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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5233-14T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSE C. GAUTIER-RODRIGUEZ,

Defendant-Appellant.

Submitted March 16, 2017 – Decided April 11, 2017

Before Judges Lihotz and Hoffman.

On appeal from Superior Court of New Jersey,
Law Division, Union County, Indictment No. 14-
07-0581.

Joseph E. Krakora, Public Defender, attorney
for appellant (Lauren S. Michaels, Assistant
Deputy Public Defender, of counsel and on the
briefs).

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

PER CURIAM

Defendant Jose Gautier-Rodriguez appeals from an April 6,
2015 judgment of conviction after he pled guilty to first-degree

unlawful possession of a handgun, N.J.S.A. 2C:39-5(b).¹ On June 5, 2015, the court sentenced defendant to ten years of imprisonment with five years of parole ineligibility. Defendant's appeal focuses solely on the denial of his suppression motion. After reviewing the record in light of the contentions advanced on appeal, we affirm.

I.

We derive the facts from the record of the suppression hearing, where the State presented the testimony of Plainfield Police Detective Michael Black. On March 3, 2014, at approximately 10:50 p.m., Detective Black was on routine patrol with his partner, Officer Eric Groething, in an unmarked SUV "known throughout the city as a narcotics vehicle." The officers were traveling northbound on Berkman Street around "high crime narcotics areas." After turning onto North Avenue, Detective Black noticed a car driving behind him with its headlights off. The detective pulled aside to let the car pass and then initiated a motor vehicle traffic stop.

Upon approaching the vehicle, Detective Black observed defendant in the driver's seat and his girlfriend, Stephanie Kahe,

¹ Unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), is ordinarily a crime of the second-degree. However, it rises to a first-degree offense pursuant to N.J.S.A. 2C:39-5(j) if the defendant has a prior conviction for any crime enumerated in N.J.S.A. 2C:43-7.2(d).

in the front passenger seat.² Defendant told the detective he did not have his license, but said he was en route to the hospital because Kahe was having pregnancy complications, specifically discomfort and bleeding. Defendant stated they left Muhlenberg Hospital and were traveling to JFK Hospital. Although he observed Kahe was "obviously pregnant," Detective Black testified the story "didn't really make sense" because they were travelling in the opposite direction of both hospitals. Defendant and Kahe further told the detective they did not take an ambulance in order to save money, and they chose a back route away from the hospital because defendant did not have his license.

Detective Black observed defendant was "[v]ery nervous, he was shaking, wouldn't make eye contact with me." He said Kahe was "[a]ggressive, answering for him sometimes" and was "a little nervous herself, but he was more nervous than she was." The detective asked if the hospital could confirm their story, at which point Kahe admitted to lying in order to keep defendant from trouble because he did not have a license.

Kahe then began "moaning real bad and saying she was in distress, her stomach was really starting to hurt her." Detective Black offered to escort them to the hospital, but defendant

² Kahe was a co-defendant in this case; the grand jury indicted her for second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b).

declined and said he would take Kahe himself. The detective let defendant go with a "verbal warning," even though he found the story "out of whack," because he did not want to take a chance if "God forbid she loses the baby there."

Detective Black then activated his emergency lights and drove away from the scene. He "acted like [he] drove around the corner," but then "discretely got back behind [defendant's vehicle] and started to follow them, to see if they actually were [going] to go to the hospital." The detective said he did this because he was "just curious" and "wanted to satisfy [his] curiosity."

The detective observed defendant pass by "numerous intersections" where he could have turned to reach the hospitals, and he began to "doubt the story was legitimate" after defendant missed "the last turn to go to either hospital." Defendant then turned in the opposite direction of both hospitals, at which point Detective Black initiated a second motor vehicle stop at approximately 11:15 p.m. He followed defendant for approximately ten minutes between the two stops.

As he approached the car, the detective did not see defendant or Kahe make any furtive gestures or movements. Upon reaching the car, Detective Black observed defendant was "even more nervous" than before. Defendant said Kahe was feeling better, so they decided to get something to eat at a restaurant in North

Plainfield. The detective ran a check on defendant's license, which was "ID only." Feeling that "something wasn't right" due to defendant's nervous demeanor, Detective Black began to question defendant whether he had outstanding warrants or if the vehicle was stolen. Defendant denied having warrants, and Kahe said the car was a rental in her mother's name.

