SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2647-21

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

JACOB HILLER,

Defendant-Respondent.

Submitted September 14, 2022 – Decided November 30, 2022

Before Judges Vernoia and Firko.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Camden County, Municipal Appeal Nos. 19-10549 and 19-10550.

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

John C. Iannelli, attorney for respondent.

PER CURIAM

Defendant Jacob Hiller is charged with driving while intoxicated and refusal to take a chemical breath test. When the State's sole witness, a New Jersey State Trooper, did not appear for a scheduled trial on the charges, the Winslow Township municipal court granted defendant's motion to suppress the State's evidence and summarily dismissed the charges. The court later granted the State's motion for reconsideration of the suppression and dismissal order, vacated the order, and relisted the matter for trial. On defendant's interlocutory appeal from the court's order on reconsideration, the Law Division ordered the suppression of any evidence concerning defendant's alleged intoxication as a sanction for the absence of the State Trooper from the scheduled trial, and remanded for a trial before the municipal court. By leave granted, the State appeals from the Law Division's order imposing the suppression sanction.

I.

On an appeal from a municipal court order, the Law Division "determine[s] the case completely anew on the record made in the municipal court." State v. Powers, 448 N.J. Super. 69, 72 (App. Div. 2016) (quoting State v. Johnson, 42 N.J. 146, 157 (1964)). Thus, although our consideration of a Law Division order on an appeal from a municipal court order requires that "[w]e review the action of the Law Division, not the municipal court," State v.

Robertson, 438 N.J. Super. 47, 64 (App. Div. 2014), we must necessarily consider the record made in the municipal court.

Our review of the appropriateness of the suppression sanction imposed by the Law Division here is made difficult because we have not been supplied with the complete municipal court record. It is therefore unclear: whether documents presented on appeal are part of the municipal court record; whether they were presented to, or considered by, the Law Division; and whether they are presented for the first time on appeal. For example, it appears defendant's municipal court trial was scheduled to take place on four separate days in 2020 (March 11; July 28; August 11; and September 1). Defendant asserts he appeared on each of those days but the State's only witness, the State Trooper, did not. The record on appeal, however, includes only the transcript of the September 1, 2020 proceeding during which the court granted defendant's motion to suppress the State's evidence and entered an order finding defendant not guilty of the charges.

Similarly, annexed to defendant's brief on appeal is a purported September 1, 2020 note to the court signed by both counsel concerning the State Trooper's unavailability for trial, as well as various summonses defendant contends were delivered to the State Trooper requiring his appearance on the various trial dates. The appellate record, however, lacks an affidavit or certification presented to

the municipal court establishing the authenticity of those documents, see R. 1:6-6, and there is no evidence the documents are part of the municipal court record the Law Division was required to review de novo, or that the documents were otherwise presented to the Law Division.

Additionally, although we consider on appeal the Law Division's de novo review of the State's motion for reconsideration of the September 1, 2020 municipal court order suppressing the State's evidence and finding defendant not guilty of the charges, the appellate record does not include the pleadings or evidence, if any, submitted to the municipal court in support of, and in opposition to, the reconsideration motion. Instead, the appellate record includes only the transcript of the November 20, 2020 oral argument on the reconsideration motion before the municipal court.

We remind the parties of their obligation under Rule 2:6-1(a)(1)(I) to supply this court with the pleadings and other documents essential to a disposition of the issues presented on appeal. Appellate review is hampered when we lack a complete record. That is especially true where, as here, we are required to determine the validity of the Law Division's de novo review of the record before the municipal court.

In any event, under the circumstances presented, any failure of the parties to provide on appeal the complete municipal court record the Law Division was required to consider de novo is not fatal to our disposition of this appeal. Despite the lack of clarity concerning the record before the municipal court when it decided the State's motion for reconsideration, we summarize the following putative facts based on the transcripts of the September 1, 2020 and November 20, 2020 proceedings in the municipal court, the transcript of the de novo proceeding in the Law Division, and the parties' briefs on appeal.[1]

