SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0360-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

C.J.B.,

Defendant-Appellant.

Submitted December 7, 2017 – Decided February 15, 2018

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Cape May County, Indictment No. 14-08-0622.

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

Robert W. Johnson, Acting Cape May County Prosecutor, attorney for respondent (Julie H. Mazur, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant, C.J.B.,[1] was convicted of possession of a controlled dangerous substance (CDS) (heroine), N.J.S.A. 2C:35-10(a)(1), after pleading guilty to that offense. He appeals from the denial of his motion to suppress evidence found in his possession at the time of his arrest. Judge Donna M. Taylor entered an order denying his motion after she found that the warrant issued for defendant's arrest on a charge of contempt, N.J.S.A. 2C:29-9, was valid, and that the arresting officer conducted a proper search incident to his arrest that revealed the CDS in defendant's possession. Defendant argues on appeal, as he did to Judge Taylor, that the arresting officer conducted an inadequate investigation into the validity of the contempt charge to justify his arrest and search. He also contends that the officer should not have sought a warrant for his arrest based upon an alleged violation of a stale, final restraining order (FRO) that was entered years earlier pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We disagree and affirm.

Prior to denying defendant's suppression motion, Judge Taylor conducted an evidentiary hearing at which officers John T.

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[1] Pursuant to Rule 1:38-3(d), we use initials and fictitious names to protect the confidentiality of the participants in the underlying domestic violence proceedings.

Armbruster and Cory A. Scheid of the Lower Township police department testified for the State. Defendant presented the testimony of Mary Beth Hueter, an investigator for the Public Defender, and Carol Jones, whose daughter, Andrea, had obtained a FRO against defendant years earlier.

After considering the testimony, Judge Taylor denied the motion for the reasons stated in her cogent October 6, 2015 written decision. In her decision, Judge Taylor made specific credibility determinations and factual findings. Her findings of fact are summarized as follows.

In September 2008, the Family Part issued a FRO to Andrea, restraining defendant from having contact with her or going to her residence that was specifically identified by address in the FRO. In 2014, another resident in the Jones home, who bore no familial relationship, filed a complaint with the police that accused defendant of entering the premises through a window and removing an item.

The police investigated the report and determined that the home specified in the FRO was owned and occupied by Carol, who told police she did not object to defendant entering her home as she and defendant had been in a romantic relationship. Moreover, she told police that her daughter had moved out years ago and lived in her own home. When Armbruster contacted Andrea to verify

her current home address, she reported that she was out of town and that upon return she would go to the police station to pick up a victim witness notification form. There was no evidence that Andrea ever notified authorities that she no longer lived in her mother's home, or that she or defendant ever obtained an order vacating the 2008 FRO.

Based upon defendant's apparent violation of the FRO, a warrant was issued for his arrest. On May 27, 2014, Scheid located defendant in town, arrested and searched him incident to the arrest. The search yielded, what was suspected to be and later proved to be, CDS.

After setting forth her findings in her written decision, Judge Taylor addressed defendant's contentions that the warrant for his arrest was improperly issued. According to defendant, further investigation would have established that Andrea no longer lived at the subject premises, and therefore, the FRO was no longer in effect for that residence. Judge Taylor rejected this contention.

Citing to State v. Harris, 211 N.J. 566, 587 (2012), the judge observed that items seized during an arrest for violating a FRO "can serve as the basis for a subsequent criminal prosecution if [their] illegal nature is immediately apparent." She also noted that under N.J.S.A. 2C:25-31, "where an officer finds

probable cause that a defendant has committed contempt of an order entered pursuant to the provisions of the [PDVA], the defendant shall be arrested and taken into custody." (Emphasis added). In reaching her conclusion that the officer acted properly, Judge Taylor relied on the fact that there are no time limits on FROs, including restraints prohibiting entry into specific residences, in order to carry out the Legislature's intention to permit victims to feel safe wherever they live.

The judge entered an order on November 16, 2015, denying defendant's motion. Defendant pled guilty to the one count indictment and received a sentence of two-years probation with the condition that he serve 364 days in jail. This appeal followed.

On appeal, defendant raises the following contention:

> POINT I
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> THE COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE (1) THE POLICE OFFICER FAILED TO ADEQUATELY INVESTIGATE WHETHER BILLINGSLY HAD VIOLATED A FINAL RESTRAINING ORDER, AND (2) EVEN IF THE OFFICER BELIEVED THAT THE RESTRAINING ORDER HAD BEEN VIOLATED, HE ERRED IN SEEKING AN ARREST WARRANT UNDER CIRCUMSTANCES WHEN THE LAW REQUIRED THE ISSUANCE OF A SUMMONS. (PARTIALLY RAISED BELOW . . .)

Our review of a trial judge's decision on a motion to suppress is limited. State v. Robinson, 200 N.J. 1, 15 (2009). In reviewing

a motion to suppress evidence, we must uphold the judge's factual findings, "so long as those findings are supported by sufficient credible evidence in the record." State v. Rockford, 213 N.J. 424, 440 (2013) (quoting Robinson, 200 N.J. at 15). Additionally, we defer to a trial judge's findings that are "substantially influenced by [the trial judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Ibid. (alteration in original) (quoting Robinson, 200 N.J. at 15). We do not, however, defer to a trial judge's legal conclusions, which we review de novo. Ibid.

Applying this standard of review, we conclude defendant's arguments are without sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(2). We affirm substantially for the reasons set forth by Judge Taylor in her well-reasoned decision. We add only the following brief comments.

A FRO under the PDVA last in perpetuity, absent a motion by one of the parties to vacate the restraint and an order entered by the court granting that relief. See M.V. v. J.R.G., 312 N.J. Super. 597, 601 (Ch. Div. 1997) ("Final restraints granted under the Act do not have a statutorily imposed expiration date"); see also N.J.S.A. 2C:25-29(d). If an application is made, a defendant cannot rely solely upon a victim's consent to vacate. Sweeney v. Honachefsky, 313 N.J. Super. 443, 447 (App. Div. 1998). A

defendant who seeks relief from a FRO must make an application and satisfy the criteria established in Carfagno v. Carfagno, 288 N.J. Super. 424, 435 (Ch. Div. 1995).

Applying these controlling principles here, even if Andrea consented to the vacation of the FRO, or no longer lived at the prohibited residence, the officers correctly determined that there was at least probable cause to believe defendant violated the still active FRO. Moreover, their obtaining a warrant for his arrest and the search incident thereto was entirely appropriate because there was no order vacating the FRO before defendant entered the premises from which he was restrained.

Affirmed.