

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0206-08T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DAVID CORWIN,

Defendant-Appellant.

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Argued: October 15, 2009 - Decided: January 6, 2010

Before Judges Stern and Graves.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Municipal Appeal No. 5868.

Vincent James Sanzone, Jr., argued the cause for appellant.

Reza Mazaheri, Assistant Prosecutor, argued the cause for respondent (Theodore J. Romankow, Union County Prosecutor, attorney; Sara B. Liebman, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from a judgment of conviction following a trial de novo finding him guilty of harassment, N.J.S.A. 2C:33-

4(b).<sup>1</sup> He was sentenced to 60 hours of community service and to pay a \$500 fine. Defendant argues that the "state failed to present any evidence that defendant's alleged conduct was harassing to [the] complainant" and "the Law Division erred by considering motive evidence."

Defendant contends that the evidence was insufficient as a matter of law to prove an offensive touching or a purpose to harass. He contends that the victim's testimony that defendant, a psychiatrist, rubbed her arm, kissed her neck, brushed her hair back and placed his hand on her hand during an independent medical examination (IME) conducted for a motor vehicle carrier, was insufficient because she did not expressly testify that she found the acts to be "offensive."

We review the conviction on the trial de novo. Judge Joseph P. Donohue in the Law Division rendered complete findings of fact and conclusions of law based on determinations of credibility. He deferred to the determinations of the municipal court judge and made his own similar determinations. He found the victim, Ms. Holder, to be "a credible and believable witness," and he did so for specific reasons, having been "impressed by the level of detail" in her testimony. Similarly,

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<sup>1</sup> The matter was downgraded as de minimus by order of the Assignment Judge to a violation of N.J.S.A. 2C:33-4.

like the municipal judge but also independently, Judge Donohue found defendant "was not a credible witness," and that defendant's conduct was inconsistent with the role of a doctor conducting an IME, and that it constituted "an overture to engage in some type of relationship." In essence, Judge Donohue found defendant's testimony "was clearly [and] materially inconsistent with his actions." Based on the credibility findings the judge found defendant "was guilty of harassment," finding by proof "beyond a reasonable doubt that he touched Ms. Holder offensively." Finally, the judge expressly found Ms. Holder was alarmed particularly because defendant approached her again after he knew she did not consent to the offensive touching. He also expressly found "defendant knew that the touching was offensive." Judge Donohue found that defendant's purpose in touching was to harass. According to the judge:

His motivation here was inter-relationship, sexual in nature. But his purpose after he knew that his touching was not consensual was to continue to engage in the continued offensive touching. And he knew that she was alarmed or she was annoyed by her reactions to it.

While the judge may have also said some things which are arguably inconsistent or different from these findings, the essential findings were clear, concise and supported by the record. Moreover, based on the credibility findings and the

conclusions based on them, there is no basis on which to disturb the conviction. See State v. Locurto, 157 N.J. 463, 474 (1999); R. 2:11-3(e)(2); N.J.S.A. 2C:33-4(b). See also State v. Hoffman, 149 N.J. 564, 577 (1997); see also H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003). We are satisfied that Judge Donohue said enough to reflect that he found that the State proved all elements of the subsection under which the defendant was convicted.

We find no abuse of discretion in the judge's consideration of the fact defendant wrote two prescriptions for Ms. Holder and gave her a follow-up appointment. To the limited extent the Law Division considered those facts, they were relevant to the fact defendant's actions were "clearly inconsistent with his report and obligation" relevant to the IME, and to the issue of credibility, in terms of the motive or reasons for doing so. Defendant testified, during his own direct testimony, that although she was in his office for an IME evaluation, he became concerned for her mental health and took action out of professional concern as a psychiatrist, not for any improper motivation. The issue of motivation was therefore a relevant question.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION