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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0694-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

RAYMOND KEARNEY,

Defendant-Appellant.

Submitted March 28, 2017 – Decided May 3, 2017

Before Judges Messano and Grall.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 14-02-0100.

Joseph E. Krakora, Public Defender, attorney for appellant (Daniel S. Rockoff, Assistant Deputy Public Defender, of counsel and on the brief).

Grace H. Park, Acting Union County Prosecutor, attorney for respondent (Meredith L. Balo, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant Raymond Kearney appeals the denial of a motion to suppress. He was indicted for and pled guilty to violating N.J.S.A. 2C:40-26(b), a crime of the fourth-degree that applies to one who operates a motor vehicle during a period of license suspension or revocation that was imposed for a second or subsequent violation of N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a. He also pled guilty to a motor vehicle violation, driving while under a license suspension, contrary to N.J.S.A. 39:3-40, which was charged in a traffic ticket (2012-X-501492). In return for his pleas, the State agreed to dismiss a traffic ticket charging defendant with speeding, N.J.S.A. 39:4-98 (2012-X-501492) and to recommend the minimum-mandatory sentence for the fourth-degree crime.

In conformity with the plea agreement, the judge dismissed the speeding ticket and sentenced defendant to the minimum-mandatory sentence — "a fixed minimum" of 180 days during which he is not eligible for parole. N.J.S.A. 2C:40-26(c). The judge also suspended defendant's license for twelve months and imposed

the monetary penalties and assessments required by N.J.S.A. 2C:43-3.1, -3.2 and -3.3.[1]

Defendant presents one argument for our consideration on appeal:

> BECAUSE THE STATE DID NOT SHOW THAT THE WARRANTLESS STOP OF DEFENDANT'S VEHICLE WAS OBJECTIVELY REASONABLE, THE COURT ERRED IN DENYING THE MOTION TO SUPPRESS.

Because the stop was supported by reasonable suspicion and there is no dispute that the ticket charging defendant with driving with a suspended license was supported by probable cause, we affirm.

Testimony on defendant's motion to suppress was taken and argument was heard on May 18, 2015. Sergeant David Belle of the Plainfield Police Department was the only witness. The officer had been assigned to traffic patrol for all but one and one-half of his seventeen years with the Department, and had issued 150 to 200 speeding tickets during that time.

On May 22, 2013, Sergeant Belle was "doing radar enforcement" and saw a green Oldsmobile "speeding down" the street. His patrol car was stationary at the time. Based on

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[1] The judge indicated his intention to merge the convictions for the fourth-degree crime and the traffic ticket and to impose the fines for the motor vehicle violation. The judgment does not reflect those determinations.

the distance defendant closed during the ten seconds the officer watched the car approach, used his radar device, and obtained a reading of thirty-seven miles per hour, the officer believed defendant was driving above the twenty-five mile per hour limit.[2]

On that basis, the officer stopped the car and issued defendant a ticket for driving thirty-seven miles per hour in a twenty-five mile per hour zone. The officer also issued a traffic ticket for driving with a suspended license. Because defendant did not challenge the basis for the second ticket, no evidence pertaining to that charge was introduced at the suppression hearing.

The Union County Prosecutor's Office presented the case for indictment after a review of defendant's driving abstract in municipal court disclosed that defendant had two license suspensions, both based on convictions for driving while intoxicated violations, which qualified him for prosecution under N.J.S.A. 2C:40-26(b).

Prior to the suppression hearing, the prosecutor and defense counsel filed briefs and documents with the trial court. Among the documents submitted was a certificate of accuracy on a

[2] Before his recollection was refreshed with review of the ticket, the officer testified that he recalled a higher speed - "probably" forty to forty-five miles per hour.

"Stalker® Speed Measuring Device," dated January 30, 2012, which reflected that the device was accurate within plus or minus "1 mph." That document is included in the record submitted on this appeal, and the State supplied it to defense counsel prior to the suppression hearing in response to a request for discovery based on State v. Green, 417 N.J. Super. 190, 208-09 (App. Div. 2010).

At the conclusion of the suppression hearing, defense counsel noted: "[T]here could have been suspicion based on Sergeant Belle's observations. The reason for the stop was based on the indication of the radar," and "the stop led to the subsequent discovery that [defendant] had been on the suspended list for at least two DWIs."

