON WHICH TO CONVICT HIM (not raised below; this was not at issue until Superior Court's interpretation of EO 107 and Disaster Control Act)

The Superior Court relied on Mr. French's speech and expressive conduct to convict him of violating EO 107 and, in so doing, trampled his constitutional rights to free speech, freedom of expression, and right to request an attorney.

The Superior Court reasoned that once Mr. French was approached by the police, he had a duty under the Disaster Control Act to "cooperate" with the police in their investigation. For the April 17, 2020 incident, the Court relied upon the following as evidence of Mr. French's alleged lack of cooperation:

- Mr. French stated: "I will not be part of this investigation." DA31.
- Mr. French did not stand still, instead walking closer to the officers and then walking away from the officers. DA31.
- Mr. French told the officers to get into their vehicles if they wanted to have a private conversation. DA31.

For the May 6, 2020 incident, the Court relied upon the following as evidence of Mr. French's alleged lack of cooperation:

- Mr. French straddled his sign, turned his back to the officers, and began to sway back and forth.⁴ DA36.
- Mr. French began to yell and make emphatic hand gestures. DA36.
- Mr. French asked the officers questions and cut them off before they could fully respond. DA36.
- Mr. French demanded a lawyer. DA36.
- Mr. French stated that he did not want to be part of the investigation any longer. DA36.
- Mr. French referred to one of the police officers as a tyrant. DA36.
- Mr. French was "hostile and combative." DA36.

⁴ The video shows that Mr. French was presenting his wrists in a position where the officers could handcuff him.

All of the behavior upon which the Court based its convictions is conduct that Mr. French is allowed to engage in under the Constitution. His speech toward the officers is all protected speech under the First Amendment and some of the speech, including stating that he does not want to be part of the investigation and requesting a lawyer, is protected under the Fourth and Fifth Amendments as well. In short, Mr. French was engaged in constitutionally protected activity and that activity was used a basis to convict him of violating EO 107 and the Disaster Control Act. The convictions are unconstitutional because Mr. French cannot be guilty of exercising his constitutional rights.

Moreover, to the extent that Mr. French's conduct is evidence of a lack of sufficient cooperation under the Disaster Control Act, then the Disaster Control Act is unconstitutionally vague under the Fourteenth Amendment because it did not provide Mr. French with sufficient notice of what would constitute a crime by being insufficiently cooperative.

VII. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SHOW THAT DEFENDANT WALKED THE WRONG WAY ON THE HIGHWAY AND THE COURT ERRED IN ITS INTERPRATION OF THE STATUTE AT ISSUE (DA21)

The Superior Court misunderstood the statute in question⁵, and it was clear error. Specifically, the Court found that "[t]he

⁵ The summons was not presented on appeal in the Superior Court by either the Defendant or the government. The summons in Defendant's possession does not show what statute under which he

statute in question requires that an individual walk on the extreme left of the road against traffic" and that Mr. French was "walking on the extreme right," which the Court concluded was a violation of the statute. However, the statute actually reads:

On all highways where there are no sidewalks or paths provided for pedestrian use, pedestrians shall, when practicable, walk only on the extreme left side of the roadway or its shoulder facing approaching traffic.

N.J.S.A. § 39:4-34 (West). This was a clear error in reading the statute. It is undisputed that Mr. French was walking *backwards*, thus facing oncoming traffic. At trial, Sgt. Glennon testified that "he was going the right way but backwards when he gave me the finger but then once he went to the jughandle he turned around and was walking improperly on the roadway." Transcript 2 at 32:8-12. Sgt. Glennon testified that "[w]hen he was walking backwards he's facing the proper way, you have to face traffic. But then once he turned around, he wasn't facing traffic, he was walking with traffic." *Id.* at 32:14-17. However, it is clear even from just this testimony that at some point Defendant *had* to turn around because he had gone around a jug handle and was preparing to cross the street, so he must have been perpendicular to the traffic to cross the street properly. Sgt. Glennon did not testify as to what point Mr. French turned around and there is no video evidence of

was charged. Defendant believes the Court and government were referring to *N.J.S.A.* 39:4-34.

this. There was insufficient evidence to convict Mr. French of violating this traffic law.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the Court enter an order:

- 1) Vacating the convictions and dismissing the charges against Mr. French on both charges concerning EO 107;
- 2) Vacating the conviction and dismissing the charges against of Mr. French for walking the wrong way in traffic.

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DANA WEFER, ESQ.

Dated: September 19, 2022

IN THE APPELLATE DIVISION OF THE STATE OF NEW JERSEY

No. A-003621-21

STATE OF NEW JERSEY,

Plaintiffs-Respondents

v.

ALBERT FRENCH,
Defendant-Appellant,

On appeal from the Superior Court of Hunterdon County, Criminal
Division

APPENDIX

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New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

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ON APPEAL FROM		
TRIAL COURT JUDGE ANGELA BORKOWSKI, JSC	TRIAL COURT OR STATE AGENCY HUNTERDON	TRIAL COURT OR AGENCY NUMBER 1027-SC-002985

Notice is hereby given that **ALBERT FRENCH** appeals to the Appellate Division from a Judgment or Order entered on **06/15/2022** in the Civil Criminal or Family Part of the Superior Court Tax Court or from a State Agency decision entered on _____

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

Defendants appeals the two convictions under N.J.S.A. App. A:9-49(h) for alleged violation of Executive Order 107. Incidents occurred on two separate dates, but were heard together by Superior Court in de novo review. Defendant also appeals from conviction for walking with traffic arising from same incident.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

On two separate occasions, Appellant was walking along highway with a political protest sign while Executive Order 107 was in effect. He was convicted of violating N.J.S.A. A:9-49(a) and (g) for allegedly violating Executive Order 107. Sentenced to 14 day suspended sentence, \$500 fine, 1 year probation, and costs for each conviction. Defendant also convicted of walking wrong way with traffic.

This appeal is from a conviction post judgment motion post-conviction relief pre-trial detention
 If post-conviction relief, is it the 1st 2nd other _____ specify

Is defendant incarcerated? Yes No

Was bail granted or the sentence or disposition stayed? Yes No

If in custody, name the place of confinement:

Defendant was represented below by:

Public Defender self private counsel **DANA WEFER** _____ specify

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	ANGELA BORKOWSKI, JSC	07/28/2022
Trial Court Division Manager	HUNTERDON	07/28/2022
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to R. 2:5-1(a), (e) or (h)		

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
STATE OF NEW JERSEY	RENEE M ROBESON, Esq. HUNTERDON COUNTY PROSECUTORS OFFICE 65 PARK AVENUE P0 BOX 756 FLEMINGTON NJ 08822-0756 908-788-1129 rrobeson@co.hunterdon.nj.us (mahkao@co.hunterdon.nj.us)	07/28/2022

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service
Transcript Office	APPELLATE TRANSCRIPT OFFICE	07/28/2022
Clerk of the Tax Court		
State Agency		

Exempt from submitting the transcript request form due to the following:

-
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by *N.J.S.A. 22A:2* has been paid.

07/28/2022

Date

s/ DANA LAUREN WEFER, Esq.

Signature of Attorney or Pro Se Litigant

BAR ID #

036062007

EMAIL ADDRESS

dwefer@weferlawoffices.com



New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

Additional appellants continued below

Additional respondents continued below

Additional parties continued below

Appellant's attorney email address continued below

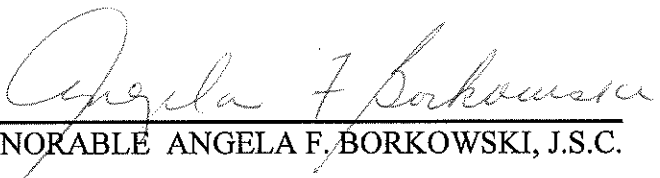
Respondent's attorney email address continued below

Additional Party's attorney email address continued below

IT IS FURTHER ORDERED that the appellant is sentenced to the same sentence below, to wit: a \$500 fine on each count of Violating Executive Order 107. Additionally, for the charge based on the events occurring on May 6, 2020, he is sentenced to a 14-day suspended jail sentence, and one year of probation. On the charge of Walking With Traffic, appellant is sentenced to a fine of \$103. The appellant is sentenced to \$33 court costs on each conviction, and \$50 VCCB and \$75SNSF on each of the Executive Order violations.

IT IS FURTHER ORDERED that all charges merged by the Municipal Court remain merged, and the appellant is acquitted on all charges on which he was acquitted by the Municipal Court.

Statement of Reasons attached and incorporated herein. The appellant has 45 days to appeal these convictions.



HONORABLE ANGELA F. BORKOWSKI, J.S.C.

FACTUAL AND PROCEDURAL HISTORY

On March 25, 2021, the appellant appeared before the Honorable Eric M. Perkins, J.M.C., in Municipal Court on charges of Violating Executive Order 107; Disorderly Conduct; and Walking With Traffic.

The State's first witness was Patrolman William Masacchio, of the Clinton Township Police Department. (T1 7:22-24)¹. He testified that on April 7, 2020, he was working a day shift on patrol. (T1 11:17-21)². He testified that at approximately 4:24 in the afternoon, he had just completed a business check at the Fountain Motel. (T1 12:10-22). At the time, due to the COVID-19 pandemic, Governor Murphy had issued an order "which was essentially lockdown to keep people only confined to certain essential activities whether it be going to work or emergencies." (T1 13:15-14:5). Patrolman Masacchio testified that after the business check, he observed a pedestrian walking westbound in the eastbound lanes and carrying a posterboard. (T1 17:24-18:5). He testified that at the time, his instructions were to contact the prosecutor's office for screening if he saw an individual engaged in activity which he believed to be in violation of the executive order. (T1 10-15). He testified that he took notice of the pedestrian because he was a pedestrian on a highway, and because of the state of emergency. (T1 20:2-5). At some point, the individual crossed the highway, and Patrolman Masacchio ultimately contacted the prosecutor's office to speak to the prosecutor assigned to assist with screening suspected violations of the executive order. (T1 20:7-22:7). He then observed the individual turn and face the highway before grabbing his genitals through his clothing and shaking them up and down while several vehicles passed by. (T1 23:5-25). After that, the individual made a gesture extending his middle finger toward passing cars. (T1 24:9-10). Following his conversation with the prosecutor's office, Patrolman Masacchio decided that it would be appropriate to take the

¹ T1 refers to the transcript dated March 25, 2021, and beginning with the testimony of Patrolman William Masacchio.

T2 refers to the transcript dated March 25, 2021, and beginning with the testimony of Sergeant Jeffrey Glennon.

V1 refers to the motor vehicle recording taken on April 7, 2020.

V2 refers to the motor vehicle recording taken on April 7, 2020, beginning immediately after the conclusion of V1.

V3 refers to the motor vehicle recording taken on April 7, 2020, that records simultaneous to V2 with a wider screen range.

V4 refers to the motor vehicle recording taken on April 7, 2020, that records simultaneous to V1 and V2 in which the camera is aimed at the ceiling of the video.

V5 refers to the motor vehicle recording taken on May 6, 2020.

² Although the transcript refers to "April 7th, 2002," context makes it clear that the question intended to refer to a date in 2020.

individual into custody on charges of violating the executive order as well as multiple disorderly persons charges. (T1 25:3-24). He testified that before doing so, he requested assistance from another officer. (T1 26:8-10). He testified that he approached the individual and found him to be irate and emotional. (T1 26:22-23). He realized that he recognized the individual as the appellant. (T1 27:22-28:7). He told the appellant that he was going to detain him, and the appellant responded that he was essential, which Patrolman Masacchio understood to mean that the appellant was an essential worker; he did not believe that the appellant was operating in a professional capacity at that time. (T1 29:1-17). Patrolman Masacchio testified that his supervisor arrived on the scene, and the appellant began to walk away from the two officers. (T1 30:3-16). They decided that since they had identified the appellant, they would not take him into custody, but instead would send any charges to him by mail. (T1 31:1-22). Patrolman Masacchio confirmed that there was video footage of this incident, beginning during his conversation with the prosecutor. (T1 32:18-33:7). At that time, the video was played for the court. (T1 34:1-35:9). In the video, it was confirmed that the appellant had driven a vehicle, although he was on foot at the time of the interaction. (T1 35:14-19). Patrolman Masacchio testified that after the events captured on video, he did not see the appellant again. (T136:44-17). He further testified that on the video, the appellant could be heard stating that he was not an essential employee. (T1 36:18-37:4). He testified that at one point, the appellant crossed the road without walking in a crosswalk, and that when the appellant had shaken his genitals at the motorists, he had also shaken it at the officers. (T1 37:24-38:3).

On cross examination, Patrolman Masacchio testified that during his career, he has interacted with people who were more upset than the appellant, and he clarified that he stopped the appellant due to his suspected violation of the executive order, his jaywalking, and his disorderly conduct. (T1 40:11-41:11). He confirmed that there were certain exceptions to the executive order, including exceptions for going to work, responding to emergencies, and getting food, as well as engaging in certain political activities. (T1 42:1-5). He testified that the appellant was holding a sign, and that he did not ask the appellant whether he was protesting, or on his way to or from work. (T1 42:15-20). He stated that he had not personally interacted with the appellant before, but was aware of him due to his prior interactions with law enforcement. (T1 43:16-21). He confirmed that some protesters do carry signs, and some do use profane language on those signs. (T1 44:20-45:1). The appellant's sign appeared to contain the word "phuck." (T1 18-21).

He confirmed that he noticed the sign before seeing the appellant grab his genitals, and stated that the appellant was walking outside the guardrail on the shoulder of the road before crossing the road to the center median. (T1 36:10-47:3). He stated that although the word “median” is not used in the statute under which the appellant was charged, “median” is synonymous with “medial barrier.” (T1 50:19-51:2). He asserted that although there was not a physical medial barrier in this case, there was a grass median, and the appellant’s conduct was still unlawful. (T1 51:18-52:2). He testified that the length of time that the appellant grabbed his genitals was approximately three to five seconds, and stated that he had multiple reasons for initiating an encounter with the appellant. (T1 55:1-20). He stated that at no time did the appellant tell him that he had a job, although he admitted that the appellant had asked whether the officer was saying that he was not an essential worker. (T1 57:21-58:2). He confirmed that there was no doubt in his mind as to what the appellant was doing when he grabbed his genitals. (T1 60:3). He stated that although there are several businesses in the area of this incident, he did not know what businesses were open at the time, due to the lockdown. (T1 60:13-20).

Neither the State nor the defense called any further witnesses, and the defense proceeded to summation of its case.

In summation, the appellant argued that under the executive order, there were legitimate reasons why a person might be outside, including being an essential worker, getting food, or engaging in political activity, and Patrolman Masacchio made no attempt to discern whether the appellant fell within one of these categories. (T1 63:7-19). He stated that Patrolman Masacchio believed that the appellant’s signs were offensive, but without the signs being in evidence the court could not determine whether they were offensive, and he stated that Patrolman Masacchio had stopped the appellant because he had grabbed his genitals, but made no attempt to determine whether that brief motion might have been because the appellant suffered from a rash or other medical condition. (T1 63:20-64:4). He argued that this created reasonable doubt. (T1 64:5-7). He further argued that it was not improper for a pedestrian to cross the road to the median, because the statute in question clearly referred to a “medial barrier,” and could have used the word “median” if that was what it meant. (T1 64:8-14). He argued that the disorderly conduct charge was improper, because the statute in question referred to “littering, dumping, destruction or playground property and so on,” and because the charge arose out of the officer’s original stop for a violation of the executive order; a stop which was unfounded. (T1 64:15-65:2).

The State argued that at the time of the charged offenses, thousands of people were dying. (T1 65:6-22). Law enforcement had been directed to arrest people who were outside of their residences without a valid reason, and that no reason listed in the order would explain or justify the appellant's conduct. (T1 65:24-66:6). The State argued that the evidence presented was uncontested, and the court cannot speculate as to whether the appellant was employed. (T1 66:6-8). The State argued that the appellant was eager to talk with the police, but never said that he was an essential worker. (T1 66:11-22). The State argued that based on that comment, the court cannot speculate as to why the appellant was on the side of the road. (T1 66:20-67:4). The appellant ultimately walked away from the officers, indicating that he was walking, and was not there for a legitimate purpose. (T1 67:11-15). The State argued that the statute is clear as to what constitutes disorderly conduct, a person is guilty if that person "with purpose to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, he engages in fighting or threatening or in violent or tumultuous behavior, creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor." (T1 68:5-13). The State reiterated that this occurred at a time when the executive order was being strictly enforced, and the appellant's activities were self-evidently non-essential. (T1 68:14-69:17). The State argued that not only was there no legitimate purpose for the appellant's conduct, but his conduct created a risk to others because it meant that the officers, high-risk first responders, had to take the additional risk of interacting with him. (T1 70:3-18). The State argued that even after being told multiple times that he was being detained, the appellant walked away. (T1 70:19-71:6). The State argued that a median can be considered a barrier, because it divides two things, and therefore the jaywalking charge was proper, but acknowledged that the State was more concerned with the other alleged offenses. (T1 72:1-16). There was little information about the sign because the appellant took the sign with him when he left, and the officer was unable to see it, but that shaking a sign at traffic and grabbing one's genitals is nevertheless disorderly conduct. (T1 72:17-25). The State argued that the appellant had argued that the initial stop for a violation of the executive order was unlawful, and therefore everything stemming from that stop should be suppressed. (T1 73:6-18). However, the State argued, the appellant was the one who walked by the officer's car, and that by the time the officer approached the appellant, he had received authorization from a prosecutor and had proof of a violation beyond a reasonable doubt. (T1 73:11-74:6). The initial encounter was not illegal.

(T1 74:1-6). The State argued that based on the testimony and video evidence, the appellant was guilty beyond a reasonable doubt. (T1 74:9-14).

The court found that it was beyond dispute that the incident occurred within the jurisdiction of the court, and it was agreed upon that the appellant was the individual in question. (T1 74:15-23). The court found that it was uncontroverted that the event occurred on April 7, 2020, during the early days of the pandemic, when the executive order was in effect. (T1 75:4-16). The appellant was observed walking on the shoulder of the road and then crossing over to the median, while carrying a sign. (T1 75:17-19). He was not in a residential area. (T1 75:20-22). When stopped, he became combative, and engaged in conduct that the court considered “quite unusual.” (T1 75:25-76:3). The court found that the officers attempted to deescalate the situation, and therefore did not take the appellant into custody. (T1 76:11-19). The court found that the State had met its burden of showing that the appellant violated the executive order – he was on the side of a highway in a public place carrying a sign, and regardless of whether or not the sign was political, he should not have been there under the terms of the executive order. (T1 76:20-77:5). The court observed that historically, during times of epidemic otherwise unconstitutional restrictions on the rights of the citizenry have been permitted, and therefore under the circumstances the State proved the appellant’s guilt beyond a reasonable doubt. (T1 77:6-19). The appellant was sentenced to a fine of \$500 and \$33 court costs. (T1 78:7-8). On the charge of disorderly conduct, the court found that the State had met its burden. (T1 78:9-11). The appellant had grabbed his genitals while in view of the public, which could have shocked a driver and caused an accident. (T1 78:11-19). The court concluded that there had been no evidence introduced suggesting that the appellant might have grabbed his genitals due to a physiological condition. (T1 78:20-79:1). The appellant was sentenced to a \$250 fine, \$33 court costs, \$50 VCCO, and \$75 SNFA. (T1 79:1-3). The court found that the two complaints of disorderly conduct alleged by the State were part of one incident, and the counts were merged. (T1 79:3-10). The State had additionally alleged two municipal Disorderly Persons charges, which were likewise merged and dismissed. (T1 79:11-17). Regarding the remaining charge, the court accepted the appellant’s argument that when there is no barrier, pedestrians should be allowed to cross a median. (T1 79:24-80:2). On that charge, the appellant was found not guilty. (T1 80:2-5).

In the afternoon, the court addressed the remaining charges against the appellant which had not been resolved by the morning’s trial. The State’s first witness was Sergeant Jeffrey Glennon

of the Clinton Police Department. (T2 5:6-12). He testified that on May 6, 2020, he received a report of an individual walking in the roadway. (T2 8:6-8). He responded, and observed an individual walking and holding a sign. (T2 8:19-20; 9:7-12). Sergeant Glennon testified that he was familiar with the individual, who he identified as the appellant, from prior police interactions. (T2 11:2-18). He attempted to communicate with the appellant, who “immediately” began yelling that he was an essential worker and pointing at his sweatshirt, which had been issued by Rita’s. (T2 11:19-12:1). At that time, Sergeant Glennon activated his body microphone. (T2 12:5-6). He stated that the appellant continued to indicate that he was an essential employee, and pointed to the Rita’s Ice logo on his sweatshirt. (T2 12:15-25). Sergeant Glennon asked the appellant what was going on, and testified that the appellant continued to yell. (T2 13:4-7). He testified that at that time, the appellant was holding a sign warning people to slow down due to police activity ahead, and containing a misspelling of a profanity. (T2 13:21-24). He stated that the appellant refused to stop his activity, and became agitated. (T2 14:2-6). The appellant stated that he had a right to protest, and was an essential employee. (T2 14:11-12). The appellant told Sergeant Glennon that he did not want to be a part of the sergeant’s investigation anymore, and demanded that he be freed from detention. (T2 14:12-15). Sergeant Glennon stated that during this encounter, two additional officers, Lieutenant Thomas DeRosa and Patrolman Carr, arrived on the scene. (T2 14:18-19). At that point, a video of the encounter from Sergeant Glennon’s dashboard camera was played. (T2 15:22). After the video was played, Sergeant Glennon testified that at the time of the May 6, 2020, encounter he was aware that the appellant had previously been charged with violating an executive order, and was aware that after a previous incident between the appellant and the police, the appellant had requested an ambulance. (T2 16:4-17:8). He testified that he was aware from radio communication that after the incident, the appellant went to a diner and requested an ambulance for anxiety, among other reasons. (T2 17:19-25). After observing the appellant’s “erratic” behavior, Sergeant Glennon became concerned for the appellant’s mental health. (T2 22:6-16). He spoke with Lieutenant DeRosa about how to address the situation, and they attempted to contact the Hunterdon County Prosecutor’s Office. (T2 23:6-24:7). Lieutenant DeRosa asked the appellant if he was working, and the appellant confirmed that he was. (T2 24:8-13). Lieutenant DeRosa told the applicant that he could go, and the appellant walked away backwards while raising his middle finger toward the officers. (T2 24:17). Sergeant Glennon stated that after the appellant began leaving, he remained at the scene typing notes, and eventually the appellant left the scene.

(T2 25:21-26:21). At the suggestion of the Prosecutor's Office, Sergeant Glennon contacted Rita's Ice, and confirmed that the appellant had worked at Rita's Ice that day and had left at approximately 4:00. (T2 27:6-22). Rita's Ice is located approximately a mile to three quarters of a mile from the location where the officers encountered the appellant. (T2 28:1-2). Sergeant Glennon observed the appellant at approximately 4:21 p.m. after being contacted by Lieutenant DeRosa. (T2 29:15-21). He stated that the appellant had been the target of an earlier stop approximately a quarter mile or less up the road, and therefore he could confirm that at the time of that stop, the appellant was not at work. (T2 30:15-31:8). Sergeant Glennon further testified that after making a rude finger gesture, the appellant had turned around and began walking in the same direction as traffic, despite the law requiring that people walk facing traffic. (T2 32:6-17). Finally, he stated that the officers had briefly detained the appellant on the side of the road because due to the pandemic, there was a restriction on people out in public, and so they needed to determine what was happening with the appellant. (T2 32:18-33:3). On cross examination, he confirmed that the earlier stop had occurred between the locations of Rita's Ice and of the second encounter. (T2 33:14-24). He stated that he saw the appellant walking, and admitted that he did not know the purpose of the appellant's sign, and could not recall whether the appellant had ever raised the sign above his head. (T2 34:3-36:7). He confirmed that he was told that the appellant's shift had ended at 4:00, but did not himself see the appellant leave work, and did not see anybody get in or out of the appellant's car that day, until the appellant got into the car. (T2 36:8-24). He stated that he had received training in dealing with mental health issues, and was concerned that the appellant might present a danger to the public, but did not want to further escalate the situation by "getting in a fight" on the roadside. (T2 37:4-18). He stated that after observing the appellant, he did not see a weapon on him, although he did not perform a pat down. (T2 37:22-25). He confirmed that he had been to Rita's Ice before, but did not know whether employees were typically attired like the appellant, or whether employees typically wore clothing with the name "Rita's" on it. (T2 38:11). He testified that the appellant was alone, and walking along the shoulder of the road before crossing the road. (T2 39:10-22). After walking backward and extending his middle finger, the appellant turned around, crossed the road, and went to the parking lot, where he got into a vehicle. (T2 40:2-22). He sat in the parking lot, and eventually drove away. (T2 41:2-7).

In response to the court's query, the officer testified that he was unable to recall whether any of the businesses in the area where the appellant parked his car were open, or recall precisely what the businesses were. (T2 41:11-24).

On redirect, the witness testified that he had only seen the appellant approach his vehicle, the appellant was not holding anything other than the sign, and the appellant had told him that he had just left work. (T2 41:25-42:16). The

In summation, the appellant argued that the May 6, 2020, incident was similar to the April incident addressed in the morning, with a few differences. (T2 44:1-2). He argued that the executive order allowed for people to walk outside while maintaining social distance, and essential employees were allowed to go to work. (T2 44:2-7). The appellant argued that based on Sergeant Glennon's report, he had been at work that day. (T2 44:7-9). He argued that he may have been delayed in leaving work for a legitimate reason, and that he may have parked his car in that lot in order to take a package to UPS. (T2 44:12-18). He argued that he had recently interacted with police, who had pointed in the direction that he then continued to walk; he was not walking for miles backwards and in the wrong direction on the highway. (T2 44:19-45:2). He argued that based on the facts, there was too much ambiguity to determine beyond a reasonable doubt that the appellant had violated the executive order. (T2 45:3-10).

In response, the State argued that the court cannot speculate, but must focus on the uncontroverted evidence. (T2 45:13-21). The State argued that the court could take judicial notice of the fact that the appellant had been charged after engaging in similar activity approximately a month previously, which should have put him on notice that there was no legitimate purpose for his activities. (T2 46:4-11). The State argued that under the circumstances, considering the severity of the virus in early May, even if the sign had been political, the "political purpose" exception was meant to refer to something like voting, not carrying a sign on the highway, and the exception for essential employees was only for them to go to and from work. (T2 46:12-24). The State argued that it was not credible to believe that the appellant got in his vehicle, drove to a parking lot, and then walked to work, instead, it was more likely that he saw police activity in the area, parked his car, and began carrying his sign. (T2 47:8-15). The State urged the court to consider the competing interests, and argued that even though the executive order infringed on constitutional rights, there was an interest in protecting public health, and courts have historically upheld this type of restriction. (T2 47:19-48:1). The State argued that it was clear what happened – the appellant was

driving home from work, but decided instead to stop and protest in a disorderly manner. (T2 48:11-21). The State argued that there was no legitimate purpose for the appellant to park his vehicle, get out, cross the street, walk in the street, make an obscene finger gesture, scream at the officers, and behave in an irrational and irate manner. (T2 49:6-15). The State argued that it had proven its case beyond a reasonable doubt, and that the appellant's actions in this case were particularly concerning – they occurred on a busy highway, and the sign stated “phuck;” this could have distracted motorists and led to an accident. (T2 49:16-50:3). The State argued that the appellant's actions put the officers at risk by forcing them to interact with him. (T2 50:4-12). The State argued that there is a reason why people are supposed to walk in the opposite direction of traffic, and when the appellant turned around, he committed a traffic violation. (T2 50:13-51:4).

The court found that it was beyond dispute that the incident occurred in Clinton Township on May 6, 2020, and that the person involved in the dispute was the appellant. The court found that the May 6 incident occurred less than a month after the previous offense, while the executive order was still in effect. (T2 51:6-52:1). There were exceptions to the executive order for performing essential work or visiting an essential business, getting food and drink, seeking medical assistance, visiting family or other appropriate individuals, or engaging in outdoor recreation while appropriately socially distanced. (T2 52:4-9). The court found that when Sergeant Glennon approached him, the appellant became angry and aggressive, and was non-responsive when asked reasonable questions about his purpose in being outside. (T2 52:10-18). The court found that law enforcement's responsibility was enhanced by the pandemic, and Sergeant Glennon and the supporting officers exercised restraint and did not allow the situation to escalate and become dangerous. (T2 52:19-53:3). The court found that in this case, the appellant had argued that he was returning to work, and was walking along the side of the road back to his car. (T2 53:4-11). The State had argued that the court should not suppose such things, and under the circumstances the court did not do so. (T2 53:11-13). The court found that the executive order allowed people to go to and from work, or go to commercial establishments, but the appellant did not make a response. (T2 53:14-17). The court found that Sergeant Glennon would have had no way of knowing whether the appellant was going to seek medical treatment or food, instead, he was walking along the road in a way that violated the law. (T2 53:18-22). The appellant was agitated, and could have been about to run out into traffic. (T2 53:23-25). The court found that it would have been irresponsible of the officer not to have approached the appellant to determine if he was a danger to himself or

others. (T2 54:2-9). Therefore, the court found that the State had met its burden of proving the appellant guilty of violating the executive order, and the appellant was found guilty. (T2 54:10-14). Regarding the appellant's obscene finger gesture, the court found that given free speech concerns, the behavior did not rise to the level of an offense, and the appellant was found not guilty. (T2 15-20). Regarding the second count, the appellant was found guilty, as the court found that it was part of the same event as the third count. (T2 55:1-6). The court dismissed the remaining disorderly conduct charge, after finding that the municipal ordinance did not apply under the circumstances given the appellant's criminal conduct. (T2 55:7-13). Regarding the traffic violation, the court found that although at one point the appellant was walking backwards, he clearly should have been on the other side of the roadway, and when he turned around, he was in violation of the relevant statute. (T2 55:22-25). The appellant was convicted, and sentenced to a \$37 fine and \$33 in court costs. Finally, the court reserved sentencing on the remaining charge in order to allow for a more thorough review of the appellant's background. (T2 56:4-15). On April 28, 2021 the municipal judge imposed sentence. The appellant was sentenced on the Violation of Executive Order 107 to a \$500 fine, \$33 court costs and a 14 day suspended sentence and one year probation. The judge also clarified that the fine for Walking with Traffic should have been \$103, not \$37. The appellant has appealed his convictions.

APPELLANT'S ARGUMENT

I. The Appellant Argues that his Conduct was Not a Violation of Executive Order 107.

The appellant argues that under Executive Order 107, all New Jersey residents were required to remain in their homes or places of residence, with nine exceptions. He argues that these exceptions were to (1) obtain goods or services from essential retail businesses, (2) obtain takeout food, (3) seek medical attention or essential social services, (4) visit family or other people with whom the resident had a close personal relationship, (5) report to or perform a job, (6) walk, run, operate a wheelchair, or engage in other outdoor activities while following social distancing practices, (7) engage in an educational, religious, or political purpose, (8) leave the residence due to a reasonable fear for health or safety, and (9) leave the residence at the direction of law enforcement or another government agency.

The appellant argues that on both of the days in question, he was engaged in at least one and likely three of these exceptions. He argues that he was walking alone, and that both of the officers who stopped him testified that at the time they did so, he was walking on the side of the highway, which is indisputably legal. He argues that there is no question that under the executive order, he was allowed to be outside walking, and that one of the officers testified that he was alone and wearing a mask, demonstrating that he was practicing best social distancing practices. Therefore, he was not violating the executive order, because he was engaged in an expressly permitted activity.

The appellant argues that both officers testified that when they stopped him, he was carrying a sign, and one of the officers testified that he saw the letters “p-h-u-c-k” on the sign. He argues that this corroborates the other officer’s testimony that he was carrying signs reading “-p-h-u-c-k #Thin Blue,” and “Slow Down Police Ahead.” He argues that this is both protected political activity under the First Amendment, and an activity protected under Executive Order 107, as he was engaged in a political protest. In support of this argument, he asserts that he told one of the officers at the time that he was protesting.

The appellant argues that according to the testimony of both officers, he either explicitly stated to them that he was engaged in an essential activity, or implied that he was commuting from his job at the time. He argues that one of the officers confirmed that he had left Rita’s Ice 20 minutes before their encounter. The appellant argues that all of the evidence in this case shows that he was engaged in walking, political activity, and commuting from his job at the time he was stopped by the police, all of which are expressly allowed under Executive Order 107.

II. The Appellant Argues that the Court Impermissibly Shifted the Burden of Proof to the Appellant to Demonstrate that he was Engaged in Activity Permitted Under the Executive Order.

The appellant argues that even if the evidence did not show that he was engaged in permissible activity, the State did not demonstrate that he was not engaging in permissible activity. He argues that the State bears the burden of proving all elements of the charged offense beyond a reasonable doubt, and therefore it was the State’s responsibility to prove that he was engaged in activity not allowed under the Executive Order. He argues that holding otherwise would

impermissibly shift the burden of proof to the appellant to show that he was engaged in permitted activity, and he argues that the municipal court engaged in such burden shifting. In support of this argument, he cites to Judge Perkins' comments that he "should not have been there under the Executive Order. And there's no good reason cited for him being there. That, in and of itself, in the Court's mind, is enough to establish a violation of the Executive Order." He argues that this burden shifting violated his right to due process by requiring him to prove that he was out of the house for a permissible activity.

III. The Appellant Argues that the State did Not Provide Sufficient Evidence to Prove a Violation of Executive Order 107.

The appellant argues that the State did not prove its case beyond a reasonable doubt. He argues that both officers testified that he told them he was an essential employee, and that there is video evidence of him making this statement. He argues that both officers further testified that he was holding signs as a form of speech, and that this is also confirmed by video evidence.

He argues that the testimony of the officers alone was sufficient to create reasonable doubt so great that no reasonable finder of fact could have found him guilty. He argues that most importantly, he was walking while engaged in social distancing, which is expressly permitted under Executive Order 107.

IV. The Appellant Argues that Touching his Groin Area is Not Disorderly Conduct as a Matter of Law.

The appellant argues that he was convicted of Disorderly Conduct for allegedly touching and shaking his groin area. He argues that N.J.S.A. 2C:33-2A(2) states in relevant part that "a person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he [... creates] a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor."

The appellant argues that the State was required to prove beyond a reasonable doubt that he caused a "hazardous or physically dangerous condition" in order to "cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof," while having no legitimate purpose for his conduct. He argues that the State did not provide sufficient evidence to

prove mens rea, to prove that he created a hazardous or physically dangerous condition, or to prove that his actions did not have a legitimate purpose. He argues that the State proved none of the required elements of the offense, and certainly did not prove them beyond a reasonable doubt as required by law.

The appellant argues that the State made no effort to prove his purpose or his mens rea, and that Judge Perkins did not make any factual findings of same. He argues that no facts were introduced into evidence showing his mens rea when touching his own groin, and the State provided insufficient evidence to prove that he did so to create public annoyance, alarm, or the risk thereof. Rather, he argues, the evidence shows that he touched his groin for between three and five seconds, and did not repeat the conduct. He further argues that the act of touching his own groin over his clothes is insufficient to show that he created a hazardous or physically dangerous situation. He argues that the record does not show how the officer concluded that he was touching his genitals, rather than touching his clothing, that this action was not captured on video, and no other evidence was presented. He argues that there is no evidence that anybody else witnessed this alleged conduct, and no evidence that the alleged conduct created a hazard or a dangerous condition. He argues that the alleged conduct falls into the category of “unexceptional” behavior that is not covered by the statute. In support of his argument, he cites State v. Stampone, in which a defendant was charged with disorderly conduct after engaging in a verbal altercation with a police officer and then slamming a car door, nearly hitting the officer’s legs. He argues that in that case, the court stated that

“the actions of the defendant and his testy exchange with [the officer] had no capacity to cause public inconvenience, public annoyance or public alarm. There was no indication that passers-by were noticing any of this or congregating or, indeed, that such persons were even present. Nor was there anything inherent in defendant’s conduct as to make it likely that his colloquy with [the officer] would cause public inconvenience, annoyance or alarm. And, of course, there was really no evidence that defendant acted with a purpose to cause public reactions.”

341 N.J. Super. 247, 255 (App. Div. 2001).

The appellant argues that the same lack of evidence is present in this case. He argues that there is no evidence that anybody saw him commit the alleged conduct, and there is no evidence of a hazardous or physically dangerous condition.

The appellant argues that the State failed to show that his actions had no legitimate purpose. He argues that in State v. Sabatino, the appellate division considered the Model Penal Code in order to determine what constitutes a “legitimate purpose.” 2012 WL 5039974 at *4 (App. Div. Oct. 29, 2012). He argues that according to the commentary on the MPC, the phrase “no legitimate purpose” is “intended to exclude activities that serve purposes other than making dangerous mischief.” Ibid. Therefore, he argues that unlawful activity that creates a dangerous physical condition or hazard would not constitute disorderly conduct, even if it were distasteful or unlawful, if it served a legitimate purpose of the actor. He further argues that in Sabatino, the court found that in drafting the relevant statute, the New Jersey Criminal Law Revision Commission was clear that acts could be “both unlawful and legitimate,” and that “not all discomforting activities are criminal.” Final Report of the New Jersey Criminal Law Revision Commission, commentary to 2C:33-2 at 295 (as quoted in Sabatino, 2012 WL at *4).

The appellant argues that in this case, he could have touched his groin due to an itch, or as a communicative gesture intended to convey displeasure. He argues that even if the court finds his actions distasteful, either of these reasons would have been legitimate. He argues that the State bore the burden of proving that there was no legitimate purpose for his conduct, and it was unable to do so.

The appellant argues that there is insufficient evidence to support a conviction in this case, because the State has not demonstrated every element of Disorderly Conduct, and therefore his conviction should be vacated with prejudice.

V. The Appellant Argues that the State Presented Insufficient Evidence to Demonstrate that he Walked the Wrong Way on the Highway.

The appellant argues that there is video of his interaction with Sergeant Glennon, and that in that footage, he is clearly walking backwards and facing traffic throughout the interaction. He argues that at trial, Sergeant Glennon testified that the appellant was walking backwards when he made a rude hand gesture, but that once he reached the jug handle, he turned around and began walking improperly. (2T 32:8-12). He argues that Sergeant Glennon testified that when he was walking backwards, he was facing traffic and walking in the proper direction, but that when he

turned around, he was walking with traffic rather than facing it. (2T 32:14-17). He argues that the video does not show him walking in the wrong direction, and that based on the video, it is clear that Sergeant Glennon's view would have been obstructed at the point in question. He argues that the video shows him continuing to walk backward, and that there is no video evidence that he turned around. Therefore, he argues, the State did not provide sufficient evidence to prove that he walked the wrong way in traffic.

STATE'S RESPONSE

The State argues that on appeal, the governing standard is de novo review, and the court is required to examine the record, make its own findings of fact and conclusions of law, and independently determine the guilt or innocence of the appellant. Rule 3:23-8(a); State v. States, 44 N.J. 285, 293 (1965). However, while the court must make independent findings of fact, it must do so based on the evidentiary record from the municipal proceeding. State v. Loce, 267 N.J. Super. 102, 104 (Law Div. 1991). Furthermore, the court is to "defer to trial courts' credibility findings that are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). Consequently, the court must "determine the case completely anew on the record made in the municipal court, giving due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses." State v. Johnson, 42 N.J. 146, 161 (1964). The State bears the burden of proving the appellant's guilt beyond a reasonable doubt. State v. Grant, 196 N.J. Super. 470, 477 (App. Div. 1984).

I. **The State Argues that the Municipal Court did Not Err in Determining that the State Proved its Case Beyond a Reasonable Doubt, nor did the Municipal Court Erroneously Place the Burden of Proof Upon the Appellant.**

The State argues that the appellant has argued that the municipal court erred in convicting him because his actions were within the scope of those permitted under Executive Order 107, as he was walking, participating in political activity, and was returning from work.

The State argues that the executive order was issued on March 21, 2020, shortly after the governor had first declared a public health emergency. The State argues that in the order, the Governor noted the spread of COVID-19 in New Jersey due to person-to-person contact. The State argues that the pertinent part of the order reads that

All New Jersey residents shall remain home of at their place of residence unless they are 1) obtaining goods or services from essential retail businesses...; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts...; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

The State argues that the executive order continues to state that “[w]hen in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members, or romantic partners.”

The State argues that in this case, the record shows that the municipal court judge made findings of fact, and applied those findings to the plain language of the order. It argues that after receiving the testimony of the officers, as well as the video recordings of the appellant’s interactions with law enforcement, the judge concluded that the State had proved beyond a reasonable doubt that the appellant violated the order.

The State argues that in making his decision, the judge stated that the order was issued in order to curb the spread of a communicable disease by restricting the movement of individuals. The appellant was observed walking on the road carrying a sign. He was not in a specifically commercial area. When stopped by law enforcement, he became combative and acted unusual. He cited constitutional cases, argued that he was privileged to be about, and indicated that he was

“essential.” The State argues that the judge observed that the officers wisely deescalated the situation.

The State argues that the judge determined that the State had met its burden, because the appellant was out in a public place with a sign, and that whether or not that sign was political, there was no good reason for the appellant to be in that place at that time. The judge stated that under the circumstances, whether the appellant was on a golf course like others who were cited for violating the order or whether he was on the side of a highway, he violated the order.

The State argues that regarding the violation of Executive Order 107 that occurred on May 6, 2020, the judge stated that there was a colorable argument that the appellant was returning from work, as law enforcement encountered him on a highway approximately half an hour after his shift at work had supposedly ended. However, the judge also stated that while the appellant could have been walking back to the car, he was “not supposed to suppose such things” and would not do so. He stated that the appellant did not respond to law enforcement that he was coming home from work or going to a commercial establishment, and that law enforcement would have had no way of knowing whether the appellant was engaged in a legitimate purpose. The appellant was walking along the highway in the wrong direction, and appeared agitated. The judge stated that the officer would have been derelict if he had not approached the appellant, and found that the State had met its burden of proving that the appellant had violated the executive order as charged.

The State argues that in this case, the municipal court heard the evidence and found that the officers were credible. It argues that these findings are entitled to deference, and that there is no need to disturb them.

The State argues that the appellant has argued that the State did not prove his guilt beyond a reasonable doubt, and impermissibly shifted the burden of proof to him. The State argues that this argument lacks merit, as the officers testified, the court reviewed the footage of the encounters, and the appellant asserted his right not to testify. The State argues that it is clear from the record that the judge heard the testimony presented, considered the evidence presented, and found that the State had met its burden beyond a reasonable doubt.

II. The State Argues that it Proved Beyond a Reasonable Doubt that the Appellant Committed the Offense of Disorderly Conduct.

The State argues that the appellant has argued that his conviction should be vacated because the State did not prove his mens rea at the time of the offense. The State argues that the appellant has relied on State v. Stampone to argue that his conduct, namely grabbing his genitals while standing along the edge of a highway in public view, is unexceptional and non-criminalized behavior.

The State argues that under N.J.S.A. 2C:33-2(a)(2), “a person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he...[c]reates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.” The State argues that the municipal judge determined that the State had met its burden, finding that when the appellant grabbed his genitals while standing along the side of the highway in view of traffic, it was “clearly” a violation of the statute. The judge stated that a driver could have been shocked, and this could have resulted in a traffic accident. The judge stated that while the appellant may have touched his groin due to a physiological condition, in the absence of the establishment of that fact, he accepted the State’s testimony on its face.

The State argues that there can be no doubt that the appellant’s actions violated the statute. It argues that the appellant’s conduct is wholly dissimilar to that in State v. Stampone, in which the appellant slammed a door and refused to provide his name to police. 341 N.J. Super. at 249-50, 254-55. The State further argues that Stampone is also clear that the State need only present evidence that the appellant acted either purposely or recklessly, and that the appellant does not need to actually cause public inconvenience, annoyance or alarm, as long as the appellant purposely or recklessly create the potential of same. Id. at 255.

The State argues that in this case, the facts support a finding that the appellant did recklessly create a risk of public inconvenience, annoyance or alarm. The State argues that the appellant had no legitimate purpose for grabbing his groin and shaking his genitals. The State argues that doing so on the shoulder of the highway in view of motorists recklessly created a dangerous condition, particularly given the officer testimony that there were vehicles driving on the highway at that time.

III. The State Argues that it Proved the Pedestrian Violation Beyond a Reasonable Doubt.³

The State argues that the appellant has claimed that the record does not support his conviction for Crossing Outside of a Crosswalk. The State argues that the relevant provisions of this law are that “[n]o pedestrian shall leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield or stop,” and that “[e]very pedestrian upon a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.” N.J.S.A. 39:36(a)(2); N.J.S.A. 39:36(a)(4). The State argues that in this case, there is credible evidence to support the appellant’s conviction. The State argues that the municipal judge reviewed the trial record, and properly determined that the appellant committed a violation of the law.

OPINION

Applicable Law

Pursuant to R. 3:23-1, a judgement of conviction in a criminal action in municipal court may be reviewed by the superior court by appeal. The standard of review governing municipal appeals is de novo. R. 3:23-8(a) provides that the Superior Court will review the decision from the lower municipal court based on the record below and make its own independent findings of fact and conclusions of law and, in applicable cases, determine independently the appellant’s guilt or innocence. See, State v. States, 44 N.J. 285, 293 (1965). Although the reviewing court is obligated to make independent findings of fact, such review is limited to the evidentiary record created below. State v. Loce, 267 N.J. Super. 102, 104 (Law Div. 1991), modified and aff’d, 267 N.J. Super. 10 (App. Div. 1993), certify. den. 137 N.J. 563 (1993). In the case of a review of a legal determination, no deference is due to the municipal court’s decision. Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

³ A review of the Municipal Court Transcript reveals that the appellant was in actuality acquitted on the charge of Crossing Outside a Crosswalk. He was convicted of Walking With Traffic.

Generally, the Superior Court must determine “whether the findings made could reasonably have been reached on sufficient credible evidence present in the record.” State v. Johnson, 42 N.J. 146, 162 (1964).

On March 21, 2020, Governor Murphy issued Executive Order 107 in order to curb the spread of the novel Coronavirus. In relevant part, the order stated that

[a]ll New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts, pursuant to Paragraph 8; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

Paragraph 24 of Executive Order 107 states, in pertinent part, “[i]t shall be the duty of every person...in this State...to cooperate fully in all matters concerning this Executive Order.” Violations of Executive Order 107 are punishable under N.J. Stat. App. A:9-49, a section of the Civilian Defense and Disaster Control Act (“Disaster Control Act”). The Disaster Control Act, originally passed in 1942 and periodically amended and reissued, sets forth the delegation of authority and additional powers given to the governor in times of emergency. Under the pertinent provisions, any person who “[r]effuse[s] to obey the lawful orders of any air raid warden, civilian protection worker, or other person who is duly authorized to perform any act or function during the threat or imminence of danger or any emergency” is guilty, as is anyone who “[v]iolate[s] any order, rule or regulation adopted by the Governor and promulgated as provider by this act.” N.J. Stat. App. A:9-49(g); N.J. Stat. App. A:9-49(h).

The provisions of the executive order are to be interpreted broadly. In Kravitz v. Murphy, the appellate division addressed a challenge to another executive order issued by the governor in

response to the COVID-19 pandemic. In that case, the court explained that the governor has the authority to declare a public health emergency, and during times of emergency, the governor may have, under the Disaster Control Act, the authority to “make such orders, rules and regulations as may be necessary adequately to meet the various problems presented by any emergency and from time to time to amend or rescind such orders, rules and regulations...” on subjects including “blackouts; air raid warnings; recruitment of volunteers including air raid wardens, police and firemen; designation of vehicles and persons who can move during an air raid or any emergency; conduct of civilian population during an emergency; air raid protocol for schools; counteracting threatened sabotage; and evacuating residents.” N.J. Stat. App. A:9-45; Kravitz v. Murphy, 468 N.J. Super. 592, 612, 614 (App. Div. 2021). When such orders, rules, or regulations are issued, they are given a broad interpretation. As the court stated, when the governor “is acting consistently with express or implied authority from the Legislature” the action “should be given the widest latitude of judicial interpretation” and the party seeking to challenge the governor’s action bears a heavy burden of persuasion. Id. at 622. When Governor Murphy issued Executive Order 107, he “explained that ‘to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance’” and he specified that those who violated the order might be subject to criminal liability. Id. at 609. This is reinforced by the New Jersey Supreme Court’s ruling in Worthington v. Fauver, in which the Court concluded that emergency executive orders can be valid if authorized by the Disaster Control Act, and stated that those executive orders, when authorized by the legislature, should be given the broadest judicial interpretation. 88 N.J. 183, 208, 210 (1982).

Disorderly Conduct is criminalized by N.J.S.A. 2C:33-2, which states in pertinent part that “[a] disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.” In order to be criminalized under N.J.S.A. 2C:33-2(a)(2), the conduct in question must be the type of conduct that has the capacity to cause a hazardous or physically dangerous condition, and the appellant must not have a legitimate purpose behind the conduct. Stampono, supra, 341 N.J. Super. at 254-55. Conduct that is merely bothersome, unexceptional, or socially inappropriate does not necessarily make an actor guilty of

Disorderly Conduct. In Stampone, the court concluded that the conduct in question, specifically, slamming a car door shut and almost hitting a police officer, did not rise to the level of Disorderly Conduct. Ibid. In contrast, however, in State v. Moore the court upheld a conviction under New Jersey's previous Disorderly Conduct statute in a case where for between 12 to 15 minutes the appellant refused to yield the microphone or take his seat when directed to do so at a city council meeting, and persisted in arguing with the chairman of the meeting about a point of parliamentary procedure, resulting in a disruption to the meeting. 101 N.J. Super. 419, 421-423. The court concluded that the appellant's conduct clearly violated the statute, because he "certainly disturbed and interfered with the conduct of the hearing" by disregarding the chairman's repeated rulings, insisting on pressing his point of order, making ad hominem insults directed at the chairman, and disrupting the meeting "to the point where the assembly became noisy," two others became involved in the dispute, and "those in the audience took to the aisles." Ibid. The actual and potential impact on the public is a key consideration in determining whether an action constitutes Disorderly Conduct. Furthermore, expressive conduct may be entitled to protection under the First Amendment to the Constitution. In Cruise-Gulyas v. Minard, the 6th Circuit Court of Appeals addressed a case in which a motorist was pulled over and raised her middle finger at a police officer. The court stated that "[f]its of rudeness or lack of gratitude may violate the Golden Rule. But that doesn't make them illegal or for that matter punishable[...]." 918 F.3d 494, 495 (6th Cir., 2019). The Supreme Court has long recognized that protected speech may include symbolic or expressive conduct, like displaying a middle finger, or in this case even grabbing one's genitals, where the speaker intends to convey a message or idea, and has noted that police officers, when confronted with these nonverbal challenges to police action, are expected to exercise a higher degree of restraint than the average individual. In Spence v. Washington, the Supreme Court laid out the test for determining whether something is expressive conduct, and therefore entitled to protection under the First Amendment. 418 U.S. 405, 410-11 (1974). There must be an intent to convey a message, and that message must be generally understood. Ibid. New Jersey follows the same standard. State v. Vawter, 136 N.J. 56, 63-64 (1994).

Finally, under N.J.S.A. 39:4-34, "[o]n all highways where there are no sidewalks or paths provided for pedestrian use, pedestrians shall, when practicable, walk only on the extreme left side of the roadway or its shoulder facing approaching traffic."

Findings of Fact and Conclusions of Law

The appellant was convicted in municipal court on charges of Violating Executive Order 107 per N.J. Stat. App. A:9-49(h), and Disorderly Conduct for conduct occurring on April 7, 2020, as well as charges of Violating Executive Order 107 per N.J. Stat. App. A:9-49(g), and Walking with Traffic on May 6, 2020. The remaining charges were either merged or the appellant was found not guilty.

He has appealed his convictions, contending that the State's proofs at trial in the municipal court were insufficient to sustain a conviction. This court has reviewed the record of the municipal court de novo, and has considered the arguments of counsel. Based on this review, the court has reached its own findings of fact and conclusions of law as to those convictions on appeal. The court has also considered the charges on which the appellant was acquitted. Those charges were not argued on appeal, but based on an examination of the record, the court finds that they were determined by the municipal court judge based on sound reasoning. These conclusions have not been argued on appeal and therefore shall stand. The court has given due weight to the credibility findings of the municipal court judge.

I. The State has Met the Burden of Proof Necessary to Sustain a Conviction for Violating Executive Order 107 on April 7, 2020.

In order to convict the appellant of violating Executive Order 107, the State bears the burden of proving his guilt beyond a reasonable doubt. There is little case law or precedent concerning convictions based on violations of Executive Order 107, and therefore the court must rely primarily on the plain text of the order, as well as the text of the applicable sections (g) and (h) of N.J. Stat. App. A:9-49.

Executive Order 107 was issued by Governor Murphy during a time of emergency in order to prevent the spread of a novel Coronavirus between individuals. The order instructed New Jersey residents to remain home or at their place of residence. At the time of his interactions with law enforcement, there is no question that Mr. French was outdoors, and was not at his home or his place of residence. However, while Executive Order 107 clearly directs residents to stay home in order to curb the spread of a dangerous disease, the order just as clearly lays forth exceptions to

this stay-at-home order. The order states that residents are to stay at home “unless,” among other exceptions, the resident is “walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart.” Under other exceptions to the order, essential workers were permitted to go to and from work, or individuals were permitted to leave home for political reasons. The court finds that the appellant has argued that he was returning from work at the time of his encounters with the police on both April 7, 2020, and May 6, 2020. He was stopped, and in the footage of the April 7, 2020 encounter, he can be heard asking the police if they are expecting him not to be an essential employee. (V2 at 3:07). However, without making initial contact with an individual, law enforcement does not know why an individual is out and not at home. The initial investigatory stop on April 7, 2020, was proper. At that time, it had been approximately a month since the executive order was issued. The officers were justified in making contact with the appellant in order to determine whether or not he was in compliance with the order. Pursuant to Paragraph 24 of Executive Order 107, he was to cooperate fully in all matters regarding the order. However, the appellant immediately became combative. He can be heard to say, “I will not be a part of this investigation.” (V2 at 3:15). He is repeatedly told to stand still. (V2 at 2:18; 6:25). He proceeds to first walk closer to the officers, and then to walk away entirely while they instruct him not to go. (V2 at 7:26; 9:04). He orders the officers to get into their vehicle repeatedly if they want to have a private conversation. (V2 at 7:36). Clearly, he refused to cooperate with law enforcement – as with Paragraph 24 per N.J. Stat. App. A:9-49(g), it is a violation to refuse to cooperate with a “person who is duly authorized to perform any act or function in connection with activities during the threat or imminence of danger or any emergency.” The officers were performing their legal responsibilities during a state of emergency – an emergency that resulted in the deaths of thousands of individuals. A month into this state of emergency, they placed their lives on the line to ensure order, and the appellant’s conduct required the officers to leave the safety of their cars and engage in an encounter with a person whose medical history and level of exposure to COVID-19 was unknown. Then, when asked to keep a distance from the officers, the appellant instead approached them. A review of the video recordings in this case clearly shows the appellant refusing to cooperate, emphasized by his walking away from the officers while being ordered to remain. In doing so, he violated Executive Order 107 (24) as stated in N.J. Stat. App. A:9-49(g). Under N.J.

Stat. App. A:9-49(h), it is an offense to “[v]iolate any order, rule or regulation adopted by the Governor and promulgated as provider by this act.” N.J. Stat. App. A:9-49 itself is a rule which provides specific rules, guidelines and orders under the governor’s power to provide for the national defense in times of emergency. The governor had determined that a state of emergency existed in New Jersey, and had begun to issue executive orders in order to address that emergency. In Executive Order 107, he specified that violators of that order were subject to criminal penalties under N.J. Stat. App. A:9-49. The court is to give a broad interpretation to the orders of the executive in a time of emergency, and therefore the court finds that the governor’s intent in specifying N.J. Stat. App. A:4-94 was clearly that individuals abide by all provisions of that section of the Disaster Control Act, including (g). Moreover, Paragraph 24 of Executive Order 107 states that

It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

New Jersey residents were, under Executive Order 107, clearly allowed to leave their residences in order to engage in outdoor recreational activities while following best social distancing practices. However, as Governor Murphy stated in Executive Order 107 itself, it was necessary to limit the unnecessary movement of individuals in and around their communities to mitigate the spread of COVID-19.

The appellant was not engaged in a traditional recreational activity. Instead, he was protesting on the side of the road – he was engaged in a high-conflict activity with a much greater chance of resulting in interpersonal activity than jogging around one’s neighborhood or taking a solitary walk. The intent of the governor’s order was to minimize person-to-person interactions in order to curb the spread of a dangerous disease. Based on the evidence before this court, it appears that the appellant was alone. However, due to his strange and combative behavior, he was approached by the police not only on April 7, 2020, but on May 6, 2020, as well. The court finds that it was foreseeable that a protest, particularly during a state of emergency, might draw attention from law enforcement. Not only did the appellant choose to partake in a high-conflict activity outside of the scope of traditional outdoor recreational activities, but when approached by the

police, instead of cooperating with their investigation, he initiated a protracted verbal confrontation that put the officers at risk by requiring them to engage in a conversation with him during a time when the community was threatened by a communicable disease. The court finds that while the appellant was outside, he was not engaged in the sort of outdoor recreational activity contemplated by a broad interpretation of Executive Order 107 and a consideration of the purpose behind that order.

The appellant has further argued that in addition to engaging in outdoor activity, he was also commuting from work and engaged in political activity, both of which are also exceptions for which people could leave their residences under the executive order. He has argued that the court engaged in impermissible burden-shifting by requiring him to prove that he had a legitimate reason for being outside of his residence. The court finds that the appellant is correct that it is the State that bears the burden of proving all elements of a criminal offense beyond a reasonable doubt, including proving that an offense was in fact committed. However, the court does not find, based on the record, that the municipal court engaged in impermissible burden shifting by requiring that the appellant prove he was engaging in one of the exceptions to the executive order. The court finds that the municipal judge listened to the evidence presented, evaluated the evidence, and was persuaded beyond a reasonable doubt by the State that the appellant had violated the executive order. That is the proper procedure. Regarding the appellant's argument that he was commuting from work and that he was engaged in political activity, the court finds that the testimony of the officers and the presence of a sign bearing a misspelled profanity weigh against the possibility that the appellant was returning from work. Furthermore, even if he was returning from work, there can be no doubt that under the order, essential employees could leave their residences to go to work, and to go home from work, not to leave work, engage in a disallowed activity for a period of time, and then continue on the way home. The video shows that the appellant was not walking directly from one place to the other – he was protesting. The court further finds that while a protest may be a form of political activity, the order states that residents may “[leave] the home for an educational, religious, or political reason.” When read with the purpose of the act in mind, it is clear that individuals were to leave their residences, perform the educational, religious, or political purpose of their leaving in as efficient and socially-distanced a manner as possible, and then go home. Voting, for example, would fall under this type of exception. Instead, the appellant engaged

in a public, high-conflict activity of an indefinite duration; an activity which, unlike voting, could have waited until the threat of emergency had subsided.

Finally, the fact remains that under Paragraph 24, the applicant still had an explicit obligation to cooperate with law enforcement in connection with any allowed activities. He did not do so, and in not doing so, he violated a rule adopted and promulgated by the governor. The court finds that the appellant's conviction on the charge of violating Executive Order 107 should be upheld under N.J. Stat. App. A:9-49(h).

This is a trial de novo, and this court finds that on the charge of violating Executive Order 107 through his conduct on April 7, 2020, the appellant is found guilty beyond a reasonable doubt.

II. The State has Not Established the Conduct Necessary to Sustain a Charge of Disorderly Conduct

The appellant has argued that his conviction for Disorderly Conduct should be overturned because the State has failed to demonstrate the mens rea necessary to sustain a charge of Disorderly Conduct. The State, in turn, argues that it has met this burden, because under the statute either a purposeful or a reckless mens rea will suffice, and the appellant's behavior was certainly reckless. However, in order to be guilty of Disorderly Conduct, the appellant must have either purposely or recklessly engaged in fighting, threatening, violent or tumultuous behavior, or created a hazardous or physically dangerous condition through an act which served no legitimate purpose to him.

The court finds that in convicting the appellant of Disorderly Conduct, the municipal judge relied on the testimony of the officers and the video presented to the court to conclude that the appellant did grab his groin, and he then determined that such conduct clearly fell afoul of the statute. This court has reviewed the video, and the court does accept the municipal court's credibility findings with regard to the officers. This court finds them credible, and finds that the appellant's conduct was as they described. He has not contested such findings. However, the court does not find that the appellant's conduct created a risk of a hazardous or physically dangerous condition, as required by statute. The State has argued that the appellant's conduct occurred on the side of a public road; a driver might have seen it, become distracted, and caused a traffic accident. However, the court finds that this is simply too vague and speculative to sustain a conviction under the statute. The appellant's conduct would not have been substantially more distracting to drivers

than any other incident involving the police on the side of the road, and it is the responsibility of the motorist to keep eyes on the road rather than becoming distracted by the actions of others. In examining this case in light of precedent, the court finds that the facts bear more similarity to those of Stampone than those of Moore. Both Stampone and the present case involve unpleasant encounters with police. In Stampone, the defendant slammed a car door shut, while in this case, the appellant made a potentially crude gesture with his hand. However, in neither case did the targeted behavior attract widespread attention or cause widespread alarm, and in neither case was the behavior in question the type of behavior with the potential to do so. The evidence in this case demonstrates that the appellant made a brief, crude gesture. There is no evidence that this gesture was observed by others other than the officer, or that even if it had been observed by others, it would have created a risk of a hazardous or physically dangerous condition. This is in marked contrast with the circumstances in Moore, where the behavior in question lasted for more than 10 minutes, brought a public meeting to a standstill, and occurred in front of a captive audience of people who had come to attend a civic meeting, and where the defendant continued to engage in the same behavior even after it became apparent that it was resulting in significant disruption. The court accepts the municipal court judge's finding that the officer's testimony was credible, but disagrees that the actions described constitute Disorderly Conduct under the law. Furthermore, the court finds that in this case, the appellant's conduct was protected by the First Amendment. Under the First Amendment, conduct is considered expressive, and therefore provided with the protections afforded to speech, if it has the intent to portray a particularized message, and those who view the message have a great likelihood of understanding it. Vawter, supra, 136 N.J. at 63-64. In this case, the officer can be heard discussing the appellant's conduct. He states that the appellant is "shaking his genitals toward [the officer] in front of the public." (V4 at 7:45). In examining this case under the First Amendment, the court finds that there was an intent to convey a message to the officer, and that the message was clear. The officer is further heard describing the conduct as "non-sexual." (V4 at 10:22). Clearly, the conduct was intended for the officer, and was intended to convey the appellant's displeasure with the officer. As with displaying a middle finger, such conduct is rude and crude, but the court finds that it does not create a physically dangerous condition, and does meet the test of expressive conduct protected by the First Amendment. Therefore, the appellant is found not guilty of this charge.

III. The State has Met the Burden of Proof Necessary to Sustain a Conviction for Violating Executive Order 107 on May 6, 2020.

On May 6, 2020, Executive Order 107 remained in effect and New Jersey continued to operate in a state of emergency due to the ongoing threat posed by the COVID-19 pandemic. On that day, the court finds that the appellant once again had an encounter with the police. On that day, he was again on the side of the road, holding a sign. He has argued that as on the previous occasion, he was engaged in an outdoor activity, he was engaged in political activity, and he was on his way back from work. The court continues to find that Executive Order 107 did allow for individuals to engage in outdoor recreational activity while following best social distancing practices. The appellant was outdoors, he was alone, and he appeared to have a piece of fabric covering his face. However, he was not engaged in a recreational outside activity. He was in an unusual place. He was standing on the immediate shoulder of the road, very close to where cars would be driving, during a time of emergency. (V5 at 1:10). He was holding a sign that at one point, he straddled, and he was walking backwards on the wrong side of the road. (V5 at 1:27). Given the unusualness of the appellant's location as well as the ongoing state of emergency, the officers were justified in approaching the appellant to determine why he was standing on the shoulder of the road holding a sign, and to ascertain whether he followed the executive order. Once again, when Sergeant Glennon approached the appellant, he became combative. He straddled his sign, turned his back to the officers, and began to sway back and forth. (V5 at 1:27). When the officer got out of the car, he began to yell, and to make emphatic hand gestures. (V5 at 2:04). He asked the officer questions, and then proceeded to cut him off before he could fully respond. (V5 at 2:05). He demanded a lawyer. (V5 at 2:26). He stated that he did not want to be a part of the investigation any longer. (V5 at 4:40). When one of the officers asked him to listen, he refused to do so, and shortly thereafter referred to the officer as a "tyrant." (V5 at 3:05; 3:42; 4:06). Throughout the encounter, the officers demonstrated a tremendous amount of restraint. The appellant demonstrated an utter unwillingness to cooperate with the officers, or even to engage in reasoned conversation with them. He was hostile and combative toward officers who were carrying out their lawful duties during a time of emergency, and in doing so, he violated Executive order 107 per N.J. Stat. App. A:4-94(g). Therefore, he is found guilty on that charge beyond a reasonable doubt.

