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OPINIONS

STATE OF NEW JERSEY,

Plaintiff,

v.

CURTIS STRICKLAND,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-CRIMINAL DIVISION
GLOUCESTER COUNTY

INDICTMENT NO. 22-12-786-I

OPINION & ORDER FOR MOTION TO
SUPPRESS

DATED: AUGUST 8, 2024

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Hon. William F. Ziegler, J.S.C.

The matter is before the court on a motion filed by the defendant to suppress certain handguns which were recovered as a result of a warrantless search of a home and a motor vehicle.

I. FACTS

Testimony was taken on July 10, 2024, wherein two members of the Deptford Township Police Department testified under oath. The first witness called was Detective Robert Jones. He is currently a Sergeant with the Deptford Township Police Department where he has served for 28 years. On September 20, 2022, Detective Jones was working. He testified that he did not have his body worn camera on his person. Neither he nor his partner detective Tim Parks (who also provided testimony) were wearing their body worn cameras on that date because when the call was received they were returning from taking an automobile in for service and were not expecting a call for service. Dispatch reported to detective Jones that there had been an incident in the vicinity near 866 Tanyard road in Deptford. He testified that dispatch had indicated that a gun was involved.

Upon arriving at that location, he testified that he initially spoke with the defendant and inquired about whether he was involved in an incident. The defendant replied that he had been in a physical scuffle with another man at the front door of the home at that location. Apparently, during the scuffle a handgun that the defendant had on his person had fallen out of his waistband. When asked what he had done with said handgun the defendant replied that he picked it up and had put it in a drawer in a dresser in the house. Detective Jones thereafter spoke to a woman who he said appeared to be the owner and or tenant of said house, asked for permission to enter (note that none of the bodyworn cameras depict this interaction nor was the woman mentioned

interviewed) and walked directly into the bedroom opened the top drawer of a dresser and recovered a handgun and thereafter secured it.

Detective Jones thereafter left the residence and immediately had the defendant placed in handcuffs. Thereafter, the defendant was read his Miranda rights and he agreed to speak with the officers. At the time there were approximately 8-10 police officers on the scene as virtually every police officer who was on duty responded to the scene which detective Jones noted was because the house in question was very close to Gateway high school and a gun was involved. He noted that while he did not have his body worn camera on that day other officers who had responded did.

On cross examination Detective Jones noted that he did not speak with Mr. Williams who was the other individual involved in the alleged scuffle and that Mr. Williams had not been charged. He stated that he was justified in entering the home because there was a weapon involved and he needed to make it safe. He further testified that no Miranda card had been signed but that the warnings had been read to the defendant.

Further he testified that when he spoke to miss Adriana Robinson (the woman mentioned above who he asked for consent to enter the home) he did not tell her that she had the right not to consent. He acknowledged candidly that ordinarily the police would not enter a home without obtaining written consent of the homeowner or tenant.

On redirect detective Jones reiterated that he never spoke to Mr. Williams who was apparently the complaining witness and that he interviewed the defendant for approximately 5 minutes and noted that the defendant's demeanor was polite and cooperative. Upon additional questioning by the defense detective Jones did acknowledge that it is Police Department policy

to wear his body worn camera and that it is further policy to obtain written consent before entering a home but that he had never obtained a consent form for Ms. Robinson to sign.

Detective Timothy parks also provided testimony. He testified that there was an incident on Tanyard road and a report of a man with a gun. He arrived on scene with detective Jones. He spoke with both Ms. Robinson and the defendant and that he determined, based on those interactions, the defendant and a Mr. Williams were involved in some sort of altercation during which the handgun fell out of the defendant's waistband. He also had no body worn camera on his person.

Finally, I note that both detectives used the words exigent circumstances and community caretaking in characterizing their decision to enter miss Robinson's home without a warrant. Both officers testified that there were small children present and that they had a credible belief based upon the defendant's statements that there was a loaded handgun in the house that needed to be made safe.

The defendant was mirandized and his handcuffs were taken off temporarily to sign a consent to search form. This form was signed after the detectives interviewed the defendant and asked him whether or not he had any other handguns. He did. They were all purchased legally in Delaware he said. He proceeded to tell police that there were two handguns in his car in locked containers and offered the key to said containers. These interactions were recorded on the body worn camera of another officer.

I find that both detectives testified truthfully and factually and were highly credible.

Based on that credible testimony I find the following facts to exist: First the officers were called to a location on Tanyard road regarding a report of a man with a gun. Upon determining that the defendant had been in possession of a handgun they determined its location. After asking

for permission from a woman who may or may not have been the owner of the home they entered the home without a warrant and secured a handgun which was found in the location they were told it would be by the defendant. There is no evidence to suggest that miss Robinson was informed that she had the right not to consent to the warrantless intrusion of her home.

II. DEFENDANT'S POSITION

The defense argues that the warrantless entry to the home which produced a handgun was outside any of the exceptions to the warrant requirement and should be void and the handgun and the other two handguns later found should be suppressed for the violation of the warrant requirement and as fruit of the poisonous tree. The defense argues that the exigent circumstances doctrine which would allow a warrantless search to prevent imminent danger to life or destruction of evidence is inapplicable here because the altercation had ended and there was no ongoing threat or immediate need for police action. The defense further argues that everything that happened after the warrantless intrusion to the Robinson home constitutes fruit of the poisonous tree and should be suppressed.

III. STATE'S POSITION

The state however argues that all evidence should be admitted because it was recovered as a result of a valid consent search. First the state argues that Mrs. Robinson consented to the police entry to her home and that secondarily while the defendant was mirandized and handcuffed he signed a valid consent to search form as to the motor vehicle. Note that the defendant's motor vehicle and the property on Tanyard road are both on private property.

The state correctly posits that where there is a valid consent a search does not infringe upon constitutionally protected privacy interests and does not require a warrant. As with all exceptions to the warrant requirement the state has the burden of demonstrating that the consent

search exception applies and must demonstrate that voluntary consent was given and must prove that fact by clear and positive testimony. State v. Legette, 227 NJ 460, 474-75 (2017).

Where a valid consent is given a search may be conducted without a warrant and even without probable cause but in New Jersey in order for the consent to be voluntary it must not only be free of coercion but also must be knowing and with the knowledge of the right to refuse consent. The voluntariness of a consent must be determined from the totality of the circumstances and the state has the burden of proving by clear and positive testimony that the consent was voluntarily given. State v. Hladun, 234 N.J.Super. 518, 521 (Law Div. 1989).

The state has not argued that there were exigent circumstances allowing for the search and subsequent seizure of the handgun nor does the state cite the community caretaking exceptions to the warrant requirement.

IV. ANALYSIS

The 4th amendment to the United states constitution and article 1 paragraph seven of the New Jersey constitution in almost identical language protect against unreasonable searches and seizures. State v. Smart, 253 N.J. 156, 164-65 (2023). One of the bedrock principles under both constitutions is that warrantless searches and seizures are presumptively invalid. See State v. Goldsmith, 251 N.J. 384, 398 (2022). Indeed physical entry of the home is the chief evil against which the wording of the 4th amendment is directed. United States v. U.S. District Court for E. Dist of Mich, S.Div., 407 U.S. 297, 313 (1972).

Most recently our appellate division decided State v. Mellody (approved for publication July 5, 2024) A-1087-22. In that case the appellate division invalidated a conviction for drunk driving on the following facts: a 911 call providing the make and model and license plate number and location of a suspected drunk driver was made and police dispatch relayed that information

to a patrolman. The patrolman immediately located the vehicle and watched as it drove into the defendant's garage. The officer watched as the automobile bumped into a refrigerator which happened to be in the garage. The patrol officer thereafter entered the garage as if conducting a motor vehicle stop on the side of the road. No exigent circumstances were established and the appellate division found that the seizure of the driver and the subsequent investigation for drunk driving constituted a warrantless entry into a house notwithstanding the existence of probable cause and vacated the conviction. In doing so the court affirmed that the very core of the 4th amendment is the right of a person to retreat into their own home and there be free from unreasonable governmental intrusion. Silverman v. U.S., 365 U.S. 505, 511 (1961) Indeed the privacy interests of the home are entitled to the highest degree of respect and protection in the framework of our constitutional system. State v. Evers, 175 N.J. 355, 384 (2003). The United states Supreme Court recognizes that police cannot make a routine felony arrest in the arrestees own home without an arrest warrant or an exception to the warrant requirement such as exigent circumstances. New York v. Payton, 445 U.S. 573, 589-90 (1980)

First it is noteworthy that the state does not argue exigent circumstances. Indeed, when police arrived on site the altercation that they had come to investigate was over, no one was injured and when asking the defendant if he had a gun he freely acknowledged the same. This court is not aware of any law, rule or regulation which would prohibit a law abiding citizen from possessing a handgun while on private property. Indeed, nothing in subsections b., c., and d. of N.J.S.2C:39-5 shall be construed to "prevent a person keeping or carrying about the person's place of business, residence, premises or other land owned or possessed by the person, any firearm, or from carrying the same, in the manner specified in subsection g. of this section, from any place of purchase to the person's residence or place of business, between the person's

dwelling and place of business, between one place of business or residence and another when moving, or between the person's dwelling or place of business and place where the firearms are repaired, for the purpose of repair. For the purposes of this section, a place of business shall be deemed to be a fixed location." Id.

That is what happened here. Moreover, the testimony provided by the officers makes clear that the children in the residence and the woman with them had come outside of the residence at or around the time detective Jones asked for permission to enter to retrieve a firearm. At that point there were no exigent circumstances there just happened to be a chance that there would be a handgun in the house which would be true of over half the homes in this country.

The state however argues consent. Here, the undisputed testimony is that detective Jones asked a woman now known to be a Ms. Robinson if he could enter her home to retrieve a weapon. I have no reason to believe that detective Jones did not testify truthfully and that she gave him permission. It is also true that he did not have her sign a consent form and he did not tell her that she had the right to refuse consent. (emphasis added).

There are a number of factors which have been identified as being relevant in determining whether consent to search is or is not voluntary and the fact that a defendant consents to a search does not alone establish voluntariness. State v. Hladun, supra.

In State v. Johnson, 68 N.J. 349, 353-54 (1975) the court found as follows:

We conclude that under Art. I, par. 7 of our State Constitution the validity of a consent to a search, even in a non-custodial situation, must be measured in terms of waiver; i.e., where the State seeks to justify a search on the basis of consent it has the burden of showing that the consent was voluntary, an essential element of which is knowledge of the right to refuse consent.

Many persons, perhaps most, would view the request of a police officer to make a search as having the force of law. Unless it is shown by the State that the person involved knew that he had the right to refuse to accede to such a request, his assenting to the search is not meaningful. One cannot be held to have waived a right if he was unaware of its existence.

However, in a non-custodial situation, such as is here presented, the police would not necessarily be required to advise the person of his right to refuse to consent to the search. Our decision is only that in such a situation if the State seeks to rely on consent as the basis for a search, it has the burden of demonstrating knowledge on the part of the person involved that he had a choice in the matter. *Ibid.*

In this matter there is no evidence to demonstrate that Miss Robinson knew that she had the right to refuse to consent to the warrantless entry of her home to allow the police to search for a handgun. The only evidence presented was that Detective Jones did not tell her that she had the right not to consent to the search of her home and that she did not sign a consent form as required by departmental policy.

Accordingly, I find that the good faith entry to the home by police while seemingly reasonable was nevertheless contrary to the rights established against warrantless entry to a home as set forth in the 4th amendment to the United States constitution and article 1 paragraph seven of the New Jersey constitution in almost identical language which protects against unreasonable searches and seizures. State v. Smart, 253 N.J. 156, 164-65 (2023). There was no exigency, there was no meaningful consent because the occupant was not told she could refuse consent. Finally, the search of the defendant's car and the recovery of hand-guns which were lawfully purchased in Delaware constitutes fruit of the poisonous tree. Had the police not engaged in a warrantless search of the house the investigation would have ended. The gun was recovered-there was no reason to handcuff the defendant-and while he was handcuffed and behaving calmly and surrounded by numerous police officers, he signed a consent to search form. He was clearly not free from duress and believing he had done nothing wrong told the police that there were indeed guns in his car. The voluntariness of a consent must be determined from the totality of the circumstances and the state has the burden of proving by clear and positive testimony that the

consent was voluntarily given. State v. Hladun, 234 N.J.Super. 518, 521 (Law Div. 1989). I find that the State has not satisfied that burden.

V. CONSLUSION

In consideration of the above, the court holds the following;

IT IS ORDERED that the Defense's Motion to Suppress is **GRANTED**; the handguns recovered are suppressed.

DATED: _____

8/8/2024



HONORABLE WILLIAM F. ZIEGLER, J.S.C.