SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3896-14T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KAREN BORN,

Defendant-Appellant.

Submitted May 24, 2017 – Decided July 17, 2017

Before Judges Fuentes and Farrington.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County Municipal Appeal No. 13-065.

Karen Born, appellant pro se.

Christopher J. Gramiccioni, Monmouth County Prosecutor, attorney for respondent (Monica do Outeiro, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Karen Born was charged with two disorderly persons offenses: false reports to law enforcement, N.J.S.A. 2C:28-4b; and resisting arrest, N.J.S.A. 2C:29-2a(1). She was also charged with

eight motor vehicle offenses, including reckless driving, N.J.S.A. 39:4-96; careless driving, N.J.S.A. 39:4-96; two charges of driving while suspended, N.J.S.A. 39:3-40; failure to exhibit a driver's license, N.J.S.A. 39:3-29a; driving without a license, N.J.S.A. 39:3-10a; delaying traffic, N.J.S.A. 39:4-56; and failure to wear a seat belt, N.J.S.A. 39:3-76.2f.

Defendant was tried in the Aberdeen Municipal Court and convicted on all of the motor vehicle violations and the two disorderly person offenses, making false reports to law enforcement, and resisting arrest. On October 9, 2013, a plea agreement was reached regarding other outstanding charges which resulted in dismissal of four charges and downgrading or amendment of three others to which defendant pled guilty.

Judge Berube imposed an aggregate sentence of $5,002 in fines, a six-month driver's license suspension, and 195 days county jail, in addition to mandatory fines and costs.

Defendant filed a Notice of Appeal with the Superior Court, Law Division on or about October 9, 2013. The Honorable Ronald Lee Reisner, J.S.C. remanded the matter to Aberdeen Municipal Court on September 19, 2014, "to complete the record" with documents referenced in municipal court transcripts.

Judge Reisner held a trial de novo on February 13, 2015, and found defendant guilty of making false reports to law enforcement,

resisting arrest, reckless driving, and failure to exhibit a driver's license. He sentenced defendant to an aggregate sentence of one year of probation, $250 in fines, and the required costs and fees.

Defendant presents these arguments for review on appeal:

> POINT I
>
> THE STATE DID NOT MEET ITS BURDEN OF PROVING APPELLANT KNOWINGLY MADE A FALSE REPORT.
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> POINT II
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> ON THE RESISTING ARREST CHARGE, APPELLANT'S LICENSE WAS VALID. SHE ENDED UP OPENING HER DOOR FOR OFFICERS. THE CORRECT CHARGE SHOULD HAVE BEEN OBSTRUCTION.
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> POINT III
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> STATE DID NOT PROVE THE ELEMENTS OF RECKLESS DRIVING FOR WHICH APPELLANT WAS NOT STOPPED, TICKET WAS MAILED TO HER HOME BY[ ]OFF DUTY OFFICER SHE HAS HISTORY WITH, AND NO POLICE REPORT WAS MADE.
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> POINT IV
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> OFFICERS'[sic] TESTIMONY IS INCONSISTENT AND NOT CREDIBLE, APPELLANT PREVIOUSLY ASSAULTED BY THIS OFFICER AND PREVIOUSLY TRIED TO FILE CHARGES AGAINST HIM, AND STOP OCCURRED IN HER DRIVEWAY WITH NO POLICE LIGHTS ON AND SHE WAS NOT DRIVING.

In its opposing brief, the State argues that the convictions should be affirmed.

Following our review of the arguments, considering the record and the applicable law, we affirm.

The essential facts are taken from the municipal court record. On December 4, 2012, Monmouth County dispatcher Kevin O'Brien received a call at approximately 3:00 p.m. from the defendant, who claimed intruders were assaulting her in her home. O'Brien alerted the Aberdeen Police Office and Officer Mary Johnson was dispatched.

When Johnson received no response after knocking on the door to defendant's home, she proceeded to walk around the home's perimeter. When her search yielded nothing, Johnson knocked on the door again and defendant's brother let Johnson and additional backup officers into the home. After a brief walk through, the officers failed to find defendant or any sign of intruders.

On December 20, 2012, at approximately 7:30 p.m., Officer Gus Grivas left the Aberdeen Police station in his personal vehicle. As he approached the "T" intersection of Church and Cypress streets, he saw a vehicle approaching a stop sign "at a fast rate of speed." As Grivas slowed his vehicle, the approaching car stopped "[a]t the last minute . . . almost out in the intersection." As Grivas continued driving, the other vehicle made a right turn in front of his car. Grivas "slam[med] on the brakes" and drove "into the other lane to avoid collision."

Grivas pulled up next to the car and recognized defendant as the driver. He testified that she was cursing and "waving her arms." Grivas continued driving and radioed dispatch to check the validity of defendant's driver's license. A summons for reckless driving was later served upon defendant by mail. Defendant denies she was involved in any incident with Grivas on that day.

On April 2, 2013, Police Officer Craig Hausmann observed defendant driving at approximately 10:35 p.m. Based on his knowledge that defendant's license was suspended, he began following her until she arrived home. Hausmann drove into defendant's driveway and, after confirming with dispatch that her license was suspended, asked defendant to produce her license which she was unable to do.

