SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4586-18

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

GILES HARRIS,
a/k/a GILES BROWN,
and JOSH HARRIS,

Defendant-Appellant.

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Submitted January 10, 2022 – Decided April 13, 2022

Before Judges Sabatino and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment Nos. 15-03-0417, 15-08-1094, 16-08-0998 and 17-09-1219, and Accusation No. 18-01-0036.

Joseph E. Krakora, Public Defender, attorney for appellant (Scott M. Welfel, Assistant Deputy Public Defender, of counsel and on the brief).

Mark Musella, Bergen County Prosecutor, attorney for respondent (Ian C. Kennedy, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

After a trial court judge denied his motion to suppress evidence, defendant Giles Harris also known as Giles Brown and Josh Harris, pled guilty to drug distribution offenses pursuant to a plea agreement. He received an initial sentence of three years imprisonment with an eighteen-month period of parole ineligibility. His sentence was later converted to five years drug court probation, which was eventually terminated based on a violation.

On appeal from his conviction, defendant challenges the trial judge's August 30, 2016 order denying his motion to suppress evidence that was discovered after a police officer ordered defendant's wife, Bonita Brown, to exit her Infiniti vehicle that defendant had been driving. He specifically asserts the following point:

> POINT I
>
> THE MOTION COURT ERRED IN DENYING THE MOTION TO SUPPRESS THE EVIDENCE AS THERE WAS NO REASONABLE SUSPICION TO STOP BROWN OR THE INFINITI, DETECTIVE WOODS LACKED HEIGHTENED CAUTION TO ORDER BROWN TO EXIT THE INFINITI, AND WOODS LACKED REASONABLE SUSPICION TO REQUEST THAT BROWN CONSENT TO A SEARCH OF THE INFINITI.
>
> A. WOODS LACKED REASONABLE SUSPICION TO STOP BROWN AND THE INFINITI.

B. WOODS LACKED "HEIGHTENED CAUTION" TO ORDER BROWN TO EXIT THE CAR.

C. THE CONSENT SEARCH OF THE INFINITI WAS NOT VALID BECAUSE WOODS LACKED REASONABLE SUSPICION THAT BROWN HAD ENGAGED IN OR WAS ABOUT TO ENGAGE IN CRIMINAL ACTIVITY.

We are not persuaded by defendant's arguments.

The facts upon which the judge relied were developed at a suppression hearing held before her over four days. At the hearing, the officers involved with defendant's and his codefendants' January 9, 2015 arrest testified. They included Elmwood Park Police Department Detectives William Woods and Thomas Kochis, and police officers Daniel Martinez and Francesca Rodriguez. Gerard Robbins, an investigator for the Public Defender, and Brown, who as already noted is defendant's wife, and who was also a codefendant. The testimony is summarized as follows.

On January 9, 2015, after picking up his wife from her place of employment, using her Infiniti vehicle, defendant and his wife drove to a supermarket. While his wife went into the store, defendant remained in her vehicle waiting for her to return. When she came out of the store, she placed

her groceries inside and resumed her position in the passenger seat while defendant drove away.

At the same time, Woods was on duty in his unmarked police vehicle in the supermarket's parking lot, which was a known high drug traffic area. While there, he observed another vehicle, a Ford Escape, circling in the parking lot several times until it came to a stop.

Woods, who was approximately ten feet away from the vehicle, watched from his car as defendant stopped and parked the Infiniti behind the Ford. Rather than being parked in parking stalls, the two vehicles were stopped in one of the parking lots' driving lanes. After parking, defendant vacated his vehicle and walked towards the passenger side of the Ford.

Woods then observed defendant take out white glassine envelopes from his pocket and hand them to one of the other vehicle's occupants in exchange for money. Based on his experience as a police officer, Woods believed that he had just witnessed a drug transaction involving the sale of what he suspected to be heroin by defendant.

As defendant was leaving the side of the other vehicle and walking back to his wife's vehicle, Woods approached him, identified himself as a police officer and directed defendant to stop. In response to Woods's inquiry,

defendant told the detective that he had just provided a cigarette to one of the Ford's occupants. In addition to speaking to defendant, Woods conducted a pat-down but did not find any contraband or weapons on defendant.

As Woods completed defendant's pat-down, the Ford attempted to drive away. Woods stopped the vehicle by banging on the car's exterior and telling the driver to remain. The detective then contacted his department and asked for backup. In response, another detective and four other officers arrived at the scene within minutes.

Once the backup arrived, Woods turned his attention to defendant's wife, who had remained in her car in the passenger seat. She explained that she had just finished shopping and provided the detective with the car's registration.

While speaking to Brown, Woods observed the interior of her car and did not see any contraband nor had he witnessed Brown doing anything that raised any concerns. Nevertheless, Woods asked Brown to exit the vehicle so he could request her consent to search her vehicle. In response to Woods's direction, Brown vacated the vehicle.

Immediately after Brown exited from the vehicle, Woods saw what appeared to be ripped newspaper with what he believed were edges of two white glassine envelopes that he suspected contained heroin sticking out from a floor

mat on the passenger side. After having another officer, Martinez, look at the same, Woods removed from the car forty-three glassine envelopes containing suspected heroin.

Without presenting Brown with any consent forms, Woods then asked Brown if she would consent to his search of the entire vehicle. In doing so, he advised her of her right to refuse.

Although there were other officers at the scene who may have had consent forms, which Woods claimed he did not have one that day, he did not present such form to Brown at that time. According to Woods, Brown who did not have possession of the car all day, verbally agreed to allow the officers to search the vehicle. However, according to Brown, she did not consent to the search. She testified that Kochis, not Woods, requested her consent to search, and after she refused, Kochis said that he was going to search the vehicle even if she did not consent and he would "lock [her] up."

The search of the vehicle yielded two clear plastic bags containing crack cocaine and two knives. With that, the officers arrested defendant. Thereafter, both defendant and his wife were transported to the police station, where officers asked Brown for the first time to sign a consent form. She refused. Brown was also placed under arrest.

While Woods was engaged with defendant and his wife, Kochis was dealing with the occupants of the Ford Escape, who were identified as codefendants Jason Cook, the driver, and Kaytie Hazekamp, the passenger. During his encounter with the two, as they were providing the detective with their credentials, Kochis observed drug paraphernalia in the center console of the vehicle and what he identified as empty glassine envelopes in the area of the driver's armrest.

Upon seeing those items, Kochis had the occupants exit their vehicle and after initially denying his accusations about the presence of drugs, Hazekamp handed the detective some crack cocaine. The detective then told the two that he was going to pat them down and as he approached to do so, Cook handed Kochis a small amount of heroin.

As a result, Kochis sought to obtain Cook's consent to search his vehicle and advised him that he did have the right to refuse at any time. However, Kochis did not use a written consent form as it was his understanding his department did not require them. According to Kochis, Cook consented to the search of the vehicle and that search revealed a crack pipe and more empty glassine envelopes which, based on his experience and training, was understood to be used in the packaging of heroin. The search also yielded three hypodermic

syringes. With that, Kochis arrested Cook and Hazekamp, and they were transported to the police station.

Thereafter a grand jury indicted all four individuals involved with the January 9 incident. Defendant was specifically charged with two counts of third-degree distribution of controlled dangerous substances (CDS), N.J.S.A. 2C:35-5(a)(1) and (b)(3); two counts of third-degree possession of CDS, N.J.S.A. 2C:35-10(a)(1); and fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d).

Later, defendant filed, pro se, a motion to suppress the evidence seized that led to his arrest. As noted, the trial court judge conducted an evidentiary hearing over four days and thereafter issued her order denying relief accompanied by her written decision.

In her decision, the judge summarized the testimony of each of the witnesses and then explained in detail the parties' arguments. The judge then turned to the applicable law governing investigatory stops by police officers, warrantless searches, and the principles governing the determination of whether a party voluntarily consented to a warrantless search.

Addressing Woods's stop of defendant and his wife and then the other car, the judge noted that the stop occurred in "a high crime area, particular for drug

activity." And, she observed that the two vehicles stopped in a parking lot and parked their vehicles away from the store "in configurations suggesting they were engaged in activity other than parking to go to the store." Reviewing the totality of the circumstances, including Woods's observations from his vehicle, the judge concluded that "Woods had a reasonable belief that an illegal drug sale had occurred. Thus[,] the stop was warranted."

The judge then turned to the issue of consent. The judge initially observed that there was no dispute that Woods "did not have Brown sign a consent to search form, [but] it [was] apparent from all the law enforcement officers who testified, such form [was] not required in the [B]orough of Elmwood Park." The judge then found credible Woods's testimony that "he advised Brown that she had the right to refuse the search, she must be present during the search, and she could stop the search at any time." The judge found no significance to the fact that Brown refused to sign the consent form that was presented to her when she was later brought to the police station.

The judge also observed that although defendant argued that the consent was invalid because Brown did not sign a consent form, he did not "cite to any authority suggesting such form is mandated by either the [s]tate or the Borough of Elmwood Park." She noted that the lack of that requirement was confirmed

by the testimony of the other officers at the hearing. The judge concluded that "the use of the form is discretionary." Not only was it insignificant that the officers didn't have Brown sign a consent form, but it was also "not fatal that several of the officers . . . were unable to recite the consent form verbatim," especially since "they were able to [re]cite the salient points of the requirement, [including that Brown] had the right to refuse the search, she must be present during the search, and she could stop the search at any time." The judge concluded that "the testimony of Woods and Kochis [was] credible that Brown [verbally] consented to the search of her vehicle." Therefore, "the State met its burden that the search was voluntarily provided." For that reason, the judge denied defendant's motion.

On November 10, 2016, defendant pled guilty to count two of the indictment which charged him with distributing CDS, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(3).[1] Thereafter, defendant was sentenced and, as already noted, that sentence was later modified to allow defendant to enter into drug court probation from which he was ultimately terminated but not returned to prison.

[1] On the same day, defendant pled guilty to other unrelated charges arising from a different indictment and an accusation.

On appeal, defendant challenges his conviction by arguing that the denial of his suppression motion was improper because "there was no reasonable suspicion" for detaining Brown, no basis to have her exit the vehicle, and no facts supporting a finding of reasonable suspicion to support the officers' request to search the vehicle. The lynchpin to all three contentions, therefore, is that the officers had no legal basis to ask Brown to exit the vehicle. According to defendant, had they let Brown remain in the vehicle, the officers would not have discovered the evidence seized after the search. We find no merit to defendant's contentions.

At the outset, we acknowledge the deference we afford to trial court judges' findings made after holding a suppression hearing. In our "review [of] a trial court's denial or grant of a motion to suppress, we 'defer to the factual findings of the trial court so long as those findings are supported by sufficient evidence in the record.'" State v. Vincenty, 237 N.J. 122, 131-32 (2019) (quoting State v. Hubbard, 222 N.J. 249, 262 (2015)). We defer to the trial court's factual findings unless they are "clearly mistaken." State v. Hathaway, 222 N.J. 453, 467 (2015). In contrast, "[a] trial court's interpretation of the law . . . and the consequences that flow from established facts are not entitled to any special deference." State v. Gamble, 218 N.J. 412, 425 (2014).

Having considered defendant's contentions in light of the record and the applicable principles of law, we affirm the denial of his suppression motion substantially for the reasons expressed by the trial court judge in her thoughtful written decision. We add only the following comments.

In State v. Carrillo, 469 N.J. Super. 318, 335 (App. Div. 2021) (reversing a trial court's order denying defendant's suppression motion and remanding for a testimonial hearing on unresolved material issues of fact), we summarized the circumstances that would warrant the removal of a passenger where the driver had been initially stopped for a motor vehicle violation. There we stated the following:

> Under our State Constitution, "an officer must be able to point to specific and articulable facts that would warrant heightened caution to justify ordering the occupants to step out of a vehicle detained for a traffic violation." State v. Smith, 134 N.J. 599, 618 (1994). An "officer need not point to specific facts that the occupants are 'armed and dangerous,'" as the officer would under Terry v. Ohio, 392 U.S. 1, 27 (1968), to justify conducting a protective pat-down for a weapon (a standard we discuss at greater length below). See Smith, 134 N.J. at 618. Instead, the officer must identify "facts in the totality of circumstances that would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to alight from the car." Ibid.

> [Carrillo, 469 N.J. Super. at 335; see also State v. Bacome, 228 N.J. 94, 107 (2017) ("reaffirm[ing] the Smith heightened-caution standard for questions of passenger removal").]

Here, the officers' interactions with Brown did not arise from a motor vehicle violation attributable solely to defendant's actions as a driver of the vehicle. Rather, they arose from Woods witnessing what he had probable cause to believe was a drug transaction involving defendant, who alighted from Brown's vehicle, was then observed exchanging suspected heroin for money and heading back to Brown's vehicle, and being found with no additional drugs or other contraband on his person. Minimally, those observations gave rise to at least a "heightened-awareness" that the vehicle and its occupants, both defendant and Brown, were involved in a criminal activity far beyond a motor vehicle violation, even without Woods or any other officer witnessing any specific suspicious conduct by Brown. State v. Mai, 202 N.J. 12, 25 (2010) (declaring that an officer's instruction to a passenger to alight from a car after forming an "articulable suspicion short of probable cause to believe that a crime had been committed" "is entirely consistent with our established jurisprudence"); see also Wyoming v. Houghton, 526 U.S. 295, 304-05 (1999) ("a car passenger . . . will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or the evidence of

their wrongdoing"). Under these circumstances, we have no reason to disturb the outcome of defendant's suppression hearing.

Affirmed.