

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-0305-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BRANDON MARONEY,

Defendant-Appellant.

Argued September 12, 2023 – Decided September 22, 2023

On appeal from the Superior Court of New Jersey,
Law Division, Morris County, Municipal Appeal No.
22-011-F.

Before Judges Whipple and Enright.

George T. Daggett argued the cause for appellant.

Robert J. Lombardo, Assistant Prosecutor, argued the
cause for respondent (Robert J. Carroll, Morris County
Prosecutor, attorney; Robert J. Lombardo, on the brief).

PER CURIAM

On the night of July 11, 2020, at about 11:30 p.m., a group of friends, including brothers Michael and Tyler McCreery, left a house party in Mount Olive. While walking back to their car, they called out to a friend standing across the street, to advise him not to drink and drive. Another group of partygoers, including defendant and Nicholas Molinari were standing nearby. The two groups did not know each other before this incident. Defendant's group took offense to the McCreerys' comments about driving drunk, perceiving a slight. The groups exchanged words, some moderate pushing may have occurred, and then the McCreerys' group turned away and continued walking to their car.

Defendant's group followed close behind. Michael¹ was initially confrontational, and Tyler attempted to separate him from defendant's group. Shortly thereafter, however, a member of defendant's group struck the brothers from behind. The brothers hit the pavement; Tyler suffered a broken bone in his hand, whereas Michael sustained a concussion, chipped teeth, and multiple lacerations to his face. What appears to be the momentary aftermath of the

¹ Given the family members share the same surname, we reference them by their first names to avoid confusion. No disrespect is intended in doing so.

incident was captured on a Snapchat video that depicts someone face down on the pavement and some people screaming and shouting.

The McCreery brothers filed individual citizens' complaints following the incident. Defendant and Molinari were both charged with two counts of simple assault in violation of N.J.S.A. 2C:12-1(a)(1). Molinari later agreed to testify in the case against defendant; Molinari's charges were dropped.

A municipal trial followed in which Molinari, Tyler, and Michael's girlfriend testified for the prosecution. Defendant also testified.

Molinari's testimony was largely consistent with the above set of facts. In Molinari's telling, defendant "hit the one kid and then the other kid got pushed to the ground." Defendant "cocked back" and threw a "normal punch" at the side of one of the brothers' head. Molinari could not remember who took the Snapchat video, nor who posted it.

Tyler also testified about the encounter but, notably, did not actually see the individual who struck him or his brother. He did, however, see defendant coming from where his brother was lying on the ground. The judge found his testimony "truthful and accurate[,] " but also noted Tyler admitted to pushing defendant at various points during the exchange.

Gracie Lata—Michael's girlfriend—also testified. She described seeing Molinari push Tyler; she also saw defendant throw a punch at Tyler and punch Michael to the ground. In the aftermath, Gracie saw Molinari shoot the Snapchat video depicting the unconscious victim. In the municipal judge's view, her testimony was extremely credible.

Finally, defendant testified. In defendant's version of events, Molinari was the assailant. Defendant explained that he was recording the incident on his phone while Molinari did the punching. Defendant recounted that Molinari ran around Lata and punched while, he, defendant was recording.

The municipal court found this testimony not credible and inconsistent with all other testimony. The judge concluded that defendant's assertion that he "made the Snapchat video" did not cast reasonable doubt as to whether defendant struck the brothers. The municipal court found him guilty of assaulting Michael. Based on the testimony, however, the court also found Tyler did strike or push defendant and, therefore, reasonable doubt existed as to whether defendant acted in self-defense as to Tyler.

Defendant appealed, and the Superior Court Criminal Part judge reviewed the decision de novo. Faced with the record, the de novo judge reasoned:

the State has proven beyond a reasonable doubt
[d]efendant's guilt on the charge of his simple assault

of [Michael]. In support, this [c]ourt notes Lata's consistent and unwavering testimony, which was deemed credible, that she saw [d]efendant strike [Michael]. In this regard, the [c]ourt notes that her testimony was substantially consistent with Molinari's testimony in which he stated consistently that [d]efendant struck [Michael]. In this regard, the [c]ourt notes and adopts [the municipal judge's] credibility finding that Molinari "testified truthfully as to who was the aggressor and who assaulted [Michael]." Likewise, although [Tyler] admits that he did not see who struck [Michael], this [c]ourt finds his testimony to be consistent with both Lata and Molinari. [Tyler's] testimony confirmed that after hearing "a loud thud" and seeing his brother "face down on the ground" he saw [d]efendant running away from [Michael]'s location and towards him and that "[d]efendant was very close to my brother, like he just hit him."

The judge was unpersuaded by defendant's factual argument that he was shooting the video, not involved in any physical altercation. Inconsistencies in the other witness testimony as to who was filming did not justify reversal given their otherwise compatible accounts.

Defendant was sentenced to a one-year probation term, along with a forty-five-day prison sentence, to be suspended pending successful completion of probation. Monetary penalties included a \$500 fine, along with various fees, and \$2,000 of restitution to be paid within sixty days for unpaid medical expenses and broken personal property. This appeal followed.

Defendant raises the following issues on appeal:

POINT I – THE DE NOVO JUDGE FAILED TO MAKE HIS OWN FACTUAL FINDINGS.

POINT II – THE DE NOVO JUDGE IGNORED THE EVIDENCE.

POINT III – BOTH THE DE NOVO JUDGE AND THE [MUNICIPAL] TRIAL COURT JUDGE IGNORED THE TESTIMONY OF A WITNESS WHICH THE TRIAL JUDGE CALLED "HIGHLY CREDIBLE".

We apply a deferential standard in reviewing the factual findings of a judge. Balducci v. Cige, 240 N.J. 574, 594–95 (2020). In an appeal from a bench trial, deference is owed "to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)).

Lastly, in an appeal from a municipal court action which has been reviewed on a de novo basis, the two-court rule applies. "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." State v. Locurto, 157 N.J. 463, 474 (1999).

Though presented as three separate points, defendant essentially makes one argument on appeal: the de novo court failed to determine whether the testimony established if there were two actors—a "puncher" and a "videographer." Defendant asserted in his trial testimony that he was the videographer and that it was Molinari, not defendant, who engaged in the assault. Gracie Lata testified defendant was the assailant and Molinari took the videorecording. On appeal, defendant argues Lata's testimony, which was deemed highly credible by both courts, was confused as to the identity of defendant and Molinari and, therefore, mistook defendant for the assailant. As a result, defendant asserts that the de novo judge erred by failing to credit defendant's testimony, which he contends raises a reasonable doubt as to whether he was the assailant. Defendant is not making a legal argument, however. Instead, this is a factual issue, not ordinarily suited to appellate review.

Both courts previously rejected the inference defendant seeks. Having reviewed the video, we can only conclude it is not useful to support either the State's or defendant's version of events.

Moreover, there are numerous issues with defendant's theory. First, defendant's testimony was twice found not credible because it cut against the weight of the other testimony and lacked corroborative indicia. We defer to the credibility findings of trial court judges because they have the feel of the case. C.R. v. M.T., 248 N.J. 428, 440 (2021).

Second, as a matter of logic, the video evidence is not exonerative: if the video only depicts the aftermath of the fight, it could have just as easily been filmed by the assailant. The video does not provide the key piece of information: who shot it. Simply put, the Snapchat video is essentially irrelevant unless it depicts the assault itself, which it does not.

The de novo court observed some of these issues in reaching its decision and named others in support—such as defendant's admitted intoxication at the time of the events, which could have impacted his memory. Defendant nevertheless asserts his theory establishes reasonable doubt because it is a "reason" to doubt his guilt. This is not an accepted formulation of the reasonable doubt standard. State v. Medina, 147 N.J. 43, 50–52 (1996). Our Supreme Court has previously approved of a different definition: reasonable doubt is "an honest and reasonable uncertainty as to the guilt of the defendant which exists in [the

factfinder's] mind[] after . . . giv[ing] full and impartial consideration to all of the evidence in the case." Id. at 53.

Given a full, impartial consideration of the evidence in this case, a reasonable factfinder could find defendant guilty beyond a reasonable doubt.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION