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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1082-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RICHARD D. LORA,

Defendant-Appellant.

Argued May 16, 2023 – Decided June 13, 2023

Before Judges Messano and Perez-Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Municipal Appeal No. 21-03.

John R. Klotz argued the cause for appellant.

Lillian Kayed, Assistant Prosecutor, argued the cause for respondent (Esther Suarez, Hudson County Prosecutor, attorney; Lillian Kayed, on the brief).

PER CURIUM

Following a trial de novo in the Law Division, defendant Richard Lora appeals his convictions for driving while intoxicated (DWI), N.J.S.A. 39:4-50, and refusal to submit to a breath test, N.J.S.A. 39:4-50.4a. We affirm.

We derive the following facts from the trial record. On July 1, 2018, at approximately 1:46 a.m., police officers Carlos Henriquez and Ruben Funes observed a vehicle being driven without headlights illuminated. A mobile data terminal search indicated that a Luis Lora owned the vehicle and had either a license or registration suspension. The officers effectuated a motor vehicle stop, and defendant pulled into a Quick Chek parking lot. Defendant advised he was driving his brother, Luis Lora's, vehicle.

Officer Henriquez approached the vehicle and observed defendant was "fumbling through paperwork in the glove compartment," had "slurred speech . . . bloodshot eyes, watery eyes, droopy eyelids," and had "a strong odor" of alcohol emanating "from his breath." Defendant denied driving without headlights on. When asked if he had consumed any drinks, defendant responded he "had a few Coors Light[s]."

Officer Henriquez performed three field sobriety tests at the scene: the horizontal nystagmus test, the walk-and-turn test, and the one-leg-stand

balancing test. Officer Henriquez determined defendant had failed all three tests and placed him under arrest.

At headquarters, the arresting officers placed defendant under a twenty-minute observation period. Prior to seeking a breath sample, Officer Henriquez and back-up Officer Yousef Awadelluh played an audio recording of the Standard Statement for Operating Motor Vehicles for the State of New Jersey (Standard Statement). After the Standard Statement was completed, defendant was asked to provide a breath sample. Defendant responded, "what breath samples?" Defendant claimed he could not understand the recording because the volume was too loud. Officer Awadelluh informed defendant "it [was] required by law that he provide a breath sample." Defendant was asked if he wanted to hear the statement again, and he indicated yes. Defendant expressed concern he could lose his "license for twenty years." After the officers played the recording for a second time, he stated, "[n]o, I want my lawyer first," and that "he knew his rights and wanted to speak to a lawyer before he provided a breath sample." Defendant ultimately refused to provide a breath sample. Officer Henriquez read defendant his Miranda¹ warnings and defendant invoked his right to remain silent.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

Defendant was charged and then appeared before the West New York Municipal Court on charges of DWI, N.J.S.A. 39:4-50, and refusal to submit to a breath test, N.J.S.A. 39:4-50.4a.² The municipal court judge denied defendant's motion to suppress the evidence based on an unlawful stop and an unlawful arrest. The judge found Officer Henriquez's testimony was credible and provided sufficient evidence to support the stop and arrest. At trial, Officer Henriquez, Officer Awadelluh, Officer Funes, and defendant testified. Defendant attempted to introduce a "video showing how [the vehicle's headlights] never go off," which had not been provided in discovery. The State objected. The judge found, "It would be unfair to the State for the defendant to bring a video at the conclusion of the State's case." Finding the officers' testimony credible, the municipal court judge convicted defendant of DWI and refusal to submit to a breath test.

Defendant appealed to the Law Division. In an oral decision after a de novo trial, the Law Division judge rejected defendant's reprised motion to suppress, finding Officer Henriquez was a credible witness, the evidence

² Defendant was also charged with driving while intoxicated within 1,000 feet of a school, N.J.S.A. 39:4-50(g)(1) (since repealed), violation of consent to take samples of breath, N.J.S.A. 39:4-50.2, and illuminating devices required, N.J.S.A. 39:3-47, which are not issues on appeal.

demonstrated a reasonable articulable suspicion for the vehicular stop, and probable cause existed for the arrest. The judge was unpersuaded by defendant's arguments as to the insufficiency of the sobriety tests and his unsupported alleged physical impairments. In addressing the DWI charge, the judge found: "under the totality of these circumstances," defendant was guilty beyond a reasonable doubt based on Officer Henriquez's observations of defendant's demeanor, physical appearance and the failed sobriety tests. As to the refusal, the judge found the pre-recorded Standard Statement "to be in compliance with the [refusal] statute,"³ and "it is clear that [defendant] refused the Breathalyzer test." Lastly, as to the headlight evidence, the judge de novo found, "the information about the automatic headlights submitted is not persuasive," as the automatic headlights "could have been shut off."⁴ The judge deemed the evidence not relevant. The defendant was found guilty of DWI and refusal to

³ The Law Division judge noted the State of New Jersey Attorney General's website provides the recordings, which are in multiple languages. Matthew J. Platkin: Attorney General, DUI Statements (May 30, 2023), <https://www.njoag.gov/about/divisions-and-offices/division-of-criminal-justice-home/police-training-commission/dui-statements/>

⁴ The defense exhibits submitted in the municipal appeal, the video evidence and vehicle manual, were not provided on appeal. The transcript, dated September 27, 2021, references an exhibit B, a "manufactured video." The judge's decision demonstrates consideration of "information about the automatic headlights submitted."

submit to a breath test. The judge imposed the same sentence, as the municipal judge, for the convictions. This appeal followed.

On appeal, defendant raises the following arguments:

I. DEFENDANT'S MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED INASMUCH AS THE MOTOR VEHICLE STOP WAS IMPROPER AND PROBABLE CAUSE TO ARREST WAS LACKING.

II. DEFENDANT [SIC] SHOULD HAVE BEEN FOUND NOT GUILTY OF N.J.S.A. 39:4-50 OPERATING UNDER THE INFLUENCE OF ALCOHOL INASMUCH AS THE EVIDENCE FAILED TO ESTABLISH GUILT [SIC] BEYOND A REASONABLE DOUBT.

III. DEFENDANT SHOULD BE FOUND "NOT GUILTY" OF THE REFUSAL CHARGE INASMUCH AS HE WAS NOT PROPERLY READ THE N.J. STANDARD STATEMENT.

IV. THE COURT BELOW IMPROPERLY DENIED VIDEO EVIDENCE OF DEFENDANT'S DASHBOARD TO DEMONSTRATE THAT THE OFFICER'S TESTIMONY WAS INACCURATE/FALSE.

"[A]ppellate review of a municipal appeal to the Law Division is limited to 'the action of the Law Division and not that of the municipal court.'" State v. L.S., 444 N.J. Super. 241, 247 (App. Div. 2016) (quoting State v. Palma, 219 N.J. 584, 591-92 (2014)). The Law Division judge must decide the matter de

novo on the record. State v. Monaco, 444 N.J. Super. 539, 549 (App. Div. 2016) (citing R. 3:23-8(a)(2)). "The [Law Division] judge[] [is] obliged to make independent findings of fact" rather than engage in a review of the sufficient credible evidence. State v. Heine, 424 N.J. Super. 48, 58 (App. Div. 2012); see also State v. Johnson, 42 N.J. 146, 157 (1964).

