SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4499-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

EDWARD HELMES, JR.,

Defendant-Appellant.

Submitted December 18, 2017 – Decided March 9, 2018

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Municipal Appeal No. 15-048.

Pringle Quinn Anzano, PC, attorneys for appellant (Doris Cheung, on the brief).

Fredric M. Knapp, Morris County Prosecutor, attorney for respondent (Paula Jordao, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Edward Helmes, Jr., appeals from his conviction following a trial de novo of driving while intoxicated (DWI), N.J.S.A. 39:4-50. He contends the police lacked probable cause

to arrest him for DWI, the police erred improperly administered the chemical breath test which showed a blood alcohol content (BAC) of .19%, and the court erred by relying on the blood alcohol test results. We affirm.

Following a motor vehicle stop, defendant was charged in the East Hanover Municipal Court with DWI, N.J.S.A. 39:4-50; making an improper turn, N.J.S.A. 39:4-124; reckless driving, N.J.S.A. 39:4-96; and traffic on marked lanes, N.J.S.A. 39:4-88. During the municipal court trial, the State presented testimony from East Hanover Patrolmen David Littman and Edward Zakrzewski. Defendant testified on his own behalf and presented Joseph Tafuni, who was qualified as an expert in standard field sobriety testing and the administration of the Alcotest chemical breath test.

The municipal court judge found defendant guilty of DWI, but found defendant not guilty of the remaining offenses based on his determination they were "part and parcel" of defendant's commission of the DWI offense.[1] Defendant was sentenced to a two-year suspension of driving privileges, thirty days of community service, forty-eight hours at the intoxicated driver's resource

[1] Although it is unnecessary to our determination of defendant's appeal, we observe that a municipal court judge must make a finding as to a defendant's guilt on each charge. The court addresses the issue of merger of offenses only if it finds a defendant guilty of more than one charge in the first instance.

center, payment of the required statutory fines and penalties, and the use of an ignition interlock device for a one-year period following restoration of his driving privileges. Defendant appealed.

In the trial de novo before Judge Catherine I. Enright, defendant argued the police lacked probable cause to arrest defendant for DWI because the field sobriety tests administered by Officer Littman were inconclusive and the officer failed to consider defendant's physical limitations affected his ability to perform the tests. Defendant asserted that Littman did not read to defendant the Attorney General Standard Statement concerning the consequences for refusal to supply a breath sample. See N.J.S.A. 39:4-50.2(e). Defendant also argued the Alcotest results lacked normal indicators of reliability and failed to account for defendant's alleged high fever. Defendant further contended there was insufficient evidence showing he was observed by the officers for the required twenty-minute period prior to the administration of the breath test, which yielded the .19% BAC upon which the court based its guilty finding.

In her comprehensive and well-reasoned written decision, which includes detailed findings of fact based on the evidence presented, Judge Enright determined there was probable cause for defendant's arrest for DWI, Officer Littman read defendant the

Attorney General Standard Statement on refusal, defendant was observed by the officers for the required twenty-minute period prior to administration of the chemical breath test, and the breath test credibly established defendant operated his vehicle with a BAC of .19%. See N.J.S.A. 39:4-50 (providing that a defendant commits the offense of DWI by operating a motor vehicle with a BAC of .08% or higher). Judge Enright found defendant guilty of DWI and imposed the same sentence as the municipal court. This appeal followed.

Defendant presents the following arguments for our consideration:

> POINT I.
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> Standard of Review.
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> POINT II.
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> The Superior Court Erred In Finding That There Was Probable Cause for the Arrest of Appellant Helmes.
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> POINT III.
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> The Superior Court Erred in Finding That Appellant Helmes Was Read the Attorney General Standard Statement.
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> POINT IV.
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> The Superior Court Erred In Determining That Appellant Was Appropriately Observed For A Twenty-Minute Observation Period Before The Second Alcotest.

POINT V.

The Superior Court Erred In Accepting the Inadequate and Unreliable Results of the Second Alcotest As Credible Evidence.

POINT VI.

Under the Cumulative Error Doctrine, Appellant Helmes Is Entitled to Reversal Of His DWI Conviction.

In our review of a Law Division decision on a municipal appeal, we consider "whether the findings made could reasonably have been reached on sufficient credible evidence present in the record." State v. Stas, 212 N.J. 37, 49 (2012) (citing State v. Locurto, 157 N.J. 463, 471 (1999)). "Unlike the Law Division, which conducts a trial de novo on the record, Rule 3:32-8(a), we do not independently assess the evidence." State v. Gibson, 429 N.J. Super. 456, 463 (App. Div. 2013), rev'd on other grounds, 219 N.J. 227 (2014) (citing Locurto, 157 N.J. at 471). We defer to the trial judge's findings of fact. Stas, 212 N.J. at 49.

"However, no such deference is owed to the Law Division or the municipal court with respect to legal determinations or conclusions reached on the basis of the facts." Ibid. Our review of the Law Division's legal determinations or conclusions based upon the facts is plenary. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); see also State v. Handy, 206

N.J. 39, 45 (2011) (stating "appellate review of legal determinations is plenary").

On appeal, defendant reasserts the arguments he made before the Law Division. Having carefully considered the record, we find the arguments lack sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(2), and affirm substantially for the reasons in Judge Enright's written decision.

Affirm.