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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3052-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KACPER KUCHARSKI,

Defendant-Appellant.

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Submitted April 9, 2018 – Decided April 25, 2018

Before Judges Ostrer and Rose.

On appeal from Superior Court of New Jersey,  
Law Division, Somerset County, Municipal  
Appeal No. 17-3.

Kacper Kucharski, appellant pro se.

Michael H. Robertson, Somerset County  
Prosecutor, attorney for respondent (Perry  
Farhat, Assistant Prosecutor, of counsel and  
on the brief).

PER CURIAM

Defendant Kacper Kucharski appeals from his conviction for reckless driving, N.J.S.A. 39:4-96, following a trial de novo in the Law Division. We affirm because the findings supporting the

conviction are based on substantial, credible evidence in the record.

I.

The facts were established at a one-day trial, during which Bedminster Township Police Officer John A. Dapkins and defendant testified.

On May 25, 2016, at approximately 8:00 p.m., Dapkins was stationed at a traffic post on the eastbound side of Burnt Mills Road, west of Milner Road. With the windows of his police vehicle open, Dapkins heard the sound of a motorcycle shifting gears in the distance. When defendant and his co-defendant, Alex Bar,<sup>1</sup> approached the officer's post, their respective motorcycles "were traveling so fast that it was impossible [for Dapkins] to actually get the radar on them." Although Dapkins "engaged the radar, they were going through the S-turn so fast there was no reading on the radar." Dapkins testified the speed limit on the roadway varied from thirty-five to forty-five miles per hour.

Concluding defendant and Bar were speeding, Dapkins "exited [his] position and pulled out in an attempt to pull over the . . . motorcycles." Because traffic initially was light, Dapkins "accelerated at a high rate of speed through the S-turns."

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<sup>1</sup> Bar was found guilty of passing a stop sign. N.J.S.A. 39:1-144. His conviction is not before us.

Accounting for traffic conditions, the officer varied his speed, which at one point reached at least eighty miles per hour. Dapkins activated the motor vehicle recorder ("MVR") on his police vehicle "[a]s soon as multiple cars . . . [passed him] on Burnt Mills Road." However, Dapkins was unable to keep the motorcycles in sight until defendant and Bar turned off Burnt Mills Road and onto Rattlesnake Bridge Road, where they stopped.

Dapkins has been employed by the Bedminster Police Department since 2002, and has driven motorcycles in his official capacity as a police officer and for personal use. He cited defendant for reckless driving because defendant was travelling at an excessive rate of speed on a roadway the officer considered dangerous. In particular, the roadway is fraught with danger, including dips, curves and tight corners.

Defendant testified that his version of the facts was "very similar to Officer Dapkin's story." However, defendant claimed he was traveling forty miles per hour, which he maintained is within the fifty-mile-per-hour speed limit on Rattlesnake Bridge Road. Defendant opined he received the ticket because his motorcycle has a "high pitched engine, high . . . revolution engine, higher RPM." He attempted to support his credibility by referencing his positions as a former volunteer firefighter, an EMT and an instructor with the Motorcycle Safety Foundation.

At the conclusion of the hearing, the municipal judge reserved decision to review the MVR. Having observed the testimony at trial, and reviewed the MVR, the municipal court judge found Dapkins credible and defendant incredible. Relying on the officer's observations and testimony, the municipal judge found defendant guilty of reckless driving. The judge imposed a fine and court costs.

On de novo review, the Law Division judge also found Dapkins credible and defendant not credible. Specifically, the Law Division judge reviewed the transcript of the testimony and gave due deference to the municipal judge's credibility findings. The Law Division judge then made findings of facts based on the testimony and his review of the MVR.<sup>2</sup> After detailing the factual findings, the Law Division judge found the State had proven beyond a reasonable doubt that defendant was guilty of reckless driving.

On this appeal, defendant raises the following arguments for our consideration:

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<sup>2</sup> Because it is part of the record, we have also reviewed the MVR. However, as our Supreme Court has reminded us, it is not our role to second-guess a fact-finder's interpretation of a video, as long as the interpretation has reasonable support in the record and is not shown to be clearly mistaken. See State v. S.S., 229 N.J. 360, 386 (2017).

POINT I

THE TRIAL COURT ERRED BY USING NON-EXISTENT EVIDENCE FOR CONVICTING [DEFENDANT].<sup>3</sup>

POINT II

THE TRIAL COURT ERRED BY IMPROPERLY FINDING DEFENDANT GUILTY OF RECKLESS DRIVING[, ] N.J.S.A. 39:4-96.  
(Not raised below)

POINT III

IN THE INTEREST OF JUSTICE THIS COURT SHOULD CONSIDER THE REASONABLE DOUBT NOT RAISED BY [DEFENDANT] IN TRIAL.  
(Not raised below)

II.

Our standard of review is limited following a trial de novo in the Law Division conducted on the record developed in the municipal court. State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005). In such an appeal, we "consider only the action of the Law Division and not the municipal court." State v. Oliveri, 336 N.J. Super. 244, 251 (App. Div. 2001). We focus our review on "whether there is 'sufficient credible evidence . . . in the record' to support the trial court's findings." State v. Robertson, 228 N.J. 138, 148 (2017) (alteration in original) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). On a legal

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<sup>3</sup> Defendant incorrectly identifies himself as "plaintiff" in his merits brief.

determination, in contrast, our review is plenary. State v. Kuropchak, 221 N.J. 368, 383 (2015).

Nevertheless, we will reverse only after being "thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction." Johnson, 42 N.J. at 162. "We do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence." State v. Barone, 147 N.J. 599, 615 (1997). Because neither the appellate court nor the Law Division judge is in a good position to judge credibility, the municipal court's credibility findings are given deference. State v. Locurto, 157 N.J. 463, 470-71 (1999). The rule of deference is more compelling where, as here, both judges made concurrent findings. Id. at 474. "Under the two-court rule, appellate courts ordinarily should not undertake to alter concurrent findings of facts and credibility determinations made by two lower courts absent a very obvious and exceptional showing of error." Ibid. (citation omitted). Therefore, appellate review of the factual and credibility findings of the municipal court and the Law Division "is exceedingly narrow." State v. Reece, 222 N.J. 154, 167 (2015) (quoting id. at 470).

Defendant contends the evidence presented at trial did not support the conviction for reckless driving. In that regard, defendant asserts that the Law Division improperly credited the testimony of Dapkins and did not give due consideration to his testimony. In particular, he claims the officer's testimony is inconsistent with the evidence adduced on the MVR. The trial record does not support such an argument.

To sustain a conviction for reckless driving, the State must prove beyond a reasonable doubt that defendant operated a motor "vehicle heedlessly, in willful or wanton disregard of the rights or safety of others, in a manner so as to endanger, or be likely to endanger, a person or property." N.J.S.A. 39:4-96; see also State v. Dorko, 298 N.J. Super. 54, 60 (App. Div. 1997).

In this case, the State presented sufficient, credible evidence to establish defendant's recklessness pursuant to N.J.S.A. 39:4-96. In particular, defendant was driving his motorcycle at such an excessive rate of speed that the officer was unable to obtain a reading on the radar. Further, the officer had to accelerate to eighty miles per hour in order to reach defendant after he turned off Burnt Mills Road.

Moreover, defendant's argument that there is no support in the record, including the MVR, for the municipal judge's finding

Dapkins "turned around," lacks merit.<sup>4</sup> Initially, as the Law Division judge found, Dapkins made "a turn from his position off the side of the road onto the road." Further, pursuant to Dapkins' testimony, he did not engage the MVR until later in his pursuit of the motorcycles, thus dispelling defendant's argument before us that the MVR did not depict the officer "turning around." The officer testified that when he first observed defendant and Bar, they were traveling westbound on Burnt Mills Road, while his vehicle was positioned eastbound on that road. Moreover, the area of the roadway where defendant was observed speeding was winding with "S turns" and a "high accident area."

While we commend defendant for his work as a motorcycle safety training instructor, an EMT, and a former firefighter, this evidence of his "past life . . . may not be introduced as proof of character for the purpose of drawing an inference as to how he may have acted at a particular time." Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 4 on N.J.R.E. 405(a) (2018) (citing State v. Reyes, 50 N.J. 454, 466-69 (1967)).

We see no reason to disturb the Law Division judge's factual and credibility findings. Those findings are entitled to our

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<sup>4</sup> Defendant's arguments on appeal primarily challenge the municipal judge's findings. However, on appeal, our review is from the Law Division's decision. Oliveri, 336 N.J. Super. at 251.



deference. Robertson, 228 N.J. at 148. To the extent we have not addressed defendant's remaining arguments, we conclude they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION