SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2816-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DEREK STRICKLAND,
a/k/a CHEF,

Defendant-Appellant.

Submitted March 21, 2022 - Decided April 6, 2022

Before Judges Messano and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Warren County, Indictment No. 18-05-0164.

Joseph E. Krakora, Public Defender, attorney for appellant (Rochelle Watson, Deputy Public Defender II, of counsel and on the brief).

James L. Pfeiffer, Warren County Prosecutor, attorney for respondent (Naya A. Tsang, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Following denial of his motion to suppress drugs seized pursuant to a warrantless search of a vehicle, defendant Derek Strickland pled guilty to second-degree possession with intent to distribute heroin, N.J.S.A. 2C:35-5(a)(1) and (b)(2), charged in a two-count Warren County indictment. Defendant was sentenced in February 2020 to special Drug Court probation, N.J.S.A. 2C:35-14.[1]

Before the motion judge, defendant challenged the validity of the motor vehicle stop and the subsequent search of the vehicle and its containers on various grounds. On appeal, defendant limits his argument to a single point for our consideration:

> THE OFFICER CONDUCTED AN UNLAWFUL SEARCH WHEN, WITHOUT PROBABLE CAUSE, HE INSERTED HIS HEAD INTO THE CAR. BECAUSE THE OFFICER WAS NOT LAWFULLY INSIDE THE CAR WHEN HE DETECTED THE INCRIMINATING ODOR, THE SUBSEQUENT SEIZURE OF EVIDENCE WAS UNCONSTITUTIONAL.

We reject this contention and affirm.

---

[1] Count one of the indictment, charging defendant with possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)(1), was dismissed pursuant to the plea bargain. In August 2021, defendant violated his probationary term and was continued on Drug Court probation. Effective January 1, 2022, Drug Court was renamed Recovery Court.

During the two-hour suppression hearing, the State presented the testimony of the arresting officer, State Trooper Daniel Kamieniecki, and played the forty-minute-long video clips of the trooper's motor vehicle recorder (MVR), without narration. Defendant did not testify or call any witnesses; he introduced in evidence the grand jury transcript and Kamieniecki's incident report.

Around 7:30 p.m. on August 27, 2017, defendant was the front seat passenger in a white Toyota Camry, when it was pulled over for speeding on Route 80 in Hope. The six-foot-one-inch-tall trooper bent down when he approached the passenger's side of the car, identified himself, and requested the three occupants' credentials. During this conversation, Kamieniecki "immediately detected the odor of marijuana emanating from inside the vehicle." Kamieniecki also noticed "remnants of what could have been a marijuana joint or something similar in the center console, in the cup holder area of the vehicle."

On cross-examination, Kamieniecki acknowledged the odor he detected "was dissipating" when he made his observation. Relevant here, defense counsel engaged the trooper in the following exchange:

> DEFENSE COUNSEL: So, you bent down, correct?
>
> KAMIENIECKI: Yes, ma'am.
>
> DEFENSE COUNSEL: And you leaned inside the car, correct?

KAMIENIECKI: Yes, ma'am.

DEFENSE COUNSEL: And when you leaned inside the car is when you said you smelled marijuana, correct?

KAMIENIECKI: Yes, ma'am.

Following argument, the motion judge reserved decision. On July 18, 2019, the judge issued a written opinion, largely dedicated to summarizing the parties' arguments.

Pertinent to this appeal, the judge rejected defendant's contentions that Kamieniecki made his olfactory perception after his head "broke the plane" of the car's window, thereby constituting an unlawful intrusion into the car that would otherwise warrant suppression of the evidence seized. The judge's findings were based on his review of the MVR recording and Kamieniecki's "highly competent and credible testimony."

Noting Kamieniecki testified "the car that he pulled over was a small sedan and that he is six feet and one inch tall," the judge found the MVR footage "clear[ly]" depicted "Kamieniecki was taller than the car and had to bend downwards in order to become eye level with [its occupants]." The judge also found "[t]he MVR corroborated the officer's testimony regarding the need to hear defendant over the traffic noise."

Further referencing the MVR, the judge found "it d[id] not appear that [Kamieniecki] placed his entire head into the car." Citing our decision in State v. Mandel, 455 N.J. Super. 109, 116 (App. Div. 2018), the judge concluded, even assuming the trooper's head entered the vehicle, "there was no evidence to suggest that he did so in order to smell inside the vehicle and the intrusion was certainly minimal, therefore it was not unreasonable."

