SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3516-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GRADY C. JILUS,

Defendant-Appellant.

Submitted February 14, 2018 – Decided March 16, 2018

Before Judges Koblitz and Manahan.

On appeal from Superior Court of New Jersey, Law Division, Union County, Indictment No. 16-01-0056.

Joseph E. Krakora, Public Defender, attorney for appellant (Tamar Y. Lerer, Assistant Deputy Public Defender, of counsel and on the brief).

Gurbir S. Grewal, Attorney General, attorney for respondent (Lauren Bonfiglio, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant Grady C. Jilus appeals from his November 4, 2016 conviction after pleading guilty to third-degree unlawful possession of an air or spring gun, N.J.S.A. 2C:39-5(b). He pled

guilty after the court denied his motion to suppress evidence. Defendant was sentenced to five years in prison with a three and one-half year term of parole ineligibility.[1] We affirm the denial of the suppression motion substantially for the reasons expressed by Judge John M. Deitch.

Only one witness testified at the suppression hearing: Linden Police Officer John Halkias, whom the judge found to be credible. Halkias testified that around 12:30 a.m., while on patrol alone in a high drug-crime area of Linden, he observed a parked Acura. The car had "heavily tinted" side windows, which the officer believed violated Title 39. As the officer drove past in his marked patrol car, the headlights of his car lit up the inside of the Acura through the front windshield, which was not tinted. He observed the occupants duck down to avoid detection. Based on that observation, he called for back-up. Halkias then drove around the block and returned to the location where another police vehicle with two officers was then positioned behind the Acura. Halkias parked his police car in front of the Acura. Other officers arrived at the scene.

Two officers and Halkias approached the Acura, where Halkias instructed the driver, defendant, to roll down the front window.

[1] Defendant was also sentenced to an aggregate concurrent term of three years in prison for other offenses. He does not challenge those convictions.

Halkias detected a strong odor of burnt marijuana. Defendant admitted they had recently smoked marijuana. Halkias also observed that two of the rear seat occupants were on their cell phones. Halkias instructed them to stop using their cell phones, but they continued to do so. The officers ordered the occupants out of the vehicle and searched the Acura.

Several bystanders soon arrived at the location. One of them, who said he was there in response to a call he received from one of the people in the Acura, approached the investigation area. The police instructed him to step back across the street with the other bystanders. Another individual then approached and was instructed to stand back. Officer Halkias' testimony as to the approach of these people was corroborated by video from the patrol cars.

A gun and ammunition was found in the glove box and marijuana inside the center console.

On appeal, defendant argues:

> POINT I: BECAUSE THERE WAS NO REASONABLE SUSPICION OF EITHER A MOTOR VEHICLE VIOLATION OR A CRIME, THE STOP WAS ILLEGAL. BECAUSE THERE WAS NO EXIGENCY, THE SEARCH OF THE CAR WAS ILLEGAL. ON EITHER BASIS, THE EVIDENCE FOUND IN THE CAR MUST BE SUPPRESSED.

Both parties agree that the police conducted an investigatory stop followed by a warrantless search. An investigatory stop must be based on a "reasonable and particularized suspicion . . . that

an individual has just engaged in, or was about to engage in, criminal activity." State v. Rosario, 229 N.J. 263, 272 (2017) (alteration in original) (quoting State v. Stovall, 170 N.J. 346, 356 (2002)). A stop may not be premised on "a reasonable but mistaken understanding of the law" by the police. State v. Sutherland, ___ N.J. ___, ___ (2018) (slip op. at 22). However, "a police officer's objectively reasonable mistake of fact does not render a search or arrest unconstitutional." Id. at 18. Thus, even if the darkly tinted side windows of the Acura did not represent a sufficient obstruction in this instance to constitute a violation of Title 39, N.J.S.A. 39:3-74, the stop was not unconstitutional. See State v. Cohen, 347 N.J. Super. 375, 380-81 (App. Div. 2002) (approving a motor vehicle stop where the officer saw heavily tinted windows). The ducking movements of the four occupants in the early morning in a high-crime area provided additional suspicious circumstances.

The smell of marijuana after the officers approached the Acura provided probable cause to search the car for contraband. State v. Nishina, 175 N.J. 502, 515-16 (2003). The parties agree that the standard enunciated in Pena-Flores, requiring exigent circumstances to search after a motor vehicle stop, controls. State v. Pena-Flores, 198 N.J. 6, 28 (2009), overruled by State v. Witt, 223 N.J. 409, 450 (2015). Although the occupants were

removed from the car, and thus could not reach weapons or contraband, this stop took place in a high-crime area early in the morning and a group of bystanders had formed, two of whom approached the police. Two of the occupants of the Acura continued to use cell phones, and one person approached saying he had been summoned by someone from the stopped car. Thus, the circumstances were sufficiently dangerous that a call to secure a telephonic search warrant, or a wait for the Acura to be towed and then a warrant secured, was not objectively required under Pena-Flores.

We affirm substantially for the reasons expressed in Judge Deitch's July 22, 2016 written opinion.

Affirmed.