Regarding the appellant's arguments that he was returning from work and that he was engaged in political activity, the court finds them without merit for the reasons elaborated upon above. While in this case, the appellant was wearing a sweatshirt that appears to have possibly been issued by his job and it was confirmed that he had left work approximately 20 minutes beforehand, walking backward while holding a sign is simply not a part of commuting to and from work in an efficient and socially distanced manner.

IV. The State has Proved that the Appellant Violated Statute by Walking With Traffic.

Although this is a trial *de novo*, the court does give weight to the credibility determinations of the municipal court judge, who, having observed the testimony firsthand, is best placed to evaluate the witnesses' credibility. In this case, the court has examined the record before it, and finds that the judge heard witness testimony, and determined that the testimony was credible, and the officer provided evidence beyond a reasonable doubt to convict the appellant of this offense. The appellant has argued that the video taken of the events in question demonstrates that he was walking in the correct direction, and that at the point the officer alleged that he turned around and walked in the wrong direction, the officer's view was obstructed. The statute requires that an individual walking on the side of a highway walk on the extreme left of the road against traffic. The video footage in this case shows that the appellant was walking on the extreme right. This is a violation of the statute. Furthermore, Sergeant Glennon testified that at a certain point, the appellant turned around and began to walk in the direction of traffic. The video recording of the encounter does not capture this moment, but the officer was able to observe it while he was writing his report. He testified that eventually the appellant crossed the street. There is sufficient evidence to conclude that he did turn around at some point, creating further support for this conviction. The appellant has provided no evidence to dispute the officer's testimony. While the appellant has argued that the video shows that the officer's vision would have been obstructed based on the positioning of trees in the video of the encounter, the human eye is significantly more sensitive than the camera, and the absence of clear video footage does not mean that Sergeant Glennon could not have seen what he credibly testified that he saw. Here, the municipal judge heard Sergeant Glennon testify that he personally observed the appellant committing the offense in question, and when viewing that testimony in light of all the evidence produced at trial, including the video to

which the appellant referred, the judge concluded that the sergeant's testimony remained credible, and proved the appellant's guilt beyond a reasonable doubt. Given the municipal court's credibility findings the deference that they deserve, and based on the totality of the evidence, this court finds that the appellant is guilty of Walking With Traffic.

CONCLUSION

For the aforementioned reasons, the appellant's Municipal Appeal is hereby **GRANTED IN PART AND DENIED IN PART**. Appellant, on de novo review, is convicted on both charges of Violating Executive Order 107, as well as Walking With Traffic. He is acquitted on one charge of Disorderly Conduct. The appellant is sentenced to a fine of \$500 on each charge of Violating Executive Order 107; on the conviction for the events occurring on May 6, 2020, he is additionally sentenced to a 14-day suspended jail sentence with one year of probation. On each conviction there is a \$50 VCCO and \$75 SFSN as well as \$33 court costs. On the charge of Walking With Traffic he is sentenced to a \$103 fine and \$33 court costs. Fines are payable in Municipal Court.

The appellant has 45 days to appeal these convictions.

2020008155

BENCH WARRANT BAIL INFORMATION

Filed to Appear Date: _____
 Warrant Date: _____ Ordered by: _____
(Signature and title of person issuing warrant)
 Bail Amount: \$ _____ Set by: _____
(Signature and title of person setting bail)
 Forfeited Return Reinstated
(Date) (Signature of Judge)

FIRST APPEARANCE, ARRAIGNMENT & COUNSEL INFORMATION

First Appearance Date: _____ Arraignment Date: _____
 Advised of Rights: By: _____ Defendant Desires Counsel: Yes No
 Counsel assigned: Y N
(If yes, name of counsel)
 Counsel retained: Y N
(If yes, name of counsel)
 Counsel waived: Y N
(If yes, name of Judge accepting waiver)
 Name of Prosecuting Attorney: _____
 Jurisdiction: Municipal County State Other (list) _____

MISCELLANEOUS INFORMATION

Additional Information and Judge's Notes:

Adjournment Requested by: _____ Reason: _____ To: _____
 See attached sheet for additional Judge's notes or other information.

EVENT COURT ACTION

Complaint Amended To: _____
 Plea and Date: G NG
 Finding or Dismissal Date: G NG DISMISSED
 Fine \$ _____ Costs \$ _____ Contempt \$ _____
 VCCO \$ _____ DWI \$ _____ SNSE \$ _____
 D.A.E.F. \$ _____ Other \$ _____ Total \$ _____
 Period of D.L. Suspension: _____
 IDRC: _____ Comm. Service: _____
 Jail Term/Jail Credit: _____ Credit For: _____
 Signature of Judge: _____ Date: _____
 Court's Copy

COURT I.D. P COMPLAINT NUMBER
1027 - SC - 002985
CLINTON TOWNSHIP MUNICIPAL COURT
 1370 Route 31 North
 Annandale, NJ 08801

The State of New Jersey
 (Please Print) VS.
 Defendant's Name: First Initial Last
ALBERT E. FRENCH
 Address 208 DELAWARE AVE City MILFORD
 State NJ Zip Code 05848 Telephone: 9087971011
 Birth Date: Mo. Day Yr Sex Race Eyes Height Restrictions
1 11 87 M W 4 101" _____
 DL # F73370176501874
 State NJ Exp Date 7/2020

STATE OF NEW JERSEY COUNTY OF HUNTERDON } SS:
 Complaining Witness: Pd. W. Musacchio #59
 of CLINTON TWP PD
(Identify Dept./Agency Represented) (Badge No.)
 Residing at 1370 RT 31 N ANNANDALE
 by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the
4 7 20 1624
Month Day Year Time
 in CLINTON TWP. 1027 County of HUNTERDON NJ
 did commit the following offense

VIOLATION OF EO #107
 in violation of (one charge only) NJSA APP. A: 9-49(h)
(Statute, Regulation or Ordinance # Number)

LOCATION OF OFFENSE 1006 Describe Location ROUTE 22 EAST
 OATH: Subscribed and sworn to before me this _____ day of _____ yr. _____
 CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.
 OR 4/7/20
(Date)
 (Signature of Complaining Witness) (Signature of Person Administering Oath) (Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY **LAW/ CODE ENFORCEMENT USE ONLY**
 Probable cause is found for the issuance of this Complaint-Summons
 Yes No (Signature of Judicial Officer)
 Yes No (Signature of Judge)
 The complaining witness is a law enforcement officer or a code enforcement officer with territorial and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons

YOU ARE HEREBY SUMMONED TO APPEAR
BEFORE THIS COURT TO ANSWER THIS COMPLAINT. IF YOU FAIL TO APPEAR ON THE DATE AND AT THE TIME STATED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

NOTICE TO APPEAR
 COURT APPEARANCE REQUIRED **COURT DATE** Month 5 Day 13 Year 20 Time 1030 AM PM
4/7/20 (Date Summons Issued) Pd. W. Musacchio #59 (Signature of Person Issuing Summons)
 Complaint-Summons SF (200)

COMPLAINT - SUMMONS

COMPLAINT NUMBER				<i>THE STATE OF NEW JERSEY</i> VS ALBERT E FRENCH	
1027	S	2020	000104	ADDRESS: 208 DELAWARE AVENUE	
COURT CODE	PREFIX	YEAR	SEQUENCE NO	MILFORD NJ 08848-1935	
CLINTON TWP MUNICIPAL CT 1370 ROUTE 31 NORTH ANNANDALE NJ 08801-0000 908-735-3730 COUNTY OF: HUNTERDON					
# of CHARGES	CO-DEFTS	POLICE CASE #:		DEFENDANT INFORMATION	
3	0	2020011282		SEX: M EYE COLOR: BLUE	DOB: 01/11/1987
COMPLAINANT NAME: SGT J GLENNON			DRIVER'S LIC. #: F73370176501874		
1370 ROUTE 31 NORTH			SOCIAL SECURITY #: xxx-xx-x678		
ANNANDALE NJ 08801			SBI #: _____		
			TELEPHONE #: 908-797-1011 (c)		
			LIVESCAN PCN #: _____		

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **05/06/2020** in **CLINTON TWP HUNTERDON County, NJ** did: WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY CAUSE OR RECKLESSLY CREATE THE RISK OF PUBLIC INCONVENIENCE, ANNOYANCE OR ALARM BY ENGAGING IN VIOLENT OR TUMULTUOUS BEHAVIOR, SPECIFICALLY BY WALKING THE WRONG WAY ON STATE HIGHWAY 31 SOUTH WHILE DISPLAYING THE MIDDLE FINGER TO POLICE OFFICERS AND SEVERAL MOTORIST PASSING THE DEFENDANT'S LOCATION. IN VIOLATION OF N.J.S.A. 2C:33-2A A PETTY DISORDERLY PERSONS OFFENSE

WITHIN THE JURISDICTION OF THIS COURT, COMMIT AN UNAUTHORIZED ACT DURING THREAT OF EMERGENCY, SPECIFICALLY BY WALKING ALONG STATE HIGHWAY 31 SOUTH IN CLINTON TOWNSHIP HOLDING UP SIGNS TO PASSING MOTORISTS STATING "PHUCK #THIN BLUE AND "#PHUCK. . . ." AND "SLOW DOWN POLICE AHEAD." WITH NO LEGITIMATE PURPOSE. IN VIOLATION OF N.J.S.A. A:9-49(A) A DISORDERLY PERSONS OFFENSE

WITHIN THE JURISDICTION OF THIS COURT, REFUSED TO COOPERATE WITH POLICE OFFICERS in violation of:

Original Charge	1) 2C:33-2A(2)	2) A:9-49A	3) A:9-49G
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: _____ **SGT J GLENNON** Date: **05/07/2020**

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the **Municipal Court** in the county of: **HUNTERDON** at the following address: **CLINTON TWP MUNICIPAL CT**
1370 ROUTE 31 NORTH ANNANDALE NJ 08801-0000
 If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.
Date of Arrest: 05/06/2020 Appearance Date: 06/10/2020 Time: 10:30AM Phone: 908-735-3730
 Signature of Person Issuing Summons: _____ **SGT J GLENNON** Date: **05/07/2020**

<input type="checkbox"/> Domestic Violence – Confidential	<input checked="" type="checkbox"/> Related Traffic Tickets or Other Complaints	<input type="checkbox"/> Serious Personal Injury/ Death Involved
Special conditions of release: <input type="checkbox"/> No phone, mail or other personal contact w/victim <input type="checkbox"/> No possession firearms/weapons <input type="checkbox"/> Other (specify): _____		ORIGINAL
		Page 1 of 11

COMPLAINT – SUMMONS (Court Action)

COMPLAINT NUMBER

1027 **S** **2020** **000104**

STATE V.

ALBERT E FRENCH

COURT CODE PREFIX YEAR SEQUENCE NO.

FTA Bail Information

Date Bail Set: _____

Amount Bail Set: \$ _____

by: _____

Bail Recog. Attached

Released on Bail

R.O.R.

Committed Default

Committed w/o Bail

Place Committed: _____

Date Referred to County Prosecutor: _____

Date of First Appearance: **06/10/2020**

Advised of Rights by _____

Defendant Desires Counsel:

Yes No

Prosecuting Attorney Information

Defense Counsel Information

Name:

Name:

State County Municipal Other

None Retained Public Def Assigned Waived Other

Original Charge

1) **2C: 33-2A(2)**

2) **A: 9-49A**

3) **A: 9-49G**

Amended Charge

Waiver Indt/Jury

Plea/Date of Plea

Plea:

Date:

Plea:

Date:

Plea:

Date:

Adjudication (* see code)

Finding Code:

Date:

Finding Code:

Date:

Finding Code:

Date:

Jail Term

Jail time credit

Susp. Imp

Jail time credit

Susp. Imp

Jail time credit

Susp. Imp

Probation Term

Susp. Imp

Susp. Imp

Susp. Imp

Cond. Discharge Term

Susp. Imp

Susp. Imp

Community Service

D/L Suspension Term

Fines/Costs

Fines:

Costs:

Fines:

Costs:

Fines:

Costs:

VCCB/SNSF

VCCB:

SNSF:

VCCB:

SNSF:

VCCB:

SNSF:

DEDR/Lab Fee

DEDR:

LAB:

DEDR:

LAB:

DEDR:

LAB:

CD Fee/Drug Ed Fnd

CD:

DAEF:

CD:

DAEF:

CD:

DAEF:

DV Surch/Other Fees

DV:

Other:

DV:

Other:

DV:

Other:

Restitution

Beneficiary: _____

Miscellaneous Information, Adjournments, Companion Complaints, Co-Defendants, Case Notes:

N/A

* Finding Codes

- 1 - Guilty
- 2 - Not Guilty
- 3 - Dismissed - Other
- 4 - Guilty but Merged
- 5 - Dismissed-Rule
- 6 - Dismissed Lack of Prosecution
- 7 - Dismissed - Pros Motion/Vic Req
- 8 - Conditional Discharge
- D - Dismissed- Prosecutor Discretion
- M - Dismissed- Mediation
- P - Dismissed-Plea Agreement
- S - Disposed at Superior
- W - Dismissed-False ID

Related Traffic Tickets and Complaints:
1027-CT-024566

JUDGE'S SIGNATURE _____

DATE _____

ORIGINAL - Court Action

COMPLAINT - SUMMONS (DEFENDANT'S COPY)

COMPLAINT NUMBER				<i>THE STATE OF NEW JERSEY</i>	
1027	S	2020	000104	<i>VS.</i>	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ALBERT E FRENCH	
CLINTON TWP MUNICIPAL CT 1370 ROUTE 31 NORTH ANNANDALE NJ 08801-0000 908-735-3730 COUNTY OF: HUNTERDON				ADDRESS: 208 DELAWARE AVENUE MILFORD NJ 08848-1935	
# of CHARGES 3	CO-DEFTS 0	POLICE CASE #: 2020011282		DEFENDANT INFORMATION SEX: M EYE COLOR: BLUE DOB: 01/11/1987 DRIVER'S LIC. #: F73370176501874 DL STATE: NJ SOCIAL SECURITY #: xxx-xx-x678 SBI #: TELEPHONE #: 908-797-1011 (C) LIVESCAN PCN #:	
COMPLAINANT NAME: SGT J GLENNON					

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **05/06/2020** in **CLINTON TWP**, **HUNTERDON** County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY CAUSE OR RECKLESSLY CREATE THE RISK OF PUBLIC INCONVENIENCE, ANNOYANCE OR ALARM BY ENGAGING IN VIOLENT OR TUMULTUOUS BEHAVIOR, SPECIFICALLY BY WALKING THE WRONG WAY ON STATE HIGHWAY 31 SOUTH WHILE DISPLAYING THE MIDDLE FINGER TO POLICE OFFICERS AND SEVERAL MOTORIST PASSING THE DEFENDANT'S LOCATION. IN VIOLATION OF N.J.S.A. 2C:33-2A A PETTY DISORDERLY PERSONS OFFENSE

WITHIN THE JURISDICTION OF THIS COURT, COMMIT AN UNAUTHORIZED ACT DURING THREAT OF EMERGENCY, SPECIFICALLY BY WALKING ALONG STATE HIGHWAY 31 SOUTH IN CLINTON TOWNSHIP HOLDING UP SIGNS TO PASSING MOTORISTS STATING "PHUCK #THIN BLUE AND "#PHUCK...." AND "SLOW DOWN POLICE AHEAD." WITH NO LEGITIMATE PURPOSE. IN VIOLATION OF N.J.S.A. A:9-49(A) A DISORDERLY PERSONS OFFENSE

WITHIN THE JURISDICTION OF THIS COURT, REFUSED TO COOPERATE WITH POLICE OFFICERS
in violation of:

Original Charge	1) 2C:33-2A(2)	2) A:9-49A	3) A:9-49G
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

Signed: SGT J GLENNON Date: 05/07/2020

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the Municipal Court in the county of: HUNTERDON at the following address: CLINTON TWP MUNICIPAL CT 1370 ROUTE 31 NORTH ANNANDALE NJ 08801-0000

If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.

Date of Arrest: 05/06/2020 Appearance Date: 06/10/2020 Time: 10:30AM Phone: 908-735-3730

Signature of Person Issuing Summons: SGT J GLENNON Date: 05/07/2020

<input type="checkbox"/> Domestic Violence – Confidential	<input checked="" type="checkbox"/> Related Traffic Tickets or Other Complaints	<input type="checkbox"/> Serious Personal Injury/ Death Involved
Special conditions of release: <input type="checkbox"/> No phone, mail or other personal contact w/victim <input type="checkbox"/> No possession firearms/weapons <input type="checkbox"/> Other (specify):		COMPLAINT - SUMMONS (DEFENDANT'S COPY) Page 5 of 11 NJ/CDR1 1/1/2017

RETURN OF SERVICE INFORMATION

COMPLAINT NUMBER

1027	S	2020	000104
COURT CODE	PREFIX	YEAR	SEQUENCE NO.

THE STATE OF NEW JERSEY

VS.

ALBERT E FRENCH

CLINTON TWP MUNICIPAL CT
1370 ROUTE 31 NORTH
ANNANDALE NJ 08801-0000
908-735-3730 COUNTY OF: HUNTERDON

ADDRESS:
208 DELAWARE AVENUE
MILFORD NJ 08848-1935

# of CHARGES 3	CO-DEFTS 0	POLICE CASE #: 2020011282
COMPLAINANT SGT J GLENNON NAME: 1370 ROUTE 31 NORTH ANNANDALE NJ 08801		

DEFENDANT INFORMATION
SEX: M EYE COLOR: BLUE DOB: 01/11/1987
DRIVER'S LIC. # F73370176501874 DL STATE: NJ
SOCIAL SECURITY # xxx-xx-x678 SBI #:
TELEPHONE #: 908-797-1011 (C)
LIVESCAN PCN #:

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **05/06/2020** in **CLINTON TWP HUNTERDON County, NJ** did: **WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY CAUSE OR RECKLESSLY CREATE THE RISK OF PUBLIC INCONVENIENCE, ANNOYANCE OR ALARM BY ENGAGING IN VIOLENT OR TUMULTUOUS BEHAVIOR, SPECIFICALLY BY WALKING THE WRONG WAY ON STATE HIGHWAY 31 SOUTH WHILE DISPLAYING THE MIDDLE FINGER TO POLICE OFFICERS AND SEVERAL MOTORIST PASSING THE DEFENDANT'S LOCATION. IN VIOLATION OF N.J.S.A. 2C:33-2A A PETTY DISORDERLY PERSONS OFFENSE.**

WITHIN THE JURISDICTION OF THIS COURT, COMMIT AN UNAUTHORIZED ACT DURING THREAT OF EMERGENCY, SPECIFICALLY BY WALKING ALONG STATE HIGHWAY 31 SOUTH IN CLINTON TOWNSHIP HOLDING UP SIGNS TO PASSING MOTORISTS STATING "PHUCK #THIN BLUE AND "#PHUCK. . . ." AND "SLOW DOWN POLICE AHEAD." WITH NO LEGITIMATE PURPOSE. IN VIOLATION OF N.J.S.A. A:9-49(A) A DISORDERLY PERSONS OFFENSE

WITHIN THE JURISDICTION OF THIS COURT, REFUSED TO COOPERATE WITH POLICE OFFICERS in violation of:

Original Charge	1) 2C:33-2A(2)	2) A:9-49A	3) A:9-49G
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Check ✓	Certification by Police Regarding Complaint-Summons
	I certify that I served the complaint-summons by delivering a copy to the defendant personally.
	I certify that I personally served the complaint-summons by leaving a copy at the defendant's usual place of abode with a competent member of the household of the age 14 or over <div style="text-align: right; border-bottom: 1px solid black; width: 200px; margin-left: auto;">Name of family member over 14 years of age</div>
✓	I certify that I mailed a copy of the complaint-summons by ordinary mail to the defendant at his or her last known address. <div style="text-align: right; border-bottom: 1px solid black; width: 200px; margin-left: auto;">208 DELAWARE AVE MILFORD, NJ 08848</div> <div style="text-align: right; font-size: small; margin-left: auto;">Defendant's last known address</div>
	I certify that I served the complaint-summons by delivering a copy to a person authorized to receive service of process on the defendant's behalf. <div style="text-align: right; border-bottom: 1px solid black; width: 200px; margin-left: auto;">Name and title of authorized person</div>
	Other manner of service: I certify that I served the complaint-summons in the following manner: _____
	I certify that I was unable to serve the complaint-summons.

Signed: SGT J GLENNON CLINTON TOWNSHIP POLICE DEPT Date of Action: 05/07/2020
Name, Title and Department of Officer

RETURN OF SERVICE INFORMATION

Affidavit of Probable Cause

COMPLAINT NUMBER				<i>THE STATE OF NEW JERSEY</i>	
1027	S	2020	000104	VS	
COURT CODE	PREFIX	YEAR	SEQUENCE NO	ALBERT E FRENCH	
CLINTON TWP MUNICIPAL CT 1370 ROUTE 31 NORTH ANNANDALE NJ 08801-0000 908-735-3730 COUNTY OF: HUNTERDON				ADDRESS: 208 DELAWARE AVENUE MILFORD NJ 08848-1935	
# of CHARGES 3	CO-DEFTS	POLICE CASE #: 2020011282		DEFENDANT INFORMATION	
COMPLAINANT SGT J GLENNON NAME: 1370 ROUTE 31 NORTH ANNANDALE NJ 08801		SEX: M EYE COLOR: BLUE DOB: 01/11/1987 DRIVER'S LIC. # F73370176501874 DL STATE: NJ SOCIAL SECURITY #: xxx-xx-x678 SBI #: TELEPHONE #: 908-797-1011 (C) LIVESCAN PCN #:			

Purpose: This Affidavit/Certification is to more fully describe the facts of the alleged offense so that a judge or authorized judicial officer may determine probable cause.

1. Description of relevant facts and circumstances which support probable cause that (1) the offense(s) was committed and (2) the defendant is the one who committed it:

The acts committed by the defendant were in the presence of a sworn law enforcement officer and were captured on the officers in-car-camera system. Mr. French was walking along State Highway 31 waiving a sign at traffic that stated, "Slow down police Ahead" and "Phuck #Thin Blue and #Phuck ...". When officers went to speak with Mr. French at first he refused to stop and state the reasons for his actions. Mr. French denied holding the sign up in traffic that was witnessed by Lt. Thomas Derosa. When release Mr. French walked almost 100 yards giving the middle finger to police in view of multiple passing motorist on state Highway 31. I identified the subject by past dealings with him.

Affidavit of Probable Cause

Preliminary Law Enforcement Incident Report

COMPLAINT NUMBER				THE STATE OF NEW JERSEY VS. ALBERT E FRENCH ADDRESS: 208 DELAWARE AVENUE MILFORD NJ 08848-1935	
1027	S	2020	000104		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		
CLINTON TWP MUNICIPAL CT 1370 ROUTE 31 NORTH ANNANDALE NJ 08801-0000 908-735-3730 COUNTY OF: HUNTERDON					
# of CHARGES 3	CO-DEFTS	POLICE CASE #: 2020011282		DEFENDANT INFORMATION	
COMPLAINANT SGT NAME: J GLENNON 1370 ROUTE 31 NORTH ANNANDALE NJ 08801				SEX: M EYE COLOR: BLUE DOB: 01/11/1987 DRIVER'S LIC. # F73370176501874 DL STATE: NJ SOCIAL SECURITY #: xxx-xx-x678 SBI #: TELEPHONE #: 908-797-1011 (C) LIVSCAN PCN #:	

Purpose: The Preliminary Law Enforcement Incident Report (PLEIR) is intended to document basic information known to the officer at the time of its preparation. It is recognized that additional relevant information will emerge as an investigation continues. The PLEIR shall be in addition to, not in lieu of, any regular police arrest, incident, or investigation reports. Note that the PLEIR is specific to each defendant charged in an investigation.

- The complaining officer personally observed the offense.
- Another law enforcement officer(s) personally observed the offense. List the officer(s) and their badge#
Lt. T. DeRosa #26 Ptl.56
- The defendant made statements/admissions.
 - It was recorded using:
*Dash Camera/MVR/DIVR

Certification:
 I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: SGT J GLENNON LAW ENFORCEMENT OFFICER Date: 05/07/2020

EXECUTIVE ORDER NO. 107

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State's Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health ("DOH"), in order to coordinate the State's efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserved the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, in accordance with N.J.S.A. App. A:9-40, I declared that, due to the State of Emergency, no municipality, county, or any agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of my Executive Orders, or which will in any way interfere with or impede their achievement; and

WHEREAS, to further protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19; and

WHEREAS, Executive Order No. 104 (2020) limited the scope of service and hours of operation for restaurants and certain retail establishments to balance the need to allow individuals to access food and other essential materials with the need to limit unnecessary person-to-person contact; and

WHEREAS, Executive Order No. 104 (2020) deemed a subset of businesses as "essential," including grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities, and ancillary stores within healthcare facilities, and it authorized the State Director of Emergency Management, who is the Superintendent of State Police, to make additions, amendments, clarifications, exceptions, and exclusions to that list; and

WHEREAS, Executive Order No. 104 (2020) made clear that such essential businesses may continue operating without limits on their scope of service or hours of operation, absent further amendments by the State Director of Emergency Management; and

WHEREAS, Executive Order No. 104 (2020) and subsequent Administrative Orders issued by the State Director of Emergency Management also placed restrictions on other businesses' scope of service and hours of operation, and also placed restrictions on the size of gatherings in the State; and

WHEREAS, as of March 20, 2020, according to the Centers for Disease Control and Prevention ("CDC"), there were more than 234,000 confirmed cases of COVID-19 worldwide, with over 9,800 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were more than 15,000 confirmed cases of COVID-19 in the United States, with at least 201 of those cases having resulted in death; and

WHEREAS, as of March 20, 2020, there were at least 890 positive cases of COVID-19 in New Jersey, with at least 11 of those cases having resulted in death; and

WHEREAS, social mitigation strategies for combatting COVID-19 require every effort to reduce the rate of community spread of the disease; and

WHEREAS, the CDC has advised that COVID-19 spreads most frequently through person-to-person contact when individuals are within six feet or less of one another; and

WHEREAS, as a result, the CDC has recommended that individuals practice "social distancing" to prevent community spread of the virus; and

WHEREAS, the CDC has defined social distancing as the practice of "remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible"; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

WHEREAS, the best way for New Jersey residents to keep themselves, their families, and their communities safe during the COVID-19 outbreak is to stay at home as much as possible; and

WHEREAS, as of March 15, 2020, the CDC recommends that for the next eight weeks, gatherings of 50 or more people be canceled or postponed throughout the United States; and

WHEREAS, as of March 16, 2020, the White House went further than the CDC had and recommended that Americans avoid social gatherings in groups of more than 10 people; and

WHEREAS, restricting the physical presence of individuals in office environments and work sites is critical to preventing future spread of COVID-19; and

WHEREAS, accommodating work-from-home arrangements is an effective means to ensure continuity of operations while also limiting person-to-person contact; and

WHEREAS, the CDC has recommended employers to establish policies and practices to increase the physical distance among employees and between employees; and

WHEREAS, permitting the workforce to work from home may reduce stress on the State's child care system; and

WHEREAS, as of March 19, 2020, I have instructed all State departments and agencies to utilize work-from-home arrangements for both essential and non-essential employees wherever feasible; and

WHEREAS, given the rapidly rising incidence of COVID-19, temporarily closing non-essential retail businesses will strengthen New Jersey's efforts to slow the spread of COVID-19; and

WHEREAS, even as we institute social distancing measures, the number of COVID-19 cases in New Jersey is likely to increase for the immediate future, meaning we must take all possible steps to preserve our health care system's capacity to treat those who require emergency or intensive care; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The operative paragraphs of Executive Order No. 104 (2020) are hereby superseded in full. The factual findings of Executive Order No. 104 (2020) remain applicable except to the extent they are in conflict with the factual findings in this or any intervening Executive Order.

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts, pursuant to Paragraph 8; 3) seeking medical attention, essential social services, or assistance from law enforcement or emergency services; 4) visiting family or other individuals with whom the resident has a close personal relationship, such as those for whom the individual is a caretaker or romantic partner; 5) reporting to, or performing, their job; 6) walking, running, operating a wheelchair, or engaging in outdoor activities with immediate family members, caretakers, household members, or romantic partners while following best social distancing practices with other individuals, including staying six feet apart; 7) leaving the home for an educational, religious, or political reason; 8) leaving because of a reasonable fear for his or her health or safety; or 9) leaving at the direction of law enforcement or other government agency.

3. When in public, individuals must practice social distancing and stay six feet apart whenever practicable, excluding immediate family members, caretakers, household members, or romantic partners.

4. Individuals who have to travel pursuant to Paragraph 2 should only use public transportation only if they have no other feasible choice. Individuals who ride public transportation should abide by best social distancing practices, including making

all efforts to stand or sit six feet away from other riders and frequently use sanitizing products.

5. Gatherings of individuals, such as parties, celebrations, or other social events, are cancelled, unless otherwise authorized by any part of this Order. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make clarifications and issue orders related to this provision.

6. The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect. Essential retail businesses, listed below, are excluded from this directive and may remain open during their normal business hours. Essential retail businesses must, wherever practicable, provide pickup services outside or adjacent to their stores for goods ordered in advance online or by phone. Additionally, online and telephonic delivery services are permitted to the extent the retail business is authorized to operate an online or telephonic delivery service under existing law. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
- b. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
- c. Medical supply stores;
- d. Retail functions of gas stations;

- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;
- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

7. Any essential retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing essential services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.

8. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses. If alcoholic beverages are to be sold from a restaurant, dining establishment or bar with a liquor license, such sales shall be

limited to original containers sold from the principal public barroom. The on-premises consumption of alcohol is prohibited. All retail sales of alcoholic beverages by limited brewery licensees, restricted brewery licensees, plenary and farm winery licensees (and associated salesrooms), craft distillery licensees and cidery and meadery licensees must be in original containers and must be sold through customer pick up and/or delivered by licensees in accordance with their existing licenses.

9. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this Order remains in effect. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to this list:

- a. Casino gaming floors, including retail sports wagering lounges, and casino concert and entertainment venues. Online and mobile sports and casino gaming services may continue to be offered notwithstanding the closure of the physical facility.
- b. Racetracks, including stabling facilities and retail sports wagering lounges. Mobile sports wagering services may continue to be offered notwithstanding the closure of the physical facility.
- c. Gyms and fitness centers and classes.
- d. Entertainment centers, including but not limited to, movie theaters, performing arts centers, other concert venues, and nightclubs.
- e. All indoor portions of retail shopping malls. Restaurants and other stores located within

shopping malls that have their own external entrances open to the public, separate from the general mall entrance, may remain open pursuant to the terms and directives of this Order for operating hours and takeout or food delivery services. All entrances and exits to the common area portions of retail shopping malls must remain closed.

- f. All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement parks, water parks, aquariums, zoos, arcades, fairs, children's play centers, funplexes, theme parks, bowling alleys, family and children's attractions.
- g. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; hair braiding shops; nail salons; electrology facilities; spas, including day spas and medical spas, at which solely elective and cosmetic medical procedures are performed; massage parlors, tanning salons, tattoo parlors, and public and private social clubs, whether or not they serve alcohol, including but not limited to facilities owned or operated by the American Legion, Veterans of Foreign Wars, Knights of Columbus, and any other social clubs associated with community service organizations. This excludes any health facilities that provide medically necessary or therapeutic services.

h. All municipal, county, and State public libraries, and all libraries and computer labs at public and private colleges and universities.

10. All businesses or non-profits in the State, whether closed or open to the public, must accommodate their workforce, wherever practicable, for telework or work-from-home arrangements. For purposes of this order, "telework" means the practice of working from home or alternative locations closer to home through the use of technology that equips the individual to access necessary materials.

11. To the extent a business or non-profit has employees that cannot perform their functions via telework or work-from-home arrangements, the business or non-profit should make best efforts to reduce staff on site to the minimal number necessary to ensure that essential operations can continue. Examples of employees who need to be physically present at their work site in order to perform their duties include, but are not limited to, law enforcement officers, fire fighters, and other first responders, cashiers or store clerks, construction workers, utility workers, repair workers, warehouse workers, lab researchers, information technology maintenance workers, janitorial and custodial staff, and certain administrative staff.

12. All public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, shall remain closed to students as long as this Order remains in effect.

13. All institutions of higher education shall continue to cease such in-person instruction as long as this Order remains in effect. The Secretary of the Office of Higher Education shall have the authority to grant a waiver to allow in-person instruction to students on a case-by-case basis where a compelling rationale to

allow such access exists. The Secretary of the Office of Higher Education shall coordinate with institutions of higher education to determine appropriate student housing conditions for those students who reside in on-campus housing as their primary residence.