On May 15, 2013, Sergeant Matthew Lloyd confirmed the validity of a bail order and warrant to detain defendant issued August 7, 2012. The next day, May 16, 2013, Sergeant Lloyd informed Aberdeen police officers of the order's validity during morning briefing. Later that same day, Patrolman Hausmann observed defendant driving and communicated the information via police radio.

Sergeant Lloyd, who was near the scene, pulled defendant over, instructed her to exit the vehicle, and advised she was under arrest. Defendant refused, claiming the order was invalid and that she was on the phone with her lawyer. Eventually, a

backup officer used a device to unlock the passenger door. Defendant then exited the vehicle and was placed under arrest. Defendant denies she was driving.

In the trial de novo, Judge Reisner tried "the case anew based on the record and . . . giving some deference to the findings of credibility . . . ." Judge Reisner considered the charges in chronological order. Commencing with those findings of guilt which are the subject of defendant's appeal, we turn to Judge Reisner's findings regarding the December 4, 2012 allegations that defendant made a false report to the police contrary to N.J.S.A. 2C:28-4b. After reviewing the circumstances of the incident based upon the record and the elements of the offense, the judge found:

> Under these circumstances I'm satisfied beyond a reasonable doubt from the circumstances that the defendant made the call, that no such incident ever occurred and that she knew that no such incident was ever occurring. So I'm satisfied beyond a reasonable doubt that she committed the disorderly persons offense of a fictitious report to the police.

Defendant argues that Judge Reisner's finding is inconsistent with that of the municipal judge. The factual findings made by the municipal court are not relevant here. We review the facts found by the Law Division to determine whether those findings are supported by the competent evidence in the record.

Defendant argues that she lacked the requisite intent to make a false report, or the presence of mind to understand her report was not based in reality. This claim was examined and rejected by Judge Reisner. Defendant admitted making the call purporting to report persons in her home who were assaulting her. The recording of the call between defendant and the dispatcher speaks for itself. Judge Reisner independently found, based on the trial record, that defendant knew the incident she reported did not occur. There is no basis in the record to support defendant's argument to the contrary.

Defendant further confuses the court's fact-findings, pertinent to establishing whether the State has met its burden of proof, with assessment of aggravating and mitigating factors performed by the court to determine the appropriate sentence to be imposed. Judge Reisner considered defendant's psychiatrist's report only in the context of fashioning an appropriate sentence. As a result, he substantially reduced her sentence, eliminating the custodial term entirely, and reducing the fines to $250.

Judge Reisner next considered the charge of reckless driving pursuant to N.J.S.A. 39:4-96 which was issued on December 20, 2012. After noting that the municipal court judge made a finding of guilt on the "preponderance evidence, which is clearly wrong as a matter of law", he found beyond a reasonable doubt that

defendant was guilty of reckless driving when she caused Police Officer Gus Grivas to swerve out of her way to avoid a collision. Defendant claims this charge was based on a "long history" she has with the police officer who filed the charge against her, against whom she had "previously written 5 Internal Affairs Complaints." In addition, defendant cites to the facts that there was no stop and no police report filed in connection with the incident to support her claim that the incident never occurred. Her arguments have no basis in law and are without merit.

Based on his own de novo review of the record, Judge Reisner also found beyond a reasonable doubt that the arresting officer, Police Officer Christopher DeSarno, was credible when he testified he observed defendant driving in the Township of Aberdeen.

Finally, the court considered the testimony of the police, including that of Officer Hausmann, regarding the incident of April 2, 2013. Citing the video of the incident and the testimony of the officers, Judge Reisner was "satisfied based on [Patrolman] Hausmann's testimony that the operation of the vehicle was careless in violation of 4-97 beyond a reasonable doubt and that she did not produce a driver's license . . . ." He further found "the video shows clearly that she purposefully prevented the officers from effectuating the arrest by refusing to open the car doors and

step outside the car. So I'm satisfied beyond a reasonable doubt that she's guilty of resisting arrest."

Our function as a reviewing court is governed by the "substantial evidence" rule; namely, to determine whether the findings of the Law Division "could reasonably have been reached on sufficient credible evidence present in the record." State v. Johnson, 42 N.J. 146, 157 (1964). If we determine that the findings and conclusions of the Law Division meet that criterion, our "task is complete" and we should not disturb the result even if we "might have reached a different conclusion." Johnson, supra, 42 N.J. at 162.

Just as the Law Division does when conducting a de novo review, we "defer to [the] trial court['s] credibility findings that are often influenced by matters[,] such as observations of the character and demeanor of witnesses and common human experience[,] . . . not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999). We reverse if we find the trial "judge went so wide of the mark, a mistake must have been made." Id. at 471 (quoting Johnson, supra, 42 N.J. at 162). Moreover,

> The rule of deference is more compelling where . . . two lower courts have entered concurrent judgments on purely factual issues. Under the two-court rule, appellate courts ordinarily should not undertake to alter

> concurrent findings of fact and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error.
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> [Id. at 474 (citing Midler v. Heinowitz, 10 N.J. 123, 128-29 (1952).]

With these principles in mind, we affirm substantially based on the reasons expressed by Judge Reisner. The balance of defendant's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.