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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1399-22**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ERIK D. VANDEVELDE,
a/k/a ERIK VANDEVELDE,

Defendant-Respondent.

Argued May 30, 2023 – Decided June 22, 2023

Before Judges Whipple, Mawla and Smith.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Morris County, Indictment No. 22-09-0572.

Paula C. Jordao, Assistant Prosecutor, argued the cause for appellant (Robert J. Carroll, Morris County Prosecutor, attorney; Paula C. Jordao, on the briefs).

Austin J. Howard, Assistant Deputy Public Defender, argued the cause for respondent (Joseph E. Krakora, Public Defender, attorney; Austin J. Howard, of counsel and on the brief).

PER CURIAM

The State appeals from the trial court's November 28, 2022 order suppressing the seizure of multiple guns, including automatic weapons, over 100,000 rounds of ammunition, and illegal drugs from defendant's home and garage. After receiving a 911 call to conduct a welfare check on defendant Erik D. Vandavelde at his home, police officers conducted a warrantless search of the home, identifying a stolen handgun. Police obtained a warrant to search defendant's premises, and then uncovered the contraband. After a hearing, the trial court suppressed the evidence seized, finding no warrantless search exceptions applicable.

On appeal, the State argues the trial court committed error and that the warrantless search which led to the identification and seizure of the stolen gun was permissible. For the reasons that follow, we affirm.

I.

We summarize the salient facts from the record, including the testimony of Corporal John Field, the sole witness at the suppression hearing conducted by the trial court on November 14, 2022.

On June 8, 2022, defendant's friend Dan Conroy called 911 to report defendant was punching himself in the head while waving a gun in the air.

Corporal Field was dispatched to do a welfare check with other officers around 11:08 p.m. Corporal Field spoke to Conroy by phone and learned Conroy did not witness this behavior. Defendant's brother Donald Vandavelde¹ had been with defendant earlier and was the person who called Conroy to express concern over defendant's behavior. Corporal Field learned from Conroy that defendant owned several guns, including four to five handguns and three AR-15 style weapons.

Prior to arriving at defendant's residence, Corporal Field and the other officers met at a nearby elementary school to plan their approach to the welfare check. Corporal Field testified at the suppression hearing that he considered this a high-risk welfare check due to Conroy's 911 report about defendant's firearms.

While at the school, Corporal Field called Donald to get additional details. In that call, Corporal Field learned Donald was no longer at defendant's home, and that defendant appeared "irate." Donald told Corporal Field that defendant had experienced "a difficult couple of weeks." Donald also denied any knowledge of the gun mentioned by Conroy in the 911 call, and that he did not

¹ Because defendant and his brother share the same surname, we use Donald's first name to identify him. We intend no disrespect.

know whether his brother was alone in the residence. As a result of what he learned, Corporal Field checked to see if defendant had any firearms registered to him. He learned there were none.

The officers arrived at defendant's house at around 11:34 p.m. The home had security cameras and all of the exterior lights were off. The premises was quiet. Partially closed blinds and curtains revealed some interior lights were on. The officers knocked on the front door with no response. They tried calling defendant's phone and got no answer. They heard snoring sounds coming from the glass sliding doors on the patio. Officers knocked on the sliding doors, but no one answered. They could see through the glass doors and observed a handgun and rifle scope cover lying on a pool table.

Because there was no movement within the house, Corporal Field called Donald and Conroy again to ask if defendant was alone in the house. Donald told Corporal Field he believed defendant was alone and might be hiding in the house. Video footage from Corporal Field's body-worn camera (BWC) revealed that he told the other officers, "the house is empty. He's by himself" He also told the other officers that Donald "said nothing about a gun."

Corporal Field next called defendant's girlfriend and learned she was no longer at defendant's residence but had been there earlier that day. She had

noticed defendant acting strangely. Corporal Field learned from his call that defendant kept "a lot" of guns in his home. She added that she did not know whether defendant was alone.

Sometime after this call, Corporal Field told another officer present, "he's alone." The officers then tracked defendant's cell phone, and it pinged about a quarter mile away from his home near the elementary school. Corporal Field called Conroy, Donald, and defendant's girlfriend to obtain a key to defendant's home. Conroy answered the phone but did not have a key. Neither Donald nor defendant's girlfriend answered the calls.

One of the officers then alerted the others that he saw movement in the house towards the front door. The officers rushed to the front door area, and defendant finally emerged from the front door at approximately 12:30 a.m. The officers escorted him onto the porch and patted him down for weapons. They asked defendant if there was anyone else in the house. He said no. Defendant stayed on the front porch with Corporal Field while other officers entered the residence to search for possible victims or threats to officer safety. According to Corporal Field, the officers went into the home because they did not know if defendant was alone.

While inside the residence, the officers only searched places large enough for a person to fit. Corporal Field eventually entered the home and picked up the gun the police had earlier observed on the pool table. He confirmed it was unloaded and returned it to the pool table. When Corporal Field asked defendant who owned the gun, defendant replied that he did not know. Defendant went on to mention that Donald had been at his house earlier that day, and owned guns. Defendant denied punching himself in the head or raising his voice and claimed that he had been sleeping all day.

Corporal Field next went back into defendant's home to check the serial number on the pool table gun and learned it was reported stolen. The officers then arrested defendant. A criminal background check revealed defendant was a certain person ineligible to possess firearms.² Based on this information, police obtained and executed a search warrant for defendant's residence. The police recovered substantial contraband, including but not limited to four assault weapons, seven other guns, over 100,000 rounds of ammunition, more than 100 high-capacity magazines, and various illegal drugs.

² N.J.S.A. 2C:39-7(b)(1).

Defendant was charged with third-degree receiving stolen property, as well as multiple drug and weapons charges.³

In September 2022, defendant moved to suppress all evidence seized pursuant to the search warrant. The trial court heard Corporal Field's testimony and viewed portions of his BWC footage. The trial court found Corporal Field credible. The court found the following facts: two officers went into defendant's house to perform a protective sweep; the officers entered the house "less than a minute" after defendant emerged from the house to speak with the them; at the time the two officers entered the house, defendant was not under arrest, there were no outstanding warrants for his arrest, and his criminal history was unknown; during the protective sweep, Corporal Field picked up and checked the handgun to ensure it was not loaded, then replaced it on the pool table; after

³ Indictment No. 22-09-0572 charged defendant with one count of third-degree receiving stolen property, N.J.S.A. 2C:20-7(a); four counts of second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(f); fourth-degree unlawful possession of a prohibited weapon, N.J.S.A. 2C:39-3(j); first-degree possession with intent to distribute a controlled dangerous substance (CDS), N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(6); two counts of third-degree possession of CDS, N.J.S.A. 2C:35-10(a)(1); second-degree unlawful possession of a weapon during a CDS offense, N.J.S.A. 2C:35-5 and N.J.S.A. 2C:39-4.1(a); twelve counts of second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7(b)(1); and fourth-degree certain persons not to have ammunition, N.J.S.A. 2C:39-7(a).

defendant told Corporal Field he did not know who owned the handgun, Corporal Field re-entered the home to get the serial number on the gun, as the serial number could not be seen from the officers' vantage point outside the sliding door.

The trial court rejected the three warrantless search exceptions argued by the State: protective sweep; community caretaking; and inevitable discovery.

The State raises the following points on appeal:

POINT I

THE EVIDENCE SHOULD NOT HAVE BEEN SUPPRESSED

A. Protective Sweep

B. Community-Caretaking

POINT II

THE EVIDENCE IS ALSO ADMISSIBLE PURSUANT TO THE INEVITABLE DISCOVERY EXCEPTION

II.

Our scope of review on a motion to suppress is limited. State v. Ahmad, 246 N.J. 592, 609 (2021) (citing State v. Robinson, 200 N.J. 1, 15 (2009)).

"Generally, on appellate review, a trial court's factual findings in support of granting or denying a motion to suppress must be upheld when 'those findings

are supported by sufficient credible evidence in the record." State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). The appellate court gives deference to those factual findings in recognition of the trial court's "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Elders, 192 N.J. 224, 243 (2007). The reviewing court "ordinarily will not disturb the trial court's factual findings unless they are 'so clearly mistaken that the interests of justice demand intervention and correction.'" State v. Goldsmith, 251 N.J. 384, 398 (2022) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)). However, legal conclusions to be drawn from those facts are reviewed de novo. State v. Radel, 249 N.J. 469, 493 (2022); State v. Hubbard, 222 N.J. 249, 244 (2015).

III.

The State first contends the protective sweep doctrine justified the warrantless entry of defendant's home. It argues the record supports the conclusion that this welfare check was "high risk" because the officers faced several variables which affected their safety calculus: they did not know if defendant was alone; they learned from defendant's brother he may be hiding; they learned from Conroy and defendant's girlfriend that defendant had several guns; and they observed a gun and a rifle scope case on the pool table. The State

argues these conditions required the officers to enter and sweep the house for their protection as well as to check for potential injured victims. It further contends the warrantless search was properly limited in scope to places where a person could fit, and that officers had a reasonable articulable suspicion to believe there might be another person in the house with access to weapons who may be a danger to themselves or the public.

"[T]he warrantless search of a home is 'presumptively unreasonable' and 'must be subjected to particularly careful scrutiny.'" Radel, 249 N.J. at 494 (quoting State v. Edmonds, 211 N.J. 117, 129 (2012)). In order for police to legally enter a home without a warrant, not incident to an arrest, there must be "objective facts provid[ing] the police with a reasonable and articulable suspicion that their lives may be placed in imminent danger by a person or persons inside the home." Id. at 477-78.

The trial court concluded that the State did not meet its burden to show the officers "had reasonable and articulable suspicion to believe that a person or persons were present inside the [r]esidence who posed an imminent threat to their safety so as to justify their warrantless entries into defendant's home . . . based upon the protective sweep doctrine."

We have no basis to second guess the trial court. Its findings are supported with credible evidence in the record, including but not limited to: Donald and defendant's girlfriend's statements to Corporal Field; the lack of movement inside the house for over an hour; no noise detected besides snoring for the same period of time; and no one seen approaching the pool table gun during that time. Additionally, the BWC video showed Corporal Field telling his fellow officers that defendant was alone. Defendant behaved in a calm manner when he came out of the house, and he was compliant with the officers.

The State next argues the warrantless search of defendant's house was justified under the community caretaking exception. It asserts the two-part test established in State v. Vargas, 213 N.J. 301 (2013) has been satisfied.

Our Supreme Court has held the community caretaking exception allows police to enter a home without a warrant if they satisfy a two part test: (1) there must be "'an objectively reasonable basis to believe that an emergency requires that [police] provide immediate assistance to protect or preserve life, or to prevent serious injury' and (2) there is a 'reasonable nexus between the emergency and the area or places to be searched.'" Id. at 323-24 (quoting Edmonds, 211 N.J. at 132).

The trial court rejected the State's argument, citing Caniglia v. Strom, 141 S. Ct. 1596 (2021). In Caniglia, the United States Supreme Court held that the community caretaking exception to the constitutional prohibition against unreasonable searches and seizures did not justify seizure of weapons during a welfare check. Id. at 1598.

The Court summarized the facts of the case as follows:

During an argument with his wife at their Rhode Island home, Edward Caniglia . . . retrieved a handgun from the bedroom, put it on the dining room table, and asked his wife to "shoot [him] now and get it over with." She declined, and instead left to spend the night at a hotel. The next morning, when [Caniglia's] wife discovered that she could not reach him by telephone, she called the police . . . to request a welfare check.

[The police] accompanied [Caniglia's] wife to the home, where they encountered [him] on the porch. [Caniglia] spoke with [police] and confirmed his wife's account of the argument, but [he] denied that he was suicidal. [Police], however, thought that [Caniglia] posed a risk to himself or others. They called an ambulance, and [Caniglia] agreed to go to the hospital for a psychiatric evaluation—but only after [police] allegedly promised not to confiscate his firearms. Once the ambulance had taken [Caniglia] away, however, [police] seized the weapons. Guided by [Caniglia's] wife—whom they allegedly misinformed about his wishes—[police] entered the home and took two handguns.

[Id. at 1596 (first alteration in original).]

The trial court found that like Caniglia, defendant was not under arrest or suspected of a crime when police encountered him on his porch during the welfare check. Defendant was not brandishing a gun. He was coherent and cooperative when he answered the door. On the porch, defendant did not exhibit the state of distress admitted to by Caniglia.

The trial court did not misapply the law by relying on Caniglia. Nor did it abuse its discretion when it concluded that there was no objectively reasonable basis to believe the police were needed to provide immediate assistance to protect life or limb as required by prong one of Vargas.

Finally, the State argues the evidence should not have been suppressed because the handgun on the pool table is admissible because it was visible from outside the house,⁴ and that the subsequent seizures of the other firearms are admissible under the inevitable discovery doctrine. The State further contends that even if officers did not enter defendant's residence, defendant's statement that he did not know who owned the gun opened the door for police to seize the handgun. The State argues that the officers could not have left the handgun with defendant knowing his relatives were concerned about his welfare and had

⁴ The State relies on State v. Hathaway, 222 N.J. 453, 470 (2015) for the proposition that the handgun was in plain view on the pool table and therefore should be admissible.

called, reporting defendant was behaving erratically. According to the State, the officers would have inevitably discovered the gun was stolen had they seized it and checked the serial number later in an attempt to find its owner.

The inevitable discovery doctrine is a narrow exception to the exclusionary rule and requires the State to prove by clear and convincing evidence:

(1) proper, normal and specific investigatory procedures would have been pursued in order to complete the investigation of the case;

(2) under all of the surrounding relevant circumstances the pursuit of those procedures would have inevitably resulted in the discovery of the evidence; and

(3) the discovery of the evidence through the use of such procedures would have occurred wholly independently of the discovery of such evidence by unlawful means.

[State v. Camey, 239 N.J. 282, 302 (2019) (citing State v. Sugar, 100 N.J. 214, 238 (1985)).]

The State failed to meet its burden under Camey on this record. Although the gun was visible from outside the house, guns are not inherently contraband. On this record the State cannot claim it is inevitable they would have discovered the gun was stolen by simply observing it on the pool table from outside of defendant's home.

The State's argument that the police could not reasonably leave the gun with someone they believed had been acting erratically earlier in the day is unsupported by the record. The officers never witnessed defendant behaving erratically, and the trial court found the record unclear concerning how much time had elapsed since Donald and defendant's girlfriend had made the observations of defendant which prompted the 911 call.

While we are mindful of the challenging circumstances faced by these officers during a welfare check, we nonetheless conclude the officers exceeded their authority when they conducted a warrantless search of defendant's home by entering defendant's home and obtaining the serial number on the pool table gun. Therefore, the evidence seized, including subsequently pursuant to a warrant, was properly suppressed and the trial court did not abuse its discretion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION