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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0559-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MOHAMED S. SHABAAN,

Defendant-Appellant.

Submitted May 2, 2023 – Decided July 24, 2023

Before Judges Messano and Rose.

On appeal from the Superior Court of New Jersey, Law
Division, Passaic County, Municipal Appeal No. 6252.

Khari O. Moore, attorney for appellant.

Camelia M. Valdes, Passaic County Prosecutor,
attorney for respondent (Timothy Kerrigan, Senior
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Following a trial de novo in the Law Division, defendant Mohamed S. Shabaan was convicted of hindering his own apprehension by providing a false

name to law enforcement, N.J.S.A. 2C:29-3(b)(4), and driving with a revoked or suspended license, N.J.S.A. 39:3-40. He was sentenced to pay appropriate fines, costs, and penalties. Defendant now appeals, raising two evidentiary issues and maintaining the arresting officer's testimony was incredible. Discerning no evidentiary errors or grounds to reject the Law Division's factual and credibility findings, we affirm.

I.

The trial de novo was conducted on a review of the municipal court record. R. 3:28-8(a). The municipal court trial was held on November 20, 2020, and January 29, 2021. The State's case was presented on the first day largely through the testimony of the arresting officer, Robert Franciose, of the Wayne Police Department (WPD). The State also called two other WPD officers, James Clark and Skyler Cauceglia, who briefly testified about their efforts to ascertain defendant's identity after Franciose stopped the vehicle at issue. The State introduced into evidence three video clips and defendant's certified driver history abstract. On the second trial day, defendant and his wife, Yassmena Elboghday (collectively defendants),¹ testified on their own behalf.

¹ Although Elboghday was acquitted of all charges and motor vehicle violations filed against her, and is not a party to this appeal, we use "defendants" for ease of reference.

Defendants also introduced into evidence a video recording made by Elboghdady and various documents.

On August 20, 2018, Franciose was on "proactive patrol" traveling alone in a marked patrol unit on Route 23 in Wayne pursuant to his assignment in WPD's Enforcement Unit. "Traffic was heavy," but Franciose had no difficulty making observations as he was driving. After observing a minivan operated by a male driver, with a female front passenger, and "a small child unrestrained in the back," Franciose stopped the vehicle.

Franciose testified: "The vehicle made an abrupt turn into the shoulder of the highway, and at that point the driver put the vehicle in park and proceeded to jump from the driver's seat into the rear of the minivan, and I observed the female passenger jump into the driver's seat." Franciose made these observations while parked in his patrol unit "directly behind" the minivan. Because he "had no idea why someone would jump from a driver's seat into the rear of a vehicle and crouch down out of view," Franciose "approached the vehicle, with heightened awareness."

Unable to unlock the rear sliding door, Franciose twice ordered Elboghdady to do so. Thereafter, defendant refused Franciose's command to exit the minivan and attempted "to get further into the back of the vehicle."

Franciose "pulled [defendant] from the vehicle" by grabbing one of his arms. Franciose then attempted to handcuff defendant, who "was yelling for [Elboghdady] to exit the vehicle and record him."

The State played Elboghdady's video recording, which was provided by the defense earlier that trial day. Elboghdady denied Franciose's accusations that defendant "was driving [and] . . . jumped from the driver's seat to the back seat." Claiming Elboghdady was lying, Franciose threatened to call "DYFS" to "round up all [four of her] kids" who were in the minivan. Franciose told Elboghdady he had a camera in his patrol car. Later in his direct examination, Franciose acknowledged his car was not equipped with a video recorder, but so advised Elboghdady as a law enforcement "tool . . . to compel someone to tell the truth."

By this time, other officers had arrived at the scene. "The situation de-escalated," and the officers "attempt[ed] to identify . . . the male driver of the vehicle." Franciose testified that police "attempt[ed] to run the names that [they] were given [by defendants] through dispatch to obtain a driver's license of some sort, or identification of some sort." Over defense counsel's objection, Franciose referenced a "CAD abstract," which was printed by dispatch and reflected the names that were run through the NCIC database, but had not been provided to

the defense. In overruling defendant's objection, the court noted the names also were listed in the complaint. Notably, the CAD report was not moved into evidence.

The officers were unable to verify defendant's identity until they located his identification protruding from a wallet, which Cauceglia observed in plain view in the minivan. Franciose testified that after defendant was confronted with the identification card, he acknowledged his true identity. Defendant was arrested and transported to police headquarters. A record check of defendant's true name revealed his driver's license was suspended.

On cross-examination, Franciose denied that "at the precinct [defendant] was still adamant he was not the driver." On redirect examination, over defense counsel's objection, the prosecutor questioned Franciose about his "discussion" with defendant at headquarters. Franciose testified that defendant:

began to get visibly upset, and he stated at [sic] his own free will that he was the driver, and he was apologizing, and said he didn't want to be discriminated against, so he lied and [said] he was the driver. He was not questioned as to what part he took in that.

Defendants testified on the second day of trial. Not surprisingly, they offered a vastly different version of the events. Both maintained that before Franciose stopped the minivan, Elboghdady was driving while defendant was

sitting in the back feeding the children. Elboghdady did not know how the officers obtained any names other than defendant's true name. She claimed they both followed the officers' instructions at all times.

Defendant denied driving the minivan, jumping from the front seat to the back of the vehicle, resisting arrest, and giving any false names. He claimed he never had a driver's license, and as such, his driving privileges could not have been suspended. Defendant also claimed he did not apologize to the police or state that he had driven the minivan before Franciose stopped the vehicle.

Following written summations, the municipal court issued an oral decision, emphasizing credibility was crucial to the outcome in this matter. After summarizing the competing testimony, the court recognized "some inconsistencies in [Franciose's] report" but deemed those inconsistencies "fairly . . . insignificant." The court was persuaded by Franciose's "credible and clear" testimony that the officer observed defendant drive the minivan and switch seats with Elboghdady. Conversely, the court found defendants' testimony in that regard "not credible."

The court thus found defendant guilty of hindering his own apprehension and driving with a suspended or revoked license. Without elaborating, the court

found the State failed to prove the remaining charges against defendant.² The court assessed a \$507 fine and \$33 in court costs on the driving while suspended violation; and a \$200 fine, \$33 in costs, a \$50 Victims of Crime Compensation Board fee, and \$75 Safe Neighborhood Fund fee on the hindering apprehension conviction.

In his ensuing appeal to the Law Division, defendant argued the municipal court: (1) failed to hold an N.J.R.E. 104 hearing on the admissibility of defendant's statement at headquarters that he was driving the minivan before Franciose stopped the vehicle; (2) erroneously credited Franciose's testimony; and (3) erroneously permitted testimony concerning the CAD report, which was not properly authenticated. After reviewing the trial testimony, the video recordings, and conducting oral argument, the judge rendered a cogent oral decision on the record. Unpersuaded by defendant's contentions, the judge made independent evidentiary and credibility findings.

² The summons issued to defendant also charged two other disorderly persons offenses: resisting arrest, N.J.S.A. 2C:29-2(a)(1); and obstructing the administration of law, N.J.S.A. 2C:29-1(a). Defendant also was issued summonses for: improper display of license plates, N.J.S.A. 39:3-33; driving with an expired license, N.J.S.A. 39:3-10(a); failing to use a car seat for a child under eight years old, N.J.S.A. 39:3-76.2(a); and failure to wear a seatbelt, N.J.S.A. 39:3-76.2f.

Regarding the evidentiary errors raised, the judge first rejected defendant's "plain error" argument that the court failed to conduct an N.J.R.E. 104 hearing on the admissibility of defendant's statement at headquarters. The judge found defendant's statement "that he was the driver would be admissible pursuant to [N.J.R.E.] 803(c)(25) [as a] statement against interest" and "the statement appear[ed] to be voluntary and not the result of interrogation." The judge also noted "[d]efendant had previously been advised of his Miranda³ rights regardless of being involved." Ultimately, however, the Law Division judge did not consider defendant's statement in his determination of the charge and violation at issue.

Turning to the defendant's evidentiary argument about the CAD report, the judge noted Franciose testified that the CAD report and the NCIC report "were two different things." The judge concluded: "Both documents [we]re admissible as business records [under] Rule 803(c)(6), and as public records [under] Rule 930(c)(8)."

The Law Division judge also rejected defendant's credibility challenges. Although the judge gave "due regard to the trial court's credibility findings," he

³ Miranda v. Arizona, 384 U.S. 436 (1966).

"[i]ndependently" credited Franciose's testimony and found defendants' testimony "self-serving and not credible." The judge thus found defendant guilty of hindering apprehension.

Turning to the motor vehicle violation, the Law Division judge "f[ound] the testimony of all three police officers credible." Recounting their testimony, the judge noted defendant gave two false names to Franciose, dispatch ran those names through the NCIC database, with negative results, and the CAD report reflected the false names and dates of birth. The judge further credited Clark's testimony that Elboghdady provided a name for her husband, "which c[ould] not be verified." Lastly, the judge found Cauceglia "observed a wallet, which contained a photograph, which matched defendant and his pedigree information."

Regarding the disorderly persons offense, the judge stated: "The fact that the officers ran a name search for two unknown individuals corroborates their testimony and description and discredits the testimony of defendant and his wife that they did not provide false answers. Their failure to tell the truth also discredits their testimony that defendant was not driving." Concluding "defendant violated N.J.S.A. 2C:29(3)(b)(4) [by] giving false information to a law enforcement officer," the judge "did not consider" whether defendant told

police at the station that he had driven the minivan before Franciose stopped the vehicle.

The Law Division judge imposed the same fine, costs, and assessments imposed by the municipal court. This appeal followed.

Before us, defendant raises the following arguments, ascribing to the Law Division judge the same claims of error that he had previously asserted against the municipal court:

POINT I

THE [LAW DIVISION JUDGE] ERRED IN HOLDING THAT AN ALLEGED CONFESSION WAS ADMISSIBLE DUE TO HEARSAY EXCEPTION STATEMENTS AGAINST INTEREST AND THE STATEMENT WAS NOT SUBJECT TO A MIRANDA HEARING.

POINT II

THE [LAW DIVISION JUDGE] ERRED BY FINDING THE OFFICER CREDIBLE ESPECIALLY IN LIGHT OF THE VERDICT WHERE THE MAJORITY OF HIS TESTIMONY WAS FOUND TO BE INCREDIBLE.

POINT III

THE [LAW DIVISION JUDGE] UNDULY PREJUDICED [DEFENDANT] BY NOT AUTHENTICATING THE "REPORT" BEFORE ALLOWING TESTIMONY PERTAINING TO THE REPORT.

II.

Well-settled principles guide our review. On appeal from a municipal court to the Law Division, the review is de novo on the record. R. 3:23-8(a)(2). The Law Division judge must make independent findings of fact and conclusions of law but defers to the municipal court's credibility findings. State v. Robertson, 228 N.J. 138, 147 (2017). This deference is especially appropriate when a municipal court's "credibility findings . . . are . . . influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999); see also State v. Kuropchak, 221 N.J. 368, 382 (2015). Indeed, the municipal court has the unique opportunity to assess live testimony. State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005).

Unlike the Law Division, however, we do not independently assess the evidence. Locurto, 157 N.J. at 471. In an appeal from a de novo hearing on the record, we consider only the action of the Law Division and not that of the municipal court. State v. Oliveri, 336 N.J. Super. 244, 251 (App. Div. 2001). Our standard of review of a Law Division judge's decision is limited to determining only whether the findings made by the judge "could reasonably have

been reached on sufficient credible evidence present in the record." Locurto, 157 N.J. at 472 (quoting State v. Barone, 147 N.J. 599, 615 (1997)).

The rule of deference is more compelling where, as here, the municipal and Law Division judges made concurrent findings. Id. at 474. We accord great deference to the consistent conclusions of two other courts. State v. Stas, 212 N.J. 37, 49 n.2 (2012). "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." Locurto, 157 N.J. at 474.

We afford substantial deference to trial judges when evaluating their evidentiary determinations. State v. Cole, 229 N.J. 430, 449 (2017). We therefore review a trial court's evidentiary ruling for abuse of discretion. State v. Green, 236 N.J. 71, 81 (2018). Moreover, our Supreme Court has directed that our review of video evidence also is deferential. State v. S.S., 229 N.J. 360, 381 (2017). Accordingly, a trial court finding based on video evidence can only be reversed on appeal if the trial court's interpretation of the video evidence was so wide of the mark that the interests of justice demand intervention. Ibid.; see also State v. Elders, 192 N.J. 224, 245 (2007).

Having considered defendant's contentions in view of the applicable law, and our deferential standards of review, we conclude they lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons set forth by the Law Division judge in his well-reasoned decision. We simply note, the Law Division judge did not consider defendant's statement in his decision; the CAD report and the NCIC report were not admitted into evidence; and the judge's factual and credibility findings are supported by "sufficient credible evidence present in the record." See Locurto, 157 N.J. at 472 (quoting Barone, 147 N.J. at 615).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION