FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3522

ARON ASHLEY TAYLOR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Stephen A. Pitre, Judge.

July 15, 2021

NORDBY, J.

Aron Ashley Taylor argues that law enforcement exceeded the permissible scope of a welfare check and unconstitutionally seized him as he was sleeping in his car. He asks this court to reverse the denial of his motion to suppress evidence of various illicit drugs and paraphernalia found in the vehicle and on his person. Because we agree with Taylor that the trial court erred in denying his motion to suppress, we reverse and remand with instructions to vacate Taylor's convictions.

I.

A little before 4:30 in the morning, Escambia County Sheriff's Deputy David Ramires responded to a call about a man sleeping in

a vehicle with a knife on his lap. Upon arrival at the reported location, Deputy Ramires observed that a man, Taylor, was indeed sleeping in the driver's seat of a vehicle with a "fairly large knife" on his lap. The vehicle was legally parked, its engine was off, and no one else was present in the vehicle. Deputy Ramires did not smell alcohol. The surrounding area was not a high crime area. At the suppression hearing, Deputy Ramires confirmed he had no reason to believe Taylor had committed, was committing, or was about to commit a crime. Moreover, at no time during the suppression hearing did the officer suggest he had a reason to be concerned for Taylor's health or safety. The officer proceeded to call for backup from other deputies, which he always does "even if it's just a welfare check."

Within fifteen minutes, about six deputies arrived at the location, including a K9 deputy. With backup present, Deputy Ramires opened the driver's side door without warning, reached in and pulled Taylor out of the vehicle (while he was still asleep), and confiscated the knife. Deputy Ramires then began to speak with Taylor, asking him why he was asleep in the vehicle and whether he needed medical attention (he did not). As the two spoke, the K9 deputy walked around Taylor's vehicle and the dog alerted to the presence of narcotics. Deputies searched the vehicle and discovered several illicit drugs and paraphernalia. The State charged Taylor with various drug-related offenses, and he moved to suppress all evidence of drugs and paraphernalia discovered during the incident. The trial court denied the motion, and Taylor later entered his plea, expressly reserving his right to appeal the dispositive suppression ruling. This appeal followed.

II.

We review a trial court's ruling on a motion to suppress under a mixed standard, affording deference to the trial court's factual findings (when supported by competent, substantial evidence), but considering de novo any legal issues presented. *State v. Crowley*, 232 So. 3d 473, 475 (Fla. 1st DCA 2017).

This case requires us to examine whether the warrantless intrusion into Taylor's vehicle as he was sleeping was reasonable

under the Fourth Amendment as part of a permissible welfare check. It was not.

Welfare checks fall under the "community caretaking doctrine," which recognizes the duty of police officers to "ensure the safety and welfare of the citizenry at large." *State v. Brumelow*, 289 So. 3d 955, 956 (Fla. 1st DCA 2019); *State v. Fultz*, 189 So. 3d 155, 159 (Fla. 2d DCA 2016). Under this judicially created doctrine, law enforcement actions that might otherwise violate the Fourth Amendment can be found lawful when they occur in connection with an officer's "community caretaking functions, totally devoid from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)[1]; *see also Brumelow*, 289 So. 3d at 956.

Because searches and seizures conducted in connection with welfare checks are "solely for safety reasons," the scope of an encounter associated with a welfare check is limited to prevent the exception from becoming an investigative tool that circumvents the Fourth Amendment. *Brumelow*, 289 So. 3d at 956. The purpose of a welfare check regulates its scope. *See Riggs v. State*, 918 So. 2d 274, 279 (Fla. 2005) (citing *Rolling v. State*, 695 So. 2d 278, 293 (Fla. 1997)). Without any reasonable suspicion that criminal activity is or was afoot, the welfare check should end when the need for it ends. *See Brumelow*, 289 So. 3d at 955–58; *see also Greider v. State*, 977 So. 2d 789, 794 (Fla. 2d DCA 2008) ("[O]nce it was determined that Mr. Greider was 'okay' and not involved in any criminal activity, the officer lacked the proper authority to order Mr. Greider to lower his window.").

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[1] The United States Supreme Court recently reemphasized the distinction drawn in *Cady* between automobiles and homes in the context of the Fourth Amendment and the "community caretaking" doctrine. *See Caniglia v. Strom*, 141 S. Ct. 1596, 1599 (2021). The Supreme Court noted in *Caniglia* that "[w]hat is reasonable for vehicles is different from what is reasonable for homes." *Id*. at 1600.

The touchstone of any Fourth Amendment analysis—including one involving a welfare check—is reasonableness, which is measured by the totality of existing circumstances. *See Brumelow*, 289 So. 3d at 956; *State v. Johnson*, 208 So. 3d 843, 844 (Fla. 1st DCA 2017). Both the scope and manner of a welfare check must be reasonable. *See Brigham City, Utah v. Stuart*, 547 U.S. 398, 406–07 (2006). While we acknowledge that law enforcement is not required to use the least intrusive methods available when performing community caretaking functions, *see Vitale v. State*, 946 So. 2d 1220, 1223 (Fla. 4th DCA 2007), a welfare check, particularly one that evolves into a search and seizure, must be commensurate with the perceived exigency at hand, *see Brigham*, 547 U.S. at 405–07.

At issue is not whether the Deputy was unreasonable in performing a welfare check. Taylor appeared to be sleeping behind the wheel of his vehicle around 4:30AM with a "fairly large knife" sitting on his lap. Under these circumstances, a reasonable law enforcement officer would have justifiably conducted a welfare check on Taylor. *See, e.g.*, *Dermio v. State*, 112 So. 3d 551, 555–56 (Fla. 2d DCA 2013); *Vitale*, 946 So. 2d 1221–23; *see also Tripp v. State*, 251 So. 3d 982, 986 (Fla. 1st DCA 2018) (explaining that officer's actions are judged by an objectively reasonable law enforcement officer). Rather, the issue is whether the Deputy exceeded the scope of a permissible welfare check.

We conclude the Deputy did exceed that scope when he opened the vehicle door without warning and pulled Taylor out of the vehicle while still asleep. In that instant, the welfare check evolved into a seizure for purposes of the Fourth Amendment. *See Santiago v. State*, 133 So. 3d 1159, 1164–65 (Fla. 4th DCA 2014) ("Absent a reasonable suspicion that a crime has occurred, is occurring, or is about to occur, an officer may not convert a consensual encounter into an investigatory stop by ordering a citizen out of a parked car."). At that time, according to the Deputy's own testimony, there was no sign that Taylor was involved in any criminal activity, nor was the area described as high in crime. Nor was it apparent that Taylor was unresponsive, unconscious, or experiencing any sort of health emergency. *Cf. Vitale*, 946 So. 2d at 1220–23 (finding officers' actions were reasonable when they opened the door and repositioned the driver after the officers determined, based on the

driver's position, it was impossible to conclude he was sleeping). Indeed, during the suppression hearing, the Deputy never articulated any specific concern for Taylor's health or safety, and he adamantly reiterated that Taylor was merely sleeping.

Even if Taylor's wellbeing were objectively in doubt, the officer never sought to inquire into Taylor's wellbeing before pulling him out of his vehicle. *Cf. Brumelow*, 289 So. 3d at 956–58 (finding welfare check reasonable when the officer asked the driver to open the window and door after both the driver and officer failed to arouse the passenger); *Dermio*, 112 So. 3d at 553–57 (holding that no unreasonable search and seizure occurred when the deputy opened the car door after the defendant failed to adequately respond to other less intrusive inquiries).

The fact that Taylor possessed a "fairly large knife" is not lost on this court. However, the mere presence of the knife—without something more—is inadequate to justify the type of seizure that occurred here. *See Kilburn v. State*, 297 So. 3d 671, 675 (Fla. 1st DCA 2020) (noting that "a law enforcement officer may not use the presence of a concealed weapon as the sole basis for seizing an individual."). Accordingly, the trial court's conclusion that the Deputy's actions constituted a permissible welfare check was not supported by competent, substantial evidence.

III.

The State, for the first time, now asserts Taylor lacks standing to contest the search and seizure of the illegal items because he disclaimed knowledge or ownership of those items.[2] We disagree. Though Deputy Ramires was silent in the suppression hearing as to any disclaimer on the part of Taylor, it is undisputed that Taylor owned the vehicle searched and disclaimed the illegal items found within—while detained—in response to the discovery of those

[2] The issue of standing may be raised for the first time on appeal. *See State v. Fosmire*, 135 So. 3d 1153, 1156 (Fla. 1st DCA 2014).

items.[3] As a basic principle of Fourth Amendment law, "an unconstitutional seizure or arrest which prompts a disclaimer of property vitiates the disclaimer." *Baggett v. State*, 849 So. 2d 1154, 1157 (Fla. 2d DCA 2003) (quoting *State v. Daniels*, 576 So. 2d 819, 823 (Fla. 4th DCA 1991)); *see also State v. Anderson*, 591 So. 2d 611 (Fla. 1992); *Bravo v. State*, 963 So. 2d 370 (Fla. 2d DCA 2007). In determining whether such a disclaimer was voluntary, we examine whether "there is a causal nexus between the unlawful police conduct and the defendant's disclaimer of the property." *Baggett*, 849 So. 2d at 1157. As explained above, the officer's search and seizure was unconstitutional. Because Taylor disclaimed the illegal items as a result of the unconstitutional search and seizure, he retains standing to challenge the search and seizure.

The State also contends that the alert by the detection dog gave the officer probable cause to search Taylor's vehicle. Assuming the alert provided probable cause to search Taylor's vehicle, whether the evidence should have been suppressed turns on the propriety of Taylor's initial detention as the detention came before the alert. *See Jacoby v. State*, 851 So. 2d 913, 916 (Fla. 2d DCA 2003). As we have discussed, the detention was unconstitutional. Thus, the initial detention tainted the later search and seizure of the evidence. *See id.*

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For the above reasons, we reverse the trial court's denial of Taylor's motion to suppress, and we remand with instructions to vacate Taylor's convictions.

REVERSED and REMANDED.

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[3] Generally, Taylor would be entitled to a remand with instructions to conduct a hearing on standing. *See State v. Pettis*, 266 So. 3d 238, 243 (Fla. 2d DCA 2019). But a remand would be futile here because the facts relevant to standing are not in dispute. *See Fosmire*, 135 So. 3d at 1156; *Hendley v. State*, 58 So. 3d 296, 299 (Fla. 2d DCA 2011).

ROBERTS and MAKAR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Lori A. Willner, Assistant Public Defender, Tallahassee, for Appellant.

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