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SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION, CRIMINAL PART
IND. 22-12-0749-I
PROS. FILE MER-22-0011

STATE OF NEW JERSEY,

Plaintiff,

v.

TERRANCE WHITE,

Defendant.

Decided: March 11, 2025

MATTHEW S. SAMEL, ESQ, assistant prosecutor, attorney for State of New Jersey (Mercer County Prosecutor's Office).

MARY CLARE PATTERSON, II, ESQ., assistant deputy public defender, attorney for Terrance White (Office of the Public Defender).

OSTRER, J.A.D. (retired and temporarily assigned on recall):

Defendant moves to suppress a gun and ammunition that police seized after a warrantless automobile search. The search followed a motor vehicle stop prompted by an alleged motor vehicle infraction – failure to maintain lane, N.J.S.A. 39:4-88(b). Defendant presents two grounds for suppression. First, he contends that the

police lacked a reasonable and articulable suspicion of a violation of N.J.S.A. 39:4-88(b) to justify the initial stop. Second, he contends police unconstitutionally prolonged the stop. The court grants the motion on both grounds.

I.

The court finds the following facts by a preponderance of the evidence, based on the credible testimony of Robbinsville Police Detective Thomas Septak, the video recordings of the stop, and a satellite photo of the area where the failure-to-maintain-lane infraction allegedly occurred. The court considers first the circumstances related to the initial stop.

A.

The detective (then a patrolman) was on duty New Year's Eve and early New Year's Day looking for drunk drivers. At 1:00 a.m., he was parked on the shoulder of westbound I-195, just east of where the entrance ramp from the New Jersey Turnpike meets westbound I-195.

The detective testified it was cold that evening. A very light snow flurry is visible on the video recording. There was no testimony on whether the roads were slick or dry. It was dark, except for the illumination that vehicles provided.

The detective's precise location is important. As depicted on Exh. D-1 in evidence -- the satellite image of the highway interchange -- traffic entering westbound I-195 from the Turnpike travelled northbound, crossing over I-195, and

then curved in a clockwise direction until it flowed into an acceleration lane that continued under the overpass and alongside the main roadway. A shoulder east of the ramp ran alongside the right lane of the westbound roadway. The shoulder formed a vertex with the ramp to its right. Then the shoulder abruptly gave way to the entrance ramp, narrowing and disappearing at the point of gore[1] formed by the entrance-ramp-acceleration-lane and the right lane of the westbound roadway.

The detective indicated where he was located with a red mark on Exh. D-1. The detective's police car was located in the shoulder just south of the vertex formed by the ramp and shoulder. He was facing the direction of the traffic and his headlights were on.

The court finds that to a motorist coming around the ramp's final bend, the detective's car would appear unexpectedly to be headed toward the same single acceleration lane as the motorist. The motorist spotting the police car would likely be unable to tell it was stationary before discerning a sudden need to avoid it.

The detective signaled a motor vehicle stop shortly after defendant came around that entrance ramp. The detective testified that he decided to stop defendant because he failed to maintain his lane. The alleged failure-to-maintain-lane

[1] "Point of gore" is "the point where the main-traveled way and a ramp or another highway come together." N.J.A.C. 16:41C-2.1. In other words, the "point of gore" is the point of the angle or vertex, formed by the entrance ramp-acceleration lane as it meets the main roadway.

infraction was not recorded. There is no evidence that defendant deviated from his lane after he continued into the acceleration lane and entered I-195's main roadway.

The State did not ask the detective during his testimony how far defendant deviated from his lane, what distance defendant travelled while his car was beyond the fog line, or where precisely defendant deviated from the lane. Nor did the State ask Det. Septak if the fog line on the entrance lane was clearly marked and visible.

During the traffic stop, after receiving his Miranda[2] warnings, defendant asked the detective why he was pulled over in the first place. The detective answered, "You were drifting way on the shoulder. When you were coming on I-195, you were almost completely on the shoulder." When defendant questioned the detective further, he said, "When you came around the bend, you were half on the shoulder, half in the lane."

B.

Soon after the alleged failure-to-maintain-lane violation, Det. Septak pursued defendant's Ford SUV and then activated his overhead lights. Defendant pulled off the roadway without incident.

The detective requested defendant's credentials and engaged in limited conversation about defendant's travels. The detective noticed that defendant's car had expired temporary tags. He also observed a partially empty bottle of whiskey

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

near the passenger seat and additional unopened bottles of alcoholic beverages in the rear of the vehicle. Defendant provided his driver's license and said his registration and insurance credentials were in a briefcase in the rear of the vehicle. The detective accompanied defendant to the rear of defendant's SUV where defendant opened his briefcase and provided his documents.

While defendant was retrieving his documents, the detective asked defendant where he was coming from and where he was headed. Defendant responded that he was coming from New York City and was on his way back to Delaware. He had pulled off the Turnpike to try to find a gas station as he was running low. At one point, defendant said he had a picture of one of his credentials on his phone and walked back to the passenger compartment, retrieved his phone, and showed the photo of the document to the detective.

The detective then told defendant, "Let me check out your stuff." By that time, three-and-a-half minutes had elapsed according to the timer on the body worn camera recording.[3] He told defendant to close the SUV's rear gate and wait in the vehicle. The defendant then returned to his vehicle and remained there for about a minute and a half. He appeared to enter defendant's driver's license into his onboard computer. A State Police Trooper arrived. The detective asked him to assist. "I

[3] The detective exited his patrol car at the thirty-second mark. So, while roughly three-and-a-half minutes had elapsed since then, the video timer showed 4:00.

want to talk to him a little more. They say they're coming from New York, heading back to Delaware. But his story is kind of vague. I'd like to get some clarification."

About five minutes and twenty seconds after the stop began, the detective approached defendant, then seated in the driver's seat, and asked him to "hop out. I want to talk you some more." They returned to area in front of the patrol car. The detective asked about the open container. Defendant said his passenger was sipping from the bottle "hours ago," but the defendant said he "ha[d]n't been drinking at all." Det. Septak confirmed, "You haven't been drinking?" Defendant confirmed he had not.

Then the detective directed his inquiries to defendant's activities in New York. "What were you guys doing in New York?" That was about five minutes and fifty seconds into the stop. Defendant explained they drove to New York "just to get away" and they stopped to get pizza at a place called Joe's. The detective asked where the pizza place was and defendant said he could not say but offered to show a Snapchat photo of him at the pizza place, but the detective did not express an interest in seeing it. The detective asked defendant when he headed up to New York. Defendant said they left for New York around four o'clock; it was about a four-hour drive; they hung around for three hours; then decided to head back.

The detective asked defendant to identify the neighborhood in New York where the pizza place located. Defendant explained that he and his companion had

no specific destination. Det. Septak asked whether there was "anywhere specific where they were headed in New York." Defendant said he had no specific destination; he just wanted to be in New York. Defendant said he liked going for a drive. They tried to get near Times Square but it was blocked off. Defendant stated that he did not anticipate that the area would be so congested.

After questioning defendant for a minute and a half about his whereabouts in New York, the detective asked, at seven minutes and twenty-five seconds into the stop, "Nothing illegal in the car?" Defendant answered, "No," but added, "I have my registered gun that's in the glove box."

The detective seized the handgun and the ammunition. The detective then placed defendant under arrest, delivered Miranda warnings, and obtained defendant's consent to search the SUV. The search uncovered nothing else of interest.

The detective testified that he would have pursued an investigation into driving under the influence, had he not discovered the firearm. However, the detective admitted that defendant did not slur his words nor did he show signs of physical impairment or lack of balance. This is confirmed by the recording. The detective testified that the cold temperature impaired his sense of smell, so he could not detect odors, if any, of alcoholic beverages.

Defendant was charged and later indicted for unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1) and unlawful possession of hollow nose bullets, N.J.S.A. 2C:39-3(f)(1). He received tickets for the alleged failure-to-maintain-lane violation, N.J.S.A. 39:4-88(b); driving an unregistered vehicle, N.J.S.A. 39:3-4; and having an open container of alcohol in the vehicle, N.J.S.A. 39:4-51B.

II.

"To be lawful, an automobile stop 'must be based on reasonable and articulable suspicion that an offense, including a minor traffic offense, has been or is being committed.'" State v. Bacome, 228 N.J. 94, 103 (2017) (quoting State v. Carty, 170 N.J. 632, 639-40 (2002)). As the detective lacked reasonable and articulable suspicion that defendant violated the motor vehicle law, the motor vehicle stop was unlawful and the fruits of that stop – the seized weapon and ammunition – must be suppressed. See State v. Alessi, 240 N.J. 501, 518 (2020) (stating that if the State cannot meet its burden to prove by a preponderance of the evidence that an investigatory stop was constitutional, the court "will suppress the fruits of the stop").

In addressing a motor vehicle stop for failing to maintain a lane, this court does not write on a clean slate. The Appellate Division in State v. Boone, 479 N.J. Super. 193 (App. Div. 2024) detailed what the State must show to justify such a stop. The State is not required to prove the violation actually occurred – only that there was a reasonable and articulable suspicion of a violation. Id. at 207-208; see also

State v. Williamson, 138 N.J. 302, 302 (1994). Nonetheless, discerning a failure-to-maintain-lane violation "requires a fact-specific inquiry into the particular circumstances present during the incident in question in order to determine whether the driver could reasonably be expected to maintain a straight course at that time in that vehicle on that roadway." Boone, 479 N.J. Super. at 208 (quoting State v. Woodruff, 403 N.J. Super. 620, 628 (Law Div. 2008)).

That requirement is rooted in the statute's plain language. The motor vehicle law states, "A vehicle shall be driven as nearly as practicable entirely within a single lane." N.J.S.A. 39:4-88(b) (emphasis added). "If it is not practicable to maintain the lane, then a departure from lane is not a violation." Boone, 479 N.J. Super. at 207 (quoting Woodruff, 403 N.J. Super. at 627). Thus, the statute "excuse[s] a departure from the lane caused by obstacles [or] road conditions." Woodruff, 403 N.J. Super. at 628. For example, a motorist would not violate the statute by briefly departing from the lane to avoid passing too closely by an emergency vehicle that was pulled off onto the shoulder. Also, "[o]ne or two deviations from a lane may or may not constitute a violation, depending on the circumstances." Boone, 479 N.J. Super. at 208 (quoting Woodruff, 403 N.J. Super. at 629).

Establishing reasonable and articulable suspicion of a failure-to-maintain-lane violation requires more than evidence that a motorist deviated once from a lane. Boone, 479 N.J. Super. at 209-10. "The suspicion necessary to justify a stop must

not only be reasonable, but also particularized." Id. at 209 (quoting State v. Scriven, 226 N.J. 20, 37 (2016)). Thus, the Boone court found wanting a "detective's generalized statement that [a vehicle] . . . crossed the center line more than once without any particulars as to where, how many times, over what distance, how extensive the incursion or the effect of the darkness, the rain, the [vehicle's] size and the condition of the road on his assessment of the violation." Id. at 210.

Applying these principles to this case, this court concludes that the State failed to present facts sufficient to establish by a preponderance of the evidence that the detective possessed a reasonable and particularized suspicion that defendant failed to maintain his lane "as nearly as practicable." N.J.S.A. 39:4-88(b).

As noted, a motorist who deviates from the lane to avoid an obstacle does not violate the statute. The detective himself created, presumably unintentionally, an apparent obstacle to defendant's path of travel as defendant rounded the final bend of the entrance ramp. A motorist would not reasonably anticipate that there would be a car in the shoulder, headlights on, and apparently headed toward the same acceleration lane as the motorist. It was nighttime. The roadway was unilluminated. Snow was lightly falling. Under those conditions, a motorist coming around the bend would not notice the police car until the motorist completed the circle. The motorist would then reasonably conclude that one car would have to avoid and yield to the other.

That is what evidently happened here. Defendant may have deviated from the lane – crossing the right fog line – to avoid the detective's vehicle, which could be perceived as competing with defendant. An officer "cannot create a situation which amounts to a dangerous driving condition, observe the driver react appropriately, and then base reasonable suspicion on the reaction." United States v. Sigmond-Ballestros, 285 F.3d 1117, 1124 (9th Cir. 2002); see also United States v. Boatright, 678 F. Supp.3d 1014, 1033-34 (S.D. Ill. 2023) (stating that "officers cannot create a situation which causes a driver to react appropriately" and then justify a stop on the reaction); United States v. Esteban, 283 F. Supp. 3d 1115, 1129 (D. Utah 2017) (holding that a stop was unreasonable where "the traffic violation that provided the basis for the stop was provoked by the officer's own driving conduct").

Notably, the detective testified that defendant deviated from his lane just once, somewhere to the detective's right. In his testimony, he did not describe where exactly the deviation occurred, the extent of it, or its duration. Nor did he say that the lane markings were clear and visible. N.J.S.A. 39:4-88 applies only "[w]hen a roadway has been divided into clearly marked lanes for traffic." (Emphasis added). It was winter when a fog line, even if newly painted – and there was no evidence it was -- may have been obscured by salt and grit from snow treatments.

The State asks the court to find as fact that defendant departed his lane to the extent the detective said he did on the video. The court declines to do so. Although

the detective's hearsay statements are admissible in a suppression hearing, N.J.R.E. 104(a), "the trial court is the arbiter of the weight to be given to such evidence when the [S]tate forgoes presenting available firsthand testimony . . . ." State v. Watts, 223 N.J. 503, 519 n. 4 (2015). See also State v. Engel, 99 N.J. 453, 465 (1985) (noting that the hearsay rule "ensure[s] the accuracy of the factfinding process by excluding untrustworthy statements, such as those made without the solemnity of the oath, and not subject to cross-examination by the accused or the [fact-finder's] critical observation of the declarant's demeanor and tone"). Hearsay's inherent limitations do not disappear simply because hearsay is admissible in a pre-trial hearing under N.J.R.E. 104(a).

"Way on the shoulder," "almost completely on the shoulder," and "half on the shoulder" are conflicting statements. The court cannot discern which of the detective's recorded on-the-scene statements is true, or if none are true. The detective was free, while interrogating defendant, to exaggerate the nature of his motor vehicle violation. See State v. Cooper, 151 N.J. 326, 355 (1997) (discussing police misrepresentations in interrogations). But when the detective was under oath and subject to cross-examination, he did not address the extent of defendant's alleged lane deviation. And the detective did not say, on the scene or on the witness stand, where precisely defendant crossed the fog line or how far defendant travelled while doing so.

The court concludes there was a single, isolated departure from the lane, the extent of which remains uncertain. Furthermore, the lane may not have been clearly marked. The lane departure occurred on a dark roadway. Snow was lightly falling. Det. Septak's stationary police vehicle likely created the impression of an obstacle – an approaching vehicle competing for access to the acceleration lane – that may have prompted defendant to move to his right. These facts do not suffice under Boone's reasoning to establish a reasonable and articulable suspicion that defendant violated N.J.S.A. 39:4-88(b). Therefore, the stop was unlawful and the motion to suppress the fruits of the stop is granted. See State v. Alessi, 240 N.J. at 518.

III.

For the sake of completeness, the court addresses defendant's second point, which assumes for argument's sake that there was reasonable and articulable suspicion to conduct a motor vehicle stop to investigate the failure-to-maintain-lane violation. Defendant contends the handgun and ammunition must still be suppressed because the detective prolonged the stop beyond that needed to carry out the traffic stop mission, and only after he prolonged the stop did he uncover evidence of the handgun that would have justified continuing the seizure of defendant. Although the issue is a close one, the court agrees.

"A seizure justified only by a police-observed traffic violation . . . 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e]

mission' of issuing a ticket for the violation." Rodriguez v. United States, 575 U.S. 348, 350-51 (2015) (quoting Illinois v. Caballes, 543 U.S. 405, 407 (2005)). The Supreme Court explained, "Because addressing the infraction is the purpose of the stop, it may 'last no longer than is necessary to effectuate th[at] purpose.'" Id. at 354 (quoting Caballes, 543 U.S. at 407).

"Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" Id. at 355 (quoting Caballes, 543 U.S. at 408). Ordinary inquiries "[t]ypically . . . involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Ibid. "These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Ibid.

An officer also may "inquire into matters unrelated to the justification for the traffic stop." State v. Dunbar, 229 N.J. 521, 532 (2017) (quoting Arizona v. Johnson, 555 U.S. 323, 333 (2009). But those inquires "may not be performed 'in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.'" Id. at 533-34 (quoting Rodriguez, 575 U.S. at 355). "In other words, in the absence of such suspicion, an officer may not add time to the stop." Id. at 540. There is no de minimis exception to the durational limitation. Rodriguez, 575 U.S. at 356-57.

The rule against prolonging a stop is not measured against the time a typical such encounter would take. See Rodriguez, 575 U.S. at 357. "The reasonableness of a seizure . . . depends on what the police in fact do." Ibid. An officer does not earn "bonus time" for unrelated inquiries by completing the traffic mission faster than normal. "If an officer can complete traffic-based inquiries expeditiously, then that is the amount of 'time reasonably required to complete [the stop's] mission." Ibid. (quoting Caballes, 543 U.S. at 407).

Furthermore, it does not matter when, in the course of the stop, the unrelated inquiries occur. The issue is not whether such an inquiry "occurs before or after the officer issues a ticket." Ibid. The issue is whether the inquiry "'prolongs' – i.e. adds time to – 'the stop.'" Ibid.

To prevail, defendant's prolonged-stop argument depends on making two findings: first, the detective asked questions about defendant's activities in New York that were unrelated to the traffic stop; and second, those questions prolonged the stop beyond the time required to perform the traffic mission. If the detective's questions were related to the traffic stop, then they were allowed even if they extended the stop.

The nature of Det. Septak's questions presents a close call. Traffic-mission-related inquiries may include questioning about a motorist's travel plans, including point of departure and destination, when such questioning is tailored to the alleged

motor vehicle violation and traffic safety. For example, in State v. Chapman, 332 N.J. Super. 452, 463 (App. Div. 2000) – a pre-Rodriguez decision -- the defendant was stopped for erratic driving. The trooper inquired "where the defendants had been and where they were going." Ibid. The court held those questions were traffic-mission related because they "had a substantial nexus to ascertaining the reasons for Chapman's erratic driving and whether he and his passengers posed a danger to others on the road." Ibid.

Other courts have reached similar conclusions. In United States v. Barahona, 990 F.3d 412, 416 (8th Cir. 1993), a driver who was stopped for weaving told the officer he was tired. The officer asked the driver for his destination and whether he was on vacation. The court held that those questions "were reasonably related to ascertaining the reasons for [the defendant's] erratic driving and whether he posed a danger to others on the road." Ibid. Another court upheld questions about a motorist's travel plans noting that "a motorist's travel history and travel plans may help explain, or put into context, why the motorist was weaving (if tired) or speeding (if there was an urgency to the travel)." United States v. Holt, 264 F.3d 1215, 1221 (10th Cir. 2001) (en banc). Certainly, when an officer has stopped a motorist for a moving violation that triggers suspicion of driving under the influence, he may ask if a driver has come from a bar or some other place where alcoholic beverages were served.

But one commentator has questioned how travel plan questions would relate to a "stop . . . made for a loud muffler, a burned-out license plate light, or a just-ended parking violation." Wayne LaFave, 4 Search & Seizure § 9.3(d) (6th ed. 2025). But another court has stated, "An officer investigating a broken taillight . . . has a legitimate interest in knowing whether the driver is two miles from home or halfway through a cross-country trip." United States v. Cole, 21 F.4th 421, 430 (7th 2021) (en banc).

Some courts take an even broader view of questions related to the traffic mission. For example, the Seventh Circuit endorsed the view "[t]ravel plans typically are related to the purpose of a traffic stop because the motorist is traveling at the time of the stop." Id. at 430 (quoting Holt, 264 F.3d at 1221). Other federal courts apparently agree. Id. at 430-31 (citing authority); but see id. at 442-43 (Hamilton, Rovner and Wood, J.J., dissenting) (distinguishing authority).

The more persuasive approach rejects a blanket endorsement of travel plan questioning. In a post-Rodriguez decision, the Kansas Supreme Court cogently observed, "Circumstances matter. . . . To qualify as a task necessary to process the initial stop, information gathering must be limited to the infraction prompting the stop or those other matters directly related to traffic code enforcement, i.e. 'ensuring that vehicles on the road are operated safely and responsibly.'" State v. Jimenez, 429 P.3d 464, 468 (Kan. 2018) (quoting Rodriguez, 575 U.S. at 355). "[A]cross-

the-board travel plan inquiries cannot be justified under Rodriguez as routine incidents of traffic stops." Id. at 476 In Jimenez, the court held that an officer deviated from ordinary traffic-mission-related inquiries when, for four-and-a-half minutes, he asked a driver stopped for tailgating "where she was coming from, where she was heading, the trip's purpose, where she had slept recently, and with whom she had visited and for how long." Id. at 469, 471.

Applying these principles, the court is persuaded that Det. Septak's questioning about defendant's trip to New York City eventually exceeded the scope of ordinary inquiries related to the traffic mission. The suspected failure-to-maintain-lane violation, the open container, and the expired temporary registration justified some limited travel-plan questions. Whether defendant visited a place where alcoholic beverages were sold would fall within the traffic mission. So would questions whether defendant's destination was near or far. Det. Septak explained that defendant's out-of-state destination factored into his decision not to impound defendant's vehicle, notwithstanding that its temporary registration expired, but instead to allow the passenger to drive it home.

But the detective's questions ultimately exceeded the scope justified by the traffic stop. The detective learned in his first round of questioning that defendant and his companion had driven up to New York City on New Year's Eve, but left New York before midnight and were heading back to Delaware. After returning to

his patrol car, Det. Septak told the assisting trooper that defendant's answers were "vague." But the detective gave no insights in his testimony about why the answers were unsatisfactory, nor how his subsequent questioning related to the traffic-mission. In the second round of questioning, the detective sought details about the pizza place where defendant said he stopped to eat. He also asked if defendant had a specific destination in New York. The State has not demonstrated how such questions related to the reasons for the stop or the additional motor vehicle violations that the detective uncovered once the stop occurred.

Furthermore, the questioning prolonged the stop beyond the time needed to complete the traffic mission. The detective did not uncover evidence, separate from the motor vehicle violations, to create reasonable suspicion of unrelated offenses, which would have justified the additional questions. Although the time added to the stop was just a few minutes, there is no de minimis exception to the durational limitation, as already noted. Rodriguez, 575 U.S. at 356-57.

Defendant disclosed that he possessed a handgun only after the stop was already prolonged. That disclosure, and the seizure of the handgun and ammunition, are the fruit of the unlawfully prolonged stop. Therefore, the items seized must be suppressed. See State v. Alessi, 240 N.J. at 518.

IV.

In conclusion, the motion to suppress is granted because (1) the initial stop for the failure-to-maintain violation lacked reasonable, articulable and particularized suspicion; and (2) the stop was unlawfully prolonged.