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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 NO. A-1816-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MARY B. COLVELL,

Defendant-Appellant.

Submitted June 7, 2023 – Decided June 23, 2023

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Municipal Appeal No. 2021-04.

Mary B. Colvell, appellant pro se.

Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors, attorneys for respondent (Timothy J. McNichols, on the brief).

PER CURIAM

Defendant Mary B. Colvell appeals from a February 1, 2022 Law Division order affirming an April 28, 2021 municipal court decision finding her in violation of sections 3-10.4(a) and 3-11.4 of the Hightstown Borough Municipal Code. We affirm.

Defendant's property is located at 128 Broad Street in Hightstown Borough. In August 2019, George Chin, the Hightstown Borough Code Enforcement Officer, received a complaint regarding the improper storage of vehicles on defendant's property. Chin observed the violations from a church parking lot located next to defendant's property where he had an unobstructed view. Specifically, Chin observed multiple vehicles, some with license plates some without, as well as a boat, parked on the grass in violation of sections 3-10.4(a) and 3-11.4 of the Hightstown Borough Municipal Code.

Section 3-10.4(a) of the Hightstown ordinance provides

[n]o person in . . . control of property within the Borough, . . . as [an] owner . . . shall allow unregistered or uninspected or partially dismantled or non-operating or wrecked or junked or discarded vehicles to be parked or stored anywhere on private property except on a paved or stoned driveway or an approved extension of a driveway

[Hightstown Borough, N.J., Code § 3-10.4(a).]

Section 3-11.4 states "[r]egistered, operating vehicles shall be parked or stored on a paved or stone driveway or an approved extension of a driveway. If a vehicle is parked on private property in any other manner, then it shall be considered a violation of this [s]ection." Id. § 3-11.4.

On the day Chin observed the violations, he documented them by taking photographs. He also issued two notice of violation letters to defendant, which provided her forty-eight hours to remediate the conditions on her property. Defendant confirmed receipt of the two letters but stated she was "entitled to due process," and requested a hearing. Chin did not respond to defendant's correspondence, and she failed to remediate the violations within the forty-eight-hour timeframe.

In July 2020, Chin returned to defendant's property after receiving additional complaints regarding the same violations for improperly storing vehicles at her home. Again, Chin took photographs of the violations, and observed the vehicles appeared to be parked in the same locations as the previous year.

About a month later, after confirming the violations had not been remediated, Chin issued defendant two summonses for violating sections 3-10.4(a) and 3-11.4 of the ordinances. Defendant confirmed receipt of the

summonses but instead of agreeing to remove and register her vehicles, she responded that Chin "failed to acknowledge or discuss any of the information in [her] letters." Defendant further requested the name of the complainant "so that [she] c[ould] address their motives." Chin responded to defendant that the Borough does not provide the identity of complainants. In November 2020, defendant pled "not guilty" to the violations and requested a trial in the municipal court.

Prior to trial, defendant filed an application to recuse the assigned municipal court judge as he served on the town council when the applicable ordinances were adopted, and also because she previously had family matters heard in the Hightstown Municipal Court and was "concerned about getting a fair trial." Defendant also filed a motion to suppress evidence and sought a dismissal with prejudice pursuant to Rule 7:5-2(a) arguing: (1) she was denied due process to contest the summonses against her; (2) Chin effectuated an illegal search of her property by taking pictures of the purported violations; and (3) the prosecution withheld necessary discovery, specifically the identity of the complainant and in doing so denied defendant's rights under the Confrontation Clause, U.S. Const., amend. VI; N.J. Const. art. 1, ¶ 10. In support of its

opposition to defendant's motion the State called Chin as a witness who testified regarding his investigation and issuance of the summonses.

After considering the parties' submissions, Chin's testimony and oral arguments, the municipal court judge denied defendant's motions. Following the judge's decision, the matter proceeded to a two-day trial¹ where defendant, Brandi Bates,² and Chin testified.

Chin reiterated his testimony provided during the motion hearing and stated he took the photographs from the church parking lot, and never entered defendant's property. He also testified there were no fences obstructing his view, and the vehicles were not parked on a paved driveway, but rather on grass. Further, Chin stated many of the cars and trucks did not possess license plates, although he acknowledged at least one car did.

Defendant testified on her own behalf and did not deny violating the ordinances but rather contended both her home and the parked cars and trucks

¹ On the second day of the trial, defendant moved for a mistrial arguing prosecutorial misconduct, which the judge denied.

² Bates testified she installed defendant's home security system and observed recordings of defendant's property on the date Chin issued the summonses. As she did not personally observe defendant's property that day, but only reviewed the video recordings, the judge concluded her testimony was "hearsay" and excluded it from evidence.

were her "private property" and Hightstown's intent to remove the vehicles was "unheard of." She also continued to maintain Chin's photographing of her home from the church parking lot constituted an illegal search and seizure but admitted on cross-examination the vehicles and boat on her property were not on any paved driveway, rather parked on "grass and dirt."

After considering the testimonial and documentary evidence, the municipal court judge found defendant guilty of violating both ordinances. The judge also imposed a \$2,000 fine plus \$33 in court costs for each of the summonses. He provided, however, if defendant "rectified and abated" the violations within thirty days, a self-executing \$1,900 waiver per summons would occur, "meaning that a fine [of] . . . \$100 for each would be applicable." The judge further provided if defendant rectified and abated the violations between thirty and sixty days, a \$1,000 waiver for each summons would apply, and if abatement occurred between sixty and ninety days, a \$500 waiver would be imposed.

Defendant thereafter filed a timely appeal seeking a de novo review in the Law Division, pursuant to Rule 3:23-8(a)(2). She also filed an unopposed motion to stay the municipal court decision pending appeal, which the court granted.

In November 2021, a de novo trial proceeded before Judge J. Adam Hughes. Defendant argued there were "alterations" in at least one of the transcripts, and therefore the record below required supplementation. She also reprised many of her unsuccessful arguments raised in the municipal court including her claim she was denied full discovery as the identity of the anonymous complainant was not provided to her, which in turn denied defendant's rights under the Confrontation Clause, and that Chin's photographing her home constituted an unconstitutional search and seizure. Defendant also claimed the judge erred in denying her recusal application based on his time on the town council and because she previously had family matters decided in the municipal court. She further contended the municipal court judge erred in denying her motions to suppress and for a mistrial. Finally, defendant argued the ordinances themselves were unconstitutionally vague, and Hightstown's enforcement denied her due process.

After considering the parties' arguments and conducting a de novo review of the municipal court record, Judge Hughes affirmed the municipal court's decision, and detailed his reasoning in a comprehensive oral opinion in which he addressed, and rejected, each of defendant's arguments. First, the judge concluded there was no basis to supplement the record, as defendant's arguments

regarding alterations or issues with any of the transcripts were "simply speculative," and noted he "cannot find that there[] [has] been prejudice or that there[] [is] a need to supplement."

With respect to defendant's argument regarding the withholding of discovery, specifically the identity of the original complainant, the judge concluded the municipal court judge acted appropriately, and relying on State v. Milligan, 71 N.J. 373 (1976), explained as the anonymous complainant participated only in the preliminary stages of Chin's investigation, disclosure was not required. Further, the judge concluded defendant's rights under the Confrontation Clause were satisfied as Chin testified as a witness and was subject to cross-examination.

As to the municipal court judge's refusal to recuse himself, Judge Hughes concluded his recusal was not required based solely on defendant's contention that unrelated family matters were previously heard in the municipal court. The judge further determined the municipal court judge's prior service on the town council was insufficient to require his recusal. Judge Hughes also explicitly found "nothing presented suggest[ed] an unfair or biased hearing."

The judge also rejected defendant's constitutional challenges to Chin's "search" of her property, as there was credible testimony that the violations

could be seen unobstructed from the church parking lot, and that Chin never entered her property to take the photographs. The judge further determined there was no evidence of an "obvious failure of justice" requiring a mistrial. He also determined the ordinances were not unconstitutionally vague, as there was "nothing unclear" about them, and the question in this matter was "whether or not vehicles were parked on a stone or paved driveway," and relying both on Chin's testimony, and the photographs in the record, they "unequivocally" were not.

Finally, the judge resentenced defendant to the same \$2,000 fine for each summons, however, he slightly altered the municipal court's sentence regarding the applicable waiver provisions based on when defendant abated the violations. Specifically, Judge Hughes ordered if defendant abated the violations within sixty days a \$1,900 waiver would apply and if she abated the violations after sixty days and before ninety days, a \$500 waiver would apply. If defendant, however, failed to abate the violations after ninety days, the full \$2,000 fine would apply. This appeal followed.³

³ Defendant filed a motion to stay her sentence pending appeal, which we denied.

Before us, defendant raises many of the same arguments rejected by the municipal court and Judge Hughes, specifically arguing:

- I. THE LAW DIVISION FAILS IN ITS REVIEW TRIAL DE NOVO
- II. THE LAW DIVISION FAILS TO PROPERLY ADDRESS THE RIGHT OF MUNICIPAL APPEAL PERMITS SUPPLEMENTATION OF THE RECORD WHEN THE RECORD IS UNINTELLIGIBLE OR TO CORRECT LEGAL ERRORS IN THE PROCEEDINGS BELOW
- III. THE LAW DIVISION FAILS TO PROPERLY ADDRESS THE DISCOVERY VIOLATIONS
- IV. THE LAW DIVISION FAILED TO ADDRESS JUDICIAL RECUSAL INFORMATION THAT PRECLUDED A FAIR AND UNBIASED HEARING AND JUDGMENT
- V. THE LAW DIVISION FAILED TO PROPERLY REVIEW THE MOTION TO SUPPRESS EVIDENCE AND DISMISSAL AT THE MUNICIPAL COURT
- VI. THE LAW DIVISION FAILED TO PROPERLY ADDRESS THE BOROUGH CODE ENFORCEMENT VIOLATED THE FOURTH AMENDMENT, FOURTEENTH AMENDMENT, THE NEW JERSEY CONSTITUTION, CASE LAW AND PRIVATE PROPERTY RIGHTS IN THEIR ADMINISTRATION AND ENFORCEMENT
- VII. THE LAW DIVISION DENIED THE MISTRIAL AND REFERENCES MUNICIPAL

DUE PROCESS DENIED BY CODE
ENFORCEMENT, PROSECUTOR, AND
COURT BUT NEVER PROPERLY
ADDRESSES THE ISSUES

- VIII. THE LAW DIVISION FAILED TO CONSIDER
HOW THE BOROUGH ORDINANCES
VIOLATED THE U.S. CONSTITUTION, THE
NEW JERSEY CONSTITUTION, ARE
IMPERMISSIBLY VAGUE, NOT PROPERLY
CONSTRUED, AND VIOLATE DUE
PROCESS
- IX. PROSECUTOR [CHANGED] FROM
REPRESENTING STATE OF NEW JERSEY
TO REPRESENTING BOROUGH OF
HIGHTSTOWN AT THE LAW DIVISION
- X. THE MOTIONS TO STAY PENDING APPEAL
WERE NOT PROPERLY REVIEWED

Defendant also raises the following points in her reply brief:

- I. THE LEGAL ARGUMENT IN [COUNSEL'S]
BRIEF, FOR THE BOROUGH OF
HIGHTSTOWN IS ILLEGAL BUT ALSO
FLAWED
- II. THE PREJUDICIAL DESIGNATION AND
THE BRIEFS FILED BY THE BOROUGH
ATTORNEY LABELED THE CHURCH
PROPERTY; AND THE COURTS FAILED TO
CORRECT AND ADDRESS THE CHURCH'S
PRIVATE PROPERTY STATUS THEREBY
TAINTING THIS WHOLE CASE MATTER
- III. [COUNSEL'S] OPPOSITION TO THE
MOTION TO SUPPRESS IS FLAWED AND

SHOULD NOT HAVE BEEN GRANTED BY
THE LAW DIVISION

IV. [DEFENDANT] IS THE PREVAILING PARTY
IN THIS MATTER

We review the Law Division's findings in a trial de novo to determine "whether there is 'sufficient credible evidence . . . in the record' to support the trial court's findings." State v. Robertson, 228 N.J. 138, 148 (2017) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). "[A]ppellate 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." State v. Locurto, 157 N.J. 463, 474 (1999). We review, however, the Law Division's legal rulings, de novo. State v. Kuropchak, 221 N.J. 368, 383 (2015).

Applying those standards here, we affirm substantially for the reasons expressed by Judge Hughes in his comprehensive oral opinion. The judge's conclusion that Chin's testimony was credible is supported as to each summons by the photographs admitted as exhibits, which corroborated his description of the premises. Thus, the record contained ample credible evidence to support Judge Hughes's findings of fact and legal conclusions. Robertson, 228 N.J. at

148. Defendant's legal attacks on the judge's decision simply have no merit. 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