SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4286-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROSEMARY EKEADA,

Defendant-Appellant.

Submitted February 9, 2022 – Decided April 22, 2022

Before Judges Sumners and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Municipal Appeal No. 17-00007.

Carolyn J. Campanella, attorney for appellant.

Grace C. MacAulay, Camden County Prosecutor, attorney for respondent (Rachel M. Lamb, Assistant Prosecutor, of counsel and on the brief).

Appellant filed a pro se supplemental brief.

PER CURIAM

Following a trial de novo in the Law Division, defendant Rosemary Ekeada appeals her convictions for obstructing the administration of law, N.J.S.A. 2C:29-1(a); disorderly conduct, N.J.S.A. 2C:33-2(a)(1); disorderly persons resisting arrest, N.J.S.A. 2C:29-2(a)(1); and disorderly persons simple assault, N.J.S.A. 2C:12-1(a)(1) (collectively "criminal convictions"). She also appeals her sentence of sixty days in county jail, of which thirty days was suspended on the condition she incur no new criminal charges for one year. We affirm.

This appeal has its origins in two separate motor vehicle stops of defendant by Mt. Ephraim police officers in May 2016, resulting in the issuance of complaint-summonses for motor vehicle violations and criminal charges. We first discuss the relevant municipal court testimony.

On May 23, 2016, Officer Gregory Severance, driving an unmarked patrol vehicle but in uniform, made a traffic stop of defendant while she was driving a minivan with "a large crack down the windshield" and a broken third brake light. When Severance ran defendant's license plate through the Mobile Data Terminal (MDT), it was revealed that her car's registration was suspended. She explained the suspension was due to non-payment of her automobile insurance, but it was current at the time. Severance then called her insurance company—his personal

practice, not the standard policy of his police department—and confirmed her insurance coverage was in good standing because payment was made. Severance told her she needed "to follow up with [the Motor Vehicle Commission] to vacate her registration suspension order." He did not issue her a summons for driving a vehicle with a suspended registration but did do so for failing to maintain a brake light, N.J.S.A. 39:3-66, and "cracked" windshield, N.J.S.A. 39:3-74.

Three days later, uniformed officer Tyler Covely driving a marked patrol vehicle pulled over defendant's vehicle because he saw a crack that "spider-webbed" across the entire front windshield of the vehicle, impairing defendant's vision. After defendant pulled into and stopped at a fast-food restaurant's parking lot, she handed Covely her driver's license, an expired insurance card, and the vehicle's registration card with the expiration date crossed out with a handwritten date of "12/2016" in its place. Covely did not have an MDT in his vehicle, so he radioed his department's central communications, which reported that the vehicle's registration was suspended and the insurance was expired. When he asked defendant if she knew her vehicle's registration was suspended, she said it was not. He reconfirmed the

suspension in front her from his portable radio "for her to hear [it] from central [communications]."

Covely then requested a tow truck "because [defendant's] vehicle was not legally allowed to be on the road" due to its suspended registration and invalid insurance card. According to Covely, after he informed defendant that her vehicle was going to be towed and she needed to exit it, she said, "I'm not going to step out of the vehicle, because my registration is not suspended." Covely recalled she then "started getting disorderly" "by yelling and honking [the] horn of [her] vehicle" repeatedly, so he called for a backup police officer and repeated his demand that she exit her vehicle. Officer Danielle Perna, also in uniform and driving a marked patrol vehicle, arrived as backup and observed Covely speaking with defendant, who was still "sitting in her vehicle," trying to explain to defendant with no avail why her registration was suspended. Perna was also unsuccessful in getting defendant to cooperate.

Soon after Perna arrived, defendant called 911 twice on her cell phone, "asking for help," because she felt Covely and Perna "were being violent towards her." The 911 operator asked defendant twice whether "[she was] going to step out of the vehicle for the officer[s]?"[1] The officers told defendant the tow truck

[1] The 911 calls were recorded and played in municipal court.

had arrived and "if she wasn't going to step out of the vehicle, [they] would have to remove her from [it,] . . . place her under arrest," and charge her with obstruction.

When defendant did not exit her vehicle, Perna attempted to remove her from the vehicle by grabbing her left wrist. Defendant then put her right arm through the steering wheel and "lock[ed] her hands together so [the officers] could not remove her from the vehicle." Covely then tried "to pry her hands apart with [his] own hands," and defendant "lean[ed] in, open[ed] her mouth, and put the edge of [his] hand in her mouth." Although she bared her teeth, he was able to pull his hand away before she bit down. Believing defendant had bitten Covely, Perna sprayed defendant with mace for "approximately a two-to-three-second burst." Covely removed defendant and restrained her on the ground, where "[s]he continued to resist" by trying to "keep her hands very close to her body and not let[ting] [him] cuff her." He was eventually able to effectuate defendant's arrest and transported her to the police station in his patrol car.

Defendant was issued summonses for a "broken" windshield, N.J.S.A. 39:3-75; driving with a suspended registration, N.J.S.A. 39:3-40; driving an uninsured vehicle, N.J.S.A. 39:6B-2; failure to exhibit vehicle registration,

N.J.S.A. 39:3-29, obstructing the administration of law; third-degree resisting arrest, N.J.S.A. 2C:29-2(a)(1)(a); and fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(5)(a). The latter two charges were downgraded to disorderly persons resisting arrest and disorderly persons simple assault.

Defendant testified that along with handing Covely her driving documentation, she also "did exactly what . . . Severance asked [her] to do," which was to show the tickets for the broken brake light and cracked windshield[2] "i[f] anybody stop[ped] [her]." When Covely looked at the tickets, she said he responded, "Oh, so you know why I stopped you," threw the summonses at her, and went inside his car for approximately forty-five minutes. Upon Covely's return, she claims to have told him she had insurance coverage. She asked to speak with his supervisor because of how long she was waiting for Covely, and that he did not seem to believe her and the advice given to her by Severance.

[2] Defendant testified that in August 2015, the rear and front windows of her vehicle were randomly shot in Camden while it was parked. She reported the shooting to Camden police and the Camden County Prosecutor's Office. She "had gone to several mechanics to ascertain . . . how [a cracked windshield] would affect [her visibility while] driving or the operation of the vehicle while Camden County was investigating the case." She did not get the front windshield fixed "[b]ecause everybody is trying. . . . this was a question of the money involved" despite her efforts working with "the [homeless] shelter, [her] church . . . [and] going to the victim witness office all the time . . . it just wasn't easy."

When Perna showed up, defendant believed "something [was] wrong" because she thought her "hairstyle unusual for a police officer," as well as her uniform, "pink handcuff," and her general demeanor. When Perna asked defendant what she was doing in Mt. Ephraim, she interpreted it as Perna telling her that she "should go back to Camden, and that . . . [she is] a threat to the safety of" "the fine people of Mt. Ephraim," which defendant found to be racist. Defendant denied crossing out the expiration date on her registration card and did not know it was altered prior to Covely telling her. Defendant also denied honking her horn.

Defendant stated the first time she was told she was under arrest was after her second 911 call when Perna attempted to grab her cell phone while her driver's side window was down. Perna was "physically attacking [her]" by "knocking the phone [out] of [her] hands," "verbal[ly] attack[ing]" her with "threats of violence," and trying to remove her from the vehicle. Defendant testified she was "resisting what [Perna] was doing, because it became clear to [her] that . . . [Perna] was about to arrest her . . . So [she] was doing [her] best to protect [her]self until [other] policemen c[a]me" and for the "situation to be over." After she was sprayed with mace, Covely and Perna hit her head on the concrete ground.

Defendant testified she did not remember what she "did to try to stay in the vehicle, to resist," including attempting to bite Covely or Perna, but she "wish[ed] [she] could have done more to protect [her]self." Contradicting her earlier statement about the officers telling her she was under arrest, she stated:

> [T]hey never said to me ["]you're under arrest["] . . . nothing like that. [Perna] just wanted to continue the situation that I wasn't sure why she was there for, what it was. And, yes, police officers do beat up people. And, you know, you can defend yourself and then, you know, you can let the system work it out . . . as far as I [was concerned] I didn't commit any crime. They didn't say to me you've committed any crime; we need to arrest you. [Perna] just wanted . . . to threaten my life. And she . . . wanted to put me in fear for my life. And at no point did I see that they were afraid for their lives. I thought she saw me as an easy target.

The municipal court judge convicted defendant of all motor vehicle violations and criminal charges. He found the State's witnesses to be "strong and logical," with "no cracks in . . . Covely's testimony that affected his credibility." Conversely, the judge found defendant's testimony was "incongruous, unsupported, not presented in any type of semblance of order[,] and many times contradicted by [her] later testimony." He stressed that defendant also "perjured herself multiple, multiple, multiple times." The judge pointedly mentioned that

> [defendant's] testimony repeatedly flip flop[ped] back and forth about being told whether [her vehicle] was being towed, whether she was under arrest, whether she resisted, whether she bit somebody, whether she was tying her hands around.
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> In several instances, she denie[d] it, she later admit[ted] it, she d[id]n't recall, then she d[id]n't know. Of those, literally, I had four different answers to the same question, depending on when they were asked.