On November 11, 2019, a New Jersey State Trooper issued summonses to defendant for DWI and refusal. The State Trooper did not appear on September 1, 2020, in the municipal court for a scheduled trial on the charges. During a proceeding in the municipal court on that date, defense counsel moved for dismissal of the charges based on the Trooper's alleged fourth failure to appear for trial. Defendant's motion was made outside the presence of the municipal prosecutor, who was absent from the courtroom when defense counsel requested

[1] Our summary shall not be interpreted as constituting findings of fact binding on the parties or any court. We provide the summary based on the record presented on appeal, the representations of counsel, the parties' briefs, and miscellaneous documents that are not authenticated by competent evidence and about which we are unable to determine if they were before either the municipal court or Law Division. The record does not permit proper findings of fact based on competent evidence, and we make none.

dismissal of the charges. In support of the motion, defense counsel represented the case had been previously scheduled for trial on three prior dates, and that the July 28, August 11, and September 1, 2020 trial dates had been designated by the court as "date[s] certain." Counsel also informed the court that he had been advised by the municipal prosecutor the State Trooper was "not working" and would not appear that day. Counsel further represented the State Trooper "received adequate notice every single time" his appearance had been required for the scheduled trials.[2]

The municipal court judge opined he could not "dismiss this matter," and he could "only suppress the evidence." Defense counsel then moved, again outside the presence of the municipal prosecutor, for suppression of the State's evidence. The municipal court granted the request without making any findings of fact or conclusions of law. The court ordered the suppression of the State's evidence and then summarily declared defendant not guilty of the DWI and refusal charges.

[2] Defense counsel did not provide competent evidence supporting his assertion, and the record on appeal otherwise lacks evidence the State Trooper actually received any subpoena or notice to appear for the trials.

The State subsequently moved for reconsideration of the court's September 1, 2020 suppression and dismissal order. At oral argument on the motion, the State asserted it was entitled to reconsideration because defendant made the motions, and the court entered the order, in the municipal prosecutor's absence. The State further asserted suppression of the State's evidence and the dismissal of the charges were not appropriate because the July, August, and September 2020 trial dates were "post [p]andemic" and "many troopers" were not informed that "in-person" court proceedings were continuing. The municipal prosecutor also explained she had not been aware the September 1, 2020 trial was scheduled as a "date certain" because the matter had previously been scheduled on a different prosecutor's list in the Winslow Township municipal court, and the case had been transferred to her calendar just prior to the September 1, 2020 trial date.

The municipal prosecutor further asserted that when she first learned on September 1, 2020, the matter was listed as a "date certain" case, she contacted the State Trooper's barracks to obtain his appearance for trial that day and a State Police sergeant informed her the State Trooper had been transferred to another barracks and was unavailable because he was not scheduled to work that day. The municipal prosecutor explained to the court that on September 1, 2020, she

had been able to determine the State Trooper would be working and available on September 22, 2020; she sent a written "slip" to the court explaining that was the case; and she "believed that the matter would be continued to September 22nd, not even considering that a matter would be dismissed, especially post [p]andemic." Defense counsel argued the court should deny the State's reconsideration motion because the matter had been scheduled for three dates certain, the State Trooper failed to appear for each scheduled trial date, and "enough is enough."[3]

The municipal court granted the State's reconsideration motion, finding it should not have entertained defendant's dismissal and suppression motions outside the prosecutor's presence. The municipal court further found the prosecutor did not know the September 1, 2020 trial was scheduled as a "date certain" matter because it previously had been assigned "on another tract" within

[3] Defendant also argued the municipal court could not properly grant the State's reconsideration motion because the court found him not guilty of the charges on September 1, 2020. The municipal court rejected the double jeopardy claim, as did the Law Division on its de novo review of the municipal court's November 20, 2020 order granting the State's reconsideration motion and vacating the September 1, 2020 suppression and dismissal order. Defendant does not argue the Law Division erred by rejecting his claim the municipal court's September 1, 2020 not-guilty finding precluded the court from granting the State's reconsideration motion. We therefore find it unnecessary to address the merits of the Law Division's determination on that issue.

the court. The court also determined the record was unclear as to the manner in which, and whether in fact, the State Trooper received any notices to appear for trial, and whether the State Trooper's assignment had "changed." The court concluded the circumstances were "unusual" and entered a November 20, 2020 order granting the State's reconsideration motion and reopening the case for trial.

On defendant's interlocutory appeal from the November 20, 2020 order, the Law Division judge heard argument and granted the State's motion for reconsideration of the September 1, 2020 order. The judge reasoned the case should be reopened because the municipal prosecutor "wasn't in the room" when defendant made his motion to suppress the evidence and the municipal court granted the motion and found defendant not guilty of the charges.

Without making any findings of fact, the Law Division judge also explained that in lieu of imposing a "monetary sanction against the State" based on the State Trooper's absence on September 1, 2020, he felt "the appropriate remedy" for the State Trooper's failure to appear was to "relist[]" the DWI and refusal charges for trial and suppress all evidence — including law enforcement officers' observations of defendant, defendant's statements, and the results of defendant's performance on field sobriety tests — concerning any indicia of defendant's alleged intoxication. The judge recognized the ordered suppression

of the evidence "may be the end of the DWI case" but explained the remedy nonetheless afforded the State the opportunity to reopen its case for a trial.

The judge entered orders granting the State's motion for reconsideration, reopening the matter for trial, suppressing all evidence concerning defendant's alleged intoxication, and denying the State's motion for a stay pending appeal. We granted the State's motion for leave to appeal.

II.

In our consideration of a Law Division decision on a municipal appeal, we defer to the court's factual findings, State v. Locurto, 157 N.J. 463, 470-71 (1999), and must uphold those findings so long as they are supported by sufficient competent evidence in the record, State v. Reece, 222 N.J. 154, 166 (2015). We review the Law Division's interpretation of the law de novo without according any special deference to the court's interpretation of "the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Here, the Law Division conducted a de novo review of the municipal court's order granting the State's motion for reconsideration of the September 1, 2020 order suppressing the State's evidence and finding defendant not guilty of the DWI and refusal charges. The State does not claim the Law Division erred by granting the

reconsideration motion, vacating the order finding defendant guilty of the charges, and setting the matter for a new trial. We therefore do not address those determinations, and we limit our discussion to the State's challenge to the Law Division's order suppressing evidence of any indicia of defendant's alleged intoxication.

"Motions for reconsideration of interlocutory orders," like that portion of the September 1, 2020 order at issue here, "shall be determined pursuant to [Rule] 4:42-2." R. 1:7-4(b). A motion for reconsideration of an interlocutory order "does not require a showing that the challenged order was 'palpably incorrect,' 'irrational,' or based on a misapprehension or overlooking of significant material presented on the earlier application." Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021). The determination of a motion to reconsider an interlocutory order requires only that the court exercise "sound discretion" guided by the "interest of justice." Ibid. (quoting R. 4:42-2); see also Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)) (noting "'reconsideration is a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice.'"). A court abuses its discretion when its decision is "made without a rational explanation, inexplicably departed from established policies, [and] rested on an impermissible basis." Iliadis v.

Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

The State challenges the Law Division's determination evidence concerning defendant's alleged intoxication should be suppressed as a sanction for the State Trooper's absence from the September 1, 2020 trial. The State contends the court abused its discretion because suppression of the evidence is an extreme remedy — which is tantamount to a dismissal of the DWI charge and may require dismissal of the refusal charge — that is unwarranted based on the facts and circumstances. Defendant contends the court properly exercised its discretion by suppressing the evidence in response to the State's failure to produce the State Trooper on four consecutive trial dates, three of which the court designated as "date[s] certain."

Where a municipal court "complaint is not moved on the day for trial, the court may direct that [the complaint] be heard on a specified return date" with notice provided to the defendant and "all other known witnesses." R. 7:8-5(a). "If the complaint is not moved" on the designated rescheduled date, "the court may order the complaint dismissed." Ibid.

Our courts "have always recognized that ordinarily adjournments are within the discretion of the trial court," State v. Gallegan, 117 N.J. 345, 354

(1989); State v. Tsetsekas, 411 N.J. Super. 1, 10 (App. Div. 2009), and they "should generally be granted to either party for legitimate reasons, including the unavailability of a necessary witness," Tsetsekas, 411 N.J. Super. at 12. Rule 7:8-3 expressly provides "the [municipal] court may adjourn the trial for not more than fourteen days, except that an adjournment for a longer period or additional adjournments may be granted if the court deems postponement of the trial to be reasonably necessary in the interest of justice."

The court's discretion in ordering a dismissal due to a failure of the State to move a case to trial must be exercised by balancing the principles that "in the administration of justice, dismissal must be a recourse of last resort," State v. Farrell, 320 N.J. Super. 425, 447 (App. Div. 1999) (quoting State v. Prickett, 240 N.J. Super. 139, 147 (App. Div. 1990)); see also State v. Audette, 201 N.J. Super. 410, 414-15 (App. Div. 1985), and the "[i]nterests of substantial justice . . . do not permit endless adjournments and delays in trials," Gallegan, 117 N.J. at 355; see also State v. Cahill, 213 N.J. 253, 270 (2013) (declining to "adopt a rigid bright-line try-or-dismiss rule" for DWI cases based on delays in bringing such cases to trial).

In support of his claim the judge properly exercised his discretion by suppressing the evidence of defendant's alleged intoxication as a sanction for

the State Trooper's absence from the September 1, 2020 trial, defendant primarily relies on the Law Division's opinion in State v. Perkins, 219 N.J. Super. 121 (Law Div. 1987). In Perkins, the Law Division dismissed a DWI charge because the State failed to subpoena its witnesses and was therefore unable to prove its case on the day the municipal court had designated as a "date certain" for trial. Id. at 123-24.

The court rejected the State's claim the complaint should not be dismissed, reasoning the State's erroneous reliance on the municipal clerk's office to serve subpoenas for the witnesses, and the State's failure to make the necessary arrangements to present its case on the designated trial date, did not support a trial adjournment. Id. at 125-27. Further, the court reasoned the designation of a trial date as a "date certain" constitutes a promise the case will proceed to trial that is "sacrosanct" and "must be kept." Id. at 124-25. The court did not, however, hold the State's inability to present its evidence on a "date certain" requires dismissal. To the contrary, it explained a court must "weigh all the factors" in deciding whether to dismiss a case based on the State's inability to proceed to trial on the scheduled trial date, id. at 129, and the decision to dismiss a complaint "must be 'founded on the facts and the applicable law and not simply

an undisciplined whim,'" id. at 124 (quoting State v. Daniels, 38 N.J. 242, 249 (1962)).

In Audette, which we decided prior to the Law Division's decision in Perkins, we considered an order granting the defendant's suppression motion because the State failed to produce its key witness, a State Trooper, at an adjourned hearing on the motion. 201 N.J. Super. at 412. The trial judge rejected the State's request for a further adjournment of the suppression hearing and granted the suppression motion because the State could not proceed with its proofs. Id. at 414.

We found "the State erred in not giving timely notice and a subpoena to the [State] Trooper or in not arranging another date when he could be available to testify." Id. at 412. However, we determined "[t]he extreme remedy of granting [a] motion to suppress, a remedy tantamount to dismissal of [an] indictment, was too severe and disproportionate" where the imposition of a monetary sanction against the State for the expenses incurred by the defendant for his appearance at a hearing that was adjourned due to the State's failure to produce a necessary witness. Id. at 415; see also R. 1:2-4(a) (authorizing imposition of sanctions as a condition of an adjournment).

In Prickett, which we decided following the Law Division's opinion in Perkins, we rejected the defendant's claim the Law Division erred by denying his request for dismissal of a DWI charge where the municipal court set a peremptory "date set certain" for trial, the defendant appeared for trial ready to proceed with expert witnesses, and the State sought an adjournment without advance notice due to the State's chief witness's failure to appear "for no good cause." 240 N.J. Super. at 143. The Law Division remanded the matter to the municipal court for trial and the consideration of the imposition of sanctions "'against the State or town or whoever is at fault.'" Id. at 142-43.

We affirmed the Law Division's determination, citing our decision in Audette and explaining "[w]e have frequently cautioned that in the administration of justice dismissal must be a recourse of last resort."[4] Id. at 147. We also noted that, "[c]onsidering that [the] defendant is charged with driving while under the influence of alcohol, dismissal should not result" under the circumstances presented. Ibid. Instead, as noted, we affirmed the Law

[4] We also cited a December 2, 1986 memorandum issued by Chief Justice Wilentz directing in part that in the exercise of their discretion, municipal court judges should consider all the factors pertinent to a request to dismiss charges due to the failure of a law enforcement officer to appear for trial, including determining what happened, whether the officer can be quickly brought to court, and the seriousness of the charge. Id. at 147.

Division's decision to remand for the imposition of appropriate costs and sanctions. Id. at 147-48.

A court's discretion in granting an adjournment of a scheduled trial, including trials of DWI cases, is limited by the defendant's right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and as applicable to the States under the Due Process Clause of the Fourteenth Amendment. Cahill, 213 N.J. at 263-67; Tsetsekas, 411 N.J. Super. at 8; Farrell, 320 N.J. Super. at 451-53. The four-part test to determine when a violation of a defendant's speedy-trial rights contravenes due process — as announced in Barker v. Wingo, 407 U.S. 514, 530-33 (1972), and adopted by our Supreme Court in State v. Szima, 70 N.J. 196, 200-01 (1976) — requires "[c]ourts [to] consider and balance the '[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant,'" Tsetsekas, 411 N.J. Super. at 8 (third alteration in original) (quoting Barker, 407 U.S. at 530); see also Cahill, 213 N.J. at 272-76 (applying the Barker standard to defendant's claim his right to a speedy trial on a DWI charge was violated).

We are not presented with a speedy trial claim. Defendant did not seek dismissal of the charges on speedy trial grounds, and defendant offered no argument before the municipal court or the Law Division, and offers no

argument on appeal, that his right to a speedy trial was violated under the four-factor standard established in Barker. Indeed, defendant does not argue on appeal that "[t]he only remedy" for a violation of a defendant's right to a speedy trial — "dismissal of the charge[s]" — should have been ordered by the Law Division. Id. at 276. He claims only the Law Division correctly suppressed the evidence.

We are therefore required to consider only whether the Law Division abused its discretion by ordering the suppression of the evidence of defendant's intoxication as a sanction for the State Trooper's absence from the September 1, 2020 trial. See Audette, 201 N.J. Super. at 412, 414-15. We conclude the Law Division's decision suppressing the evidence constitutes an abuse of discretion because it was "'made without a rational explanation, inexplicably departed from established policies, [and] rested on an impermissible basis.'" Iliadis, 191 N.J. at 123 (quoting Flagg, 171 N.J. at 571).

The Law Division's order is unsupported by a rational explanation because its decision is bereft of any findings of fact or conclusions of law grounded in the municipal court record, R. 1:7-4; see also Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996) ("Trial judges are under a duty to make findings of fact and to state reasons in support of their conclusions."), and is untethered to

any applicable legal principles, such as those guiding our decisions in Audette and Prickett. Indeed, the court paid no heed to the admonition that suppression of evidence – and the concomitant inability of the State to present otherwise competent evidence satisfying its burden at trial – should be imposed as a sanction only as a last resort and where alternative sanctions are unavailable. See Prickett, 240 N.J. Super. at 147; Audette, 201 N.J. Super. at 414. The court also abused its discretion by basing the suppression sanction solely on an impermissible basis — the judge's "feel[ing]" suppression is appropriate — which, in our view, constitutes no more than "an undisciplined whim." Perkins, 219 N.J. Super at 124 (quoting Daniels, 38 N.J. at 249).

We therefore vacate the suppression order entered by the Law Division and remand for reconsideration of the sanction based on a de novo review of the municipal court record. See Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (stating remand is appropriate where the trial court fails to make appropriate findings of fact); Barnett & Herenchak, Inc. v. State, Dep't of Transp., 276 N.J. Super. 465, 473 (App. Div. 1994) (remanding for reconsideration, and essential findings of fact and conclusions of law). The court shall conduct such proceedings on remand as it deems appropriate and, in its discretion, may permit the filing of briefs and hear additional argument. The

Law Division shall reconsider its decision in accordance with the rules governing appeals from the municipal court, see R. 3:23-1 to -9, and the court may address any issues pertaining to the record before the municipal court in accordance with Rule 3:23-8(a). The Law Division's remand decision shall be supported by findings of fact and conclusions of law as required by Rule 1:7-4. Our decision to vacate and remand shall not be interpreted as expressing a view on the merits.

Vacated and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION