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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-0361-16T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JEROME EDWARDS,

Defendant-Appellant.

Argued March 20, 2018 - Decided April 10, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No. 13-
07-1796.

Alyssa A. Aiello, Assistant Deputy Public
Defender, argued the cause for appellant
(Joseph E. Krakora, Public Defender, attorney;
Alyssa A. Aiello, of counsel and on the
briefs).

Tiffany M. Russo, Special Deputy Attorney
General/Acting Assistant Prosecutor, argued
the cause for respondent (Robert D. Laurino,
Acting Essex County Prosecutor; Tiffany M.
Russo, of counsel and on the brief).

PER CURIAM

Following denial of his motion to suppress evidence seized from the warrantless search of a car he fled from, defendant Jerome Edwards pled guilty to second-degree possession of heroin with the intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(2), second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b), and fourth-degree resisting arrest, N.J.S.A. 2C:29-2(a). The court sentenced defendant in accordance with a plea agreement to an aggregate ten-year prison term with five years of parole ineligibility pursuant to the Graves Act, N.J.S.A. 2C:43-6(c).

Defendant appeals from the July 13, 2015 order denying his suppression motion. He challenges the warrantless seizure of drugs and weapons from the car as not justified by any exception to the warrant requirement. Because we conclude the police lawfully seized this evidence, which was in plain view after defendant abandoned the vehicle, we affirm.

The State's only witness at the suppression hearing was Officer Christopher Segarra of the Newark Police Department. Segarra testified that on January 2, 2013, he was on patrol in his police vehicle when he observed a black Infiniti travelling south on Isabella Avenue at a high rate of speed. He then observed the Infiniti "bl[o]w past a stop sign" before pulling "over to the right without signaling." When the Infiniti stopped, "a group of

males approached the vehicle on the passenger side" and began conversing with the car's sole occupant.

Segarra pulled his patrol car behind the Infiniti and activated his overhead lights and siren to conduct a motor vehicle stop based on the traffic violations he observed. Upon doing so, the group of males dispersed in various directions.

Newark Police Officers Davila and Cuevas were traveling in another patrol car in front of Segarra. After Segarra activated his lights and siren, Davila and Cuevas also turned on their lights and pulled their police car "slightly ahead of the [Infiniti]." However, before Segarra was able to exit his vehicle, "the driver of the [Infiniti] placed the car in reverse" and struck the front bumper and right side of Segarra's patrol car. The Infiniti continued in reverse, traveling northbound against traffic on Isabella Avenue, a one-way residential street.

Segarra followed the Infiniti, also driving in reverse on Isabella Avenue with his lights and siren on. After crossing an intersection at Plymouth Street, the Infiniti again changed direction and struck Segarra's patrol car in the rear. At that point, the driver of the Infiniti, subsequently identified as defendant, exited the driver's side door and fled eastbound on Plymouth Street. Segarra ordered defendant to stop, but when he failed to do so Segarra continued to pursue him on foot.

During the chase, Segarra observed defendant reach "into his waistband area" and remove "a clear sandwich bag and some currency," which he tossed to the ground. Defendant then jumped a fence and was apprehended by Officers Davila and Cuevas, who were waiting on the other side. After defendant was secured, Segarra recovered the items defendant discarded during the chase and discovered "small ziplocs" inside the clear bag containing a "white substance" that appeared to be cocaine.¹

Defendant was placed in Davila's patrol car, and Segarra then walked backed to his own patrol car, which remained at the intersection of Isabella Avenue and Plymouth Street. The Infiniti also remained there in the same condition as defendant had left it, with the driver's door open and resting partially on the sidewalk. From outside the Infiniti, Segarra saw "multiple green ziplocs" in the vehicle's center console that appeared to contain cocaine. Additionally, the glove box was open and Segarra observed two handguns inside it. Segarra also "saw a plastic Pathmark shopping bag with what [he] believed to be numerous bricks of heroin" in the rear seat. The officers then recovered the guns and drugs from the Infiniti.

¹ Defendant did not challenge the seizure of this evidence before the trial court nor does he do so on appeal.

In moving to suppress the evidence, defendant argued its seizure was unconstitutional because no exception to the warrant requirement applied. The State, however, maintained the warrantless search was proper under the plain-view exception. Alternatively, the State contended the seizure of the evidence was justified because defendant abandoned the Infiniti.

Following the hearing, the motion judge issued a written opinion denying defendant's motion to suppress the evidence seized from the Infiniti. The judge found Segarra's testimony "generally credible," and accepted his testimony that defendant committed a motor vehicle violation, that individuals approached defendant's car, and that defendant "drove in reverse, then fled from his car, and while running did discard drugs and money." The judge also viewed pictures of the Infiniti that were admitted in evidence at the hearing. The judge noted the console and glove compartment were both open, the drugs and two handguns were visible, and "[n]othing in the interior of the Infiniti . . . is in disarray."

The judge determined "[t]he initial stop of the [Infiniti] was proper" based on Segarra's observation "that he witnessed two motor vehicle violations (running a stop sign and pulling over without signaling)."² The judge rejected the seizure of the

² Defendant does not challenge this ruling on appeal.

evidence as justified under the plain-view exception to the warrant requirement based on her finding that no exigent circumstances existed "that would have prevented the officers from getting a telephonic [search] warrant and towing the car."

The judge did, however, sustain the validity of the warrantless search based on a theory of abandonment. The judge reasoned,

the car had been abandoned by defendant. He had jumped out of the car, leaving the car running. Any reasonable expectation [of privacy] that [d]efendant could assert with respect to the car was forfeited. As the car was abandoned, the officers were legally able to search the car and to seize the contraband.

On appeal, defendant argues in a single point:

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED FROM HIS CAR WITHOUT A WARRANT BECAUSE NO EXCEPTION TO THE WARRANT REQUIREMENT APPLIED, AND THE DEFENDANT HAD NOT "ABANDONED" HIS CAR, AS THE TRIAL COURT MISTAKENLY CONCLUDED.

"An appellate court reviewing a motion to suppress evidence in a criminal case must uphold the factual findings underlying the trial court's decision, provided that those findings are 'supported by sufficient credible evidence in the record.'" State v. Boone, ___ N.J. ___, ___ (2017) (slip op. at 16) (quoting State v. Scriven, 226 N.J. 20, 40 (2016)). We do so "because those findings 'are substantially influenced by [an] opportunity to hear

and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Gamble, 218 N.J. 412, 424-25 (2014) (alteration in original) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). We owe no deference, however, to conclusions of law made by trial courts in suppression decisions, which we review de novo. State v. Watts, 223 N.J. 503, 516 (2015).

The Fourth Amendment to the United States Constitution and Article I, paragraph 7 of the New Jersey Constitution require that police officers obtain a warrant before conducting a search, unless that search falls into a recognized exception to the warrant requirement. State v. Deluca, 168 N.J. 626, 631-32 (2001). Accordingly, a warrantless search is presumptively unreasonable and invalid. Payton v. New York, 445 U.S. 573, 586 (1980); State v. Pineiro, 181 N.J. 13, 19 (2004). The burden rests with the State to prove that the search "falls within one of the few well-delineated exceptions to the warrant requirement." Pineiro, 181 N.J. at 19 (quoting State v. Maryland, 167 N.J. 471, 482 (2001)).

Federal courts have employed a two-prong test: first, a person must have exhibited an actual expectation of privacy, and second, the expectation must be one that society is prepared to recognize as reasonable or legitimate. Minnesota v. Olson, 495 U.S. 91, 95-96 (1990). Our Supreme Court, however, has defined an objective test asking only whether a person has a reasonable expectation of

privacy. State v. Hemptele, 120 N.J. 182, 199-200, 211 (1990) (holding that, despite federal law to the contrary, police officers must have a valid search warrant to open a garbage bag).

"Under both Article I, Paragraph 7 and the Fourth Amendment, a defendant has no standing to challenge the warrantless search of abandoned property." State v. Brown, 216 N.J. 508, 527 (2014) (citing State v. Johnson, 193 N.J. 528, 548 (2008)). "The test is whether, given the totality of the circumstances, an objectively reasonable police officer would believe the property is abandoned." Id. at 531. We have recognized a distinction between what constitutes abandonment in the property law sense and abandonment in the law of search and seizure. In the latter context, "[i]n essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein." State v. Burgos, 185 N.J. Super. 424, 427 (App. Div. 1982) (citation omitted).

Here, our review of the record leads us to affirm the motion judge's ruling that the warrantless search of the Infiniti was proper based on a theory of abandonment. The police searched the Infiniti only after defendant overtly exited it, leaving the motor running and the driver's door open while he fled the scene. See State v. Adams, 224 N.J. Super. 669, 673 (App. Div. 1988) ("The police could reasonably have concluded that an automobile

improperly parked, with [its] doors open and the key in the ignition, had been abandoned and the owner had a lessened privacy interest."); State v. Carroll, 386 N.J. Super. 143, 160-61 (App. Div. 2006) (finding the defendant abandoned a vehicle and its contents when he indisputably ran from it after crashing it and leaving the door open). Accordingly, defendant abandoned the Infiniti and had no reasonable privacy interest in it or its contents deserving of constitutional protection.

Unlike the trial court, we also separately conclude that the plain view exception to the warrant requirement constitutes an independent basis to sustain the constitutionality of the search of the Infiniti.

"'[P]lain view' provides grounds for seizure of an item when an officer's access to an object has some prior justification under the Fourth Amendment." Texas v. Brown, 460 U.S. 730, 738 (1983). "The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity." Payton, 445 U.S. at 587. Our Supreme Court has stated: "We do not believe that a police officer lawfully in the viewing area must close his eyes to suspicious evidence in plain view." State v. Bruzzese, 94 N.J. 210, 237 (1983). Therefore, for the plain view exception to apply:

First, the police officer must be lawfully in the viewing area.

Second, the officer has to discover the evidence "inadvertently," meaning that he did not know in advance where evidence was located nor intend beforehand to seize it.^[3]

Third, it has to be "immediately apparent" to the police that the items in plain view were evidence of a crime, contraband, or otherwise subject to seizure.

[Id. at 236 (citing Coolidge v. New Hampshire, 403 U.S. 443, 465-68, 470 (1971)).]

In the present matter, Segarra observed the drugs and handguns while he was lawfully standing beside the vehicle. The discovery of this evidence was inadvertent after Segarra initially stopped the Infiniti for motor-vehicle violations and defendant then crashed the car, left it partially on the sidewalk in an intersection, and fled the scene. Thus, a warrant was not required to seize the drugs and guns. See State v. Mann, 203 N.J. 328, 341 (2010) ("[T]he plain view exception to the warrant requirement applies, and [the officer's] seizure of the drugs from the back seat of defendant's vehicle was lawful."); State v. Mai, 202 N.J.

³ Following the lead of the United States Supreme Court in Horton v. California, 496 U.S. 128,130,138-39 (1990), our Supreme Court has since excised the inadvertence requirement from the plain view doctrine. State v. Gonzales, 227 N.J. 77, 82 (2016). However, the reformulated doctrine is to be applied prospectively and is inapplicable to this case. Ibid.

12, 25 (2010) ("[T]he seizure of the loaded gun from the floor of the van was proper under the 'plain view' doctrine.").

Affirmed.

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



CLERK OF THE APPELLATE DIVISION