Our review of a trial court's decision on a suppression motion is circumscribed. We defer to the court's factual and credibility findings provided they are supported by sufficient credible evidence in the record. State v. Dunbar, 229 N.J. 521, 538 (2017). Our deference includes the trial court's findings based on video recording or documentary evidence. See State v. S.S., 229 N.J. 360, 374-81 (2017) (clarifying the deferential and limited scope of appellate review of factual findings based on video evidence); see also State v. Tillery, 238 N.J. 293, 314 (2019); State v. McNeil-Thomas, 238 N.J. 256, 271-72 (2019). Deference is afforded because the court's findings "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 N.J. 463, 474 (1999).

We disregard a trial court's findings only if they "are clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015). Legal conclusions are reviewed de novo. Dunbar, 229 N.J. at 538.

Well-established principles guide our review. "Warrantless seizures and searches are presumptively invalid as contrary to the United States and the New Jersey Constitutions." State v. Pineiro, 181 N.J. 13, 19 (2004). To overcome this presumption, the State must show by a preponderance of evidence that the search falls within one of the well-recognized exceptions to the warrant requirement. State v. Bryant, 227 N.J. 60, 69-70 (2016).

"One such exception is the 'plain view' doctrine, which allows seizures without a warrant if an officer is 'lawfully . . . in the area where he observed and seized the incriminating item or contraband, and it [is] immediately apparent that the seized item is evidence of a crime.'" Mandel, 455 N.J. Super. at 114 (quoting State v. Gonzales, 227 N.J. 77, 101 (2016)). Until recently, "New Jersey courts have recognized that the smell of marijuana itself constitutes probable cause 'that a criminal offense ha[s] been committed and that additional

contraband might be present.'"[2] State v. Walker, 213 N.J. 281, 290 (2013) (alteration in original) (quoting State v. Nishina, 175 N.J. 502, 516-17 (2003)). Further, the odor of marijuana emanating from a vehicle gave rise to probable cause that the car contained contraband. See State v. Pena-Flores, 198 N.J. 6, 30 (2009); State v. Myers, 442 N.J. Super. 287, 296 (App. Div. 2015); State v. Judge, 275 N.J. Super. 194, 197 (App. Div. 1994).

In Mandel, we considered whether an officer "broke the plane of the car" by leaning slightly inside the vehicle's open window when he detected the odor of marijuana under the plain smell doctrine. 455 N.J. Super. at 113. At the suppression hearing, the officer was unable to recall whether he smelled marijuana before or after leaning into the vehicle. Id. at 112. However, the officer testified he leaned into the car because he could not hear the defendant's responses to his questions due to passing traffic. Ibid.

We affirmed the motion judge's finding that the "credible evidence on th[e] record reveal[ed] that the officer placed his head inside the window of the

[2] The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-31 to - 56, became effective on February 22, 2021. Under the Act, an "odor of cannabis or burnt cannabis" cannot create a "reasonable articulable suspicion of a crime" under most circumstances. N.J.S.A. 2C:35-10c(a). Because that limitation is prospective, it is not applicable in this appeal.

vehicle in order to better hear the defendant." Id. at 117. We relied on federal and out-of-state case law that held courts should look to "the purpose behind an officer's actions when determining whether a search was reasonable." Id. at 116. We concluded where there is credible record evidence to support such a conclusion, "it [may be] reasonable for an officer to place his head into a vehicle to have effective communications with a passenger." Id. at 117.

In the present matter, defendant urges us to reject our prior holding in Mandel, asserting any intrusion into the vehicle, however minimal, constitutes a search. He further implies the motion judge impermissibly created an "auditory exception to the warrant requirement" by finding Kamieniecki's actions were reasonable in view of the noisy highway conditions. We disagree.

The evidence adduced at the hearing supports the motion judge's findings that Kamieniecki's "slight, momentary intrusion inside the car window was reasonable." See ibid. The judge's findings were grounded in the trooper's testimony – which the judge deemed "highly competent and credible" – and the judge's observations of the MVR footage. The officer testified he bent down to speak to the occupants of the car and the video depicted a minimal intrusion of his head into the car when doing so. Although our review of the record reveals Kamieniecki did not explicitly testify he leaned into the car to better hear the

passengers when he detected the odor of marijuana, the motion judge's inferences were reasonably based on his review of the MVR recording. See S.S., 229 N.J. at 379-81. We therefore discern no basis to second-guess the motion judge's decision.

To the extent not addressed, defendant's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.