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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 NOS. A-2220-16T2
A-2298-16T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARLIN SCHNEEBERGER,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARYELLEN SCHNEEBERGER,

Defendant-Appellant.

Argued Telephonically March 14, 2018 – Decided April 10, 2018

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Municipal Appeal
Nos. 09-16 and 08-16.

Brian J. Neary argued the cause for appellant
Marlin Schneeberger (Law Offices of Brian J.

Neary, attorneys; Brian J. Neary, of counsel; Suzanne S. Axel, of counsel and on the brief).

James M. Doyle argued the cause for appellant Maryellen Schneeberger (Galantucci, Patuto, De Vences, Potter & Doyle, LLC, attorneys; David J. Altieri, on the brief).

Kerry J. Salkin, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Kerry J. Salkin, on the briefs).

PER CURIAM

Defendants Marlin Schneeberger and Maryellen Schneeberger appeal from their Law Division convictions for the disorderly persons offense of obstructing the administration of law, N.J.S.A. 2C:29-1(a), for which they were each sentenced to pay \$158 in fines and costs.¹

In deciding Marlin's case, the court did not make its own factual findings but instead improperly relied on the findings of the municipal court. Accordingly, we vacate Marlin's conviction and sentence and remand her case to the Law Division for reconsideration and independent factual findings.

¹ Defendants were tried together in the municipal court and their Law Division appeals were heard at the same time. Therefore, we have consolidated the appeals for purposes of this opinion. Intending no disrespect, we will refer to defendants by their first names because they share the same last name.

In deciding Maryellen's case, the Law Division made its own clear and specific factual findings, which are supported by substantial credible evidence. We affirm Maryellen's conviction.

I

The convictions arose from defendants' dispute with a neighboring restaurant over the latter's use of a construction crane in the parties' shared driveway. Defendants were initially charged with multiple offenses, primarily based on their alleged conduct after the police arrived on the scene. However, defendants were acquitted of all charges except obstruction. Therefore, we will focus our factual discussion on the events relevant to the obstruction charges.

The police were initially dispatched to the scene based on a 9-1-1 call reporting that an irate woman was tearing down some "no parking" signs on Warren Avenue and interfering with a construction crane.² When they arrived, an officer observed Marlin standing next to a green car, which was parked in the designated "no parking" area, and he observed that one of the parking signs had been torn down. Her car was also blocking a construction crane from entering the driveway and reaching the neighboring restaurant premises. According to the police, Marlin appeared to be acting

² Officer Cantrell had previously posted the no parking signs, specifically to enable the crane to enter the construction site.

in an "irrational" manner, but she eventually moved her car at the direction of the police.

Marlin then insisted on calling 9-1-1, although the police had previously warned her not to do so because they were already present. After she called 9-1-1, the police attempted to place Marlin under arrest for creating a false public alarm. The State presented evidence that Marlin refused to put her hands behind her back to be handcuffed, flailed her arms, and otherwise actively resisted, requiring the police to use some degree of force to subdue her.

The defense version was that Marlin was distraught because she believed the crane was not lawfully permitted to use the driveway, and she was upset that the police were not protecting her property rights. Defendants contended that the police were rude and abusive, Marlin called 9-1-1 because she was afraid of them, and Marlin did not intentionally resist arrest or otherwise obstruct the police. The defense presented testimony that Marlin was physically disabled and could not put her arms behind her back to be handcuffed.

The relevant evidence against Maryellen was brief. Through the testimony of police officers, and through a videotape, the State presented evidence that Maryellen, who was Marlin's daughter, attempted to physically prevent the police from

arresting Marlin. The State presented testimony that, despite her brother's efforts to restrain her from interfering, Maryellen "drape[d] herself over [the arresting officer's] back" and started scratching his arm and back. Maryellen denied assaulting the officer. She asserted that she was only trying to talk to him, to convince him that her mother was disabled and could not put her hands behind her back. Her brother and Marlin corroborated that testimony. In addition to the testimony, both sides referred to the video of the incident.

II

On an appeal of a municipal conviction to the Law Division, the Law Division judge must decide the matter de novo on the record. State v. Adubato, 420 N.J. Super. 167, 176 (App. Div. 2011). This means that the Law Division judge must independently make his or her own factual findings, rather than determining whether the findings of the municipal judge were supported by sufficient credible evidence. See ibid.; State v. Johnson, 42 N.J. 146, 157 (1964). However, in making findings about witness credibility, the Law Division judge should give "due" but "not necessarily controlling" weight to the municipal judge's credibility determinations, because the municipal judge had the opportunity to observe the testimony firsthand. Adubato, 420 N.J. Super. at 176 (quoting Johnson, 42 N.J. at 157).

When we review the Law Division judge's decision, our standard is different. We do not decide the facts de novo. Rather we decide whether the Law Division judge's factual findings are supported by sufficient credible evidence. Aduato, 420 N.J. Super. at 176; State v. Locurto, 157 N.J. 463, 470-71 (1999). Where both the municipal judge and the Law Division judge have found a witness credible, we owe particularly strong deference to the Law Division judge's credibility finding. Id. at 474. We review the Law Division judge's legal conclusions de novo. See State v. Rivera, 411 N.J. Super. 492, 497 (App. Div. 2010).

III

On her appeal, Marlin Schneeberger presents the following points of argument:

POINT I: THE COURT BELOW ERRED IN FINDING MRS. SCHNEEBERGER GUILTY OF OBSTRUCTING THE ADMINISTRATION OF LAW.

POINT II: MRS. SCHNEEBERGER'S STATEMENTS WERE IMPROPERLY ADMITTED INTO EVIDENCE BECAUSE THERE WAS NO RULE 104 HEARING AND THE STATE FAILED TO NOTIFY DEFENSE COUNSEL BEFORE TRIAL THAT IT INTENDED TO ADMIT SAID STATEMENTS.

POINT III: THE COURT BELOW FAILED TO REMEDY A CONFLICT OF INTEREST DESPITE ACKNOWLEDGING SAID CONFLICT.

Defendant's last two points are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2). However, we find the first point has merit and requires a remand.

With respect to the obstruction charge against Marlin, the Law Division judge did not make the independent factual findings required on a municipal appeal. She stated that her standard of review was de novo, but then indicated that the purpose of the municipal appeal was "to determine whether the findings could reasonably have been reached on sufficient credible evidence presented on the record." In specifically addressing the obstruction charge, the Law Division judge made the following very brief statement:

I don't find that the [municipal] court erred here beyond a reasonable doubt in finding the defendant guilty of this charge because once the officers say you're under arrest, even if they charged her, even if they're wrong, her only option at that point is to say fine, I'm going with you and I'll deal with it at a later date.

By not doing that, she did obstruct the administration of law and . . . I am finding her guilty on that charge.

That was insufficient for two reasons. First, the judge was required to make independent factual and legal findings, not decide whether the municipal judge's decision "erred . . . beyond a reasonable doubt." Second, the judge did not make specific findings as to what Marlin actually did, so as to constitute obstruction. That deficiency probably resulted from the mistaken

belief that, as to Marlin, the judge could rely on the findings of the municipal judge.

Because the Law Division did not conduct the review legally required on a municipal appeal, we are constrained to vacate Marlin's conviction and the sentence. We remand the case back to the Law Division to make a genuinely de novo review, using the correct legal standards and making independent, specific factual findings. We imply no view as to the result the Law Division should reach on remand.

IV

On her appeal, Maryellen Schneeberger raises the following points of argument:

POINT ONE: THIS COURT SHOULD REVERSE THE GUILTY FINDING ON COMPLAINT NO 2015 S 2014-000167 BECAUSE THE RULINGS OF THE LAW DIVISION ARE FATALLY INCOMPATIBLE.

POINT TWO: THE EVIDENCE PRESENTED IS NOT SUFFICIENT TO SUPPORT THE LAW DIVISION'S FINDING THAT MARYELLEN SCHNEEBERGER OBSTRUCTED THE ADMINISTRATION OF LAW PURSUANT TO N.J.S.A. 2C:29-1(A).

We find no merit in either point, because with respect to Maryellen's case, the Law Division made an independent review and made specific factual findings sufficient to sustain the conviction. A discussion of the municipal and Law Division findings illustrates our conclusions.

Addressing the charges against Maryellen, the municipal judge found that the police officers were credible witnesses and that the video corroborated their testimony that Maryellen jumped on the arresting officer's back and attempted to obstruct the arrest of her mother. The municipal judge also found that Maryellen scratched the arresting officer and therefore assaulted him.

The Law Division judge also credited the police officers' version of the events with respect to the obstruction charge against Maryellen. She found that the video showed Maryellen "did jump on the officer," thus corroborating the officer's testimony. Based on her evaluation of the evidence, the Law Division judge made specific factual findings to that effect. However, unlike the municipal judge, the Law Division judge found insufficient evidence that Maryellen scratched the officer. For that reason, the judge acquitted Maryellen of simple assault, but convicted her of obstruction.

The Law Division's factual findings are supported by sufficient credible evidence.³ We owe particular deference to her

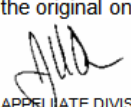
³ Appellants did not provide us with the video or any other trial exhibits. At oral argument, Maryellen's attorney candidly stated that although he did not share the Law Division judge's interpretation of the video, he conceded that one might construe it the way she did. As our Supreme Court has reminded us, it is not our role to second-guess a trial judge's interpretation of a video. See State v. S.S., 229 N.J. 360, 386 (2017).

finding that the police were credible, because the municipal judge made the same credibility finding. Locurto, 157 N.J. at 474.

Contrary to defendant's argument, the acquittal on the separate assault charge, which was premised on defendant allegedly scratching the officer, did not fatally undermine the obstruction conviction. Among other acts, the obstruction statute prohibits purposely attempting "to prevent a public servant from lawfully performing an official function by means of . . . force . . . or physical interference or obstacle." N.J.S.A. 2C:29-1(a). Jumping on the officer's back in order to interfere with an arrest constituted obstruction, even if defendant did not assault the officer by scratching him. Apparently, the officer felt rather than saw what he thought was scratching, and the judge found there was "no clear evidence" as to how he was injured. The judge could reasonably find that the officer was mistaken in concluding that Maryellen scratched him, but that he and other officers accurately perceived that Maryellen jumped on his back. Accordingly, we affirm Maryellen's conviction for obstruction.

Affirmed as to Maryellen Schneeberger. Vacated and remanded as to Marlin Schneeberger. 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