Because defendant was "still acting nervous," the detective then asked whether there were any weapons in the vehicle. Defendant did not give a direct response to this inquiry; instead, he "skip[ped]" the question and reiterated that he was on the way to eat. Detective Black felt this non-response was a "red flag," prompting him to remove defendant from the vehicle and conduct a pat down. Defendant was not under arrest at this point, but he was not free to leave. The detective did not find a weapon on defendant's person.

Defendant remained nervous following the pat down, prompting Detective Black to ask, "[I]s there anything in the car that could hurt me[?]" Defendant replied, "[T]here's a gun in the glove compartment." Detective Black then stayed with defendant while Officer Groething removed Kahe from the vehicle and retrieved a handgun from the glove compartment. Detective Black did not ask for permission to search the vehicle. The officers placed defendant and Kahe under arrest and transported them to the police

station. Defendant signed a Miranda waiver form at the station and gave the police a statement admitting the gun was his.

Defendant moved to suppress the handgun evidence, which the trial judge denied on the record on March 16, 2015. The judge also provided a detailed written opinion on that date, finding Detective Black credible and explaining his reasoning for denying suppression. First, the judge determined the "community caretaking" doctrine justified the second stop, finding:

When he saw the vehicle driving away from either of the nearest medical centers, Detective Black's suspicions were raised for Defendant Kahe's health as the driver did not seek medical attention for the allegedly ailing passenger. He believed something may have been wrong with the passenger based upon Defendants' prior representations. Detective Black testified that he initiated the second stop due to the driving away from any medical facilities. He was concerned that Defendant Kahe was seriously ill. Therefore, this [c]ourt finds that Detective Black's concern for Defendant Kahe's health implicated the community caretaking doctrine and served as a justification for the second stop.

The judge further determined Detective Black lawfully removed defendant from the vehicle, stating, "Having effectuated a valid motor vehicle stop, Detective Black needed no other reasons to ask Defendant . . . to exit the vehicle." He found the officers properly removed Kahe after they became aware of the weapon. Last, the judge determined Detective Black "properly expanded the scope of his original traffic stop," and found the existence of exigent

circumstances and probable cause to search the glove compartment under the automobile exception to the warrant requirement.

This appeal followed. Defendant raises the following contentions for our review:

POINT I

THE DISCOVERY AND SEIZURE OF THE EVIDENCE VIOLATED DEFENDANT'S CONSTITUTIONAL RIGHT TO BE FREE OF UNREASONABLE SEACHES AND SEIZURES. ACCORDINGLY, THE DENIAL OF THE SPUPRESSION MOTION MUST BE REVERSED.

- A. The community-caretaking exception did not apply to the second stop because the police, rather than believing that there was a medical crisis, merely stopped the car to investigate a hunch.
- B. Even if the community-caretaking justified the second stop initially, once police confirmed Kahe was not in distress, the stop was converted into an unlawful seizure.
- C. Because there was no exigency justifying entering the car and removing the evidence, the warrantless search and seizure were invalid.

II.

On appellate review, we "must uphold the factual findings underlying the trial court's decision" on a motion to suppress "so long as those findings are supported by sufficient credible evidence in the record." State v. Gamble, 218 N.J. 412, 424 (2014) (citing State v. Elders, 192 N.J. 224, 243 (2007)). However, we give no special deference to the trial judge's "interpretation of

the law . . . and the consequences that flow from established facts." Id. at 425 (citing State v. Gandhi, 201 N.J. 161, 176 (2010); Manalapan Realty v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"Both the United States Constitution and the New Jersey Constitution guarantee an individual's right to be secure against unreasonable searches or seizures." State v. Minittee, 210 N.J. 307, 318 (2012) (citing U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7). As such, a search or seizure undertaken without a warrant is "presumed to be invalid." Ibid. (citing State v. Cooke, 163 N.J. 657, 664 (2000)). Automobile stops constitute seizures of persons under the Fourth Amendment. State v. Baum, 199 N.J. 407, 423 (2009). Police may not conduct warrantless searches or seizures unless the action "falls within one of the few well-[delineated] exceptions to the warrant requirement." State v. Rodriquez, 172 N.J. 117, 125 (2002) (quoting State v. Maryland, 167 N.J. 471, 482 (2001)).

The "community caretaking" doctrine is one such exception to the warrant requirement. State v. Harris, 211 N.J. 566, 581 (2012). Our Supreme Court has recognized that "police officers acting in a community-caretaking capacity 'provide "a wide range of social services" outside of their traditional law enforcement and criminal investigatory roles.'" State v. Vargas, 213 N.J.

301, 323 (2013) (quoting State v. Edmonds, 211 N.J. 117, 141 (2012)). Although our Court has narrowed the applicability of community caretaking in the context of home searches, id. at 305, the Court has applied the community caretaking exception to automobile stops and searches. See, e.g., State v. DiLoreto, 180 N.J. 264, 277-78 (2004); State v. Scriven, 226 N.J. 20, 38-39 (2016).

Community caretaking can justify a motor vehicle stop where police have "an objectively reasonable basis to believe that a driver may be impaired or suffering a medical emergency." Scriven, supra, 226 N.J. at 39. "Abnormal" driving that poses a traffic safety hazard also implicates this exception. State v. Martinez, 260 N.J. Super. 75, 78 (App. Div. 1992) (justifying a stop where the defendant drove "on a residential street at a snail's pace between five and ten m.p.h."). Officers may further approach a vehicle to "mak[e] an inquiry on property and life" where, for example, it was parked in the lot of a closed business around midnight. State v. Drummond, 305 N.J. Super. 84, 88 (App. Div. 1997).

The community caretaking exception has two recognized elements. First, the police officers' action must be "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a [criminal] statute."

DiLoreto, supra, 180 N.J. at 275 (alteration in original) (quoting State v. Cassidy, 179 N.J. 150, 161 n.4 (2004)). Officers must not "perform the community caretaker function as a pretext for a criminal investigation." Id. at 280; see also State v. Bogan, 200 N.J. 61, 77 (2009). Second, the officers' actions must be "objectively reasonable under the totality of circumstances." DiLoreto, supra, 180 N.J. at 278.

Pursuant to this standard, defendant argues Detective Black's second stop was not "divorced" from his investigatory duties, and the purported medical reason was mere pretext. In support of this argument, defendant relies on Detective Black's testimony that he followed defendant to "satisfy [his] curiosity" and that he doubted defendant's explanation was legitimate. Defendant contends the detective initiated the second stop "not to make sure that Kahe was alright, but to investigate them further."

We disagree. Although community caretaking cannot serve as a pretext for a criminal investigation, our Supreme Court has expressly declined to "handcuff police officers from fulfilling a clear community caretaking responsibility, particularly one that might prevent imminent harm to a child, merely because the officers are engaged in a concurrent criminal investigation." Bogan, supra, 200 N.J. at 77. Instead, "[s]o long as the police had an independent basis . . . under the community caretaking exception

that was not a pretext for carrying out an investigatory search," we will not bar the resultant evidence. Ibid.

Therefore, based on our deferential standard of review, we decline to reverse the trial judge on this basis. The judge determined Detective Black initiated the second stop due to his concern for Kahe's health. Even though the detective may have doubted defendant's story, his concerns regarding Kahe's pregnancy clearly provided an "independent basis" to stop the car under the community caretaking exception. Ibid. The record shows the stop was not mere pretext for a criminal investigation.

Furthermore, despite defendant's arguments to the contrary, we find the second stop was objectively reasonable. DiLoreto, supra, 180 N.J. at 278. Detective Black feared Kahe might "lose[] the baby." He let defendant go from the first stop after Kahe began moaning in pain due to her purported pregnancy complications. Therefore, when they turned away from the hospital, it was objectively reasonable for Detective Black to follow up in order to prevent "imminent harm" to Kahe. Boqan, supra, 200 N.J. at 77. Under the totality of the circumstances, we are satisfied the trial judge did not err by finding the community caretaking exception justified the second stop. DiLoreto, supra, 180 N.J. at 278.

Defendant next argues, assuming arguendo the second stop was lawful, that Detective Black's decision to question him, run his information, remove him from the car, conduct a pat down, and then continue questioning converted the situation into an unlawful seizure. We disagree.

"Once a lawful stop is made, the subsequent reasonable detention of the occupants of the motor vehicle constitutes a seizure." State v. Carty, 170 N.J. 632, 640 (citing Whren v. United States, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89, 95 (1996)); State v. Dickey, 152 N.J. 468, 475 (1998)), modified on other grounds, 174 N.J. 351 (2002).

"Therefore, any automobile stop, however brief, must satisfy the Fourth Amendment's basic requirement of 'reasonableness.'" Baum, supra, 199 N.J. at 423 (quoting State v. Hickman, 335 N.J. Super. 623, 634 (App. Div. 2000)).

Reasonableness turns on "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." Dickey, supra, 152 N.J. at 476 (quoting Terry v. Ohio, 392 U.S. 1, 20, 88 S. Ct. 1868, 1879, 20 L. Ed. 2d 889, 905 (1968)). "[A]n investigative stop becomes a de facto arrest when 'the officers' conduct is more intrusive than necessary for an investigative stop.'" Id. at 478 (quoting United States v.

Jones, 759 F.2d 633, 636 (8th Cir.), cert. denied, 474 U.S. 837, 106 S. Ct. 113, 88 L. Ed. 2d 92 (1985)). The relevant factors for this inquiry include "whether there was delay unnecessary to the legitimate investigation, the degree to which the police conduct engenders fear or humiliation, and whether the suspect was isolated, handcuffed, or confined." State v. Baum, 393 N.J. Super. 275, 288 (App. Div. 2007) (citing Dickey, supra, 152 N.J. at 479), aff'd in part and modified in part, 199 N.J. 407 (2009).

However, "if a motor vehicle is subject to a valid police stop, the police may question the occupants, even on a subject unrelated to the purpose of the stop, without violating the Fourth Amendment, so long as such questioning does not extend the duration of the stop." Hickman, supra, 335 N.J. Super. at 636 (citations omitted). "If, during the course of the stop or as a result of the reasonable inquiries initiated by the officer, the circumstances 'give rise to suspicions unrelated to the traffic offense, an officer may broaden [the] inquiry and satisfy those suspicions.'" Dickey, supra, 152 N.J. at 479-80 (alteration in original) (quoting United States v. Johnson, 58 F.3d 356, 357-58 (8th Cir.), cert. denied, 516 U.S. 936, 116 S. Ct. 348, 133 L. Ed. 2d 245 (1995)); see also Baum, supra, 199 N.J. at 424.

Ordering a person from a vehicle is a Fourth Amendment seizure. State v. Smith, 134 N.J. 599, 609 (1994). However, if

police lawfully stop a vehicle, officers have an "automatic right to remove [the] driver . . . to ensure officer safety." State v. Pena-Flores, 198 N.J. 6, 31 n.7 (2009) (citing Smith, supra, 134 N.J. at 611), overruled on other grounds by State v. Witt, 223 N.J. 409 (2015); see also Baum, supra, 199 N.J. at 425. Conversely, in order to remove a passenger from a vehicle, "an officer must be able to point to specific and articulable facts that would warrant heightened caution to justify ordering the occupants to step out of a vehicle." Smith, supra, 134 N.J. at 618. "[T]o justify a pat-down of an occupant once alighted from a vehicle, specific, articulable facts must demonstrate that a 'reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.'" Id. at 619 (quoting Terry, supra, 392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909).

Defendant argues the officers violated his rights by continuing to question and detain him after they determined Kahe did not require medical attention. He asserts Detective Black's mere "hunch" that "something" was amiss did not justify the continued questioning and eventual pat down.

This argument lacks merit. Here, Detective Black was clearly justified in broadening his inquiry based on the suspicious circumstances that arose during the course of the stop. Dickey,

supra, 152 N.J. at 479-80. Detective Black initially let defendant go due to a purported pregnancy crisis involving Kahe bleeding and moaning in pain. Ten minutes later, the crisis apparently resolved itself to allow defendant and Kahe to go out to eat at a restaurant. Given these circumstances, the officers reasonably asked defendant basic questions about the ownership of the car and outstanding warrants.

Furthermore, defendant's extreme nervousness justified the simple inquiry as to whether he had any weapons. Hickman, supra, 335 N.J. Super. at 637-38. In Hickman, police stopped a car and conducted a computer license check. Id. at 628. The driver's license had been revoked; when police asked a passenger if he had a license, he appeared "extremely nervous" and did not make eye contact, prompting police to ask if he had any contraband or weapons. Ibid. We found the defendant's nervous response to questioning provided "a reasonable basis for [the officer's] suspicions to be enhanced and for him to broaden the scope of his inquiries," which were "no more intrusive than required to determine whether he . . . [was] engaged in . . . unlawful activity." Id. at 637-38.

The facts here warrant the same result. Based on defendant's continued nervousness, Detective Black simply asked whether he had a weapon. Defendant's non-response then justified the subsequent

removal and pat down. Smith, supra, 134 N.J. at 619. Finding nothing on defendant's person, the officers reasonably asked if there was a weapon in the car. Because we are satisfied Detective Black's conduct was entirely appropriate under these circumstances, we decline to reverse on this basis.

Last, defendant argues the trial judge erred by finding exigent circumstances justified the warrantless glove compartment search, which led to the discovery of the handgun. We disagree.

Our courts recognize an "automobile exception" to the warrant requirement. Minitee, supra, 210 N.J. at 319-20. In Pena-Flores, supra, 198 N.J. at 28, our Supreme Court outlined a three-part test, allowing police to search an automobile without a warrant where "(1) the stop is unexpected; (2) the police have probable cause to believe that the vehicle contains contraband or evidence of a crime; and (3) exigent circumstances exist under which it is impracticable to obtain a warrant."³

Exigency under Pena-Flores turns on a case-by-case analysis of the totality of the circumstances. Ibid. (citations omitted).

³ On September 24, 2015, our Supreme Court announced a new rule of law for warrantless automobile searches, overruling the Pena-Flores rule that "assessed exigency on a case-by-case basis, rather than solely on the inherent mobility of the automobile." See Witt, supra, 223 N.J. at 449-50, 459 (citing Pena-Flores, supra, 198 N.J. at 21). The Court applied this new rule "purely prospectively." Id. at 449. Therefore, because the operative facts here occurred in 2014, Pena-Flores applies.

"[O]fficer safety and the preservation of evidence is the fundamental inquiry." Id. at 29 (citing State v. Dunlap, 158 N.J. 543, 551 (2006)). Relevant factors include

the time of day; the location of the stop; the nature of the neighborhood; the unfolding of the events establishing probable cause; the ratio of officers to suspects; the existence of confederates who know the location of the car and could remove it or its contents; whether the arrest was observed by passersby who could tamper with the car or its contents; whether it would be safe to leave the car unguarded and, if not, whether the delay that would be caused by obtaining a warrant would place the officers or the evidence at risk.

[Ibid.]

Applying these factors to the facts as the trial judge found them, we find no error in his conclusion that the police faced exigent circumstances, and the warrantless search for the gun was justified. Defendant contends there was no exigency because police removed him and Kahe from the vehicle before opening the glove compartment, and because Detective Black did not testify that he feared for his safety or for the destruction of evidence. He asserts there were no "confederates" of defendant nearby, and police could have obtained a telephonic warrant. However, the judge appropriately found exigency because there was a weapon present, it was late at night, defendant and Kahe were not secured, there was an equal ratio of police to suspects, and Kahe had easy access to the glove compartment from the passenger seat. Moreover,

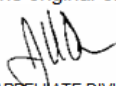
in Pena-Flores, supra, 198 N.J. at 12, 30-31, the Court found exigent circumstances where the police removed the occupants from the vehicle prior to the search, but did not immediately arrest or secure them in the patrol car. As such, we discern no reason to disturb the trial judge's findings on this basis.

III.

In conclusion, we are satisfied the record and relevant case law support the judge's well-reasoned decision denying suppression. Because we find no basis to reverse the trial judge, we decline to consider the alternative arguments asserted by the State, and the argument in defendant's reply brief challenging one of these assertions.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION