

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2843-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SHAREEF O. GRAY,

Defendant-Appellant.

APPROVED FOR PUBLICATION

December 20, 2022

APPELLATE DIVISION

Argued November 28, 2022 – Decided December 20, 2022

Before Judges Mawla,¹ Smith and Marczyk.

On appeal from the Superior Court of New Jersey,
Law Division, Middlesex County, Indictment No.
19-10-1681.

Kevin Opoku-Gyamfi, Designated Counsel, admitted pursuant to Rule 1:21-3(c), argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Alison Perrone, Deputy Public Defender, of counsel; Kevin Opoku-Gyamfi, on the briefs).

David M. Liston, Assistant Prosecutor, argued the cause for respondent (Yolanda Ciccone, Middlesex County Prosecutor, attorney; David M. Liston, of counsel and on the brief).

¹ Judge Mawla did not participate in oral argument. He joins the opinion with counsel's consent. R. 2:13-2(b).

The opinion of the court was delivered by
SMITH, J.A.D.

After a jury trial, defendant Shareef O. Gray was convicted of second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b). He appeals the trial court's denial of his motion to suppress physical evidence seized during a warrantless search of his girlfriend's vehicle. He argues the trial court erred in denying his motion to suppress because the police's warrantless entry was unconstitutional, and his oral and written consent to search the vehicle was involuntary and coerced. We conclude defendant's motion to suppress should have been granted because the police did not have a permissible basis to enter the vehicle. For the following reasons, we reverse the trial court's order and vacate defendant's conviction.

I.

The suppression hearing took place on September 26, 2017. The testifying witnesses were Detective Cory Rodriguez of the New Jersey State Police (NJSP) and defendant. The court made credibility findings, and evidence presented at the hearing revealed the following pertinent facts.

In January 2015, Detective Cory Rodriguez and Detective Sergeant Jeovanny Rodriguez of the NJSP were investigating a luxury-car theft ring in Sayreville. The target of the investigation was Panel Dalce. Defendant was

not a person of interest in the investigation, and police were not aware of defendant at the time. Defendant and Dalce were acquaintances, and each owned Mercedes-Benz vehicles. When defendant needed his car repaired, Dalce referred defendant to his mechanic, Mario Mondesir. Unbeknownst to either, Mondesir was a confidential informant (CI) for the NJSP in the auto-theft investigation.

Defendant dropped off his car with Mondesir for repairs, but he could not get in touch with Mondesir to get his car back. After three months, defendant asked Dalce for help contacting the mechanic. Dalce invited defendant to a meeting he had scheduled with Mondesir for January 13, 2015. Unbeknownst to defendant and Dalce, the January 13 meeting and its location, a parking lot next to a truck dealership, were arranged by the police in cooperation with their CI, Mondesir.

NJSP were on scene in four unmarked police cars carrying two troopers each, including Detective Rodriguez. The CI wore a concealed recording device monitored by the troopers. Their sole objective on January 13 was to seize what they believed to be a stolen Mercedes-Benz from Dalce. The NJSP did not know defendant was coming.

Using information they obtained through their CI, the police expected their investigation target, Dalce, to show up in a tow truck with a Mercedes Benz

attached, or in a car following the tow truck. Instead, Dalce arrived at approximately 9:45 p.m. in a silver Toyota 4Runner, driven by defendant but owned by defendant's girlfriend. Dalce, Terrell Jones, and defendant got out of the Toyota and pursued Mondesir, who ran.

An altercation ensued, but the officers quickly intervened, weapons drawn, and detained and handcuffed all four men, including the CI. The troopers placed the CI, Dalce, and Jones in three of the unmarked NJSP police cars present. Taking care to preserve the CI's cover, troopers placed him in the unmarked NJSP car, which contained the surveillance and recording equipment.

After the men were subdued, Detective Rodriguez took defendant, still handcuffed, to the Toyota. He opened the passenger door without defendant's consent and placed him on the passenger seat with the door ajar. Detective Rodriguez testified that the police detained the four men inside vehicles rather than leaving them outside in the parking lot because it was cold that night.

Detective Rodriguez placed defendant inside the open passenger compartment of the Toyota and left another trooper, Detective Sergeant Stephen Kempinski, to monitor him. Detective Rodriguez then began to shuttle between the four men, three in police vehicles, and defendant in the Toyota, to learn why they were attempting to assault Mondesir. The detective

testified that when he returned to the open passenger compartment of the Toyota after talking to the other men, he smelled burnt marijuana.

The detective then sought defendant's consent to search the Toyota. Defendant twice refused to consent and testified he finally consented to the search the third time he was asked because the troopers "still pushed the issue" and were threatening to arrest his friends.

Troopers moved defendant to an unoccupied police vehicle, and Detective Rodriguez then searched the Toyota. His search did not turn up any marijuana, or even burnt ashes, but he did find a backpack with a loaded gun. Detective Rodriguez arrested defendant for unlawful possession of a firearm. At the police station, defendant admitted the gun was his.

The trial court found Detective Rodriguez credible. The court found defendant not credible on the issue of the consent to search, citing unspecified inconsistencies in his testimony, and noting his poor recall.

In its written statement of reasons, the court briefly addressed the circumstances in which defendant found himself being returned to the Toyota after being handcuffed and detained by the police. "Specifically, Jones, Dalce, and Mondesir were placed in separate, unmarked trooper cars on scene [D]efendant remained in the front passenger seat of [the Toyota] which he claimed possession of." It found Detective Rodriguez's cold weather

justification for opening the Toyota "made sense . . . in the totality of the circumstances." The motion court found "it was lawful for Detective Rodriguez to open the vehicle's door and place the defendant in the passenger seat to protect him from the harsh weather without first obtaining a warrant or consent to search." Further, "Detective . . . Rodriguez . . . detected the smell of burnt marijuana coming from inside the [vehicle]. [The troopers] subsequently removed defendant from the vehicle and placed him in an unmarked trooper car." Finding probable cause, the court concluded "the smell of burnt marijuana emanating from the Toyota raised the officers' suspicion to the level of probable cause so as to lawfully effectuate a consent search of the vehicle."

Defendant moved for reconsideration, but the trial court denied the application. He was charged in a superseding indictment with second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1), as an additional count. A jury acquitted defendant of the additional charge but convicted him of second-degree unlawful possession of a weapon under N.J.S.A. 2C:39-5(b). Defendant was sentenced to a seven-year term of incarceration with a forty-two-month period of parole ineligibility pursuant to N.J.S.A. 2C:43-6(c). On appeal defendant raises the following arguments:

I. THE TRIAL COURT ERRED IN DENYING
[DEFENDANT'S] MOTION TO SUPPRESS

BECAUSE THE OFFICER'S WARRANTLESS ENTRY INTO THE TOYOTA WAS UNCONSTITUTIONAL

A. THE AUTOMOBILE EXCEPTION

1. THE OFFICERS ORCHESTRATED THE MEETING
2. THE TROOPERS LACKED PROBABLE CAUSE TO OPEN THE TOYOTA DOOR
3. NO EXIGENT CIRCUMSTANCES EXISTED TO MAKE OBTAINING A WARRANT IMPRACTICAL

II. THE TRIAL COURT ERRED IN DENYING [DEFENDANT'S] MOTION TO SUPPRESS BECAUSE [HIS] CONSENT WAS INVOLUNTARY AND COERCED

II.

Our scope of review for a motion to suppress is limited. State v. Ahmad, 246 N.J. 592, 609 (2021); State v. Nelson, 237 N.J. 540, 551 (2019); State v. Boone, 232 N.J. 417, 425 (2017); 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)).

We defer 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 cannot enjoy." State v. Elders, 192 N.J. 224, 244 (2007). A 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, 263 (2015).

III.

In denying defendant's motion to suppress, the trial court relied upon State v. Judge to find probable cause existed. 275 N.J. Super. 194 (App. Div. 1994). In Judge, the plain smell doctrine was used to justify probable cause for a vehicle search because the officer identified the smell of burnt marijuana emanating from the defendant's vehicle. Id. at 198. The facts of Judge are clearly distinguishable. Here, the smell of marijuana was noticeable to officers only after the unlawful opening of the door to the Toyota, whereas in Judge, the officers noticed the smell incident to a lawful traffic stop. Ibid.

Next, the trial court mistakenly applied our decisions in State v. Woodson, 236 N.J. Super. 537 (App. Div. 1989), and State v. Conquest, 243

N.J. Super. 528 (App. Div. 1990), to support its order denying defendant's motion. In Woodson, an officer opened a car door without warning during a traffic stop and an empty beer can fell out. Woodson, 236 N.J. Super. at 539. The officer reasoned the beer can gave him probable cause to search the car. Ibid. The search resulted in the discovery of marijuana. Ibid. The court held there are three factors to consider in deciding whether an officer opening a car door is lawful: (1) whether the officer had permission; (2) whether the officer gave a warning; and (3) whether the officer first spoke with the driver. Id. at 552. "Suddenly opening a car door is unconstitutionally intrusive because the police officer thereby surprises the occupant when the latter is entitled to consider [their] private affairs secure from outside scrutiny Opening the door sufficiently partakes of an "exploratory investigation" as to constitute a search." Id. at 540-41 (emphasis added) (internal citation omitted) (quoting State v. Giffin, 84 N.J. Super. 508, 517 (App. Div. 1964)).

