SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0302-21

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DOUGLAS LUKA,

Defendant-Appellant.

Argued March 7, 2023 – Decided May 12, 2023

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Municipal Appeal No. 6265.

Christina Vassiliou Harvey argued the cause for appellant (Lomurro, Munson, Comer, Brown & Schottland, LLC, attorneys; Peter H. Lederman and Christina Vassiliou Harvey, of counsel and on the briefs).

Michele C. Buckley, Assistant Prosecutor, argued the cause for respondent (William A. Daniel, Union County Prosecutor, attorney; Michele C. Buckley, of counsel and on the brief).

PER CURIAM

Defendant Douglas Luka appeals from his conviction for driving while intoxicated (DWI). The municipal court judge granted defendant's motion to suppress after hearing argument but without taking testimony. On the State's appeal to the Law Division, Judge John M. Deitch denied defendant's motion to limit the State's supplementation of the record and convened an evidentiary hearing. After making credibility assessments, Judge Deitch denied defendant's motion to suppress. He concluded the arresting officer had lawfully initiated an investigative detention based on information reported by defendant's wife, Karen.[1] In addition to finding the investigative detention was lawfully based on reasonable articulable suspicion to believe defendant was driving while intoxicated, Judge Deitch found the encounter was also authorized under the community-caretaking doctrine. After carefully reviewing the record in view of the governing legal principles, we affirm.

I.

On May 17, 2020, defendant was arrested by Westfield Police Officer Ryan Weiss and charged with DWI, N.J.S.A. 39:4-50. Defendant filed a motion

[1] Because defendant and his wife share the same surname, we use her first name to avoid confusion. We mean no disrespect in doing so.

to suppress in the Westfield Township Municipal Court. In October 2020, the municipal court judge heard oral argument on the motion; no testimony was taken. The judge granted defendant's motion and dismissed the complaint.

The State, now represented by the county prosecutor, appealed to the Superior Court, Law Division. The prosecutor supplemented the record with additional documents in accordance with Rule 3:24(d). Defendant filed a motion to limit the supplementation of the record. Judge Deitch heard arguments on the motion on April 7, 2021, and ruled that the State was entitled to supplement the record.

Judge Deitch convened an evidentiary hearing on defendant's motion to suppress on July 22, 2021. On July 28, 2021, the judge issued a written opinion and order denying the motion to suppress and reinstating the complaint against defendant. The matter was remanded to the municipal court for trial.

On September 9, 2021, defendant pled guilty to the charge, preserving his right to challenge the constitutionality of the stop leading to his arrest. The municipal court judge imposed a three-month license suspension, twelve hours of Intoxicated Driver Resource Center (IDRC) training, and a fine in addition to court costs and other assessments. The sentence was stayed pending this appeal.

Defendant raises the following contentions for our consideration:

POINT I

THE LAW DIVISION ERRED IN CONSIDERING FACTS THAT OCCURRED AFTER THE STOP IN ORDER TO JUSTIFY THE POLICE ACTION.

POINT II

THE STOP VIOLATED [DEFENDANT]'S CONSTITUTIONAL RIGHTS.

A. THE STATE DID NOT HAVE A REASONABLE AND ARTICULABLE SUSPICION OF A PARTICULARIZED CRIME TO JUSTIFY THE WARRANTLESS SEIZURE.

B. THE STATE DID NOT HAVE A BASIS TO JUSTIFY THE COMMUNITY CARETAKING EXCEPTION FOR THE WARRANTLESS SEIZURE.

II.

We discern the following pertinent facts from the record. Officer Weiss was the sole witness to testify at the suppression hearing. The State also introduced Officer Weiss's body worn camera (BWC) recording of the encounter; the officer's dashboard camera recording; the BWC recording of the officer who spoke to Karen; and the audio recording of Karen's initial call to police.

Officer Weiss testified that on May 15, 2020, at approximately 7:50 p.m., he received a "be on the lookout" (BOLO) alert from the dispatcher concerning

a brown GMC Acadia, advising that "the driver was possibly driving [while] intoxicated." Officer Weiss responded to the bulletin and began heading in the direction of defendant's last reported location.

Officer Weiss was advised that Karen had called police because she was concerned that her husband was driving while intoxicated. Officer Weiss did not personally communicate with Karen; the information she provided to police was transmitted to him by the dispatcher. Officer Weiss also was told another officer was with Karen and that she was providing updated locations of defendant's vehicle using a GPS phone app.

Based upon the information provided, Officer Weiss went to defendant's residence to check if he was there. After confirming that defendant's vehicle was not at his residence, Officer Weiss continued down defendant's street and turned onto an intersecting street. Officer Weiss saw defendant's vehicle parked along the curb.[2] He positioned the police car fifteen to twenty feet behind defendant's vehicle and radioed the dispatcher, advising of the vehicle's location. At that point, Officer Weiss activated his overhead emergency lights. Officer Weiss explained that the reason for doing so was twofold: "One is to alert the

[2] The video recordings in the record confirm that defendant's vehicle was running and his taillights were illuminated.

vehicle in question that a police action is occurring,[3] and the second is to alert any pedestrian or vehicle traffic in the roadway that a police action is occurring and to drive more cautiously."

Officer Weiss approached the front passenger side of defendant's vehicle. He observed defendant in the driver's seat "with his head slouched forward, [and] his face pointed down towards his lap." Officer Weiss announced, "Police Department," and then tapped repeatedly on the passenger-side window and shined his flashlight into the vehicle to elicit a response from defendant. Defendant eventually responded and lowered the passenger window. Officer Weiss spoke to defendant, noting "his responses were slow and slurred" and his eyes were "bloodshot" and "watery."

Judge Deitch accepted Officer Weiss' testimony, finding him to be a credible witness. The judge added that the officer's testimony was corroborated by the video recordings in evidence.

The judge further explained that he listened to the audio recording of Karen's initial call to the police department.[4] The judge recounted that:

---

[3] The State does not dispute that defendant was subject to a Fourth Amendment seizure at the moment the officer activated the police vehicle's overhead lights.

[4] The judge ruled that there was no need for the prosecutor to play the recording in court.

> [Karen] reported that she might need some help. While she was not one hundred percent sure, she believed that her husband was drinking and driving. Her basis for this belief was that he had done this in the past and, on this day, [Karen] had been following him using the OnStar GPS device in his car and he had stopped at two liquor stores.
>
> During the call, [Karen] continued to update the dispatched as to the location of defendant's vehicle . . . . [Karen] stated that she was "very concerned about [defendant]" and that he had been "driving around for hours." [Karen] stated that she believed [d]efendant had seen her while she was following him, but that he was out of her view on South Avenue. At some point, [Karen], who was driving on South Avenue, pulled into a parking lot and was advised by dispatch that an officer would be sent to her location.

At the hearing, the judge viewed the BWC recording of the officer who had responded to the location where Karen was parked. Judge Deitch found Karen "to be a credible reporter who is obviously deeply concerned for the health and safety of her husband and others on the road." The judge concluded it was reasonable for the police to accept her report and act upon it.

III.

We begin our analysis by acknowledging the governing legal principles. In an appeal from a Law Division judge's decision following de novo review of a municipal court order, our inquiry then focuses on the determination made in the Law Division. State v. Locurto, 157 N.J. 463, 470 (1999). Furthermore, we

do not "'weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence.'" Id. at 472 (quoting State v. Barone, 147 N.J. 599, 615 (1997)). Our review "focuses on whether there is 'sufficient credible evidence . . . in the record' to support the trial court's findings." State v. Robertson, 228 N.J. 138, 148 (2017) (omission in original) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). The Law Division judge's legal conclusions and the legal consequences that flow from established facts, however, are not entitled to special deference; they are reviewed de novo. Ibid.

Turning to substantive legal principles, "[a] motor vehicle stop by a police officer, no matter how brief or limited, is a 'seizure of persons' under both the Federal and State Constitutions." State v. Smith, 251 N.J. 244, 258 (2022) (internal quotation marks omitted) (quoting State v. Scriven, 226 N.J. 20, 33 (2016)). "To justify such a seizure, 'a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense.'" Ibid. (quoting Scriven, 226 N.J. at 33–34).

Reasonable suspicion "requires 'some minimal level of objective justification for making the stop.'" State v. Amelio, 197 N.J. 207, 211–12 (2008) (quoting State v. Nishina, 175 N.J. 502, 511 (2003)). "[A]n investigative

detention 'may not be based on arbitrary police practices, the officer's subjective good faith, or a mere hunch.'" State v. Chisum, 236 N.J. 530, 546 (2019) (quoting State v. Coles, 218 N.J. 322, 343 (2014)). "The suspicion necessary to justify a stop must not only be reasonable, but also particularized." Smith, 251 N.J. at 258 (quoting Scriven, 226 N.J. at 37). "A motor vehicle stop that is not based on a 'reasonable and articulable suspicion is an "unlawful seizure," and evidence discovered during the course of an unconstitutional detention is subject to the exclusionary rule.'" Ibid. (quoting Chisum, 236 N.J. at 546).

"To determine whether reasonable and articulable suspicion exists, a court must evaluate the totality of the circumstances and 'assess whether the facts available to the officer at the moment of the seizure . . . warrant[ed] a [person] of reasonable caution in the belief that the action taken was appropriate.'" Ibid. (alterations and omission in original) (quoting State v. Alessi, 240 N.J. 501, 518 (2020)). A court must consider the "whole picture" rather than taking each fact in isolation. State v. Nelson, 237 N.J. 540, 554–55 (2019) (quoting State v. Stovall, 170 N.J. 346, 361 (2002)).

Importantly for purposes of this appeal, an officer need not personally observe illegal conduct to develop reasonable and articulable suspicion to stop an individual; rather, the officer may rely upon "adequate facts from a reliable

informant" relayed by a dispatcher to establish a reasonable suspicion that an individual may have committed or is about to commit an offense. State v. Crawley, 187 N.J. 440, 457 (2006). In Crawley, our Supreme Court found it to be "common sense" that a police dispatcher who was "provided adequate facts from a reliable informant to establish a reasonable suspicion that defendant was armed . . . had the power to delegate the actual stop to officers in the field." Ibid. Moreover, in United States v. Hensley, the United States Supreme Court held that an arresting officer may stop a wanted person based on a dispatch without possessing the specific information that formed the probable cause to issue the dispatch. 469 U.S. 221, 230–31 (1985).

In determining the weight to attribute to information provided to police, we emphasize the distinction between known sources and anonymous sources. "Generally speaking, information imparted by a citizen directly to a police officer will receive greater weight than information received from an anonymous tipster." State v. Basil, 202 N.J. 570, 586 (2010). "Thus, an objectively reasonable police officer may assume that an ordinary citizen reporting a crime, which the citizen purports to have observed, is providing reliable information." Ibid.

"Our courts have distinguished between an identifiable citizen, who is presumed to be reliable, and an anonymous informer whose reliability must be established." Ibid. (citing State v. Davis, 104 N.J. 490, 506 (1986)). "The distinction is 'grounded in common experience' because we assume that an ordinary citizen 'is motivated by factors that are consistent with law enforcement goals.'" Ibid. The distinction is grounded not just in common experience but also in common sense. Ibid. "[W]hen a tip is made in-person, an officer can observe the informant's demeanor and determine whether the informant seems credible enough to justify immediate police action without further questioning." Ibid. (quoting United States v. Palos-Marquez, 591 F.3d 1272, 1275 (9th Cir. 2010)).

Our Supreme Court has "previously considered the constitutionality of a vehicular stop where the officer's suspicion was not based on an observed traffic violation." Alessi, 240 N.J. at 518. In State v. Amelio, a daughter reported that her father was driving while intoxicated. 197 N.J. 207, 210 (2008). She provided the make, color, and license plate of her father's vehicle. Ibid. The Court held that report provided reasonable articulable suspicion to make a stop. Id. at 209. In so finding, the Court relied on the detailed description of the vehicle and the fact that the daughter, whose identity was known to police,

"exposed herself to criminal prosecution if the information she related to dispatch was knowingly false." Id. at 214. Those facts "lent credibility to the information she conveyed to the dispatcher." Alessi, 240 N.J. at 519 (citing Amelio, 197 N.J. at 214).

Applying these foundational principles to the present matter, we are satisfied that the totality of the circumstances known prior to the investigative detention amply satisfy the reasonable articulable suspicion standard.[5] As in Amelio, the call to police came from an identified citizen who was intimately familiar with defendant. Karen reported that, while she was not one hundred percent sure, she believed her husband was drinking and driving. When asked by the dispatcher why she thought he was intoxicated, Karen responded, "he's done this before." She further explained that she had been following his movements using the OnStar GPS device in his car and he had stopped at two liquor stores. She also reported that he was driving fast.

Karen told the dispatcher that she was very worried about her husband and that he had been "driving around for hours." Karen provided the make and

[5] As we have noted, we accept that defendant's vehicle was seized for Fourth Amendment purposes the moment the officer activated the overhead lights on the police vehicle. Information learned thereafter, including the officer's observation that defendant was slumped over in his vehicle, play no part in our determination that the investigative detention was lawfully initiated.

model of defendant's vehicle, as well as its current OnStar location. When police located defendant's vehicle, it was not in the driveway of his home, but rather parked on a curb a block-and-a-half away with the engine running. The totality of these circumstances establishes reasonable and articulable suspicion that defendant had been operating the vehicle while intoxicated.

We also agree with Judge Deitch that the encounter was authorized under the community-caretaking doctrine, providing an independent basis to deny defendant's suppression motion. That doctrine, first enunciated by the United States Supreme Court in Cady v. Dombrowski, 413 U.S. 433 (1973), acknowledges that police officers "often are called on to perform dual roles." State v. Diloreto, 180 N.J. 264, 276 (2004). "The community-caretaking doctrine recognizes that police officers provide a wide range of social services outside of their traditional law enforcement and criminal investigatory roles." Scriven, 226 N.J. at 38 (internal quotation marks omitted) (quoting State v. Edmonds, 211 N.J. 117, 141 (2012)).