After determining the aggravating factors "by far" outweighed the mitigating factors, the judge imposed a sixty-day sentence in county jail on April 5, 2017, with thirty days suspended, conditioned upon defendant not incurring new criminal charges for one year.[3]

At a trial de novo appeal to the Law Division,[4] defendant only contested the criminal convictions and her county jail sentence. The judge found defendant guilty, holding the State proved the charges beyond a reasonable

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[3] Defendant has served her sentence.

[4] The Law Division judge had initially dismissed defendant's trial de novo appeal as untimely. We reversed and "remand[ed] . . . to consider whether defendant timely filed her appeal or substantially complied with the filing requirements, and to make findings of facts and conclusions of law as required by Rule 1:7-4." State v. Rosemary Ekeada, No. A-4914-16 (App. Div. June 11, 2019) (slip op. at 2). On remand, a different Law Division judge "[r]e-opened" the municipal court appeal "finding that the excusable hardships presented made it difficult for . . . [d]efendant to file the original municipal court appeal."

doubt. In his oral decision[5] issued after arguments of counsel, the judge said that he reviewed the municipal court trial transcripts and ruled:

> I feel that it's the conduct of . . . defendant that put [Covely and Perna] in the no-win position having to do what they had to do in order to make themselves safe and in order to make the public safe. Attempting to bite an officer is something that just cannot be tolerated.
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> There may have been some misunderstanding by the defendant because of language or experienced barriers that she had before [in her native country of Nigeria], but that does not excuse her conduct. [The police] had probable cause to arrest her for the obstruction of the administration of law because she . . . refused to get out of the car after being warned. Certainly in the trial[,] she indicated if she had to do it again, she would have resisted more. So clearly[,] she had intent to not obey the [police] authority which had been logical[,] and [the municipal court judge] explained to her since she had been given the benefit of the doubt three days earlier [when stopped by Severance], she didn't conduct herself and take any other steps expecting the same kind of [treatment] on [May 26, when stopped by Covely].

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[5] We would be remiss if we did not comment on the lack of Rule 1:7-4 findings of fact and conclusions of law in this record. In every case decided by a court, it must make specific findings of fact and conclusions of law. R. 1:7-4(a). "Failure to make explicit findings and clear statements of reasoning [impedes meaningful appellate review and] 'constitutes a disservice to the litigants, the attorneys, and the appellate court.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)). These deficiencies, however, do not preclude our conclusion that the order affirming defendant's convictions should be affirmed.

The judge also imposed the same sentence as the municipal court.

Before us, defendant through counsel contends:

> POINT I
>
> THE COURT ERRED BECAUSE IT FAILED TO CONSIDER CONSISTENT EVIDENCE FROM MULTIPLE SOURCES, INCLUDING THE POLICE OFFICERS AND THE 911 RECORDINGS, THAT DEFENDANT REASONABLY BELIEVED SHE WAS ACTING IN SELF-DEFENSE WHEN ALLEGEDLY RESISTING ARREST AND OBSTRUCTING JUSTICE. (Not Raised Below).
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> POINT II
>
> THE COURT ERRED IN CONVICTING DEFENDANT OF RESISTING ARREST BECAUSE THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE OFFICERS HAD PLACED DEFENDANT UNDER ARREST WHEN THEY USED FORCE TO EXTRICATE HER FROM THE VEHICLE. (Not Raised Below).
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> POINT III
>
> THE COURT ERRED IN CONVICTING DEFENDANT OF SIMPLE ASSAULT BECAUSE THE ALLEGED ATTEMPTED BITE WAS NOT A SEPARATE OFFENSE FROM RESISTING ARREST. (Not Raised below).
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> POINT IV
>
> THE COURT ERRED IN CONVICTING DEFENDANT OF SIMPLE ASSAULT BECAUSE THE EVIDENCE DOES NOT ESTABLISH BEYOND

A REASONABLE DOUBT THAT SHE ATTEMPTED TO BITE OFFICER COVELY.

POINT V

THE COURT ERRED IN CONVICTING DEFENDANT FOR DISORDERLY CONDUCT BECAUSE THE STATE FAILED TO PROVE AN ESSENTIAL ELEMENT OF THE CLAIM—THAT DEFENDANT CAUSED OFFENSE TO THE PUBLIC.

In her pro se supplemental brief, defendant argues:

POINT I

THE COURT ERRED IN ITS APPLICATION OF STANDARD OF PROOF IN THIS SEIZURE CASE BY REQUIRING THE DEFEN[S]E, RATHER THAN THE PROSECUTION, TO PROVE THE STATE'S CASE BEYOND A REASONABLE DOUBT[.] (Not Raised Below).

POINT II

THE COURT ERRED IN NOT COMPLETELY REVERSING AND DISMISSING ALL CRIMINAL CHARGES AND CIVIL CITATIONS BY DISREGARDING DEFENDANT-APPELLANT['S] DUE PROCESS RIGHTS, AND INDEPENDENT EXCULPATORY EVIDENCE SHOWING THAT THE DEFENDANT-APPELLANT POSSESSED VALID VEHICLE DOCUMENTS AT THE PERTINENT TIMES, AND THAT MOUNT EPHRAIM POLICE IS EQUIPPED AND STATUTOR[I]LY CHARGED TO CHECK THE VALIDITY OF THE DEFENDANT-APPELLANT'S

VEHICULAR DOCUM[]ENTS DURING A TRAFFIC STOP[.]

POINT III

THE COURT ERRED IN NOT COMPLETELY REVERSING AND DISMISSING ALL CRIMINAL CHARGES AND CIVIL CITATIONS BY DISREGARDING DEFENDANT-APPELLANT'S DUE PROCESS RIGHTS AND INDEPENDENT EXCULPATORY EVIDENCE SHOWING THAT THE ALLEGED VICTIMS OF THE ATTEMPTED SIMPLE ASSAULT CHARGE—[OFFICERS] COVELY AND PERNA FILED THE USE OF FORCE REPORT, INVESTIGATIVE REPORT AND THE CRIMINAL CHARGES[.] (Not Raised Below).

POINT IV

THE COURT ERRED IN CONVICTING DEFENDANT FOR DISORDERLY CONDUCT BECAUSE THE STATE FAILED TO PROVE ESSENTIAL ELEMENT OF THE CHARGE – THAT DEFENDANT-APPELLANT CAUSED OFFENSE TO THE PUBLIC[.]

POINT V

THE COURT ERRED IN REQUIRING A ZOOM NON-TESTIMONIAL HEARING, RATHER THAN A DE NOVO HEARING, IN THE ABSENCE OF THE DEFENDANT-APPELLANT, AND DURING THE HEIGHT OF THE COVID-19 PANDEMIC, WHILE RELYING ON CHOPPY TRANSCRIPTION ON DISPUTED MATERIAL ISSUES, TESTIMONY[,] AND IMPRESSIONS OF THE LOWER COURT[.] (Not Raised Below).

An appeal of a municipal court conviction must first be addressed by the Law Division de novo. R. 3:23-8. The Law Division must make independent findings of facts and conclusions of law based on the record developed in the municipal court. State v. Avena, 281 N.J. Super. 327, 333 (App. Div. 1995) (citing State v. Johnson, 42 N.J. 146, 157 (1964)). The Law Division is required to decide the case completely anew on the record made before the municipal judge, "giving due, although not necessarily controlling, regard to the opportunity of the" judge to evaluate witness credibility. Johnson, 42 N.J. at 157; see also State v. Cerefice, 335 N.J. Super. 374, 382-83 (App. Div. 2000).

We assess the Law Division's decision employing the "substantial evidence rule." State v. Heine, 424 N.J. Super. 48, 58 (App. Div. 2012). "Our review is limited to determining whether there is sufficient credible evidence present in the record to support the findings of the Law Division judge, not the municipal court." State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005) (citing Johnson, 42 N.J. at 161-62). We owe no deference to the trial judge's legal conclusions. Manalapan Realty, L.P. v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990)).

Citing State v. Mulvihill, 57 N.J. 151 (1970) and the resisting arrest statute, N.J.S.A. 2C:29-2(a)(1), defendant argues "the [Law Division] failed to

consider evidence that [she] reasonably believed she was acting in self-defense when allegedly resisting arrest and obstructing justice" because she did not believe Covely and Perna were law enforcement officers. Regarding Covely, she did not recognize his uniform, did not see his portable radio, he did not tell her that he was a police officer, and he denied her request to speak with his supervisor. As for Perna, defendant argues her suggestion that defendant should leave Mt. Ephraim and that defendant was a "threat to the safety" of its residents are not comments expected from a police officer.

Neither Mulvihill nor N.J.S.A. 2C:29-2(a)(1) support defendant's argument for reversal. In Mulvihill, our Supreme Court concluded the trial court erred in assuming as a matter of law that the defendant was arrested before his alleged assault and battery of a police officer, which prevented him from claiming self-defense. The Court reasoned

> the rule permitting reasonable resistance to excessive force of the officer, whether the arrest is lawful or unlawful, is designed to protect a person's bodily integrity and health and so permits resort to self-defense. Simply stated, the law recognizes that liberty can be restored through legal processes but life or limb cannot be repaired in a courtroom. And so it holds that the reason for outlawing resistance to an unlawful arrest and requiring disputes over its legality to be resolved in the courts has no controlling application on the right to resist an officer's excessive force.

