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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0978-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MAXIM COLLINS,

Defendant-Appellant.

Argued May 3, 2022 – Decided May 13, 2022

Before Judges Hoffman, Whipple and Geiger.

On appeal from the Superior Court of New Jersey, Law
Division, Passaic County, Municipal Appeal No. 6232.

John R. Klotz argued the cause for appellant.

Leandra L. Cilindrello, Assistant Prosecutor, argued
the cause for respondent (Camelia M. Valdes, Passaic
County Prosecutor, attorney; Mark Niedziela, Assistant
Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from the denial of his motion to suppress the evidence garnered while he was being followed by a citizen and after he stopped his vehicle, which resulted in defendant's arrest for driving while intoxicated (DWI), N.J.S.A. 39:4-50. We affirm.

We take the following facts from the motion record. On December 8, 2017, John B. Munro was working in New York City and after taking a bus to Secaucus, got in his car to return home to Cedar Grove. As he did every workday, he used Meadowlands Parkway to get to Route 3. While driving in the middle lane of the Meadowlands Parkway at around 9:00 p.m., Munro noticed a vehicle pass him on the right without signaling, travel "all the way . . . from the right lane over to the left lane," and "almost hit a barrier." Munro stated he was going about fifty-five to sixty miles per hour and the other vehicle was going "probably about sixty at that time." Munro stated the vehicle changed lanes what seemed like "every ten to [fifteen] seconds[,]" and almost hit the barrier to the left of the left shoulder "probably at [least] four times."

At this point, Munro put on his four-way flashers to signal cars behind him that there was a vehicle driving erratically that was "all over the road" and kept his flashers on "all the way down [Route] 46." Munro kept his distance from the vehicle for his safety and was unable to see a license plate or surmise

the make of the car at first. He called 911 based on the "erratic driving" "before [the driver] kills somebody or hurts himself." Munro gave updates to the dispatcher about their specific location on Route 3 as they drove towards an interchange with Route 46. At the interchange, the vehicle "nicked the curb" as the car "jumped onto 46." Both cars were now traveling west on Route 46 with Munro about "six, eight car lengths" behind. Near Clifton, the vehicle slowed down and Munro was able to make out the license plate and provide it to the dispatcher. Munro observed the vehicle go from the middle lane to the left, and then all the way to the right to exit "sharp[ly]" at Riverview Drive without signaling. Munro normally takes this exit to "go the back way" home and he exited, made a left at the traffic light, and "followed [defendant] right to where he parked." Munro never lost sight of the vehicle once it exited Route 46.

Munro observed the vehicle pull into a condominium development, hit and drive over a parking divider, get stuck, reverse, and finally give up before the driver exited the vehicle and walked around the parking lot in circles. Totowa Police arrived soon after and Munro pointed defendant out to officers as the driver he called 911 about. Munro testified that he was "100 percent" certain that the vehicle he pointed out to officers was the same vehicle that passed him

on the right on Route 3. Munro identified defendant in court as the driver who he witnessed exit the vehicle.

On cross examination, defense counsel attempted to highlight a supposed discrepancy in his testimony about exactly when Munro called 911. Defense counsel introduced 911 call logs of the Passaic County Sheriff's Office into evidence. Munro's cell phone number appeared in an entry at 9:09 p.m. The log indicated a call location on Allwood Road in Clifton. Munro reiterated that he first dialed 911 via an emergency button on his phone when he was near Meadowlands Parkway.

Next, defense counsel attempted to elicit testimony that Munro "pursued" defendant's vehicle rather simply "follow behind" him while on the phone with 911. Munro replied he "absolutely [did] not" pursue the vehicle. At one point in the tape, Munro estimates defendant was traveling ninety miles per hour, but Munro clarified that defendant was "speeding up, slowing down" and he was able to get the plate number when defendant slowed down.

Joanne Roth testified next for the State. Roth has been a public safety telecommunicator for twenty years in the City of Clifton and handled Munro's 911 call about defendant's erratic driving. She testified that during her call with Munro, he was able to give her the license plate number and vehicle make and

told her the vehicle was driving unpredictably and almost hit barriers several times. She instructed Munro to keep a safe following distance and turn on his flashers. On cross-examination, defense counsel asked Roth if she recalled Munro stating that defendant was traveling ninety miles per hour, but she only recalled Munro stating defendant's vehicle "was going at a high rate of speed."

Officer Joseph Parlegreco of the Totowa Police Department also testified for the State. Parlegreco testified he was dispatched to the condominium complex where defendant ended up. He saw Munro parked on the right side. Munro pointed from inside his vehicle to defendant on the left side of a driveway to the complex. The officer identified defendant as the individual he observed get out of the car that Munro pointed at on December 8. On cross-examination, Parlegreco did not remember if Munro's flashers were on when he arrived at the scene.

Parlegreco was then a seven-year veteran of the police department. He arrested defendant and charged him with DWI and refusal to submit to chemical tests, N.J.S.A. 39:4-50.4A.

Defendant moved to suppress the evidence obtained while Munro followed defendant and after he stopped. In addition to the testimony by Munro, Roth, and Parlegreco, defense counsel presented the New Jersey Police

Vehicular Pursuit Policy (Rev. July 2009) (Pursuit Policy). Defense counsel also presented a document entitled "Mandatory In-Service Law Enforcement Training" for police officers issued by the Division of Criminal Justice, which notes that "N.J.A.C. 13:81-2.2 requires call-takers and dispatchers for the 911 emergency telecommunications system to complete eight hours of in-service training on an annual basis."

Defense counsel emphasized the length of the chase, the distance travelled in such a short period of time, and the "high rate of speed." He argued that because Munro was acting at the direction of the police when he listened to the dispatcher's directions, the Pursuit Policy should be imputed to him and warranted suppression of the evidence. The court restated for its own edification: "So it's not the act of the Samaritan traveling at 100 miles an hour to keep up with the defendant, it's the fact that the Samaritan is on the phone with an arm of the police department, the dispatcher who is instructing the Samaritan to continue to pursue, put on the flashers and be identified[.]" To which defense counsel responded in the affirmative.

The State argued that the Pursuit Policy did not apply to defendant being followed by a civilian. The State noted that the Pursuit Policy refers specifically

to law enforcement and in situations where the perpetrator knows he is being pursued, which does not align with the facts in this case.

The municipal court judge issued an oral decision denying the motion. The judge rejected defendant's argument that violation of the Pursuit Policy required suppression of the evidence or provided a defense to the charges. The judge noted that the Pursuit Policy really went to liability of the officer in the event of an accident.

The judge found that Roth did not instruct Munro to pursue, keep up with, or follow defendant. Instead, she instructed Munro to engage his flashers and to avoid getting too close to defendant's vehicle.

The judge analyzed the path and location of the vehicles in relation to time during the 911 call. He found the stop was appropriate based on the preponderance of the evidence and that the Pursuit Policy did not apply to Munro. The judge noted the dispatcher was not a law enforcement officer. In any event, Roth's actions did not violate the Pursuit Policy since she did not instruct Munro to travel at an excessive rate of speed in order to keep up with defendant.

Following the denial of the suppression motion, defendant entered a conditional plea of guilty to DWI as a second offense, preserving his right to

appeal the denial of the motion. Defendant appealed the denial of his suppression motion to the Superior Court.

Defense counsel argued that Munro took "the law in his own hands" and "chased" defendant for 4.72 miles. Counsel contended that Munro actively pursued defendant in a high-speed chase." Counsel acknowledged he was unable to find any case law supporting defendant's position.

The State argued that "the citizen was not acting as the agent of the police [and] the Municipal Court made a factual finding based upon the testimony . . . of the witnesses that the citizen was acting independent of the police in basically providing the police and the dispatchers what I would call in essence a tip[.]" In addition, the State pointed out that Munro followed his regular route home that day aside from a brief stop where defendant's car ultimately ended up. The State further contended that the Pursuit Policy is meant to provide a professional consequence rather than constitutional grounds to argue Fourth Amendment violations.

The Law Division judge recounted the facts and found all three witnesses who testified before the municipal court to be credible. The judge concluded that Pursuit Policy was not relevant because "[i]t does not apply to citizens" and "[e]ven if there was a violation, it did not allow defendant to escape liability for

his criminal behavior." The judge denied the motion to suppress and returned the matter to the Municipal Court for execution and judgment." He declined to stay the decision pending appeal to this court. This appeal followed.

Appellant raises the following point for our consideration:

POLICE PARTICIPATION IN THE THIRD PARTY
HIGH-SPEED PURSUIT OF DEFENDANT BY [AN]
UNTRAINED CIVILIAN WARRANTS EXCLUSION
OF THE EVIDENCE DERIVED FROM THE MOTOR
VEHICLE STOP.

On appeal from 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 based upon the evidentiary record of the municipal court and must give due regard to the opportunity of the municipal court judge to assess the witnesses' credibility. State v. Johnson, 42 N.J. 146, 157 (1964).

In reviewing a trial court's decision on a municipal appeal, the Appellate Division must determine whether sufficient credible evidence in the record supports the Law Division's decision. Id. at 162. Unlike the Law Division, which conducts a trial de novo on the record, we do not independently assess the evidence. State v. Locurto, 157 N.J. 463, 471 (1999). We defer to the "trial courts' credibility findings that are often influenced by matters such as

observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." Id. at 474.

Under the two-court rule, only "a very obvious and exceptional showing of error" will support setting aside the Law Division and municipal court's "concurrent findings of facts." Ibid. However, where issues on appeal turn on purely legal determinations, our review is plenary. State v. Adubato, 420 N.J. Super. 167, 176 (App. Div. 2011) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Defendant contends there is "uncontroverted evidence" that shows defendant "was chased in his car at dangerous high speeds" by "a civilian, John Munro, who was acting under the guidance of police via cell phone." Defendant argues that police participating in the third-party high-speed pursuit of defendant by untrained civilian warrants the exclusion of the evidence derived from the motor vehicle stop. He further argues the 911 recording demonstrates that police were involved in and "encouraged" the "high-speed pursuit."

The evidence shows the dispatcher attempted to obtain the license plate number and make of the car to relay that information to responding officers. At no point did Roth instruct Munro to chase defendant. Defendant additionally relies on a factual finding made by the municipal court judge that at one point,

defendant was traveling upwards of ninety miles per hour. Defendant argues this alone proves that the entire chase was at excessively high speeds.¹

Defendant additionally argues that "law enforcement would not have been permitted to engage in a vehicle pursuit of this defendant for a suspected motor vehicle violation. Therefore, it logically follows police cannot indirectly engage in vehicle pursuits for which they are directly prohibited from engaging in." Finally, defendant suggests that his "imperfect driving" was caused by Munro following him.

Defendant's arguments lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(2). We reject the defendant's contentions that Munro engaged in a high-speed police chase or that he acted under police guidance.

As noted by the Attorney General in her September 17, 2009 letter distributing the Pursuit Policy to law enforcement chief executives, "[t]he policy outlines the proper procedures to be followed when police officers are

¹ While not critical to this appeal, defendant's brief inaccurately extrapolates location information based on the 911 call to conclude that the "chase" averaged more than 106 miles per hour. The municipal court judge found that Munro approached Fette Ford, a car dealership, at 0:42 seconds into the call. Fette Ford is roughly four miles from defendant's home. Defendant incorrectly uses the location where Munro first noticed defendant's car, rather than the location when the 911 call began, which yielded a considerably overstated average speed.

confronted with the possibility of pursuing a fleeing vehicle." The Pursuit Policy is directed at police officers and their use of police vehicles, not civilians or civilian vehicles. Indeed, the Pursuit Policy defines pursuit driving as:

an active attempt by a law enforcement officer operating a motor vehicle and utilizing emergency warning lights and an audible device to apprehend one or more occupants of another moving vehicle when the officer reasonably believes that the driver of the fleeing vehicle is aware of the officer's attempt to stop the vehicle and is resisting apprehension by increasing vehicle speed, ignoring the officer or otherwise attempting to elude the officer.

The Pursuit Policy authorizes a police officer to engage in a high-speed pursuit if the officer reasonably believes the suspect has committed a second- or first-degree offense, or certain other enumerated offenses, including automobile theft, or if the officer reasonably believes the suspect posed an immediate threat to public safety. Before engaging in the pursuit, the pursuing and supervising officers must also consider the degree of risk created by the pursuit. Once the decision to pursue is made, the Pursuit Policy requires officers to immediately activate their emergency lights, siren, and headlights, and continually apprise communications officers of "pertinent information" including their speed.

The entirety of the Pursuit Policy makes clear that the elements of a police pursuit are: (1) an attempt by a police officer to apprehend someone; (2) the

officer has a reasonable belief that the suspect is aware of the attempt to stop him; and (3) the suspect ignores the officer's attempt to stop him and decides to initiate a pursuit. "The critical element in this definition is the officer's reasonable belief that the pursued driver is aware of a police attempt to stop the vehicle and the pursued driver 'is resisting apprehension by increasing vehicle speed, ignoring the officer or otherwise attempting to elude the officer.'" Torres v. City of Perth Amboy, 329 N.J. Super. 404, 407 (App. Div. 2000). None of those elements were present in this case.

Munro is not a law enforcement officer. Neither is Roth. Munro was driving his own personal vehicle, not a police car. His vehicle was not equipped with emergency lights or a siren. Munro did not attempt to overtake defendant's vehicle or other try to stop him. He followed defendant at several car length's distance. No accident occurred during that sequence. When following defendant, Munro was taking the same route he used when returning home from work.

Moreover, there is no evidence in the record that defendant knew he was being followed by Munro, let alone that defendant was driving so fast to elude Munro. The municipal court judge found Roth never told Munro to remain in pursuit of defendant's vehicle. On the contrary, she urged Munro to use caution

by repeatedly telling him to keep a safe distance. When police arrived, defendant's vehicle was already stuck on a parking barrier and defendant had previously exited the vehicle.

More fundamentally, the Pursuit Policy regulates police conduct, not the actions of civilians. While violation of the Pursuit Policy may result in disciplinary action or be relevant to potential civil liability in the event of an accident, violation of the Pursuit Policy does not afford a defense to underlying criminal charges or motor vehicle offenses committed by the defendant who is pursued.

The municipal court and Law Division judges correctly denied defendant's motion to suppress. We discern no abuse of discretion or legal error. Defendant does not otherwise challenge the motor vehicle stop, his arrest, his conviction, or his sentence.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION