

## SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

### **State of New Jersey v. Derek J. Kaltner (A-8-11)(068778)**

**(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in the opinion below.)**

**Argued March 27, 2012 -- Decided May 1, 2012**

#### **PER CURIAM**

The Court considers whether the trial court correctly suppressed drug evidence found in a bedroom during a warrantless search of a residence by police officers who were responding to noise complaints.

On October 22, 2009, housemates of defendant Derek J. Kaltner hosted a party in the home they rented in Long Branch, New Jersey. Five Long Branch police officers in plain clothes responded to the home after receiving noise complaints. On their arrival, the officers heard loud noise coming from the home. According to Officer Ramon Camacho, he knocked on the door, and an unidentified male opened the door to allow the officers entry. However, the individual walked away before the officers could speak with him. Upon entering the home, Camacho observed a very large crowd of people drinking beer and talking loudly. In an attempt to locate the responsible residents, the officers repeatedly shouted, "who lives here?," but the partygoers did not respond. The officers separated and canvassed the residence to identify and locate the residents in order to clear out the party, abate the noise, and ensure that no individual was in need of medical assistance. On the second floor of the house, Camacho continued to inquire among partiers, but no one acknowledged being a resident. Camacho proceeded to the third floor, where he found Kaltner's bedroom door open. From the hallway, Camacho saw pills in small plastic bags sitting in plain view atop a small table in the bedroom. Based on his training and experience, Camacho believed the pills were a controlled dangerous substance. Next to the pills, Camacho observed a prescription pill bottle, empty plastic bags, and a black digital scale covered with white powder residue. Camacho entered the bedroom, where he saw additional pills inside the pill bottle with Kaltner's name on the label. Camacho also observed Kaltner's identification cards sitting on the table near the pills. Meanwhile, other officers located three of the residents and issued summonses to them for violating the city's noise ordinance. One of the residents telephoned Kaltner, who was at his parent's home in Rochelle Park. Kaltner returned to the residence and was arrested and charged with possession of a controlled dangerous substance.

The defense disputed the officers' version of the events, arguing that the party was small, and that the officers searched the entire house and forcibly entered the bedrooms, including Kaltner's, by kicking down locked bedroom doors. The judge found credible Officer Camacho's testimony about the size and scope of the party and the volume of noise. The judge also found that the unidentified adult male who answered the door invited the officers at least into the common area of the home. However, the judge suppressed the drug evidence after concluding that the officers unlawfully extended their search beyond entry into the first floor main living area. The judge explained that any number of methods could have been employed by the officers to locate a resident of the premises that would not have required invading the private areas of the home.

The Appellate Division affirmed. 420 N.J. Super. 524 (App. Div. 2011). The panel rejected the State's argument that by hosting a large party defendant had no expectation of privacy in the home or, in the alternative, that the officers acted reasonably in their community caretaking function to abate the noise nuisance. The panel explained that Kaltner had a reasonable expectation of privacy despite the party, which was not open to the public, therefore a search warrant grounded in probable cause was needed unless an exception to the warrant requirement applied. The panel agreed with the motion judge that the police officers' initial entry into the premises in response to the noise complaint was lawful. The question, however, was whether, after their legitimate entry, the community caretaking exception to the warrant requirement justified the officers' conduct in fanning out in search of those in control of the premises in an attempt to abate the noise nuisance.

The panel explained that the community caretaking exception to the warrant requirement requires a case-

by-case, fact-sensitive analysis. The relevant question focuses on the objective reasonableness of the police action under the circumstances, and requires that the court balance the nature of the intrusion necessary to handle the perceived threat to the community caretaking concern, the seriousness of the underlying harm to be averted, and the relative importance of the community caretaking concern. The panel concluded that the police action in this case was not constitutionally permitted. Although the officers' entry into the dwelling was initially justified, their subsequent action in fanning out and conducting, in essence, a full-blown search of the home was not reasonably related in scope to the circumstances that justified the entry in the first place, nor was it carried out in a manner consistent with the factors supporting the entry's initial legitimacy. As explained by the motion judge, the objective of noise abatement could have been achieved well short of the officers' full-scale search. For example, given the number of officers present and the fact that the offending noise emanated from the crowd itself, the officers could easily have dispersed the partiers.

After balancing the competing interests, including the important privacy interest in one's home, the breadth and extent of the invasion of the entire premises, the limited nature of the community caretaking concern, and the relatively low threat posed in light of the available less-drastic options, the panel concluded that Officer Camacho was not lawfully in the hallway outside Kaltner's bedroom when he viewed the evidence, and the plain-view doctrine did not excuse his entry into the bedroom and seizure of the drugs.

**HELD:** The decision of the Appellate Division is affirmed substantially for the reasons expressed in Judge Parrillo's opinion. Because the police officers' warrantless search of the home after they were called to address a noise complaint was not objectively reasonable, the evidence obtained during the search was properly suppressed.

The judgment of the Appellate Division is **AFFIRMED**.

**CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, HOENS, and PATTERSON, and JUDGE WEFING (temporarily assigned) join in this opinion.**

SUPREME COURT OF NEW JERSEY  
A-8 September Term 2011  
068778

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

DEREK J. KALTNER,

Defendant-Respondent.

Argued March 27, 2012 - Decided May 1, 2012

On appeal from the Superior Court, Appellate Division, whose opinion is reported at 420 N.J. Super. 524 (2011).

Ian D. Brater, Assistant Prosecutor, argued the cause for appellant (Peter E. Warshaw, Jr., Monmouth County Prosecutor, attorney).

Frank J. Pugliese, Assistant Deputy Public Defender, argued the cause for respondent (Joseph E. Krakora, Public Defender, attorney).

Frank Muroski, Deputy Attorney General argued the cause for amicus curiae Attorney General of New Jersey (Jeffrey S. Chiesla, Attorney General, attorney).

Michael Noriega argued the cause for amicus curiae American Civil Liberties Union of New Jersey Foundation (Noriega & Associates and Edward L. Barocas, Director, attorneys; Mr. Noriega, Mr. Barocas, Jeanne M. LoCicero, and Alexander R. Shalom, on the brief).

Peter J. Gallagher submitted a brief on behalf of amicus curiae Association of Criminal Defense Lawyers of New Jersey (Porzio, Bromberg & Newman, attorneys).

PER CURIAM

The judgment is affirmed, substantially for the reasons expressed in Judge Parrillo's opinion of the Appellate Division, reported at 420 N.J. Super. 524 (2011).

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, ALBIN, HOENS, and PATTERSON, and JUDGE WEFING (temporarily assigned) join in this opinion.