[Id. at 156-157 (emphasis added).]

N.J.S.A. 2C:29-2(a)(1) provides, in part, that the disorderly offense of resisting arrest occurs

> if [a person] purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. . . . [A] person is guilty of a crime of the fourth degree if he, by flight, purposely prevents or attempts to prevent a law enforcement officer from effecting an arrest. . . . An offense under paragraph (1) or (2) of subsection a. is a crime of the third degree if the person:
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> (a) Uses or threatens to use physical force or violence against the law enforcement officer or another; or
>
> (b) Uses any other means to create a substantial risk of causing physical injury to the public servant or another.
>
> It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance.
>
> [(Emphasis added.)].

The determination that defendant was guilty of resisting arrest is supported by credible evidence in the record, which belies her claim that she was unaware Covely and Perna had placed her under arrest before she decided to resist their lawful authority. Throughout her inconsistent testimony, defendant acknowledged the officers attempted to arrest her when she refused

to comply with their order that she exit her vehicle. When she was asked to describe what happened after Perna tried to grab her cell phone for a second time, she stated that Perna said, "well, now you're under arrest." Perna also testified that if defendant did not exit her vehicle, she would be arrested for obstruction. In describing her resistance to the officers' attempts to arrest her, defendant testified she was "resisting what [Perna] was doing, because it became clear to me that . . . she was about to arrest me." (Emphasis added).

The record further shows defendant's contention that she was suspicious as to whether Covely and Perna were police officers is contradicted by her actions. Her alleged suspicions about Covely did not prevent her from showing him the summons Severance issued her three days earlier to avoid being issued additional summonses. Simply put, defendant believed Covely was a police officer because she showed him her prior summons to avoid additional citations. In addition, during the 911 calls, the operator informed defendant that Covely and Perna indeed were police officers and asked her whether she would comply with their command to exit her vehicle.

In sum, the credible evidence demonstrates defendant was aware she was being arrested by police officers; therefore, her refusal to get out of her vehicle constitutes resisting arrest.

Turning to the simple assault conviction, defendant contends that the State failed to prove she had the requisite intent to be convicted, and that the Law Division found her guilty on a preponderance of the evidence standard rather than beyond a reasonable doubt. We disagree.

A person commits the crime of simple assault if he or she "[a]ttempts to cause or purposely, knowingly, or recklessly causes bodily injury to another." N.J.S.A. 2C:12-1(a)(1) (emphasis added). "A finder-of-fact required to determine questions . . . is called upon to assess matters that, unlike broken bones or windows, are not susceptible to proof by physical evidence." State v. Stull, 403 N.J. Super. 501, 506 (App. Div. 2008). "[P]hysical discomfort, or a sensation caused by . . . a physical confrontation, as well as pain . . . is sufficient to constitute bodily injury for purposes of a prosecution for simple assault." Ibid. (quoting State ex rel. S.B., 333 N.J. Super 236, 244 (App. Div. 2000)).

The Law Division judge, relying on the municipal court's credibility findings in favor of Covely and Perna, correctly found defendant guilty of simple assault. Covely testified that defendant put the edge of her mouth on his hand, particularly the "meaty part along the pinkie." Perna corroborated Covely's testimony, stating that defendant "went for his arm" with her mouth and witnessed him pull his arm back in an "ouch"-like manner. This, in turn,

led Perna to spray defendant with mace. Despite Covely's reflexive action of pulling his hand away before defendant could bite it, defendant attempted to cause him bodily injury, thereby committing simple assault. Based on a plain reading of the simple assault statute, along with the credible testimony of both officers, the Law Division properly found defendant guilty of simple assault.

Finally, we conclude there is no merit to defendant's apparent affirmative defense that her actions were attributable to her homelessness, poverty, and trauma as a Nigerian immigrant. While defendant's unfortunate plight may have factored into her difficulty repairing her vehicle's brake light and windshield, maintaining her vehicle's registration, and restoring her driving privileges after her administrative suspension, she was not justified in attempting to bite a police officer and refusing to comply with police officers' lawful orders. Defendant had an obligation to abide by the law. Her convictions were supported by credible evidence submitted and the law.

Any arguments made on defendant's behalf we have not specifically addressed are without sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(2).

Affirmed.