SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2836-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ELIZABETH KARLINSKI,

Defendant-Appellant.

———————————————

Argued October 4, 2023 – Decided October 27, 2023

Before Judges Currier and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Appeal No. MA22-001.

Peter M. O'Mara argued the cause for appellant (The O'Mara Law Firm, attorneys; Peter M. O'Mara, on the brief).

Monica do Outeiro, Assistant Prosecutor, argued the cause for respondent (Raymond S. Santiago, Monmouth County Prosecutor, attorney; Monica do Outeiro, of counsel and on the brief).

PER CURIAM

Defendant Elizabeth Karlinski appeals from her conviction for driving while intoxicated (DWI). Following a trial in the municipal court, Judge Michael A. Guadagno conducted a de novo trial based on the municipal court record. Judge Guadagno issued an order and accompanying written opinion finding defendant guilty of DWI, N.J.S.A. 39:4-50. A key disputed issue was whether defendant was operating her vehicle when it crashed onto private property. In his eight-page written opinion, Judge Guadagno made independent findings of fact and adopted the municipal court judge's "inescapable" inference that defendant had been driving the vehicle. After carefully reviewing the record in light of the governing legal principles and the arguments of the parties, we affirm substantially for the reasons explained in Judge Guadagno's thorough opinion.

The record shows that on March 9, 2019, police were dispatched around 1:00 a.m. to a motor vehicle crash on the lawn of a private residence. The vehicle, a Jeep registered to defendant, had apparently driven through a T-intersection, over a curb, and crashed through a fence surrounding a garden and into shrubbery. Defendant was the only person present when police arrived. A responding officer assisted defendant out of the driver's side of the Jeep. The passenger's side door was locked and unobstructed. Defendant's blood alcohol

content was determined to be 0.23%—nearly three times the legal limit. Defendant told police her "boyfriend" had been driving and claimed he fled the scene after the crash. However, she did not identify him by last or even first name and provided only a generic description. He was never identified by name and was never found.

Defendant raises the following contentions for our consideration:

> POINT I
>
> THE EVIDENCE PRESENTED BELOW WAS NOT SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT OPERATED THE VEHICLE.
>
> POINT II
>
> THE EVIDENCE PRESENTED BELOW DID NOT ESTABLISH THAT MS. KARLINSKI'S VEHICLE WAS OPERABLE.

When a defendant appeals a municipal court conviction, a Law Division judge conducts a de novo trial on the municipal court 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); State v. Locurto, 157 N.J. 463, 474 (1999); see also State v. Kuropchak, 221 N.J. 368, 382 (2015).

"[T]he rule of deference is more compelling where . . . two lower courts have entered concurrent judgments on purely factual issues." Locurto, 157 N.J. at 474; accord 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 (citing Midler v. Heinowitz, 10 N.J. 123, 128-29 (1952)).

Furthermore, in an appeal from a de novo hearing on the record, we do not independently assess the evidence. Id. at 471. Our review of a Law Division judge's decision is limited to determining whether the findings made by the judge "'could reasonably have been reached on sufficient credible evidence present in the record.'" Id. at 472 (quoting State v. Barone, 147 N.J. 599, 615 (1997)) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)).

N.J.S.A 39:4-50(a) defines driving while intoxicated as: "[a] person who operates a motor vehicle while under the influence of intoxicating liquor . . . or operates a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood. . . ." Our Supreme Court has "construe[d] the terms of N.J.S.A 39:4-50(a) flexibly, pragmatically and purposefully to effectuate the legislative goals of the drunk-driving laws." State

v. Tischio, 107 N.J. 504, 514 (1987). Importantly for purposes of this appeal, "[o]peration [of a vehicle] may be proved by any direct or circumstantial evidence—as long as it is competent and meets the requisite standards of proof." State v. Ebert, 377 N.J. Super. 1, 10 (App. Div. 2005) (quoting State v. George, 257 N.J. Super. 493, 497 (App. Div. 1992)). Operation may be proved "by observation of the defendant in or out of the vehicle under circumstances indicating that the defendant had been driving while intoxicated. . . ." Id. at 11.

As Judge Guadagno aptly noted, there is strong circumstantial evidence supporting the inference defendant drove her Jeep into the fence while intoxicated. Notably, police helped defendant out of the driver's side of the car—the passenger's side door was not obstructed. If defendant was in the passenger's seat when the vehicle crashed, she would have exited through the front passenger's door. In other words, there would have been no need for her to shift from the passenger's seat over to the driver's seat to exit the Jeep if she had been in the passenger's seat at the time of the crash.

Moreover, defendant was the only person at the scene of the crash when police arrived. Although she informed police her boyfriend was the driver, she could not provide police with his name or address. There was sufficient

circumstantial evidence for the court to conclude defendant was the driver of the vehicle.

We add that defendant's reliance on State v. Daly, 64 N.J. 122 (1973), is misplaced. In Daly, the State failed to prove the defendant intended to move his car when he was found sleeping in his parked car in a tavern's parking lot. Id. at 124-26. The present situation is starkly different. Here, defendant was not in a parked car, asleep, and in a reclined position. Id. at 124-25. Furthermore, as Judge Guadagno stressed, "there was not a shred of evidence to support defendant's initial claim that a 'boyfriend,' who she never identified, had been driving at the time of the crash and fled the scene."

Nor are we persuaded by defendant's attempts to cast doubt on the credibility of the officer who was the only witness at the trial. Defendant asserts the testifying officer did not know "exactly when the accident" occurred, did not feel the engine to determine whether it was still warm, and did not mention in his report whether the car was still running when he arrived at the scene. Judge Guadagno reviewed the officer's dashcam recording, finding it "thoroughly corroborate[d] his testimony." Judge Guadagno concluded defendant "presented no reason why this court should not defer to the municipal court's well-supported determination that [the officer] testified credibly." We agree.

We likewise reject defendant's contention the State failed to prove the vehicle was operable. Defendant relies on State v. DiFrancisco, 232 N.J. Super. 317 (Law Div. 1998). In DiFrancisco, the defendant was found behind the steering wheel of a truck that was stuck in a ditch, inoperable, and had to be towed from the scene. Id. at 319-20, 323. In determining the State had failed to prove drunk driving, the Law Division judge focused on the significant amount of time that might have elapsed between when the truck was last operated and when police found it in the ditch. Id. at 320, 323. The judge concluded that although the facts permitted an inference that the defendant had been driving at some prior time, there was no proof he did so while intoxicated. Id. at 323.

DiFrancisco does not preclude other courts from drawing reasonable inferences from the facts presented at trial. As we have already noted, it is well-established that operation of a vehicle while intoxicated may be proven by circumstantial evidence. See Ebert, 377 N.J. Super. at 10.

In this instance, both the municipal court judge and Judge Guadagno concluded defendant drove her car while intoxicated, which resulted in the crash and damage to her vehicle. The record amply supports the conclusion defendant's Jeep was damaged because she drove it through a T-intersection,

over a curb, through a fence, and into shrubbery. In sum, if defendant's vehicle was inoperable when police arrived at the scene,[1] it is because she crashed it into a fence. Obviously, it was operable immediately prior to the crash. We reiterate that both the municipal court judge and Judge Guadagno found the inference defendant was the driver "inescapable."

To the extent we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

[1] The fact that defendant's vehicle was towed from the scene does not conclusively establish it was inoperable. N.J.S.A. 39:4-50.23(a) requires that a vehicle involved in drunk driving be impounded by the arresting law enforcement agency.