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Appendix A ORDER ON APPEAL FROM JUDGMENT ON TRAFFIC INFRACTIONS
from Ouray County District Court

Appendix B ORDER OF COURT from Colorado Supreme Court
Petition For Writ of Certiorari – DENIED

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 26, 2018
Certiorari to District Court Ouray County, 2017CV2	
Petitioner: Mark L. Halper, v. Respondent: The People of the State of Colorado.	Supreme Court Case No: 2017SC690
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the District Court of Ouray County and after review of the record, briefs, and the judgment of said District Court,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, FEBRUARY 26, 2018.

OURAY COUNTY DISTRICT COURT, COLORADO 541 South 4 th Street, P.O. Box 643 Ouray, CO 81427 (970) 325-4405	DATE FILED: September 7, 2017
PEOPLE OF THE STATE OF COLORADO Plaintiff/Appellee vs. MARK L. HALPER Defendant/Appellant	County Court Case No. 16R244 District Court Case No. 2017CV2 Division: 5
ORDER ON APPEAL FROM JUDGMENT ON TRAFFIC INFRACTIONS	

This matter came before the Court on Defendant-Appellant's (referred to herein as "Defendant") appeal of the Ouray County Court's decision finding the Defendant guilty of failing to use a turn signal and making a left turn from the wrong position or lane. The record in this matter includes the filings from 16R244; CDs containing exhibits from the trial of this matter and a CD filed under seal by the Colorado State Patrol and the transcript of proceedings. After review of the record and applicable authority, the Court enters the following order.

BACKGROUND

Defendant was issued a citation by Colorado State Trooper Buckingham on July 26, 2016 for failing to use a turn signal and making a left turn from the wrong lane or wrong position. At a trial before the Honorable Cory Jackson (hereafter "Judge" or "Referee") on April 13, 2017, Defendant was found guilty of the traffic infractions. At trial, Defendant argued that because the original reason that Colorado State Troopers were made aware of the Defendant's driving was from a REDDI Report (Report Every Drunk

Driver Immediately) that had identified a vehicle matching Defendant's as driving erratically; at the time that Trooper Lubbes began observing Defendant's vehicle, Defendant was no longer driving erratically and he should not have been stopped. Ultimately, Defendant was not charged with any offense other than failing to use a turn signal and making an improper left turn and Defendant therefore argues that there was not a legitimate basis for Trooper Lubbes to initiate the stop of Defendant.

However, as the testimony at trial shows, Trooper Lubbes actually observed Defendant making an improper turn without using his turn signal. Defendant also claims that he was not given a fair hearing as he had subpoenaed records of an internal investigation of the Troopers involved in his traffic stop and Defendant believed that the records would exonerate him. The trial court found that the records were not relevant to the traffic infraction proceedings and quashed the subpoena.

JURISDICTION

Plaintiff timely filed his notice of appeal on April 13, 2017; the record was certified on June 13, 2017 and Defendant filed his opening brief on July 31, 2017. This Court finds that it has proper jurisdiction in accordance with C.R.Crim.P. 37; C.R.T.I. 13 and CRS §13-6-504 to review the final order from which this appeal arises.

STANDARD OF REVIEW

The Court is bound by the findings of the trial court unless there is a clear abuse of discretion. People v. Brown, 485 P. 2d 500, 517 (Colo. 1971). "The function of a reviewing court is to correct any errors of law committed by the trial court and not to try, nor retry, issues of fact. The lack of sufficient competent evidence to support a finding

of a material fact, however, would be a matter of law and fall within the court's power of review." People v. Williams, 473 P. 2d 982, 984 (Colo. 1970).

ANALYSIS AND ORDERS

After a review of the record and the parties' briefs, this Court finds that the trial court did not err in quashing the subpoena duces tecum nor in ultimately finding the Defendant guilty of the traffic infractions. The Court does not find there was an abuse of discretion in any of the findings made by the trial court and all of the findings are supported by the record.

First, with regard to the subpoena duces tecum that the Defendant had served upon the Colorado State Patrol, there was a motion to quash that portion of the subpoena that requested internal investigation documents of the Troopers involved in the traffic stop¹. The Assistant Attorney General who filed the Motion argued several reasons that the internal investigation documents should not be produced. The trial court judge issued a written order and ultimately found, among other things, that the internal investigation documents was irrelevant to a determination of the infractions in this matter. Specifically, the trial court noted, "Because this proposed evidence goes far afield of the facts necessary to adjudicate this infraction, the Court concludes that the subpoena requesting its product [sic] should be quashed." (Order on Motion to Quash Subpoena dated February 28, 2017.) The Court, based upon the record, cannot conclude that such a determination was an abuse of discretion.

¹ The Motion was in the alternative, seeking that the subpoena be quashed, and alternatively, if not quashed, that the documents be reviewed *in camera*. Because the trial court judge found that the subpoena should be quashed for the reasons stated in the February 28, 2017 Order, the trial court did not need to review the documents *in camera*.

The infractions that the Defendant was charged with included failing to use a turn signal and making an improper left turn (from the wrong lane or position). At the hearing, Trooper Lubbes testified to his observations of the Defendant failing to use a turn signal and the improper turn. Trooper Lubbes was directly behind the Defendant when he made these observations and proceeded to stop the Defendant as a result of his visual observations of what had occurred. Specifically, Trooper Lubbes testified:

As I traveled directly behind that vehicle towards Highway 550 on Highway 62, we approached the traffic light – the signal light – and the light turned yellow. That the dark SUV at that point moved the tires on the left side of the vehicle into the westbound lane of Highway 62, in other words cutting through that lane to make the left-hand turn onto Highway 550. As it made this turn, neither before the turn, during the turn or after the turn there was no turn signal activated on that SUV. (See p. 21, FTR Transcript.)

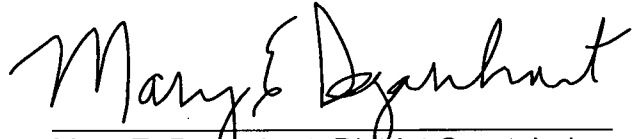
Trooper Lubbes also provided dashcam video that showed the failure to use a turn signal; Defendant argues that the dashcam video was inconclusive regarding the violations, however, the trial court found Trooper Lubbes' testimony credible and while the video may have corroborated the testimony, such corroboration was unnecessary for the court's ultimate findings at the trial.

At the conclusion of the trial, the judge made findings, beyond a reasonable doubt, that identified all of the elements for failure to use a turn signal as provided in CRS §42-4-608. Further, the judge made findings that identified the elements related to the improper left turn as provided by CRS §42-4-901. The record thoroughly supports the findings and conclusions of the trial court.

CONCLUSION

From a review of the record, the Court cannot conclude that the trial court abused its discretion or made an error in the application of the law and for the reasons stated the trial court order is affirmed.

BY THE COURT:



Mary E. Deganhart, District Court Judge

Date: _September 7, 2017