The doctrine provides an independent justification for intrusions into a citizen's liberty that would otherwise require a showing of probable cause or reasonable and articulable suspicion of criminal behavior. Diloreto, 180 N.J. at 277–76. Our Supreme Court has held the community-caretaker role permits

officers to "check on the welfare or safety of a citizen who appears in need of help on the roadway without securing a warrant or offending the Constitution." Scriven, 226 N.J. at 38.

The doctrine entails a fact-sensitive, two-part inquiry. First, a court must ask whether the officer has reacted to an objectively reasonable community concern. Id. at 39 (stating officers must have an "objectively reasonable basis" to stop a vehicle to provide aid or check a motorist's welfare). This concern must serve as a distinct motivation for the officer's conduct, divorced from any desire to further a criminal investigation. Id. at 38–39. In other words, community caretaking may not serve as a "pretext" for a warrantless intrusion into a citizen's liberty that does not satisfy another warrant exception. State v. Bogan, 200 N.J. 61, 77 (2009). However, the "divorce" between the two police functions "need only relate to a sound and independent basis for each role, and not to any requirement for exclusivity in terms of time or space." Ibid. (quoting New Hampshire v. D'Amour, 834 A.2d 214, 217 (N.H. 2003)). The State is required to prove the officers were acting objectively reasonably. Scriven, 226 N.J. at 38–39.

Second, a reviewing court must discern whether the actions taken by the officer pursuant to his or her community caretaking role remained within the

limited scope of that function. Ibid. For example, an officer's "community caretaking inquiry must not be 'overbearing or harassing in nature.'" State v. Drummond, 305 N.J. Super. 84, 89 (App. Div. 1997) (quoting State v. Davis, 104 N.J. 490, 503 (1986)).

Regarding the first part of the Scriven test, police clearly acted reasonably in responding to Karen's report. Police received a credible report from defendant's wife, who was intimately familiar with his substance abuse history. She reported that he left the house after a fight with his daughter, was driving around for hours—sometimes at speeds well above the speed limit—and stopped at two liquor stores. Given her knowledge of defendant's prior conduct, coupled with his actions that day, she was concerned that her husband was driving while intoxicated, endangering himself and others.

As to the second prong of the Scriven test, the initial steps taken by Officer Weiss were limited to the justifiable need to check on defendant's welfare. The officer parked behind defendant's vehicle, activated his lights to alert both defendant and those on the road that a stop was occurring, and proceeded to tap on defendant's window to get his attention. He then asked defendant if he was okay and explained that his wife was concerned about him.

We are satisfied in these circumstances that police were authorized under their community-caretaking role to check on defendant's condition.

IV.

Finally, we address defendant's contention the Law Division judge erred in supplementing the record to include information about events that occurred after Officer Weiss pulled behind defendant's vehicle. As we have noted, for purposes of determining whether there was reasonable and articulable suspicion to justify an investigative detention, we have focused solely on the circumstances known to police before Officer Weiss activated the overhead lights of his police vehicle. See supra note 5. Our separate and distinct consideration of the community-caretaking doctrine requires that we consider the manner in which the welfare check was conducted. See Scriven, 226 N.J. at 38–39.

Judge Deitch acted well within his discretion in expanding the limited record that had been developed at the municipal court. We recognize that as a general matter, the Law Division reviews an appeal of a suppression order rendered by a municipal court de novo based on the record made in the municipal court. R. 3:24(d). In this instance, the municipal court did not convene an evidentiary hearing. Furthermore, Rule 3:24(d) expressly provides:

> In cases in which the Attorney General or county prosecutor did not appear in the municipal court, the State shall be permitted to supplement the record and to present any evidence or testimony concerning the legality of the contested search and seizure. The defendant shall be permitted to offer related evidence in opposition to the supplementary evidence offered by the State.
>
> [R. 3:24(d) (emphasis added).]

As the county prosecutor did not appear in municipal court, the State was authorized to supplement the record with appropriate evidence. Ibid. We reiterate that in affirming Judge Deitch's finding there was reasonable and articulable suspicion to believe defendant had been driving while intoxicated, we only considered the circumstances known to police at the moment the Fourth Amendment seizure occurred, that is, when Officer Weiss activated the overhead lights of his police vehicle.

To the extent we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed. We remand solely for the trial court to vacate the stay of defendant's sentence. We do not retain jurisdiction.