Each Woodson factor points toward an unconstitutional intrusion on defendant's privacy by Detective Rodriguez. There is no support in the record showing the detective: had permission to open the door; warned defendant he was going to open the door; or made an attempt to speak with defendant prior to opening the door.

The trial court agreed the Woodson factors were present but found that the factors in Conquest were sufficient to distinguish this case. In Conquest, we established a narrow exception to Woodson for the purposes of officer safety. Conquest, 243 N.J. Super. at 533. An officer made a traffic stop and the driver exited the car and approached the solitary officer in a suspicious manner with shaking hands. Id. at 530. The officer ordered the passenger out of the car and opened the door as he gave that command. Ibid. When she got out, he saw a vial of drugs on the floor of the car. Ibid. The officer searched the vehicle after seeing the vial of drugs. Ibid. Defendants argued this was an illegal search pursuant to Woodson, but the court held the unusual behavior of the driver and passenger, combined with the fact that the officer was alone, gave him an articulable reason for wanting to see the passenger's hands as she got out of the vehicle. Id. at 533. Further, the court found "the Woodson factors of surprise, lack of warning, lack of time, and absence of prior conversation with the driver are not . . . here present." Ibid.

The record before us is distinguishable from the facts in Conquest, where the court was concerned with officer safety. The Conquest officer was alone with two people acting strangely. Here, seven prepared and well-equipped state troopers, operating at the time and place of their choosing, outnumbered the four men, who were secured in handcuffs. One of the men

was their CI. The troopers were in no danger at the time Detective Rodriguez opened the door, and we conclude that our holding in Conquest does not apply to these facts.

State v. Cohen provides useful instruction. 73 N.J. 331 (1977). There, the defendant went to a garage to retrieve his car. Id. at 335-36. Upon arrival, he was arrested by an officer, who was under the mistaken impression there was an active arrest warrant out for the defendant. Id. at 336. The officers approached the vehicle in which defendant had arrived and opened the door. Id. at 344. When the officers opened the door, they encountered the smell of marijuana and conducted a search of the vehicle. Ibid. The search uncovered a tin of marijuana. Id. at 335. The defendant moved to suppress this evidence based on a theory that the search was illegal. Ibid. The Supreme Court held where the officers had "no justifiable reason or probable cause . . . to make the initial intrusion [of opening the door]," the search must be invalidated. Id. at 344.

IV.

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution protect individuals from unreasonable searches and seizures. Defendant argues Detective Rodriguez's opening of the Toyota front passenger-side door constituted an

unconstitutional search, and any evidence resulting from that search must be suppressed. We agree.

There can be no dispute that the opening of the door constituted a warrantless search. Woodson, 236 N.J. Super. at 541. We consider the question of whether Detective Rodriguez's act of opening the door constituted an impermissible search. As in Cohen, the record shows Detective Rodriguez opened the vehicle door without defendant's consent or probable cause. The State contends Cohen is distinguishable because the cold January night provided Detective Rodriguez with a "justifiable reason" for opening the car door. However, the record shows there were enough police vehicles to hold each of the four men individually. The State never explained why Detective Rodriguez chose to put defendant in the Toyota, rather than in one of the police vehicles not holding one of the other three men. We are not persuaded by the State's argument, and we decline to make constitutional protections against unreasonable search and seizure contingent upon the vagaries of the weather.

The totality of the circumstances prior to the detective's opening of the car door can be summarized in this way: troopers, investigating a stolen car ring, set up a meeting between their CI, Mondesir, and their target, Dalce; they surrounded the meeting location in force, bringing at least four unmarked cars

and seven troopers; they expected Dalce to show up alone, but he arrived with defendant and another man; a melee broke out which the troopers quelled by calling for backup, subduing and handcuffing the men with guns drawn; finally the troopers separated the handcuffed men, placing all but defendant in separate police cars.

There was no automobile stop, as defendant's car was parked and defendant was detained as the result of the melee, not any motor vehicle violation. There was no officer safety concern, as the troopers had handcuffed the four men, including defendant. There was no "plain smell" exception, as the record shows the burnt marijuana odor became noticeable only after Detective Rodriguez opened the door. The State has failed to demonstrate by a preponderance of the evidence a justifiable reason to open defendant's car door.

Detective Rodriguez's action in opening the door was an impermissible search, and the evidence which flowed from it, namely the backpack and the handgun, should have been suppressed. It follows that the trial court erred in denying the motion. Because we find the State did not meet its burden to show a justifiable reason to open the door, our inquiry ends. We need not address the voluntariness of defendant's consent to search the vehicle.

The order denying defendant's motion to suppress is reversed, and defendant's conviction and sentence are vacated. The matter is remanded to the trial court for entry of an order granting defendant's motion to suppress, and for further proceedings consistent with this opinion.

Reversed and remanded.

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



CLERK OF THE APPELLATE DIVISION