Our "review is limited to 'whether the findings made could reasonably have been reached on sufficient credible evidence present in the record.'" State v. Kuropchak, 221 N.J. 368, 382-83 (2015) (quoting Johnson, 42 N.J. at 162.) In making findings about witness credibility, "the Law Division judge must give 'due, although not necessarily controlling, regard to the opportunity of the [municipal judge]'" to make credibility determinations. State v. Adubato, 420 N.J. Super. 167, 176 (App. Div. 2011) (quoting Johnson, 42 N.J. at 157). 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 findings. State v. Robertson, 228 N.J. 138, 147 (2017). "We owe no deference, however, to the 'trial court's interpretation of the law . . . and the consequences that flow from established facts[,]'" which we review de novo." L.S., 444 N.J. Super. at 248 (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

We discern no merit in defendant's contentions that the Law Division judge erred in denying the motion to suppress because the evidence did not support a reasonable articulable suspicion for the motor vehicle stop, nor probable cause for the arrest. "Law enforcement officers 'may stop motor vehicles where they have a reasonable or articulable suspicion that a motor vehicle violation has occurred.'" State v. Barrow, 408 N.J. Super. 509, 517 (App. Div. 2009) (quoting State v. Murphy, 238 N.J. Super. 546, 553 (App. Div. 1990)). "To establish reasonable suspicion, 'the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the suspicion." State v. Pitcher, 379 N.J. Super. 308, 315 (App. Div. 2005) (quoting State v. Pineiro, 181 N.J. 13, 21 (2004)). When reviewing a motion to suppress, we "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Ahmad, 246 N.J. 592, 609 (2021) (quoting State v. Elders, 192 N.J. 224, 243 (2007)).

The judge found Officer Henriquez's testimony credible. The judge found Officer Henriquez observed defendant driving the vehicle at 1:46 a.m. without illuminated headlights, in violation of N.J.S.A. 39:3-47, and that the vehicle's owner had either a license or registration suspension. The judge's findings are

supported by sufficient credible evidence in the record and provided a reasonable articulable suspicion for the vehicle stop.

"In assessing whether probable cause exists, 'courts must look to the totality of the circumstances and view those circumstances from the standpoint of an objectively reasonable police officer.'" State v. Diaz, 470 N.J. Super. 495, 529 (App. Div. 2022) (quoting State v. Gibson, 218 N.J. 277, 293 (2014)). "[C]ourts are to give weight to 'the officer's knowledge and experience' as well as 'rational inferences that could be drawn from the facts objectively and reasonably viewed in light of the officer's expertise.'" State v. Citarella, 154 N.J. 272, 279 (1998) (quoting State v. Arthur, 149 N.J. 1, 10-11 (1997)). "Ultimately, '[p]robable cause exists where the facts and circumstances with . . . [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a [person] of reasonable caution in the belief that an offense has been or is being committed.'" Diaz, 470 N.J. Super. at 529 (alterations in original) (quoting State v. Moore, 181 N.J. 40, 46 (2004)).

Regarding probable cause for the arrest, the judge found Officer Henriquez observed defendant fumbled with his documents and had physical indicia of intoxication. Further, the judge found defendant had an odor of

alcohol, admitted to drinking alcohol prior to the stop and failed to satisfactorily complete the sobriety tests. We conclude, the trial judge's independent findings are based on sufficient credible evidence in the record and demonstrated probable cause for the arrest.

We discern defendant's argument that there is insufficient evidence to sustain a finding of guilt, beyond a reasonable doubt, for operating a vehicle under the influence, is also without merit. A person is guilty of DWI if he or she "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." N.J.S.A. 39:4-50(a). "Under the influence" of alcohol means a driver's "physical coordination or mental faculties are deleteriously affected." State v. Nunnally, 420 N.J. Super. 58, 67 (App. Div. 2011) (first quoting N.J.S.A. 39:4-50, and then quoting State v. Emery, 27 N.J. 348, 355 (1958)). "In a case involving intoxicating liquor, 'under the influence' means a condition which so affects the judgment or control of a motor vehicle operator 'as to make it improper for him to drive on the highway.'" State v. Cryan, 363 N.J. Super. 442, 455 (App. Div. 2003) (quoting Johnson, 42 N.J. at 165); see also State v. Oliveri, 336 N.J. Super. 244, 251-52 (App. Div. 2001) (sustaining DWI conviction based on officer's observations of

watery eyes, slurred and slow speech, staggering, inability to perform field sobriety tests, and defendant's admission to drinking alcohol earlier in the day).

Proof of intoxication can be based on a police officer's observations. See State v. Slinger, 281 N.J. Super. 538, 543 (App. Div. 1995). A defendant's demeanor, physical appearance, slurred speech, and bloodshot eyes, together with an odor of alcohol, are sufficient to sustain a DWI conviction. See State v. Bealor, 187 N.J. 574, 588-89 (2006); see also Oliveri, 336 N.J. Super. at 251-52.

The judge found Officer Henriquez observed defendant's manifestations of intoxication because defendant fumbled with his paperwork, had slurred speech, bloodshot eyes, droopy eyelids, and a strong odor of alcohol. The judge noted Officer Henriquez's advanced DWI training and experience and found credible Officer Henriquez's determination that defendant had failed the field sobriety tests. The record amply supports the judge's finding that defendant was driving while under the influence. We conclude the findings are based on sufficient credible evidence to support defendant's conviction of DWI beyond a reasonable doubt.

Defendant next argues the State failed to read the Standard Statement; therefore, the State did not meet its burden of proof beyond a reasonable doubt

that he refused to submit to a breath test. We again disagree. Under the implied consent statute, "[a] person who operates a motor vehicle on any public road, street or highway . . . in this State shall be deemed to have given his [or her] consent to the taking of samples of his [or her] breath for the purposes of making chemical tests to determine the content of alcohol in his blood." N.J.S.A. 39:4-50.2(a). Refusal is "a separate and distinct offense from [the] conviction of drunk driving." State v. Wright, 107 N.J. 488, 504 (1987).

The Court has outlined the four elements to sustain a conviction for refusal to submit to a breath test as:

- (1) the arresting officer had probable cause to believe that defendant had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol or drugs;
- (2) defendant was arrested for [DWI];
- (3) the officer requested defendant to submit to a chemical breath test and informed defendant of the consequences of refusing to do so; and
- (4) defendant thereafter refused to submit to the test.

[State v. Marquez, 202 N.J. 485, 503 (2010).]

If a defendant refuses to provide a breath sample, a police officer must read the Standard Statement, which "inform[s] the person arrested of the consequences of refusing to submit to such test." N.J.S.A. 39:4-50.2(e).

Defendant's contention that he cannot be found guilty because he was not read the Standard Statement is unavailing. Defendant was provided the pre-

recorded statement on two occasions. The judge found defendant's testimony that he did not understand, "hard to believe." Officer Awadelluh testified defendant stated, after he heard the recording, that he could lose his license for twenty years, and that he was not refusing but wanted his lawyer first. The judge found defendant's remarks demonstrated "he understood." The judge's findings that the pre-recorded Standard Statement was sufficient to satisfy the statute, N.J.S.A. 39:4-50.4a, and that the facts support a conviction beyond a reasonable doubt for refusal to provide a breath sample, are clearly based on sufficient credible evidence.

Defendant lastly contends the court incorrectly denied the admission of video evidence which would have impeached Officer Henriquez's testimony. "A trial court's resolution of a discovery issue is entitled to substantial deference and will not be overturned absent an abuse of discretion." State v. Stein, 225 N.J. 582, 593 (2016). Rule 7:7-7(c) requires a defendant to provide the municipal prosecutor with reciprocal discovery, including "video and sound recordings . . . within 20 days of the prosecuting attorney's compliance with defendant's discovery request." Here it is undisputed the video was not provided to the State in discovery.

The record indicates the judge considered the evidence and arguments de novo and found "the information about the automatic headlights submitted [was] not persuasive." The judge found the video taken after the incident was not relevant evidence to impeach Officer Henriquez as the headlights "could have been shut off" at the time defendant was observed driving. We discern no abuse of discretion.

Defendant's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION