SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0240-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DYLAN D. BARAZANJI,

Defendant-Appellant.

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Argued March 16, 2022 – Decided April 14, 2022

Before Judges Hoffman, Geiger, and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Indictment No. 19-01-0096.

Alison Gifford, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Alison Gifford, of counsel and on the brief).

Tiffany M. Russo, Assistant Prosecutor, argued the cause for respondent (Robert J. Carroll, Morris County Prosecutor, attorney; Tiffany M. Russo, on the brief).

PER CURIAM

Defendant Dylan D. Barazanji appeals from the denial of his motion to suppress physical evidence seized during a warrantless search of his vehicle following a motor vehicle stop. We affirm.

A Morris County grand jury issued an indictment charging defendant with fourth-degree possession of a controlled dangerous substance (CDS) (marijuana), N.J.S.A. 2C:35-10(a)(3) (count one)[1]; and second-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(10)(b).

Defendant and co-defendant Melquan Vargas moved to suppress the evidence seized during the warrantless search of defendant's vehicle. Officer Joshua Williams and Patrol Sergeant Anthony Vitanza of the Hanover Township Police Department (HTPD), testified at the motion hearing. Their testimony provided the following version of the incident.

On August 29, 2018, Williams was on patrol in Parsippany. Williams had been in the HTPD Patrol Division for one and one-half years at this point. Williams was stopped at an emergency turnaround and waiting to head

[1] The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act and related marijuana decriminalization statutes, N.J.S.A. 24:6I-31 to -56, effective February 22, 2021, decriminalized possession of six ounces of marijuana or less. Here, approximately ten pounds of marijuana was seized from the trunk of defendant's car.

southbound on Route 287 to return to his jurisdiction. While stopped, Williams observed a white Volkswagen sedan that crested a hill and immediately changed lanes, presumably because the driver saw the police car. Officer Williams pulled onto Route 287 southbound and began following the Volkswagen.

Williams observed the Volkswagen activate its turn signal and change lanes "[a]lmost immediately." Williams testified that based on his training and experience, a proper lane change consists of a driver activating their turn signal for approximately one hundred feet prior to turning or changing lanes. Williams was shown his dash camera footage and later clarified that defendant waited "one to two seconds" in the center lane before his tires touched the dotted line. After Williams witnessed the Volkswagen quickly change lanes, he activated his emergency lights and conducted a motor vehicle stop. He then advised dispatch of the stop and walked to the passenger side of the vehicle.

As Williams approached the car he saw "a big cloud of cigarette smoke . . . come out of the passenger side window" and the "passenger blew smoke right into [his] face." The officer also noticed the car had an "overwhelming odor of deodorizer" and the cigarette co-defendant was smoking "was freshly lit." The passenger was later identified as co-defendant Vargas. Defendant was the driver. Williams asked defendant for his driving credentials and inquired as

to where they were heading. Both the driver and the passenger windows were down and the officer asked defendant to roll his window up because he couldn't hear defendant's responses due to roadway noise. Defendant rolled up his window and responded they were coming from his grandmother's house in Fort Lee and headed to his home in Budd Lake. Williams then told defendant that he was going in the wrong direction.[2]

Williams noticed that defendant's "hands were shaking" when he handed Williams his license, he would not "make eye contact," and was visibly nervous. At this point, Williams asked defendant to step out of the vehicle and called Sergeant Vitanza for backup.

When defendant exited the vehicle, he asked Williams if "everything was okay" and Williams responded, "it was and . . . began patting [defendant's] pockets[.]" After the officer asked defendant twice what he had been doing that night, defendant responded he left his grandmother's house at "around 10:30 [p.m.]" By that time, it was around 1:00 a.m. and according to Williams, driving from Fort Lee to Hanover Township would not take that much time. When asked

[2] On cross-examination, Williams stated that after he pulled out behind the Volkswagen, both cars passed the exit for Budd Lake. Defendant did not get off at the correct exit because he knew he was being followed by the police.

whether his car contained drugs, defendant responded, "there was not" and would not consent to the car being searched.

Vitanza testified that he worked as a police officer for thirty-four years. When Vitanza arrived, Williams asked him to call for a K-9 unit because he "believed that there was criminal activity afoot." Williams indicated that defendant's "behavior, his nervousness, the confliction of his timeframes coming from his grandmother's house and the overwhelming odor of deodorizer and the cigarette smoke that was freshly lit" led him to be suspicious. A Morris County K-9 unit was dispatched to the scene, which was fifteen minutes away.

Williams asked Vargas where they were coming from, and he also said defendant's grandmother's house in Fort Lee and stated they left "around midnight[.]" Vargas became frustrated and Williams stated he believed he "had reasonable suspicion that there was criminal activity afoot[.]" Vitanza indicated that when he first went to the passenger side of the vehicle, he also smelled deodorizer. Vitanza asked Vargas what the smell was, and Vargas motioned towards an air freshener hanging from the rear-view mirror. Vitanza stated the smell was so strong it "was giving [him] a headache" so he asked Vargas to step out of the vehicle. Based on his training, Vitanza did not believe that the smell

was from the air freshener but was from another substance sprayed to mask "large quantities of marijuana."

Vitanza noticed "powder on the seat" as Vargas exited the car. After both occupants had exited the vehicle, Vitanza used his flashlight and observed "greenish flakes" on the floor by the front passenger seat and door and a white powdery substance on the front passenger floor. He also observed a package of "cheap cigars which are commonly used to roll marijuana blunt cigarettes, between the front passenger seat and front passenger door." He noted that these cigars are usually hollowed out and refilled with marijuana.

At this point, officers did not conduct a search of the vehicle because the K-9 unit was moments away and they thought "let the dog come in and . . . see what he can do and go from there." K-9 Spike arrived, ran around the vehicle, "showed a lot of interest in the vehicle," and "was trying to jump in the window[.]"[3]

Based on video footage, at 1:26 a.m. Vitanza told Williams that he observed flakes in the car. Despite K-9 Spike's interest in the vehicle, the dog's handler stated he "did not alert." At that point, Vitanza decided "based on the

[3] At the suppression motion hearing, Vitanza explained that he has found marijuana in vehicles even when K-9's do not alert because the smell of marijuana can be concealed by heat-sealed packaging.

probable cause that developed with the flakes and the powder" to direct Williams to search the vehicle. Williams found "small brownish-green vegetation" on the front passenger floor. Also on video, Williams states, "they have . . . white powder all over" and "[a]s soon as [he] opened the door [he] smelled the weed." "Due to the strong odor being near the rear seat without any findings of marijuana, a search of the trunk was conducted." The search yielded approximately ten pounds of marijuana, seventy-five THC cartridges, and paraphernalia. Specifically, "[t]wo pounds were found wrapped in a gray sheet, two pounds w[ere] found within a Wal-Mart shopping bag, and six pounds w[ere] found within a black duffel bag."

Following the submission of supplemental briefs on the 100-foot turn signaling rule imposed by N.J.S.A. 39:4-126 and oral argument, on February 25, 2020, the court issued an oral decision and order denying the suppression motion. The court found both Williams and Vitanza to be "forthright and candid" and not "in any way rehearsed or evasive[.]"

The court outlined the State's burden of proof to uphold the warrantless search and the requirements of N.J.S.A. 39:4-126, the statute relied upon by Williams for the traffic stop. It noted that in State v. Williamson, 138 N.J. 302 (1994), the Supreme Court held that the "other traffic" referred to in the statute

may include "law enforcement [vehicles.]" The court found Williams "had a reasonable and articulable suspicion" N.J.S.A. 39:4-126 was violated. The court reasoned that

> because [Officer] Williams' conclusion that a violation occurred was objectively reasonable, even though . . . with the benefit of repeated viewing of the [footage] and mathematical calculation it may very well have been mistaken. Such a mistake, . . . because it was . . . objectively reasonable under those circumstances under [State v. Handy, 206 N.J. 39 (2011)] does not invalidate the motor vehicle stop here.

The court found the State satisfied its burden by a preponderance of the evidence that the motor vehicle stop was valid because it was based on a reasonable articulable suspicion that a violation took place. The court rejected defendant's mistake of law argument, finding it inapplicable.

The court then addressed whether the police had probable cause to search the passenger compartment. The court explained probable cause under the plain smell doctrine, noting that "the odor of marijuana . . . gives rise to probable cause to search the immediate area . . . from where the smell has emanated" and that "an odor of unburned marijuana creates an inference that marijuana is physically present in the vehicle[.]"

The court found that Vargas' "actions, lighting a cigarette and blowing the smoke directly into Williams' face, together with the . . . very strong smell of

deodorizer, would lead a reasonable officer to conclude" that co-defendant was "trying to mask the scent of contraband[.]" Combined with their suspicious answers to questions about where they were coming from, the time discrepancy, defendant's nervous demeanor, lack of eye contact, and shaking hands, the court was satisfied that it was reasonable to conclude there was "criminal activity afoot" and call a K-9 unit. The court rejected the argument that the motor vehicle stop was unreasonably prolonged by the request for the K-9 unit. The court found probable cause to search the passenger compartment under the automobile exception.

The court was "surprised that there was so little testimony" about the search of the trunk because the automobile exception "does not necessarily extend to the trunk." However, the affidavit of probable cause that set forth the officers' path to the trunk was admitted into evidence without objection. Indeed, defendants did not challenge the extension of the search beyond the passenger compartment and into the trunk at the hearing or in any written submissions to the court. The court still analyzed the extension of the search to the trunk under State v. Guerra, 93 N.J. 146 (1983), where the Supreme Court held "the police had probable cause to search the trunk because . . . the strong smell of marijuana was not emanating from the passenger compartment[.]" The court noted that

here, the officers detected a stronger smell of marijuana as they neared the rear of the car which established probable cause for a search of the trunk.

The court also analyzed the inevitable discovery exception to the warrant requirement. It found Williams lawfully entered the passenger compartment and the odor of raw marijuana was "certainly sufficient" to apply for a search warrant of the trunk.

For these reasons, the court ruled the State met its burden of establishing by a preponderance of the evidence that the warrantless search of the vehicle, including the trunk, was based on probable cause and within the scope of the automobile exception. See State v. Witt, 223 N.J. 409 (2015).

Following the denial of his suppression motion, defendant pled guilty to an amended charge of third-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(b)(11), in exchange for a recommended sentence of noncustodial probation and mandatory fees, penalties, and assessments, and dismissal of the remaining charges. Defendant preserved his right to challenge the denial of the suppression motion. In addition, the charges against Vargas were to be "dismissed at the time of sentencing."

On May 29, 2020, defendant was sentenced in accordance with the plea agreement to noncustodial probation for two years and appropriate fees,

penalties, and assessments. The remaining charges were dismissed. This appeal followed.

Defendant raises the following points for our consideration:

> POINT I
>
> THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE THE STATE FAILED TO MEET ITS BURDEN OF DEMONSTRATING THE VALIDITY OF THE MOTOR VEHICLE STOP.
>
> POINT II
>
> EVEN IF THE MOTOR VEHICLE STOP WAS VALID, SUPPRESSION IS STILL WARRANTED BECAUSE A) THERE WAS NO REASONABLE SUSPICION TO PROLONG THE MOTOR VEHICLE STOP, AND B) THE PASSENGER'S REMOVAL FROM THE VEHICLE WAS UNCONSTITUTIONAL BECAUSE THERE WAS NO "HEIGHTENED AWARENESS OF DANGER."
>
> A. The Motor Vehicle Stop Was Unlawfully Prolonged Without Reasonable Suspicion.
>
> B. The Passenger's Removal From The Vehicle Was Unconstitutional Because There Was No "Heightened Awareness of Danger" During The Motor Vehicle Stop.

Our review of an order denying a motion to suppress following an evidentiary hearing is deferential, the court must "uphold the factual findings underlying the trial court's decision so long as those findings are 'supported by

sufficient credible evidence in the record.'" State v. Nyema, 249 N.J. 509, 526 (2022) (quoting State v. Ahmad, 246 N.J. 592, 609 (2021)). "A trial court's legal conclusions, however, and its view of 'the consequences that flow from established facts,' are reviewed de novo." Ibid. (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

"The Fourth Amendment and Article I, Paragraph 7 of the State Constitution guarantee individuals the right to be free from unreasonable searches and seizures." State v. Carter, 247 N.J. 488, 524 (2021). "When police stop a motor vehicle, the stop constitutes a seizure of persons, no matter how brief or limited." Nyema, 249 N.J. at 527. A warrantless stop of a motor vehicle does not violate the prohibitions against unreasonable searches and seizures "if it is based on 'specific and articulable facts which, taken together with rational inferences from those facts,' give rise to a reasonable suspicion of criminal activity." Ibid. (quoting State v. Rodriguez, 172 N.J. 117, 126 (2002)). Stated differently, "[t]o justify a stop, an 'officer must have a reasonable and articulable suspicion that the driver . . . is committing a motor-vehicle violation' or some other offense." Carter, 247 N.J. at 524 (quoting State v. Scriven, 226 N.J. 20, 33-34 (2016)). The State bears the burden of proving a motor vehicle stop is

supported by a reasonable and articulable suspicion the driver is committing a motor-vehicle violation. State v. Atwood, 232 N.J. 433, 444 (2018).

Defendant argues the State failed to meet its burden of demonstrating the validity of the motor vehicle stop and as a result the motion to suppress should have been granted. He argues that "Williams testified that even though [defendant's] lane change could not have impacted traffic, he pulled [defendant] over because any lane change without a sufficient signal violates [N.J.S.A. 39:4-126]." Defendant contends that Williams was mistaken as to the law and, therefore, the stop was unconstitutional.

"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)). Reasonable and articulable suspicion is a "lower standard" than probable cause, State v. Stovall, 170 N.J. 346, 356 (2002), and requires a court to evaluate the totality of the circumstances, State v. Alessi, 240 N.J. 501, 518 (2020).

Here, the motor vehicle stop was based on a perceived violation of N.J.S.A. 39:4-126, which provides:

> No person shall . . . turn a vehicle from a direct course or move right or left upon a roadway, or start or back a

> vehicle unless and until such movement can be made with safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.
>
> A signal of intention to turn right of left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

The "clear and unambiguous language" of N.J.S.A. 39:4-126 does "not project a requirement that a turn movement must affect other traffic but merely that it has the potential of doing so." State v. Moss, 277 N.J. Super. 545, 547 (App. Div. 1994); accord Williamson, 138 N.J. at 304. An officer may rely on N.J.S.A. 39:4-126 to make a lawful motor vehicle stop even where the only vehicle that may be affected by the driver's failure to make an appropriate turn signal is the police car behind it. Williamson, 138 N.J. at 304. The State "need not establish that the move actually affected traffic," nor does the State need to "prove that a motor-vehicle violation occurred as a matter of law." Williamson, 138 N.J. at 304. The officer "needed only a reasonable and articulable suspicion that defendant's failure to signal may have affected other traffic." Ibid.

As in Williamson, the issue here is whether there was an objectively reasonable belief that N.J.S.A. 39:4-126 was violated because the driver had not signaled the lane change continuously for 100 feet prior to changing lanes. The

court calculated that "a vehicle traveling at 55 miles an hour takes 1.24 seconds to travel 100 feet" and would take 1.136 seconds at 60 m.p.h. and 1.049 seconds at 65 m.p.h. to travel that distance. Following a review of the MVR footage, the motion court found that the "move to the right began before signaling" and that defendant "had signaled only in the course of the lane change." The court noted that Williams testified he saw "the lane change 'almost immediately' with the signal," which "meant that the driver had not signaled continuously for at least . . . 100 feet prior . . . to changing lanes." The court observed "essentially the same thing" when it watched the MVR footage.

Based on his observations, Williams believed defendant's vehicle failed to travel 100 feet after signaling before beginning to change lanes.[4] The court found his testimony credible in all respects, and that under the circumstances, Williams had an objectively reasonable and articulable suspicion that defendant violated N.J.S.A. 39:4-126. It reached this conclusion even though "with the benefit of repeated viewing of the MVR [footage] and mathematical calculation" the officer's conclusion "may very well have been mistaken." The court found

[4] On the MVR footage, Officer Williams can be heard saying, "as soon as he crested the hill he was in the left lane, transferred to the right, and then when he went by[,] he rolled down all his windows . . . . I was behind him trying to get PC (probable cause) when he transferred lanes."

the State met its burden of establishing the stop was valid and rejected defendant's claim that Williams had made a mistake of law that invalidated the stop.

Defendant's brief alludes to the officer's intent to find any basis to stop his vehicle. We do not focus on the officer's subjective intent. See State v. Diaz, ___ N.J. Super. ___, ___ (App. Div. 2022) (slip op. at 34). Rather, under Fourth Amendment analysis, reviewing courts apply an objective test of reasonableness to evaluate police conduct. State v. Gonzales, 227 N.J. 77, 82 (2016). Absent evidence of impermissible racial profiling or some other constitutionally impermissible motive, the officer's intent or motive is irrelevant because the Fourth Amendment "proscribes unreasonable actions, not improper thoughts." State v. Bruzzese, 94 N.J. 210, 220 (1983). In Bruzzese, the Court rejected a "bad faith doctrine." Id. at 227. Defendant does not contend that Williams engaged in racial profiling.

The court's factual findings related to validity of the motor vehicle stop are supported by sufficient credible evidence in the record.[5] We discern no basis

[5] Our conclusion would be different if the only observation of the improperly signaled lane change occurred while Williams was still stationary in the police turnaround lane. In that instance, the improperly signaled lane change would not affect other traffic since there were no other moving vehicles in the vicinity.

to overturn that determination. Officers need not be mathematically precise to have an objectively reasonable suspicion that N.J.S.A. 39:4-126 was violated.

Defendant argues that the removal of the passenger was unconstitutional because there was no heightened awareness of danger during the vehicle stop. We are unpersuaded. The nervousness and implausible answers to lawfully propounded questions meets the "articulable suspicion . . . that a crime had been committed" threshold to justify directing the passenger to exit the vehicle. State v. Mai, 202 N.J. 12, 25 (2010) (quoting State v. Tucker, 136 N.J. 158, 167 (1994)). It was objectively reasonable to do so. The State does not rely on the officers' mere "inarticulate hunches" or "subjective good faith" to justify the removal. Alessi, 240 N.J. at 518 (quoting State v. Arthur, 149, 1, 8 (1997)). Instead, "the circumstances present[ed] reason for heightened caution." Bacome, 228 N.J. at 107. Nervousness and conflicting or implausible statements of the driver and passenger, coupled with other indicia of wrongdoing, such as the overwhelming odor of air freshener, were part of the totality of circumstances properly considered by the officers. See State v. Elders, 192 N.J. 224, 250 (2007).

We next address defendant's argument that even if the initial stop was lawful, suppression was still warranted because the motor vehicle stop was

unlawfully prolonged without reasonable suspicion. Defendant contends that his nervousness, the car's smell, the passenger smoking a cigarette, and his inaccurate statement about leaving Fort Lee at 10:30 p.m. caused Williams to order a K-9 unit and were the only probable cause factors. He contends that Vitanza's observations while waiting for the K-9 unit to arrive cannot be factored into the probable cause analysis and, therefore, the evidence seized must be suppressed. We disagree.

After the passenger alighted from the vehicle, officers observed, in plain view, a white powdery substance on the seat and green flakes on the floorboard, which appeared to be marijuana. The police had already smelled the overpowering odor of some type of deodorant – a so-called masking agent. Those observations coupled with the other suspicious circumstances suggested criminal activity was afoot, see State v. Nelson, 237 N.J. 540, 555 (2019), and provided a lawful basis to expand the investigation and prolong the stop to investigate possible criminal activity. Considering the time of night and the location on a limited access highway, the response time of the K-9 Unit was not unreasonable.

We reject defendant's argument that observations made while waiting for the K-9 unit to arrive cannot be considered in determining whether there was

probable cause to search the trunk. Defendant cites no authority to support the proposition that the totality-of-the-circumstances test excludes relevant facts learned at any point during the course of the investigative detention. To the contrary, that test – by definition – permits police to consider all suspicious circumstances in determining whether probable exists to justify a warrantless search under the automobile exception. The same facts that justified directing the passenger to exit the vehicle and the request and resulting delay for the K-9 unit provided a "reasonable suspicion independent from the justification for a traffic stop" for prolonging the traffic stop "beyond the time required to complete the stop's mission[.]" Nelson, 237 N.J. at 553 (quoting State v. Dunbar, 229 N.J. 521, 540 (2017)). That mission was broadened when police developed reasonable suspicion to believe the vehicle was being used to commit an offense apart from the lane change violation.

We conclude that the totality of the circumstances, including the "'overwhelming odor of air freshener' emanating from [defendant's] car which, coupled with the [officers'] observations, . . . suggested criminal activity[,] . . . [and] provided the [officers] with the reasonable suspicion necessary to prolong [defendant's] stop as they awaited the arrival of the canine unit." Id. at 555.

Affirmed.