14. The Commissioner of the Department of Education ("DOE"), in consultation with the Commissioner of DOH, shall be authorized to permit schools to remain open on a limited basis for the provision of food or other essential, non-educational services, or for educational or child care services if needed in emergency situations after consultation with the Commissioner of DOH. The Commissioner of DOE shall also have the authority to close any other career or training facilities over which he has oversight, after consultation with the Commissioner of DOH.

15. The Commissioner of DOE shall continue working with each public school district, and private and parochial schools as appropriate, to ensure that students are able to continue their educations during this time period through appropriate home instruction. Local school districts, charter schools, and renaissance schools, in consultation with the Commissioner of DOE, shall have the authority and discretion to determine home instruction arrangements as appropriate on a case-by-case basis to ensure all students are provided with appropriate home instruction, taking into account all relevant constitutional and statutory obligations.

16. The Secretary of the Department of Agriculture, in conjunction with the Commissioner of DOE, shall take all necessary actions to ensure that all students eligible for free or reduced meals shall continue to receive the services or supports necessary to meet nutritional needs during closures.

17. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.

18. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.

19. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.

20. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.

21. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of the federal government, or the movement of federal officials in New Jersey while acting in their official capacity.

22. In accordance with N.J.S.A. App. A:9-33, et seq., as supplemented and amended, the State Director of Emergency Management, who is the Superintendent of State Police, through the police agencies under his control, to determine and control the direction of the flow of vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic and to prevent ingress or egress from any area that, in the State Director's discretion, is deemed necessary for the protection of the health, safety, and welfare of the public, and to remove parked or abandoned vehicles from such roadways as conditions warrant.

23. The Attorney General, pursuant to the provisions of N.J.S.A. 39:4-213, shall act through the Superintendent of State Police, to determine and control the direction of the flow of

vehicular traffic on any State or interstate highway, municipal or county road, and any access road, including the right to detour, reroute, or divert any or all traffic, to prevent ingress or egress, and to determine the type of vehicle or vehicles to be operated on such roadways. I further authorize all law enforcement officers to enforce any such order of the Attorney General or Superintendent of State Police within their respective municipalities.

24. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Executive Order.

25. Penalties for violations of this Executive Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

26. This Order shall take effect on Saturday, March 21, 2020, at 9:00 p.m., and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
21st day of March,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fourth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

CLINTON TWP POLICE DEPT. INVESTIGATION REPORT

1370 ROUTE 31 NORTH
908-735-7230
CLINTON TWSP, NJ 08801

Municipal Code: 1006
ORI: NJ0100600

DEPARTMENT CASE NUMBER 2020008133		MUN. CODE 1006	PHONE NUMBER 908-735-7230		UCR	DEPARTMENT ARREST NUMBER		
CRIME/INCIDENT Violate Governor's Order DISORDERLY CONDUCT DISORDERLY CONDUCT			NJS A:9-49(H) 2C:33-2 2C:33-2		VICTIM NAME (Last Name, First Name, MI) STATE OF NEW JERSEY			DOB
DATE BETWEEN		HOUR	MONTH	DAY	YEAR	VICTIM'S HOME ADDRESS		PHONE
AND		<input checked="" type="checkbox"/>	16:24	04	07	2020		
TIME			16:32	04	07	2020		
CRIME/INCIDENT LOCATION ROUTE 22 WEST, CLINTON NJ 08833					EMPLOYER		PHONE	
MUNICIPALITY CLINTON TOWNSHIP		COUNTY HUNTERDON		CODE 1006	PERSON REPORTING CRIME PATROLMAN MUSACCHIO, WILLIAM		DATE AND TIME 04/07/2020 16:20	
TYPE OF PREMISES Street		WEAPONS - TOOLS NONE		ADDRESS CLINTON TOWNSHIP POLICE DEPARTMENT - 1370 ROUTE 31 NORTH, CLINTON TWSP NJ 08801			PHONE 908-735-7230	
MODUS OPERANDI THE DEFENDANT WAS OBSERVED ON THE SHOULDER OF ROUTE 22 MAKING OBSCENE GESTURES TOWARDS ONCOMING TRAFFIC. THESE ACTS OCCURRED DURING A STATE OF EMERGENCY FOR COVID-19. THE GOVERNOR HAD ENACTED EXECUTIVE ORDER #107 ADVISING ALL RESIDENTS WITH NON ESSENTIAL JOBS, TO REMAIN AT HOME AND SOCIAL DISTANCE..								
VEHICLE	YEAR	MAKE	MODEL	BODY TYPE	COLOR	REG. PLATE-STATE	VIN	VEHICLE VALUE
VALUE STOLEN PROPERTY	CURRENCY	JEWELRY	FURS	CLOTHING	AUTO	MISC.		
TOTAL VALUE STOLEN \$0.00		TOTAL VALUE RECOVERED		TELETYPE ALARM	TECHNICAL SERVICES		TECHNICAL AGENCY A.P. MICHAEL SWEENEY	
WEATHER CLEAR		SIC		NIC		ASSISTING AGENCIES HUNTERDON COUNTY PROSECUTOR'S OFFICE		
NO. OF ACCUSED 1	ADULT 1	JUVENILE	STATUS CRIME CLR-SUMMONS		STATUS CASE COURT		UCR STATUS	DATE CLEARED
NARRATIVE ***** PARTIES INVOLVED ***** ROLE: Defendant NAME: FRENCH, ALBERT E HOME ADDRESS: 208 DELAWARE AVE, MILFORD NJ 08848-1935 HOME PHONE: 908-797-1011 HOME ALT. PHONE: 908-797-1011 WORK ADDRESS: UNKNOWN - SEX: M DOB: 01/11/1987 AGE: 33 SSN: 154-80-3678 RACE: WHITE ETHNICITY: NON-HISPANIC HAIR COLOR: BLONDE/STRAWBERRY COMPLEXION: LIGHT HEIGHT: 6' 1" WEIGHT: 201 BUILD: MEDIUM DL#: F73370176501874 DL EXP: 07/31/2020 DL STATE: NJ FBI#: 525870KC6 SBI#: 503747D ON TUESDAY, APRIL 7, 2020 AT APPROXIMATELY 1624 HOURS, I WAS OPERATING MARKED POLICE VEHICLE 46-25. I WAS PARKED IN A MEDIAN CUT OUT OF ROUTE 22 ADJACENT TO THE FOUNTAIN MOTEL, AFTER JUST COMPLETING A BUSINESS CHECK OF THE MOTEL. I OBSERVED A WHITE MALE CARRYING TWO POSTER BOARDS WALKING WESTBOUND IN THE EASTBOUND SHOULDER OF ROUTE 22, IN FRONT OF MY POLICE VEHICLE. THIS MALE WAS IDENTIFIED AS ALBERT E. FRENCH FROM PREVIOUS INTERACTIONS WITH THE CLINTON TOWNSHIP POLICE DEPARTMENT. FRENCH STOOD IN FRONT OF THE FOUNTAIN MOTEL AND BEGAN RAISING THE SIGNS TOWARDS ONCOMING TRAFFIC AND ALSO TURNED TO FACE MY PATROL VEHICLE. I LATER WAS ABLE TO READ THE FIRST WORD OF A SIGN WHICH READ "PHUCK" WHICH I INTERPRETED TO REPRESENT THE CURSE WORD "FUCK." I DECIDED TO LEAVE ME POSITION AND TRAVEL EAST TOWARDS POTTERSTOWN ROAD WHERE I UTILIZED THE MEDIAN TURN AROUND TO CONTINUE BACK WEST. AS I PASSED FRENCH IN FRONT OF THE FOUNTAIN MOTEL, HE TURNED TOWARDS MY POLICE VEHICLE AND OTHER ONCOMING TRAFFIC AND GRABBED HIS GENITALS FROM OVERTOP OF HIS CLOTHING. HE PROCEEDED TO SHAKE HIS GENITALS IN AND UP AND DOWN MANNER. AT THIS TIME, I CONTACTED LT. DEROSA ABOUT MY OBSERVATIONS AND HE INSTRUCTED ME TO CALL AP MICHAEL SWEENEY WHO IS ASSIGNED AS THE COVID-19 PROSECUTOR FOR HUNTERDON COUNTY. I FELT THIS DISORDERLY CONDUCT WAS IN DIRECT...								
NAME PATROLMAN MUSACCHIO, WILLIAM 59			DATE OF REPORT 04/07/2020	REVIEWED BY SERGEANT TIGER, JOHN J 40			SIGNATURE	

CLINTON TWP POLICE DEPT. INVESTIGATION REPORT

1370 ROUTE 31 NORTH
908-735-7230
CLINTON TWSP, NJ 08801

Municipal Code: 1006
ORI: NJ0100600

INCIDENT # : 2020008133

VIOLATION OF THE "STAY AT HOME" ORDER DETAILED IN GOV. PHIL MURPHY'S EXECUTIVE ORDER (EO) #107. I PARKED MY PATROL VEHICLE FURTHER WEST OF FRENCH'S POSITION IN THE CENTER MEDIAN NEAR ROUTE 22 AND MAIN STREET. I THEN CONTACTED AP SWEENEY WHO AUTHORIZED CHARGING FRENCH WITH CRIMINAL DISORDERLY CONDUCT AND VIOLATION OF EO #107. WHILE ON THE PHONE WITH AP SWEENEY, FRENCH CONTINUED WEST IN THE EASTBOUND SHOULDER PASSING MY PATROL VEHICLE FOR A SECOND TIME. THIS TIME HE GESTURED WITH HIS MIDDLE FINGER TOWARDS THE HIGHWAY, ONCOMING VEHICLES, AND MY PATROL VEHICLE. THIS CONSTITUTED ANOTHER ACT OF DISORDERLY CONDUCT.

AT THIS TIME, I CONTACTED DET. MICHAEL AKERS AND ADVISED HIM TO RESPOND TO MY LOCATION TO ASSIST WITH A DISORDERLY MALE. WHILE CONTACTING DET. AKERS I OBSERVED FRENCH ENTER THE HIGHWAY NEAR ROUTE 22 AND MAIN STREET AND CROSS INTO THE CENTER MEDIAN. THIS VIOLATION, COMMONLY REFERRED TO AS "JAYWALKING," PROHIBITS PEDESTRIANS FROM CROSSING A HIGHWAY SEPARATED BY A MEDIAL BARRIER EXCEPT WHERE DESIGNATED BY A CROSSWALK.

I MADE CONTACT WITH FRENCH IN THE CENTER MEDIAN OF ROUTE 22 AND DET. AKERS ASSISTED. DUE TO FRENCH'S IRATE BEHAVIOR AND THE PROCEDURES IN PLACE FOR COVID-19, WE DECIDED TO ISSUE FRENCH ALL CHARGES AND CITATIONS VIA MAIL. THE FOLLOWING CHARGES AND CITATIONS WERE ISSUED:

- 2 COUNTS OF 2C:33-2A(2); CRIMINAL DISORDERLY CONDUCT
- 2 COUNTS OF 198-10(C): TOWNSHIP ORDINANCE DISORDERLY CONDUCT
- 1 COUNT OF APP.A:9-49(H): VIOLATION OF EXECUTIVE ORDER 107
- 1 TRAFFIC CITATION FOR 39:4-34: PEDESTRIAN CROSSING HIGHWAY WITHOUT THE USE OF A CROSSWALK.

ON TUESDAY, APRIL, 14, 2020, THE MVR FOOTAGE FROM THIS INCIDENT WAS LOGGED INTO EVIDENCE AS ITEMS WRM-1, WRM-2, AND WRM-3. NO FURTHER ACTION WAS TAKEN AT THIS TIME.

RANK	SIGNATURE OF OFFICER SUBMITTING REPORT	COMMAND	BADGE NUMBER
PATROLMAN	MUSACCHIO, WILLIAM	DA 60	59

CLINTON TWP POLICE DEPT. INVESTIGATION REPORT

1370 ROUTE 31 NORTH
 908-735-7230
 CLINTON TWSP, NJ 08801

Municipal Code: 1006
 ORI: NJ0100600

DEPARTMENT CASE NUMBER 2020011282		MUN. CODE 1006	PHONE NUMBER 908-735-7230		UCR	DEPARTMENT ARREST NUMBER		
CRIME/INCIDENT DISORDERLY CONDUCT Commit Unauthorized Act GENERAL PROHIBITIONS			NJS 2C:33-2 A:9-49(A) 198-4		VICTIM NAME(Last Name, First Name, MI) STATE, OF NEW JERSEY			DOB
					SSN NO.	AGE	SEX	RACE
					ETHNICITY			
DATE	BETWEEN	HOUR	MONTH	DAY	YEAR	VICTIM'S HOME ADDRESS		PHONE
AND	<input type="checkbox"/>	16:21	05	06	2020	N/A		000-000-0000
TIME								
CRIME/INCIDENT LOCATION ROUTE 31/LONGWOOD DRIVE, CLINTON TWP NJ 08801					EMPLOYER N/A		PHONE 000-000-0000	
MUNICIPALITY CLINTON TOWNSHIP			COUNTY HUNTERDON		CODE 1006	PERSON REPORTING CRIME SERGEANT GLENNON, JEFFERY J		DATE AND TIME 05/06/2020 16:21
TYPE OF PREMISES Street		WEAPONS - TOOLS NONE		ADDRESS CLINTON TOWNSHIP POLICE DEPARTMENT - 1370 ROUTE 31 NORTH, CLINTON TWSP NJ 08801			PHONE 908-735-7230	
MODUS OPERANDI DEFENDANT WAS WALKING ALONG STATE HIGHWAY 31 SOUTH HOLDING DIFFERENT SIGNS STATING POLICE ACTIONS AHEAD AND ANOTHER SIGN WITH "PHUCK" WRITTEN ON IT, WITH OTHER SAYINGS THAT WERE CONCEALED BY THE DEFENDANT. DEFENDANT REFUSED TO COOPERATE WITH OFFICERS AND WHEN THE INTERACTION WAS CONCLUDED; DEFENDANT WALKED DOWN THE STREET BACKWARDS GIVING THE OFFICERS THE MIDDLE FINGER WITH HIS LEFT HAND IN VIEW OF MULTIPLE PASSING MOTORISTS.								
VEHICLE	YEAR	MAKE	MODEL	BODY TYPE	COLOR	REG. PLATE -STATE	VIN	VEHICLE VALUE
VALUE STOLEN PROPERTY	CURRENCY	JEWELRY	FURS	CLOTHING	AUTO	MISC.		
TOTAL VALUE STOLEN \$0.00	TOTAL VALUE RECOVERED		TELETYPE ALARM N/A	TECHNICAL SERVICES N/A		TECHNICAL AGENCY N/A		
WEATHER OVERCAST/RAIN/47 DEGREES		SIC		NIC		ASSISTING AGENCIES HUNTERDON COUNTY PROSECUTORS OFFICE		
NO. OF ACCUSED 1	ADULT 1	JUVENILE 0	STATUS CRIME CLR/ARREST	STATUS CASE COURT		UCR STATUS		DATE CLEARED
NARRATIVE ***** PARTIES INVOLVED ***** ROLE: Arrested NAME: FRENCH, ALBERT E HOME ADDRESS: 208 DELAWARE AVE, MILFORD NJ 08848-1935 HOME PHONE: 908-797-1011 HOME ALT. PHONE: 908-797-1011 WORK ADDRESS: RITA'S ITALIAN ICE - 2632 ROUTE 31 SOUTH, CLINTON NJ 08801 WORK PHONE: 908-638-8230 SEX: M DOB: 01/11/1987 AGE: 33 SSN: 154-80-3678 RACE: WHITE ETHNICITY: NON-HISPANIC HAIR COLOR: BLONDE/STRAWBERRY COMPLEXION: LIGHT HEIGHT: 6' 1" WEIGHT: 201 BUILD: MEDIUM DL#: F73370176501874 - NJ DL EXP: 07/31/2020 DL STATE: NJ FBI#: 525870KC6 SBI#: 503747D ON WEDNESDAY, MAY 6, 2020, I, SERGEANT JEFFERY GLENNON OF THE CLINTON TOWNSHIP POLICE DEPARTMENT WAS ON PATROL IN VEHICLE 46-11. I JUST CLEARED A MOTOR VEHICLE STOP ON STATE HIGHWAY 31 NORTH AT THE ENTRANCE TO EL PATRON RESTAURANT WHICH IS LOCATED AT #2014 STATE HIGHWAY 31 NORTH, JUST PRIOR TO VAN SYCKELS ROAD. I CLEARED THE MOTOR VEHICLE STOP AND WAS RESPONDING BACK INTO CLINTON TOWNSHIP. LT. THOMAS DEROSA IN PATROL VEHICLE 46-16 CONTACTED ME ON THE RADIO ADVISING THERE WAS A MALE SUBJECT WALKING NORTH AND SOUTH ON STATE HIGHWAY 31 SOUTH HOLDING UP SIGNS IN TRAFFIC. LT. THOMAS DEROSA ADVISED ME HE JUST PASSED THE MALE AS HE WAS RESPONDING TO MY LOCATION. I WAS NOW TRAVELING STATE HIGHWAY 31 SOUTH PASSING RILEY AND JAKE'S WHEN I OBSERVED A WHITE MALE WITH A RED SWEATSHIRT, A BACKWARDS RED HAT, BLUE FACE MASK AND BLUE JEANS WALKING BACKWARDS ON THE SHOULDER OF STATE HIGHWAY 31 SOUTH. THE MALE WAS HOLDING TWO WHITE POSTER BOARD SIGNS IN HIS HANDS AND PLACED THEM AT HIS SIDE AS I WAS APPROACHING HIM. ONE SIDE OF THE SIGN DISPLAYED "SLOW DOWN POLICE AHEAD", AND THE OTHER SIDE OF THE SIGN DISPLAYS "PHUCK #THIN BLUE... , I AM UNABLE TO READ THE REST OF THE WORDS IN THAT LINE. UNDERNEATH IT HE HAS WRITTEN "#PHUCK ...) AND THE REST OF THE WORDS I AM UNABLE TO READ OR CLEARLY SEE. I DO RECOGNIZE THE INDIVIDUAL AS ALBERT FRENCH AS OUR AGENCY HAD PREVIOUS DEALINGS WITH HIM AND FROM INTERACTIONS WITH OTHER AGENCIES THROUGHOUT THE COUNTY AND STATE THAT A. FRENCH HAS HAD...								
NAME SERGEANT GLENNON, JEFFERY J			DATE OF REPORT 05/06/2020	REVIEWED BY SERGEANT BUGAL JR., HARRY 29 P			SIGNATURE	

CLINTON TWP POLICE DEPT. INVESTIGATION REPORT

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INCIDENT # : 2020011282

I PULL ONTO THE SHOULDER OF ROUTE 31 SOUTH AND ATTEMPT TO MAKE CONTACT WITH A. FRENCH. ON MY PUBLIC ANNOUNCEMENT SYSTEM, I ADVISE A. FRENCH TO STOP WALKING SO I CAN TALK WITH HIM. A. FRENCH REFUSES AND CONTINUES TO WALK BACKWARDS TOWARDS LONGWOOD DRIVE. I STOP MY PATROL CAR AND EXIT YELLING AT HIM TO STOP, WHICH HE DOES NOT DO. I YELL AGAIN THAT HE CAN BE PLACED UNDER ARREST IF HE DOES NOT STOP AND COME OVER TO SPEAK WITH ME SO I CAN FIGURE OUT WHAT HE IS DOING TODAY ON THE SIDE OF THE ROADWAY WITH HIS SIGNS HE IS HOLDING UP IN TRAFFIC. A. FRENCH IS YELLING, BUT COMPLIES AND STARTS WALKING TOWARDS MY PATROL VEHICLE. HE TURNS AROUND AND PLACES HIS SIGNS UNDER HIS ARM AND HIS HANDS BEHIND HIS BACK, A POSITION FOR BEING PLACED IN HANDCUFFS. A. FRENCH THEN BEGINS TO DANCE AROUND WHILE MAINTAINING THIS POSITION.

I APPROACH A. FRENCH AND ADVISING HIM TO STOP HIS RHETORIC AND TO SPEAK TO ME ABOUT WHAT IS GOING ON TODAY TO CAUSE HIM TO ACT SO IRRATIONAL. A. FRENCH IS UNABLE TO CONTROL HIS EMOTIONS AND AGGRESSION AND AT THIS POINT IS JUST YELLING. A. FRENCH STATED HOW HE IS AN ESSENTIAL EMPLOYEE AND HAS THE RIGHT TO BE OUT, WHILE HE IS STATING THIS TO ME, HE IS POINTING TO HIS RITA'S ITALIAN ICE SWEATSHIRT. I LOOK DOWN AT MY MICROPHONE FOR MY PATROL VEHICLE AND REALIZE, I AM NOT RECORDING THIS INTERACTION. I THEN ACTIVATE THE RECORDING FOR MY AUDIO TO BEGIN, THIS IS HOW THE PRIOR TWO MINUTE IS DOCUMENTED FROM THE WATCHGUARD CAMERA SYSTEM SETTINGS THAT ARE SET TO RECORD THE PRIOR TWO MINUTES OF AN EVENT ONCE THE RECORDING IS ACTIVATED.

I ADVISE A. FRENCH THAT HE DOES NOT HAVE A LEGITIMATE PURPOSE. A FRENCH STATED I HAVE A LEGITIMATE PURPOSE WEATHER YOU BELIEVE IT OR NOT, I DO. I ASKED A. FRENCH WHAT HIS LEGITIMATE PURPOSE IS? A. FRENCH STATED, "I AM PROTESTING. I HAVE THE RIGHT TO PROTEST. I AM ALLOWED TO BE ON A PUBLIC HIGHWAY. I AM NOT CONDUCTING ANYTHING ILLEGAL UNDER EXECUTIVE ORDER 107. I AM ALLOWED TO CONDUCT OUTDOOR ACTIVITIES." A FRENCH IS STATING ALL OF THIS TO ME WHILE I AM ATTEMPTING TO ASK HIM QUESTION ON WHY HE IS ON THE SIDE OF THE ROADWAY. LT. THOMAS A. DEROSA OF THE CLINTON TOWNSHIP POLICE DEPARTMENT HAD ARRIVED ON SCENE AND ATTEMPTS TO SPEAK WITH A. FRENCH.

LT. DEROSA ADVISED A. FRENCH THAT HE WITNESSED HIM STANDING ON THE SIDE OF THE ROADWAY HOLDING HIS SIGNS UP TOWARDS TRAFFIC. A. FRENCH STATES, "I WAS NOT. DO YOU HAVE VIDEO? DO YOU HAVE IT ON CAMERA? LT. DEROSA ADVISES HE SAW HIM DOING THESE ACTS AND A. FRENCH CONTINUES TO SCREAM AND YELL DO YOU HAVE IT ON CAMERA? WE ARE TRYING TO SPEAK WITH A. FRENCH AND HE WILL NOT LISTEN OR COOPERATE WITH US. A. FRENCH IS YELLING, YOU ARE TRYING TO STOP ME FROM CONDUCTING LEGAL ACTIVITIES, STOPPING ME FOR CONDUCTING LEGAL ACTIVITIES. AT THIS POINT, A. FRENCH IS SCREAMING UNCONTROLLABLY, FLAILING HIS ARMS ALL OVER AND REFUSING TO COMMUNICATE WITH US.

I BEGIN TO ADVISE A. FRENCH THAT THIS INTERACTION IS POSSIBLY TURNING INTO A MENTAL HEALTH INVESTIGATION. A. FRENCH WILL NOT LISTEN AND JUST CONTINUES TO RAMBLE ON YELLING THINGS AT ME. I ADVISED A. FRENCH THAT I WAS BECOMING CONCERNED HE WAS A POSSIBLE THREAT TO SOCIETY FOR HIS CONDUCT AND ACTIONS HE IS EXHIBITING. A. FRENCH HAS NOW REPETITIVELY STATED THAT HE DOES NOT WANT TO BE PART OF THIS INVESTIGATION ANYMORE. I ADVISED A. FRENCH THAT HE IS A POSSIBLE THREAT TO SOCIETY AND THAT HE IS NOT FREE TO LEAVE. A FRENCH WENT TO WALK AWAY AND I ADVISED HIM HE WOULD BE PLACED UNDER ARREST FOR HIS CONDUCT AND FOR COMMUNITY CARE TAKING PURPOSES AND HE POSSES A POSSIBLE THREAT TO SOCIETY. PTL. SHANE CARLE OF THE CLINTON TOWNSHIP POLICE DEPARTMENT APPROVED ON SCENE AND I HAD HIM REMAIN WITH A. FRENCH.

I WENT TO LT. DEROSA PATROL VEHICLE TO SPEAK WITH HIM ABOUT SCREENING THE CHARGES WITH ASSISTANT PROSECUTOR MICHAEL SWEENEY OF THE HUNTERDON COUNTY PROSECUTORS OFFICER FOR VIOLATING THE GOVERNOR'S ORDERS. LT. DEROSA ADVISED HE WAS ACTIVELY TRYING TO CONTACT A/P SWEENEY AND WAS UNABLE TOO. I ADVISED LT. DEROSA THAT HE WAS POSSIBLE COMING FROM RITA'S ITALIAN ICE WHERE HE WORKS SINCE HE WAS WEARING THE STORES SWEATSHIRT. WE WENT AND ATTEMPTED TO SPEAK WITH A. FRENCH.

A FRENCH WAS STILL YELLING AND SCREAMING WHEN LT. DEROSA APPROACHED HIM TO SPEAK WITH HIM. LT. DEROSA ASKED A. FRENCH WHERE HE WAS COMING FROM TODAY. A. FRENCH STATED WORK. LT. DEROSA ADVISED THAT WE ARE DONE HERE AND A. FRENCH WAS FREE TO LEAVE. LT. DEROSA ADVISED US TO LEAVE THE AREA AND A. FRENCH STATED THAT HE WANTED TO STAY NOW. I RETURNED TO MY PATROL VEHICLE.

I BEGAN TO LOG THIS INCIDENT INTO OUR COMPUTER SYSTEM. A. FRENCH BEGAN TO WALK BACKWARDS AND WITH HIS LEFT HAND PROCEEDED TO GIVE US THE MIDDLE FINGER AS HE WALKED FROM THE LOCATION OF THE STOP TO THE JUG HANDLE FOR ROUTE 513 AND LONGWOOD DRIVE. MR. FRENCH CONTINUED TO GIVE US THE MIDDLE FINGER WITH NUMEROUS MOTORISTS PASSING HIM ON BOTH SIDES OF STATE HIGHWAY 31. LT. DEROSA PULLED NEXT TO ME ASKING IF I WAS STILL WITNESSING A. FRENCH GIVING THE MIDDLE FINGER TO US AS HE WALKED BACKWARDS ON STATE HIGHWAY 31; SHORTLY AFTER THIS I TURNED MY IN-CAR-CAMERA OFF AS WE CONCLUDED OUR INTERACTION WITH A. FRENCH.

Table with 4 columns: RANK, SIGNATURE OF OFFICER SUBMITTING REPORT, COMMAND, BADGE NUMBER. Row 1: SERGEANT GLENNON, JEFFERY J, DA 62, 43

CLINTON TWP POLICE DEPT. INVESTIGATION REPORT

1370 ROUTE 31 NORTH

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A. FRENCH WALKS TO THE INTERSECTION OF ROUTE 513 AND STATE HIGHWAY 31. HE STAYS AT THE LIGHT FOR TWO CYCLES AS HE IS DANCING ON THE SIDE OF THE ROADWAY. HE EVENTUALLY CROSSES WHEN THE TRAFFIC LIGHT TURNS RED FOR STATE HIGHWAY 31 TRAFFIC. A. FRENCH WALKS TO HIS VEHICLE, A WHITE MINI VAN, WHICH WAS PARKED IN THE PARKING LOT OF THE GRAYROCK PLAZA. HE THEN DRIVES AWAY FROM THE SCENE IN HIS VEHICLE. I RESPOND TO POLICE HEADQUARTERS.

WHILE EN ROUTE TO HEADQUARTERS, LT. DEROSA ADVISED ME HE MADE CONTACT WITH A/P SWEENEY WHO REQUESTED A PHONE CALL FROM ME REFERENCE TO A. FRENCH. I CONTACTED A/P SWEENEY WHEN I RETURNED TO HEADQUARTERS AND ADVISED HIM OF MY INTERACTIONS. A/P SWEENEY REQUESTED I CONTACT RITA'S ITALIAN ICE TO SEE IF A. FRENCH ACTUALLY WORKS THERE AND IF HE WAS WORKING TODAY.

I CONTACTED RITA'S ITALIAN ICE, (908)-638-8230, LOCATED AT #2632 ROUTE 31 SOUTH, CLINTON, NJ 08809 AND MADE CONTACT WITH THE MANAGER, MARIA. I ASKED MARIA IF A. FRENCH WORKS AT THEIR STORE. MARIA STATED THAT HE DOES. I ASKED MARIA WHAT TIME A. FRENCH WORKED TODAY. MARIA STATED HE WORKED FROM 11:00 A.M. TO APPROXIMATELY 4:00 P.M. TODAY. I ASKED MARIA IF HE DROVE TO WORK TODAY. MARIA STATED SHE WAS NOT 100% PERCENT POSITIVE ABOUT TODAY, BUT STATED HE USUALLY DRIVES TO WORK. THIS IS WHEN I REALIZED A. FRENCH PROBABLY SAW ME ON THE MOTOR VEHICLE STOP ON ROUTE 31 NORTH AT EL PATRON RESTAURANT, WHICH IS ONLY APPROXIMATELY AN EIGHT TO A QUARTER MILES PASSED RITA'S ITALIAN ICE. PRESUMABLY A. FRENCH THEN FELT THE NEED TO DRIVE TO THE GRAYROCK PLAZA AND EXIT HIS VEHICLE AND WALK ACROSS ROUTE 31 TO THE SOUTH BOUND SIDE WHERE HE WAS HOLDING UP HIS POSTER BOARDS AND LT. DEROSA INITIALLY SEES HIM.

I CONTACT A/P SWEENEY BACK AT APPROXIMATELY 5:15 P.M. TO ADVISE HIM OF MY FINDINGS. A/P SWEENEY ADVISES ME TO CHARGE A. FRENCH WITH DISORDERLY CONDUCT FOR HOLDING UP THE MIDDLE FINGER FOR SEVERAL PASSING MOTORIST TO SEE ALONG WITH A VIOLATION OF ORDER N.J.S.A. APP.A:9-49. I ENDED OUR CONVERSATION.

I MADE COPIES OF ALL THE VIDEOS FROM MY PATROL CAR, 46-11, LT. DEROSA'S PATROL CAR 46-16 AND PTL. CARLE'S PATROL CAR 46-10. THEY WILL BE ATTACHED WITH THIS CASE. I COMPLETED AN EVIDENCE LOG AND SECURED THEM INTO EVIDENCE. I PREPARED COPIES OF THE COMPLAINTS AGAINST A. FRENCH AND SENT THEM TO A/P SWEENEY FOR HIS REVIEW ALONG WITH MY REPORT. THE CHARGES WERE APPROVED AND I PLACED THEM IN CERTIFIED MAIL AND REGULAR MAIL SENDING THEM TO A. FRENCH'S ADDRESS LISTED WITH THE NEW JERSEY MOTOR VEHICLE COMMISSION.

NO OTHER ACTIONS TAKEN BY PATROL AT THIS TIME.

RANK	SIGNATURE OF OFFICER SUBMITTING REPORT	COMMAND	BADGE NUMBER
SERGEANT GLENNON, JEFFERY J		DA 63	43

ADMINISTRATIVE OFFICE OF THE COURTS

State of New Jersey

CERTIFICATION OF TRANSCRIPT COMPLETION AND DELIVERY

INSTRUCTIONS :

* A copy of this document is required to be included in your appendix per R.2:6-1(a)(1)(G).

Requesting Party: DANA LAUREN WEFER, ESQ.

STATE OF NEW JERSEY VS ALBERT FRENCH	APPELLATE COURT DOCKET NUMBER: A -003621-21-T1
	LOWER COURT DOCKET NUMBER: 1027-SC-002985
COUNTY: HUNTERDON	LOWER COURT: CRIMINAL

TRANSCRIPT INFORMATION					
PROCEEDING DATE	PROCEEDING TYPE	COURT REPORTER / TRANSCRIBER	TRANSMITTED PAGES	TRANSMITTED DATES	REJECTION REASON
06/15/2022	MUNICIPAL COURT APPEAL	ROBERT GROSSMAN	47	08/03/2022	

CERTIFIED BY Scott Floystrop on 08/04/2022