SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0789-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

UMAR YASIN, a/k/a MARC GRAYS, OMAR YASIN, JOHN GRIMSLEY, JOHNNY GRIMSLEY, ERIC LOVE, JOHNNY LOVE, ERIC SHARIFF, UMAR YASIM, ALEX TISO, YASIM UMAR, YASIN UMAR, and ERIC SCOTT LOVE,

Defendant-Appellant.

Argued March 13, 2018 – Decided April 5, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Indictment No. 14-06-1436.

Alan Dexter Bowman argued the cause for appellant.

Evgeniya Sitnikova argued the cause for respondent (Gurbir S. Grewal, Attorney General, attorney; Evgeniya Sitnikova, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Umar Yasin appeals from an April 27, 2017 order denying his motion to suppress evidence seized pursuant to a warrantless search. We affirm.

The following facts are taken from the record. On March 24, 2014, at 8:30 p.m., Detective Carlos Alvarado of the Newark Police Department, and his partner Detective Orlando Rada, were dispatched to conduct a proactive patrol within the Bradley Court Complex due to increasing gun violence and open-air narcotics trafficking. Detective Alvarado drove a marked patrol vehicle with Detective Rada as the passenger. The detectives were instructed to pay special attention to the parking lot of the complex known for narcotics activity.

The detectives entered the complex and traveled to the rear parking lot, where they observed a dark blue Jeep Cherokee with tinted windows, parked, and idling with its parking lights on. As Alvarado's vehicle approached the Jeep, he heard its engine running and observed the silhouettes of two people in the front cabin. Alvarado pulled behind the Jeep and activated the patrol car's lights and sirens.

Alvarado observed that all windows except for the front windshield were heavily tinted. He and Rada exited their vehicle and slowly approached the Jeep with flashlights. Alvarado

approached the driver side and Detective Rada approached the passenger side. While standing at the rear of the Jeep, Alvarado observed defendant, who occupied the driver's seat, place items into a plastic bag.

As Alvarado approached defendant, he saw defendant place a bag on the rear passenger floorboard. When Alvarado illuminated the interior of the Jeep with a flashlight he observed the plastic bag on the middle rear floorboard, but could not determine its contents. Alvarado requested defendant's driver credentials, which he provided. Alvarado illuminated the rear floorboard area with his flashlight and observed a large plastic reclosable bag containing numerous bricks of what appeared to be heroin. He ordered defendant and the passenger out of the vehicle, and they complied. Alvarado opened the driver's side rear door to remove the bag, and observed the bag between the back seats and center console. While removing the bag, he saw the handle of a black handgun located by the rear seat, behind the plastic bag. Both defendant and his passenger were arrested.

Rada field tested the contents of the bag, which proved to be heroin. Twelve bullets were retrieved from the handgun. Rada issued three motor-vehicle citations for tinted windows, a seatbelt violation, and controlled dangerous substance (CDS) in a motor vehicle.

On June 2, 2014, defendant was indicted with the following crimes: second-degree conspiracy to possess, manufacture, and/or distribute heroin, N.J.S.A. 2C:5-2 (count one); third-degree possession of heroin, N.J.S.A. 2C:35-10(a) (count two); second-degree possession with intent to distribute more than one ounce of heroin, N.J.S.A. 2C:35-5(a)(1) (count three); third-degree possession of heroin with intent to distribute within 1000 feet of school property, N.J.S.A. 2C:35-7 (count four); second-degree distribution of heroin within 500 feet of a public-housing complex, N.J.S.A. 2C:35-7.1(a) (count five); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count six); second-degree possession of a weapon while committing a CDS offense, N.J.S.A. 2C:39-4.1(a) (count seven); and third-degree receiving stolen property, N.J.S.A. 2C:20-1(a) (count eight).

