

To: New Jersey Law Revision Commission
From: Christopher Camaj, Esq.¹
Re: Title 39: Windshield Statute (N.J.S. 39:3-74) - Window Tint Traffic Stops/Citations
Date: November 6, 2023

MEMORANDUM

Project Summary

N.J.S. 39:3-74 (the “windshield statute”) prohibits the operation of a motor vehicle with any “non-transparent material” on the windshield or side windows.² As the Court noted in *State v. Smith*, this statute was enacted in 1921 and last amended in 1937.³ The statutory provision predates automotive window tinting, but it often serves as the statutory basis for traffic stops and tinted window citations.⁴

Previously, in *State v. Cohen*, the Appellate Division affirmed a finding of reasonable suspicion sufficient to justify a traffic stop based on an officer’s observation that a driver’s front and side windows “were so darkly tinted as to obstruct vision.”⁵ In the *Smith* case, however, the defendant was pulled over because of a tinted *rear* window, which was not tinted enough to obstruct the officer’s view of the defendant in the car.⁶

The New Jersey Supreme Court in *Smith* noted that the plain language of the windshield statute was limited to the front windshield and side windows, and that Smith’s tinted rear window could not constitute a violation of the statute.⁷ The Court examined other automotive and automotive window/treatment statutes and relevant New Jersey Administrative Code provisions, and found none that prohibited rear window tints.⁸ The Court concluded that its task was “to interpret the language of a statute enacted a century ago,” adding that the “Legislature may, of course, modify the statute’s text.”⁹

Statutes Considered

N.J.S. 39:3-74 (the windshield statute) provides in relevant part that:

No person shall drive any motor vehicle with any sign, poster, sticker or other non-transparent material upon the front windshield, wings, deflectors, side shields, corner lights adjoining windshield or front side windows of

¹ Research and drafting for this memorandum was conducted by Christopher Camaj, Esq., as a pro bono volunteer with the N.J. Law Revision Comm’n during the Summer and Fall of 2023.

² *State v. Smith*, 251 N.J. 244, 251 (2022) (quoting N.J. STAT. ANN. § 39:3-74).

³ *Id.* at 259.

⁴ *Id.* at 251.

⁵ *State v. Cohen*, 347 N.J. Super. 375, 380 (App. Div. 2002).

⁶ *Smith* at 255.

⁷ *Id.* at 260.

⁸ *Id.* at 260 – 63.

⁹ *Id.* at 266 (emphasis added).

such vehicle other than a certificate or other article required to be so displayed by statute or by regulations of the commissioner.

N.J.S. 39:3-75 (the safety glass statute) provides in relevant part that:

No person shall drive any motor vehicle equipped with safety glazing material which causes undue or unsafe distortion of visibility ...

Background

The windshield statute was enacted over a century ago and has not been amended in nearly 90 years.¹⁰ Its plain language prohibits any sign, poster, sticker, or “other non-transparent material” on the front windshield or side windows of a vehicle.¹¹ Over the years, the prohibition on “other non-transparent material” has served as the statutory basis for window tint traffic stops and citations.¹² Although window tints were not in common use for decades after the windshield statute’s last amendment, cases such as *Cohen* have affirmed the use of the statute as the basis for window tint stops and citations.¹³

The *Cohen* case, decided in 2002, pertained to tinting on the side windows of a vehicle.¹⁴ The recent *Smith* case, on the other hand, involved rear window tint.¹⁵ In *Cohen*, the tints obstructed the officer’s vision, whereas in *Smith*, the officer testified that he could see through the tinted rear windows – in fact, the officer’s suspicion was heightened because he could see the defendant “shoving an object” (the illegal firearm) between his seat and center console.¹⁶

Smith was arrested for an illegal firearm found in his vehicle.¹⁷ At trial, he moved to suppress evidence of the firearm, arguing that the traffic stop was unlawful because the detectives lacked a “reasonable and articulable suspicion that the tinting on [his] rear windshield violated N.J.S.A. 39:3-74” (the windshield statute).¹⁸

The trial court denied Smith’s motion to suppress, and the Appellate Division affirmed the denial.¹⁹ The New Jersey Supreme Court granted limited certification to address the question of whether the rear window tint established a reasonable and articulable suspicion for the traffic stop based on a violation of the windshield statute.²⁰

¹⁰ *Id.* at 259.

¹¹ N.J. STAT. ANN. § 39:3-74.

¹² *Smith* at 252.

¹³ *Id.*

¹⁴ *Id.* at 260.

¹⁵ *Id.* at 254.

¹⁶ *Id.* at 254 and 259.

¹⁷ *Id.* at 252.

¹⁸ *Id.*

¹⁹ *Id.* at 256.

²⁰ *Id.*

Following the Supreme Court’s grant of certification, the State moved for a limited remand to vacate Smith’s conviction and dismiss the charges against him.²¹ Although the parties agreed that there was no reasonable suspicion for the traffic stop in this case, and the issue was resolved by the limited remand, the Court noted that the underlying issue was “of sufficient public importance, likely to surface again, [and] warrant[s] our deciding it, even in the absence of an actual controversy between the litigants.”²²

The Court in *Smith* concluded that the plain language of the windshield statute is limited to “non-transparent” tints on the windshield and side windows, but does not apply to rear windshields or tints that allow an officer to “clearly see people or articles within the car.”²³ The Court held that the safety glass statute simply does not address window tints.²⁴ Finally, the Court recognized the Legislature’s ability to clarify the century-old windshield statute if it wishes.²⁵

Analysis

In the earlier *Cohen* case, which the Appellate Division relied on in *Smith*, the court held that an actual violation of the windshield statute is not necessary to support an initial stop as long as the officer had a reasonable, articulable suspicion of a violation.²⁶ The *Cohen* court further held that the safety glass statute (which the *Cohen* court characterized as a “companion” to the windshield statute) provided an additional basis for such a stop because the “unsafe distortion of visibility” under the safety glass statute is not limited to just the windshield and side windows like the windshield statute.²⁷

A. *The Safety Glass Statute*

Although the State conceded that the windshield statute governs, and not the safety glass statute, the *Smith* Court briefly addressed the safety glass statute.²⁸ The Court noted the Defendant’s argument that the plain language of that statute is “concerned solely with the quality and maintenance of ... safety glazing material, not aftermarket tinted window film.” The Court concluded that “[a]s the State ... concedes, [the safety glass statute] has no bearing” in a window tint case.²⁹

B. *The Windshield Statute*

The Court focused on the plain language when considering this statute, noting that it is explicitly limited to “non-transparent material upon the front windshield, ... or front side windows.”³⁰ For this reason, the Court concluded that a rear window tint cannot constitute a

²¹ *Id.*

²² *Id.*

²³ *Id.* at 260 and 265.

²⁴ *Id.* at 252 – 253.

²⁵ *Id.* at 266.

²⁶ *Id.* at 255.

²⁷ *Id.* at 255 – 256.

²⁸ *Id.* at 256 – 257.

²⁹ *Id.* at 261.

³⁰ *Id.* at 260 (quoting N.J. STAT. ANN. § 39:3-74, emphasis added by Court).

violation under the windshield statute.³¹ Therefore, rear window tint cannot give rise to a reasonable suspicion necessary to justify a traffic stop.³²

C. *The Community Caretaking Function*

Finally, the Court considered whether the facts of the case support the “application of the community caretaking function” which can be implicated if a police officer observes “something abnormal ... concerning the operation of a motor vehicle.”³³ In *Cohen*, the court held that a “significant obstruction” of a driver’s vision or a “hazardous vehicular condition that deviates from the norm” could justify an investigatory stop.³⁴ In the *Smith* case, however: (1) the officer could still see the driver through the rear window; and (2) New Jersey law allows rear window tints on passenger vehicles.³⁵

Pending Bills

There are no bills pending that seek to amend the language of N.J.S. 39:3-74. There is one bill pending that involves N.J.S. 39:3-75.1, but it does not address the issue raised in *Smith*.³⁶

Conclusion

Staff seeks authorization to engage in additional research and outreach to determine whether amending N.J.S. 3:37-4 would be of assistance to clarify its application.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 262 (quoting *Cohen* at 790).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See generally* Statements to S. 3858, 2023 Leg., 220th Sess. (May 15, 2023) (“[t]his bill adds migraine to the list of medical conditions that would permit a person to install motor vehicle window tinting. Current law prohibits add-on tinting on windshields and front side windows of motor vehicles, with certain exceptions”).