SUPERIOR COURT OF NEW JERSEY
HUDSON VICINAGE

CHAMBERS OF
JOHN A. YOUNG, JR.
JUDGE

Hudson County Administration Building
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NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

State v. Keith Pantaleon
Motion to Suppress
Ind. No. 13-05-01051-I

Attorneys: Defendant – Louis Nappen
State – Colleen Hannon

I.

On January 24, 2013, at approximately 10:30 p.m., Police Officers Licata and Abdelaziz responded to a neighbor dispute at 54 Tuers Avenue, Jersey City, New Jersey.[1] At this location is a duplex apartment with three floors, one apartment on each the second and third floors, with the first floor having its own separate entrance and acting as a basement. The apartments on the second and third floor share a heating unit, with the thermostat and boiler room located inside the second floor apartment. Eric Ennis, the 911 caller, lives in the apartment on the third floor. Mr. Ennis is an older man suffering from various ailments, including diabetes. Defendant, Keith Pantaleon, resides in the second floor apartment.

Although the dispatcher reported a neighbor dispute as the reason for the 911 call, Mr. Ennis testified that he telephoned the police because he was cold and his apartment was not receiving any heat. After approximately twenty minutes, Officers Licata and Abdelaziz arrived at the apartment building. Mr. Ennis met the Officers outside at street level and informed them

[1] The facts set forth in this opinion were presented during an evidentiary hearing that took place on October 30, 2013.

that Defendant had turned off the heating system[2], and as a result, his apartment was not receiving heat. Mr. Ennis testified that the Officers entered the apartment building and knocked on Defendant's front door. Defendant did not answer the door. Next, Officer Abdelaziz called for emergency medical services (EMS) to aid Mr. Ennis in finding a warm place to stay while Officer Licata went next door to the landlord's apartment. The landlord, Julio Vintimilla, told Officer Licata that the heat has been off for two days and that he had already contacted PSE & G earlier that day to set up a maintenance call.

Mr. Vintimilla testified that earlier that afternoon he was prompted to call PSE & G after receiving a telephone call from Mr. Ennis reporting that his apartment was not receiving heat. Mr. Vintimilla went next door to the apartment building, and upon investigation of a radiator in the common area, Mr. Vintimilla determined the central heating unit was broken. Mr. Vintimilla spoke with Mr. Ennis and Defendant, each separately, and informed them of the appointment with PSE & G. At this point, Defendant consented to PSE & G entering his apartment to fix the boiler if he was not home. The rental agreement between Defendant and Mr. Vintimilla provided a provision that except in case of emergencies the landlord will not enter the apartment without advance notice to the tenant and to make accommodations with tenant's schedule. Mr. Vintimilla testified that Defendant did not consent to his entrance into his apartment on the night in question.

After speaking with Mr. Vintimilla, Officer Licata asked him if he could do something about the heat. Mr. Vintimilla believed that the Officer was upset and annoyed, and was blaming him for the heating problem. Mr. Vintimilla testified that he wanted to bring the Officer to Defendant's apartment to show the police that the broken heat unit was not his fault.

[2] Testimony from the landlord, Mr. Vintimilla, revealed that Defendant was unable to alter the thermostat temperature because a locked cover was over the thermostat unit.

Meanwhile, EMS arrived at the scene. Technician, Stephanie Cordero, and her partner, spoke with Mr. Ennis and discussed the options of being hospitalized or staying at a shelter. Mr. Ennis refused hospitalization and the option of sleeping at a shelter. Further, there was no testimony that Mr. Ennis received treatment for any of his conditions at that time. Mr. Ennis proceeded back into the apartment building where he witnessed the following incident occur.

Mr. Vintimilla and the Officers both knocked on Defendant's front door. When they did not receive an answer, Mr. Vintimilla opened Defendant's door, entered the apartment and proceeded straight to the boiler room which was 20-25 feet from the front door; the Officers followed suit.[3] Both Mr. Ennis and Mr. Vintimilla testified that Mr. Vintimilla showed one Officer the boiler room, while the other looked around. Then, Mr. Vintimilla proceeded to knock on Defendant's locked bedroom door so he could show the Officers the thermostat located therein. First, Mr. Vintimilla knocked on the bedroom door, when there was no answer, the Officers proceeded to knock even louder on the bedroom door, as Mr. Vintimilla stepped away from the door giving the Officers room to do so.

On the other hand, the Officers testified that they remained in the doorway, not crossing over the threshold into the apartment until they observed Defendant with a weapon. However, I find the testimony of both Mr. Ennis and Mr. Vintimilla, as it relates to the entry of the apartment, credible discrediting the Officers' testimonies that they initially did not enter the apartment. During the five hour evidentiary hearing, I was able to observe the testimony of Mr. Ennis and Mr. Vintimilla; I was impressed with the candor of both witnesses. Both witnesses were called by the State and they were both unwavering in their answers on both direct and cross

[3] With regard to this fact, the testimony of Mr. Ennis and Mr. Vintimilla diverges slightly. Mr. Ennis testified that the Officers entered the apartment first, and then the landlord followed them into the apartment. The order of whether the landlord or the Officers entered the apartment first is an immaterial fact and does not change the outcome of this opinion.

examination. Each of their testimonies corroborated the other with regard to the fact that the police entered the apartment, observed the boiler room and then proceeded to knock on Defendant's bedroom door.

Further, I find no reason or motivation for Mr. Ennis and Mr. Vintimilla to devise such a story. During Mr. Ennis' testimony, it was clear that he disliked Defendant and solely blamed Defendant for the lack of heat in his apartment. Based on their relationship, Mr. Ennis would have no reason to assist Defendant in his case, and if anything, one would expect Mr. Ennis to side with the police officers. Instead, Mr. Ennis testified that the police did, in fact, enter the apartment prior to Defendant exiting his bedroom, and this was corroborated by Mr. Vintimilla. The testimony of the Officers, that, in essence, they stood at the threshold observing the action of Mr. Vintimilla and did not enter until after Defendant exited his bedroom, simply did not have a ring of truthfulness to it.

After the police knocked on Defendant's bedroom door, Mr. Vintimilla stated that "chaos erupted." Both Mr. Vintimilla and Mr. Ennis testified that Defendant opened his bedroom door with a tan leather book covering his left hand which was holding an object. Mr. Vintimilla believed Defendant to be holding drugs. Mr. Ennis testified that at this point he did not see what was in Defendant's hand because he was on the stairwell. However, Officer Abdelaziz testified that he observed a black handle protruding from the back of the leather book. He indicated to his partner that Defendant had a gun, at which point, Defendant retreated to his bedroom, threw the gun into the room, and proceeded to close the bedroom door behind him, reentering the living room space. Before Defendant was able to fully shut the bedroom door, Officer Abdelaziz grabbed Defendant. Officer Licata handcuffed Defendant and detained him in the kitchen area. Immediately thereafter, Officer Abdelaziz entered Defendant's bedroom to retrieve the weapon,

later identified as a .45 caliber gun. While in the bedroom, Officer Abdelaziz observed an open safe with a handgun and ammunition inside. Next, Officer Abdelaziz noticed a black plastic case perched open on a six foot high shelf in an open closet. From where he was standing Officer Abdelaziz believed the case was for a rifle, however, he could not see its contents. The Officer then reached overhead, in order to take down the black plastic case, to observe the contents inside. At the evidentiary hearing, he testified that the "rifle [was] sitting inside the spongy material of the case." Defendant was unable to produce New Jersey specific paperwork for the weapons.

Defendant was charged with violating N.J.S.A. 2C:39-5f, Unlawful Possession of an Assault Firearm in the second degree; N.J.S.A. 2C:39-9h, Manufacture, Transport, Disposition and Defacement of Weapons in the fourth degree; N.J.S.A. 2C:39-3f, Possession of Prohibited Devices in the fourth degree; and three counts of N.J.S.A. 2C:39-10, Violation of the Regulatory Provisions Relating to Firearms in the fourth degree.

II.

"The right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures" is essential guarantee of both the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. In deed, "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." United States v. U.S. Dist. Court, 407 U.S. 297, 313 (1972); accord State v. Frankel, 179 N.J. 586, 611 ("The sanctity of one's home is among our most cherished rights."), cert. den., 543 U.S. 876 (2004), overruled in part by State v. Edmonds, 211 N.J. 117 (2012).

Our constitutional jurisprudence has expressed an explicit preference that government officials first secure a warrant "before executing a search, particularly of a home." Frankel,

supra, 179 N.J. at 597-98. Because a warrantless search of a home is presumptively invalid, the State bears the burden of establishing that such a search falls within one of the few "'well-delineated exceptions' to the warrant requirement." Id. at 598. Perhaps the most basic rationale for those "well-delineated exceptions" is "the recognition that under certain exigent circumstances" warrantless searches are "both reasonable and necessary." Ibid.

In this case, the State relies on the community caretaking and emergency aid doctrines to justify the warrantless entry and search of Defendant's apartment.

A.

In State v. Vargas, 213 N.J. 301, 305 (2013), the Court held that "the community-caretaking doctrine is not a justification for the warrantless entry and search of a home in the absence of some form of objectively reasonably emergency." Defining the narrow limits of the doctrine's application, the majority observed that, "merely because police activities are divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute, does not mean that persons have a lesser expectation of privacy in their homes." Id. at 325 (quoting Cady v. Dombrowski, 413 U.S. 433 (1973)). Accordingly, "without the presence of consent or some species of exigent circumstances, the community-caretaking doctrine is not a basis for the warrantless entry into and search of a home." Id. at 321.

Under the emergency-aid doctrine, a police officer can enter a home without a warrant if he has "'an objectively reasonable basis to believe that an emergency requires that he provide immediate assistance to protect or preserve life, or to prevent serious injury'" and there is a "'reasonable nexus between the emergency and the area or places to be searched.'" Edmonds, supra, 211 N.J. at 132 (quoting Frankel, supra, 179 N.J. at 600). In other words, "if police officers 'possess an objectively reasonable basis to believe' that prompt action is needed to meet

an imminent danger, then neither the Fourth Amendment nor Article I, Paragraph 7 demand that the officers 'delay potential lifesaving measures while critical and precious time is expended obtaining a warrant.'" Id. at 133 (quoting Frankel, supra, 179 N.J. at 599). Thus, our constitutional jurisprudence recognizes that police officers or first responders, in carrying out their community-caretaking responsibilities, may not have time to secure "a warrant when emergent circumstances arise and an immediate search is required to preserve life or property." Vargas, supra, 213 N.J. at 324.

In Vargas, the defendant's landlord called the police because he had not seen nor was he able to contact the defendant for two weeks. Id. at 306-308. During the two-week period, the defendant's garbage was not placed curbside, his mail accumulated, his car remained unmoved with deflated tires, and his monthly rent went unpaid. Ibid. The landlord expressed concern for the defendant's well-being, and the police entered the apartment without a warrant because they "had reasons to fear for his safety." Id. at 308. The defendant was not at home, but the search uncovered evidence that led to a subsequent indictment. Ibid. The Court agreed with the trial court's finding that the State failed to present evidence that a warrantless search was required because of an immediate risk to the safety of either the defendant or the community. Id. at 328.

The State argues here that the police were "clearly acting in a community caregiver role...[a]fter hearing that Mr. Ennis, a diabetic, was without heat for two days during January" and that "the police sought to ensure that the landlord provided Mr. Ennis heat." Pro. Br. at 5. It is clear from the testimony that Mr. Ennis called the police because he was not receiving heat in his apartment. After the police arrived, Mr. Ennis descended two flights of stairs in order to meet the Officers outside on the street. Officer Abdelaziz waited with Mr. Ennis and called EMS, while his partner went next door to speak with the landlord. During that time, there was

no testimony that Mr. Ennis required immediate assistance. In fact, the testimony was that EMS was called to find Mr. Ennis some place warm to stay, not to provide medical assistance for a serious or life threatening injury. When the EMS arrived, the technician, Ms. Cordero, and her partner only discussed Mr. Ennis' options of going to the hospital or seeking a shelter for the night to escape the cold of his apartment. The EMS technicians were not present to medically treat Mr. Ennis. Finally, Mr. Ennis declined transportation to a hospital or a shelter and went back into the apartment building. After initially speaking with Mr. Ennis, it should have been apparent to the Officers that there was no immediate risk to Mr. Ennis' safety that would justify a warrantless entry or search of Defendant's apartment.

At oral arguments, the State maintained that the community caretaking doctrine applied in that the police responded to the scene for the welfare of the community and the landlord had an obligation to provide heat for their tenants. While it is true that a landlord has an obligation to provide heat for their tenants, there was no evidence that Mr. Vintimilla deprived his tenants of heat to justify a warrantless entry into Defendant's apartment. See N.J.A.C. 5:10-14 *et seq*. When Officer Licata spoke with Mr. Vintimilla at his apartment, Mr. Vintimilla told the Officer that he had contacted PSE & G and they were coming the following the day to fix the heat. Mr. Vintimilla specifically told the Officer that it was not his fault the heater was broken. Further, Mr. Vintimilla testified that he was unable to fix the heater himself, and maintenance from PSE & G was required.

The fact that Mr. Vintimilla had previously set up an appointment with PSE & G should have sufficed the Officer's inquiry as to why the tenants at 54 Tuers Avenue were not receiving heat. Instead, on a weekday evening, after 10:30 p.m., Mr. Vintimilla, in the presence of the Officers and without Defendant's consent, opened the front door to Defendant's apartment. The

Officers followed Mr. Vintimilla through the front door and entered the living room area of Defendant's apartment. One Officer followed Mr. Vintimilla over to the boiler room inside Defendant's apartment, while the other looked around. Mr. Vintimlla and Mr. Ennis both testified that the Officers then knocked on Defendant's bedroom door, which prompted Defendant's guarded opening of his bedroom door.

Under these circumstances, I cannot find an objectively reasonable emergency that would vindicate or support the Officers' warrantless entry. No exigency existed on the night in question that would justify the entry into Defendant's apartment, at 10:30 p.m. on a weekday night, to examine the heating unit. It was clear from the record, that although Mr. Ennis suffered from diabetes and other medical conditions, he was not in need of immediate assistance that required the heating unit to be fixed at that very moment nor were the officers or Mr. Vintimilia in any position to fix the unit. There was no testimony presented that there was any concern regarding the safety or wellbeing of Defendant. In fact, the testimony was that Defendant was observed by Mr. Vintimilla earlier that day.

B.

During the evidentiary hearing, the issue of consent was briefly addressed. While I do not find that Defendant consented to the search of his apartment, I address the issue for the sake of thoroughness.

Consent searches are generally referred to as exceptions to the warrant requirement. As with all exceptions to the warrant requirement, the State has the burden of demonstrating that the consent search exception applies. See State v. Koedatich, 112 N.J. 225, 262 (1988). To invoke this exception, the State must demonstrate that voluntary consent was given to conduct the search in question. State v. Johnson, 68 N.J. 349, 353-354 (1975). The mere status of a

landlord, however, does not convey sufficient relationship to the premises to be searched to constitute an automatic grant of authority to consent. The Court, in State v. Scrotsky, 29 N.J. 410 (1963), reasoned, "[T]o uphold such search and seizure without a warrant would reduce the Fourth Amendment to a nullity and leave tenants' homes secure only in the discretion of landlords." Id. at 415, citing Chapman v. United States, 365 U.S. 610 (1961). Therefore, even if a landlord has a key to the premises and a right to enter for limited purposes, he may not consent to the entry of a tenant's premises. State v. Coyle, 119 N.J. 194, 215-216 (1990).

In the instant case, Defendant gave Mr. Vintimilla a right to enter for a limited purpose. Earlier in the afternoon, Mr. Vintimilla had informed Defendant that he scheduled a maintenance appointment with PSE & G for some time in the next two days. According to Mr. Vintimilla, Defendant responded that PSE & G could enter his apartment if he was not there. Mr. Vintimilla testified that Defendant did not say that it was okay to enter his apartment that night. While Defendant did give Mr. Vintimilla consent to allow PSE & G to enter his apartment on a later date to fix the heating unit, he did not give Mr. Vintimilla consent to enter his apartment, that night, with the police, to show them that the unit was in fact broken.

Further, Mr. Vintimilla, as a landlord, did not have the authority to allow the officers entry into Defendant's apartment to examine the heating unit. See Coyle, supra. The police made no inquiry of Mr. Vintimilla as to whether he had Defendant's consent to enter. Additionally, Mr. Vintimilla's status as a landlord should not have led the police to believe he had consent to enter. It is clear from the facts elicited at the evidentiary hearing that Defendant did not give police officers consent to enter and search his apartment.

With all the exceptions to the warrant requirement in mind, I find no objectively reasonable justification for the Officers warrantless entry into Defendant's apartment.

III.

The plain view doctrine, as initially articulated in Coolidge v. New Hampshire, 403 U.S. 443 (1971), applied to the seizure of evidence that the police came across after an initial lawful intrusion. The initial intrusion may be justified by a warrant or a recognized exception to the warrant requirement. Id. at 466. Under these circumstances, according to the Coolidge plurality, (1) the observation of the item must be made from a permissible vantage point; (2) its discovery must be inadvertent; and (3) it must be immediately apparent to the police that the item in question is contraband or evidence of a crime. Id. at 467-468. State v. Bruzzese, 94 N.J. 210, 238 (1983).

In the instant matter, the State argued that the plain view doctrine applied since the Officers observed the gun from a permissible vantage point, the hallway. As stated above, I find the Officers were not at a permissible vantage point when they observed Defendant with a gun, as the Officers were inside Defendant's apartment when Defendant emerged from his bedroom and the emergence from the bedroom was a result of Mr. Vintimilia and the police knocking on his bedroom door. Therefore, prong one of the plain view doctrine is not satisfied.

Even if prong one was satisfied, I would still find that the plain view doctrine was not applicable to the assault rifle as it was not "immediately apparent" to Officer Abdelaziz that the item in question was contraband or evidence of a crime. To satisfy the standard of "immediately apparent," the police officer, from a permissible vantage point, has to have probable cause to believe that the item observed is contraband or evidence. Coolidge, at 74. See also State v. Pineiro, 369 N.J. Super. 65, 74 (App. Div. 2004), cert. den. 181 N.J. 285 (2004).

In Arizona v. Hicks, 480 U.S. 321, 323 (1987), police officers entered the defendant's apartment under exigent circumstances after a bullet was fired into the apartment below, and two

sets of stereo equipment were noticed by one of the officers. The officer suspected the equipment was stolen as it seemed out of place in the apartment. Ibid. The officer read and recorded their serial numbers, moving some of the stereo components in order to do so. Ibid. When, after phoning the numbers into headquarters, it was confirmed that a turntable had been taken in an armed robbery, the officer seized the equipment, and the defendant was subsequently indicted for robbery. Ibid. The defendant's motion to suppress was appealed through to the Supreme Court. Id. at 324. The Court held that the officer's mere recording of the serial numbers did not constitute a seizure. Ibid. However, the moving of the equipment did constitute a "search" separate and apart from the search for the shooter, victims, and weapons that was the lawful objective entry into the apartment. Id. at 324 – 325. Justice Scalia, writing for the majority, stated that "'the distinction between 'looking' at a suspicious object in plain view and 'moving' it even a few inches' is much more than trivial for purposes of the Fourth Amendment." Id. at 325 (responding to Justice Powell's dissent).

Similar to the officer in Hicks moving the stereo equipment to record the serial number, here, Officer Abdelaziz moved the black plastic case from the shelf to observe its contents. Officer Abdelaziz testified that from where he was standing in Defendant's bedroom he was able to observe a black plastic case on the top shelf of a closet, which had no doors. The shelf was approximately six feet from the floor. The Officer then reached up to the shelf, removed the black plastic case and brought the case down so he could observe its contents. Officer Abdelaziz testified that there was a "rifle sitting inside the spongy material of the case." While Officer Abdelaziz may have had a reasonable suspicion that the case may have contained a rifle, its criminality certainly was not "immediately apparent" from his initial vantage point. There was no testimony that any part of a weapon, or any other contraband, was visible from where he was

standing without moving the case. Officer Abdelaziz had to move the black plastic case in order to look at its contents inside to verify his suspicion that inside was a weapon.

Based on these facts, it is clear that the plain view doctrine does not apply, and therefore, the Officers' search and seizure was not justified.

IV.

I conclude that the Officers' warrantless entry and subsequent warrantless search of the apartment was a violation of Defendant's constitutional right against unlawful search and seizure. The exclusionary rule bars the prosecution from using in its case-in-chief against the defendant any evidence of any kind obtained in violation of the defendant's constitutional rights. See Mapp v. Ohio, 367 U.S. 643, 659-60 (1961). The purpose of the exclusionary rule is two-fold: 1) to assure that the law does not provide an incentive for police misconduct and 2) to protect judicial integrity. State v. Adkins, 2013 N.J. Super. LEXIS 179, *21 (App. Div. 2013), citing Mapp v. Ohio, supra. The exclusionary rule serves as the indispensable mechanism for vindicating the constitutional right to be free from unreasonable searches. Adkins, at *19 (internal citations omitted). Here, the police conduct of entering Defendant's apartment, without a warrant, and without satisfying an exception to the warrant requirement, violated Defendant's federal and state constitutional rights. As a result, all evidence seized as a result of the Officers' warrantless entry and search of Defendant's apartment must be suppressed.[4]

Defendant's Motion to Suppress, dated July 16, 2013, is hereby GRANTED.

11/15/14
Date

Hon. John A. Young, Jr., J.S.C.

[4] I find no exception to the exclusionary rule applicable to the facts in the instance case.

Prepared and Filed by Court

The State of New Jersey,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CRIMINAL PART
Plaintiff,	:	Ind. No. 13-05-1051
v.	:	Criminal Action
Keith Pantaleon	:	
Defendant.	:	**ORDER**

This matter having come before the Court by Louis Nappen, Esq., on behalf of Defendant, Keith Pantaleon, and Gaetano T. Gregory, Acting Prosecutor, appearing by Colleen Hannon, Assistant Prosecutor, appearing for the State; and the Court having reviewed briefs and heard arguments of counsel, and having considered the same;

IT IS on this 15th day of January, 2014 that Defendant's Motion to Suppress is **GRANTED** for the reasons set forth in the court's written decision dated January 15, 2014.

Honorable John A. Young, Jr., J.S.C.