Defendant filed a motion to suppress the contraband recovered during his arrest. Alvarado was the only witness to testify at the suppression hearing on behalf of the State. Defendant presented no witnesses. The motion judge found Alvarado's testimony credible, and denied defendant's motion to suppress. Subsequently, defendant pleaded guilty to counts three and six pursuant to a negotiated plea agreement. He was sentenced to five years in prison with a forty-two month period of parole

ineligibility, pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

On appeal, defendant raises the following point:

> POINT I — THE COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE SEIZED PURSUANT [TO] A WARRANTLESS SEARCH.

We begin by recognizing that "[o]ur standard of review is whether there is sufficient credible evidence present in the record to uphold the findings of the Law Division." State v. Dispoto, 383 N.J. Super. 205, 217 (App. Div. 2006) (citing State v. Johnson, 42 N.J. 146, 162 (1964)). "We review the trial court's findings of fact on a motion to suppress deferentially, affirming whenever they are supported by sufficient credible evidence in the record." State v. Dunbar, 434 N.J. Super. 522, 526 (2014) (citing State v. Elders, 192 N.J. 224, 243 (2007)).

The trial court is "entitled to draw inferences from the evidence and make factual findings based on his 'feel of the case,' and those findings [are] entitled to deference unless they [are] 'clearly mistaken' or 'so wide of the mark' that the interests of justice require[] appellate intervention." Elders, 192 N.J. at 245; see also State v. Locurto, 157 N.J. 463, 471 (1999) (quoting Johnson, 42 N.J. at 161-62). We "may not substitute [our] own conclusions regarding the evidence, even in a 'close' case." State v. Jefferson, 413 N.J. Super. 344, 349 (App. Div. 2010).

Defendant contends the police did not possess the requisite reasonable suspicion to effectuate a traffic stop based on his conduct. He argues he did not violate any motor vehicle statute because his vehicle was stationary at the time police effectuated the stop. Defendant also contends police did not have the authority to search his vehicle pursuant to the plain view exception to the warrant requirement.

"[A] police officer may stop a motor vehicle where there is a reasonable or articulable suspicion that a motor vehicle violation has occurred." State v. Cohen, 347 N.J. Super. 375, 378 (App. Div. 2002) (citing Delaware v. Prouse, 440 U.S. 648, 663 (1979)). Even if a defendant is "subsequently found not guilty of a motor vehicle violation[, that] does not impugn the propriety of the initial stop." State v. Murphy, 238 N.J. Super. 546, 553-54 (App. Div. 1990) (quoting State v. Nugent, 125 N.J. Super. 528, 534 (App. Div. 1973)).

N.J.S.A. 39:3-74 states in pertinent part:

> No person shall drive any motor vehicle with any sign, poster, sticker or other non-transparent material upon the front windshield, wings, deflectors, side shields, corner lights adjoining windshield or front side windows of such vehicle other than a certificate or other article required to be so displayed by statute or by regulations of the commissioner.

Although the statute does not expressly prohibit materials that restrict the ability to see into the vehicle, an officer's reasonable suspicion that a driver's windows are tinted in violation of New Jersey law justifies a police stop of the vehicle. State v. Oberlton, 262 N.J. Super. 204, 208-09 (Law Div. 1992).

Here, Detective Alvarado observed all of the Jeep's windows except the front windshield were heavily tinted. This provided the reasonable suspicion defendant had violated N.J.S.A. 39:3-74.

A person "operates" a motor vehicle when "he enters a stationary vehicle, on a public highway or in a place devoted to public use, turns on the ignition, starts and maintains the motor in operation and remains in the driver's seat behind the steering wheel, with the intent to move the vehicle." State v. Sweeney, 40 N.J. 359, 360 (1963). "The trial court [can] . . . infer such intent from the evidence." Ibid.; see also State v. Stiene, 203 N.J. Super. 275, 278 (App. Div. 1985).

Here, the unrebutted testimony was defendant was operating the Jeep in a public housing parking lot while he occupied the front seat with the engine running. This meets the definition of operating a motor vehicle under Sweeney. As the State argues, "[d]efendant had a clear intent to drive the vehicle and he surely drove it to get to the parking lot where he was apprehended." The parking lot was a place devoted to public use. Therefore, police

possessed the requisite reasonable suspicion defendant was operating the vehicle in violation N.J.S.A. 39:3-74, and had the authority to further investigate.

"'[P]lain view' provides grounds for seizure of an item when an officer's access to an object has some prior justification under the Fourth Amendment." Texas v. Brown, 460 U.S. 730, 738 (1983). "The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity." Payton v. New York, 445 U.S. 573, 587 (1980). Our Supreme Court has stated: "We do not believe that a police officer lawfully in the viewing area must close his eyes to suspicious evidence in plain view." State v. Bruzzese, 94 N.J. 210, 237 (1983). Therefore, for the plain view exception to apply:

> First, the police officer must be lawfully in the viewing area.
>
> Second, the officer has to discover the evidence "inadvertently," meaning that he did not know in advance where evidence was located nor intend beforehand to seize it.[1]
>
> Third, it has to be "immediately apparent" to the police that the items in plain view were

[1] As noted by the State, our Supreme Court has since excised the inadvertence requirement from the plain view doctrine. State v. Gonzales, 227 N.J. 77, 82 (2016). However, the reformulated doctrine is to be applied prospectively and is inapplicable to this case. Ibid.

> evidence of a crime, contraband, or otherwise subject to seizure.
>
> [Id. at 236 (citations omitted) (citing Coolidge v. New Hampshire, 403 U.S. 443, 465-68, 470 (1971)).]

The motion judge stated:

> I note Detective Alvarado's testimony that defendant . . . was, in fact, behind the wheel of the car . . . while the car's engine was, in fact, running.
>
> As to the application of the plain view exception to the warrant requirement, I find that the State, again, has met its burden as to both the search and seizure of the CDS heroin as well as the handgun retrieved from the automobile. The plain view exception to the warrant requirement is met. As previously noted, when the police [were] lawfully in the viewing area, the police discovered the evidence inadvertently and it [was] immediately apparent that the object in evidence [was] criminal activity.
>
> I find that the facts, as the Court has previously found them to be, certainly satisfy each of those three requirements. I further find and/or conclude that accordingly, the plain view doctrine for exception to the warrant requirement does apply to this matter. For all of those reasons, I find that the aforementioned stop, search and seizure were all lawful and accordingly, [defendant's] motion to suppress is denied.

The judge concluded:

> Detective Alvarado . . . had . . . an articulable and reasonable suspicion that the tinted windows observed on the vehicle were, in fact, in violation of N.J.S.A. 39:3-7[4] which provided probable cause for the initial

> stop as well as the subsequent preliminary investigations as to obtaining requisite documents. [F]rom outside the vehicle, Detective Alvarado observed the CDS in the back seat of the auto, in plain view, through the open window while illuminating the subject area. And lastly, I find . . . that the items retrieved, specifically the [CDS] as well as the handgun, were properly and lawfully seized as contraband and/or evidence of crime.
>
> Again, for a valid motor vehicle stop, the officer must demonstrate "articulable and reasonable suspicion" that the driver . . . has committed or is in the process of committing a motor vehicle infraction. State v. Smith, 306 N.J. Super. [370,] 380 [(App. Div. 1997)]. In the matter before the Court, again, Detective Alvarado credibly testified that when he saw defendant's vehicle idling in the parking lot of Bradley Court Housing Complex, . . . the vehicle's windows were "heavily tinted" which is in violation of N.J.S.A. 39:3-[74].

We agree. Police possessed the requisite reasonable suspicion to effectuate a traffic stop of defendant's vehicle for a violation of N.J.S.A. 39:3-74. Defendant was clearly operating the Jeep at the time of the stop because there was no evidence presented to rebut or discredit Detective Alvarado's testimony that defendant sat in the driver's seat with the engine running. Lastly, defendant does not contest the items seized from his vehicle were in plain view. These facts do not suggest Detective Alvarado knew or had reason to know, before effectuating the traffic stop, defendant possessed contraband in his vehicle. Thus,

the motion judge did not err by denying defendant's motion to suppress.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION