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October 2, 2014

Via Regular Mail

Honorable Diane Pincus, J.S.C.
Middlesex County Superior Court
Chambers 504
1 JFK Square
New Brunswick, NJ 08901

**RE: State of New Jersey v. Edwin Rodriguez
Municipal Appeal No: 39-2074**

Dear Judge Pincus:

Please accept this letter reply brief in lieu of a more formal submission in response to the State's opposition.

The State incorrectly identifies the standard of review on a trial *de novo* according to State v. Johnson, 42 N.J. 146 (1964), conflating and confusing our Court's analysis of review by the Appellate Division with *de novo* review of a municipal decision by the Law Division. The State argues in its brief "the Superior Court is to make its own findings and conclusions only if it is 'thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction.'" *Id.* at 162; *Sb.* at 3. This statement is simply incorrect, and taken out of context from the Court's opinion, in which it was discussed at length the constitutional foundations and role of our *Appellate Division*. (The discussion begins in Johnson, *supra*, 42 N.J. at 157). Our Court, however, does express the correct standard of review by the Law Division in the preceding paragraphs, stating on review of a municipal decision, the County Court's "function is to 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, 157 (1964) (Internal citations omitted; emphasis added). Unlike the Appellate Division, which is bound by the determinations and weighing of evidence at the Superior Court level using an "abuse of discretion" standard, the Law Division when reviewing the decisions of the municipal court is required to consider the evidence *de novo*.

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Hon. Diane Pincus, J.S.C.
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Further, the State incorrectly asserts that this court is bound by Judge Herman's finding that the area in which the incident occurred was a public space. Judge Herman's finding of fact based on the evidence that the area was a vestibule is irrelevant for purposes of a *de novo* review, in which this court is required to review that evidence anew and form its own conclusions. Further, his findings are not supported by case law, as discussed in our brief and buttressed by the Appellate Division's ruling in State v. Jefferson, 413 N.J. Super. 344 (App. Div 2010). (Discussed in Db. at 15).

For these reasons, and those expressed in our previous brief, Rodriguez respectfully requests that this court dismiss all charges against him

Very truly yours,

SCHILLER & PITTENGER, P.C.

By: _____



Brian S. Schiller

Cc AP Akesha L. Williams
Edwin Rodriguez