

A-6074-97T1

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FOR THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

A-6074-97T1

STATE OF NEW JERSEY,
Plaintiff-Respondent,
v.
SUSAN R. LUPTAK,
Defendant-Appellant.

FILED
APPELLATE DIVISION

JUL 29 1999

Submitted: July 20, 1999 - Decided: JUL 29 1999

Before Judges P.G. Levy and Steinberg.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County.

Mario Apuzzo, attorney for appellant.

Glenn Berman, Middlesex County Prosecutor, attorney for respondent (Simon Louis Rosenbach, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Susan R. Luptak appeals from her conviction after a trial de novo in the Law Division conducted pursuant to R. 3:23-8(a) of driving while suspended in violation of N.J.S.A. 39:3-40. The Law Division judge also found defendant not guilty of misuse of headlights, N.J.S.A. 39:3-60. The State candidly concedes that defendant's motion to suppress was improperly denied. We agree and reverse defendant's conviction.

On October 22, 1997, defendant, while driving on Perrineville Road in Monroe Township, flashed her headlights twice at an on-

coming car which was being driven by a policeman on his way to relieve another policeman who had been operating a stationary, radar device. Although the record is meager, the inference is that defendant flashed her lights as a warning to the driver who was driving an unmarked car that he was about to enter a speed trap. As a result, the officer pursued defendant and issued her a summons for misuse of her headlights in violation of N.J.S.A. 39:3-60. In reviewing defendant's credentials, the officer determined that defendant's driving privileges were suspended.

Defendant moved to suppress the evidence based upon her contention that her act of flashing of her headlights did not constitute misuse of her headlights. Defendant's motion was denied both in the municipal court and the Law Division. The State's concession is based upon a County District Court decision holding that using a sign to tell motorists that police officers were using radar to catch speeders did not constitute interfering with police officers. State v. Taylor, 121 N.J. Super. 395 (Cty. Dist. Ct. 1972). See also City of Warrensville Hts. v. Wason, 361 N.E.2d 546 (Ohio App. 1976) and Cover v. State, 466 A.2d 1276 (Md. 1983). We agree with the State that those authorities are persuasive and conclude that a motorist may not be convicted of misusing her headlights to warn oncoming motorists of radar. The statute was never intended to prohibit a motorist from warning oncoming motorists that a speed trap lies ahead. The statute defines the use of headlights only by explaining how far high beams must project, how far they must not project, and how high they must or

must not shine within specified distances.

Here, the initial stop was improper. The police may stop a vehicle and detain the driver in order to check her driver's license and the registration of the automobile if they have an articulable and reasonable suspicion that the motorist is unlicensed or that the automobile is not registered, or that either the vehicle or occupant is otherwise subject to seizure for violation of the law. See Delaware v. Prouse, 440 U.S. 648, 663, 99 S.Ct. 1391, 1401, 59 L.Ed.2d 660, 673 (1979); State v. Locurato, 157 N.J. 463, 470 (1999); State v. Murphy, 238 N.J. Super. 546, 553 (App. Div. 1990). Since N.J.S.A. 39:3-60 is not violated when a motorist flashes his or her high beams to warn oncoming motorists of radar, the officer did not have a reasonably articulable suspicion that a motor vehicle violation had occurred. Since the stop was improper, the evidence seized following that stop should have been suppressed as the "fruit of the poisonous tree". Wong Sun v. United States, 371 U.S., 471, 484-85, 83 S.Ct. 407, 416, 9 L.Ed.2d 441, 453 (1963).

Reversed and remanded for the entry of an order suppressing all evidence seized as a result of the stop of defendant's motor vehicle, and for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.