In the presence of counsel, the judge placed his findings of fact and legal conclusions on the record on May 26, 2015. The judge found that "Sergeant Belle stopped the defendant's car after observing the car traveling at approximately 37 miles per hour in a 25-mile-per-hour zone using a Stalker radar device." In addition, the judge recognized defendant's argument based on the radar device – that is, because the radar device utilized had not been declared reliable by a court of this State, there was no probable cause or reasonable suspicion supporting the stop. The judge disagreed and explained:

> In this case even if there is not probable cause to stop defendant's vehicle[,] there is reasonable, articulable suspicion that the defendant's vehicle was speeding[,] which in this case is enough to stop the motor vehicle for a motor vehicle infraction. [Driving] beyond the speed limit is a common motor vehicle infraction that leads to stops[,] and police officers often use radar devices in order to determine whether drivers are in fact driving in excess of the speed limit.
>
> Once the radar device indicated to the police officer that a vehicle was [being] driv[en] 12 miles in excess of the speed limit[,] reasonable, articulable suspicion was formed that a motor vehicle infraction had occurred. And the subsequent stop for that infraction was justified. There is no need to establish the higher burden of proof of probable cause.

Appellate counsel does not argue, as defense counsel argued at the suppression hearing, that probable cause was required for the stop. The argument here is that the State [had to] "show by a preponderance [of the evidence] that the radar device was taking accurate measurements of passing vehicles" for the judge to conclude that the stop was reasonable. It is true the State had the burden of proof, but it could meet that burden without proving that the readings were accurate.

"'It is firmly established that a police officer is justified in stopping a motor vehicle when he has an articulable and reasonable suspicion that the driver has committed a motor vehicle offense.'" <u>State v. Locurto</u>, 157 <u>N.J.</u> 463, 470 (1999)

(quoting State v. Smith, 306 N.J. Super. 370, 380 (App. Div. 1997)); accord State v. Scriven, 226 N.J. 20, 33-34 (2016). Probable cause is required to issue a traffic ticket, not to stop a car. State v. Fisher, 180 N.J. 462, 472-73 (2004).

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. Pineiro, 181 N.J. 13, 21 (2004). "[R]aw, inchoate suspicion grounded in speculation cannot be the basis for a valid stop." Scriven, supra, 226 N.J. at 34. Probable cause requires "a reasonable ground for belief of guilt." Maryland v. Pringle, 540 U.S. 366, 371, 124 S. Ct. 795, 800, 157 L. Ed. 2d 769, 775 (2003).

We agree with the trial judge that the officer's observation and a radar reading, commonly used to confirm speed, are specific and articulable facts reasonably warranting suspicion of speeding. There was no evidence that this experienced traffic patrol officer had any reason to doubt the radar result, failed to follow protocols for operation of the device, or had any reason to doubt the accuracy of the reading, which was consistent with his observation. In our view, with the facts found by the judge, the State also established a reasonable ground for a belief of guilt.

Defendant's reliance on State v. Green, which discusses reliability of a speed detecting device sufficient for admission of the results at trial is misplaced. 417 N.J. Super. at 208-09. Reasonable suspicion and probable cause are assessed in light of the information known to the officer at the time. See generally State v. Pitcher, 379 N.J. Super. 308 (App. Div. 2005) (discussing cases holding facts not known at the time of the police action irrelevant to undermine or support findings of reasonable suspicion and probable cause), certif. denied, 186 N.J. 242 (2006). Accordingly, we reject defendant's claim that the reasonableness of this stop depends on whether the "radar gun was taking accurate measurements of passing vehicles." "[T]he State need prove only that the police lawfully stopped the car, not that it could convict the driver of the motor-vehicle offense." State v. Williamson, 138 N.J. 302, 304 (1994).

We recognize evidence leading to defendant's indictment for violating N.J.S.A. 2C:40-26(b) was acquired when defendant's traffic tickets were returned to municipal court. There were two tickets. Independent of our finding that the State established probable cause for the now-dismissed speeding ticket, defendant never claimed the second ticket, for driving with a suspended license, was issued without probable cause.

That unchallenged ticket provides a separate and additional justification for the abstract review in municipal court.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION